

**DATED 3 July 2008**

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

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**AIRCRAFT CARRIER  
MANUFACTURING PHASE  
ALLIANCE AGREEMENT**

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## CONTENTS

<b>Clause</b>	<b>Heading</b>	<b>Page</b>
1	Definitions and Interpretation .....	2
2	Consideration.....	2
3	Completion .....	2
4	Objective .....	2
5	Alliance Principles .....	3
6	Alliance Management .....	3
7	Term .....	6
8	Industrial Participants' Warranties.....	6
9	Open Book .....	7
10	Risk and Reward Incentive Arrangement (RRIA).....	8
11	Indexation .....	8
12	Project Controls Requirement .....	8
13	Major Incidents .....	8
14	Intellectual Property Rights.....	9
15	Confidentiality.....	9
16	Facilities .....	9
17	Capital Expenditure.....	9
18	Information Technology .....	11
19	Government Furnished Assets .....	11
20	Personnel .....	11
21	Liability/Indemnity/Insurance .....	11
22	Delay .....	11
23	Force Majeure.....	12
24	Exclusion, Step-In, Novation and Termination.....	13
25	Survivorship .....	30
26	Variations and Change Procedure.....	31
27	Assignment and Novation .....	32
28	Industrial Participants' Obligations .....	33
29	Change of Control.....	34
30	Project Agreements.....	35
31	Precedence .....	37
32	Compliance with Law.....	38
33	Information and Further Assurance .....	38
34	Records and Documentation.....	39
35	Relationship of the Parties.....	40
36	Notices .....	40
37	Third Party Rights.....	44
38	Severability .....	44
39	Entire Agreement .....	44
40	Dispute Resolution Procedure.....	44
41	Law and Jurisdiction.....	45
42	Delivery of Agreement .....	45
43	Counterparts .....	45
	Schedule 1 - Definitions and Interpretation .....	46
	Schedule 2 - Alliance Management .....	87
	Schedule 3 - Open Book .....	112
	Schedule 4 - Risk and Reward Incentive Arrangement .....	125

Schedule 5 - Indexation ..... 137  
Schedule 6 - Project Controls Requirement ..... 141  
Schedule 7 - Excluded Risks and Assumptions ..... 157  
Schedule 8 - Intellectual Property Rights ..... 163  
Schedule 9 - Confidentiality ..... 226  
Schedule 10 - Facilities ..... 231  
Schedule 11 - Information Technology ..... 233  
Schedule 12 - Government Furnished Assets ..... 236  
Schedule 13 - Personnel ..... 243  
Schedule 14 - Liability/Indemnity/Insurance ..... 252  
Schedule 15 - Step-In and Step-Out Notices ..... 296  
Schedule 16 - Change Procedure ..... 299  
Schedule 17 - Dispute Resolution Procedure ..... 306

**THIS AGREEMENT** is made the                      day of                      2008

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR DEFENCE** of Whitehall, London, SW1 (the “**Authority**”);
- (2) **BABCOCK MARINE (ROSYTH) LIMITED** (company registration number: SC333105) whose registered office is situate at Rosyth Business Park, Rosyth, Dunfermline, Fife, KY11 2YD (“**Babcock**”);
- (3) **BAE SYSTEMS MARINE LIMITED** (company registration number: 00229770) whose registered office is situate at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU (“**BAES MARINE**”);
- (4) **BAE SYSTEMS INTEGRATED SYSTEM TECHNOLOGIES LIMITED** (company registration number 03456325) whose registered office is situate at Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU (“**BAES INSYTE**”);
- (5) **BVT SURFACE FLEET LIMITED** (company registration number 06160534 whose registered office is situate at Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ (“**BVT**”); and
- (6) **THALES NAVAL LIMITED** (company registration number: 03957722) whose registered office is situate at 2 Dashwood Lang Road, The Bourne Business Park, Addlestone, Nr Weybridge, Surrey KT15 2NX (“**Thales**”).

**WHEREAS:**

- (A) The Authority wishes to procure two aircraft carriers: CVF 01 and CVF 02.
- (B) On 13 April 2006 the Demonstration Phase Alliance Agreement and related Demonstration Phase Works Contracts were entered into by the Demonstration Phase Alliance Participants.
- (C) The purpose of this Agreement is, amongst other things, to establish an Alliance for the Manufacturing Phase of the Project between the Manufacturing Alliance Participants to incentivise the achievement of the Manufacturing Phase Objective by

working to the Alliance Principles.

- (D) The obligation to deliver the Vessels is set out in the Manufacture Phase Flow Through Contract to be entered into between the Authority and BVT and BVT will sub-contract elements of the Works to the Other Industrial Participants pursuant to the IP MFTC Sub-Contracts which Works will be managed pursuant to this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1 Definitions and Interpretation**

- 1.1 The provisions of this Agreement shall be interpreted in accordance with Schedule 1 (Definitions and Interpretation).

**2 Consideration**

- 2.1 The Manufacturing Alliance Participants are entering into this Agreement in consideration of their respective rights and obligations under this Agreement and:

- (a) the entering into of the Manufacturing Flow Through Contract between the Authority and BVT; and
- (b) the entering into of the IP MFTC Sub-Contracts between BVT and each of the Other Industrial Participants.

**3 Completion**

- 3.1 On the same date as this Agreement, the relevant Manufacturing Alliance Participants shall enter into the Manufacturing Flow Through Contract and the IP MFTC Sub-Contracts, and shall procure that the Guarantees and the Authority Deeds of Indemnity are entered into and the Alliance Management Board shall hold a duly convened meeting to transact the business and pass the resolutions in the form set out in Schedule 2 Part 4 (Alliance Management).

**4 Objective**

- 4.1 The Manufacturing Phase Objective is for the Manufacturing Alliance Participants jointly to achieve Vessel Acceptance of CVF 01 and CVF 02:
- (a) by their respective Contract Acceptance Dates;

- (b) at or below the Final Target Cost; and
- (c) in accordance with the Ship Specification.

## **5 Alliance Principles**

5.1 The Manufacturing Alliance Participants shall work together to achieve the Manufacturing Phase Objective and, subject to and in accordance with the provisions of this Agreement, shall:

- (a) act in good faith;
- (b) act in accordance with the Alliance Charter;
- (c) each fulfil their role as a member of the Alliance and actively participate in the Alliance Management Board in accordance with the provisions of this Agreement;
- (d) work together as a single, integrated, high performance team and make decisions to achieve what is Best for Project;
- (e) assume joint responsibility for the achievement of the Manufacturing Phase Objective and share all risks except the Excluded Risks;
- (f) establish clear accountabilities and responsibilities within the Alliance;
- (g) work on an Open Book basis; and
- (h) encourage co-operative behaviour between themselves and engender a culture of no fault, no blame and no disputes;

together the “**Alliance Principles**”.

## **6 Alliance Management**

6.1 The Manufacturing Alliance Participants shall communicate with each other and all relevant personnel in a way which is direct, timely and clear and thereby optimise the ability for each of the Manufacturing Alliance Participants, the Alliance Management Board and CVF Programme Director to make effective and timely decisions so as to achieve the Manufacturing Phase Objective.

- 6.2 The provisions of Parts 1, 2 and 3 of Schedule 2 (Alliance Management) shall apply and the Manufacturing Alliance Participants shall be bound by the actions and decisions of the Alliance Management Board and CVF Programme Director carried out in accordance with this Agreement.
- 6.3 Each of the Manufacturing Alliance Participants shall ensure that its Member or its Alternate Member on the Alliance Management Board attends all of the meetings of the Alliance Management Board and that its Member participates fully.
- 6.4 The Manufacturing Alliance Participants shall comply with all Alliance Strategy Documents.
- 6.5 Notwithstanding any other provision of this Agreement, no Alliance Management Board resolution shall be effective if it makes any Major Change without following (and being documented in accordance with) the Change Procedure.
- 6.6 Restricted Matters
- (a) Notwithstanding any other provision of this Agreement (other than Paragraph 9 (Change in Law) of Schedule 16 (Change Procedure)) the Authority shall not be obliged to make any decision which:
- (i) changes the Performance Requirements or reduces the likelihood of the Vessels, Vessel Parts, Compartments or Ship Deliverables passing the relevant Acceptance Events;
  - (ii) changes section 1.2 (Standards and Applicability) of the Ship Specification;
  - (iii) changes the Contract Acceptance Dates or extends the Vessel Acceptance Date for CVF 01 or CVF 02 beyond their respective Contract Acceptance Dates;
  - (iv) changes the Initial Target Cost or Final Target Cost, except where the Initial Target Cost or Final Target Cost changes as a result of an Equitable Adjustment;
  - (v) accelerates payments from the dates set out in the Time Phased Budget

save in accordance with the Project Controls Requirement;

- (vi) moves performance of the build of the Blocks or Units or their assembly into the Vessels outside the United Kingdom;
- (vii) adversely affects the Safety Case;
- (viii) requires a Major Change to the GFA Tool Set;
- (ix) adversely affects the future through-life supportability of the Vessels, even if such decision would be Best for Project.

(b) Notwithstanding any other provision of this Agreement the Authority shall not be obliged to act on a Best for Project basis in relation to the following matters:

- (i) any steps taken by the Authority pursuant to Clause 13 (Major Incidents);
- (ii) any decision of the Authority to exercise its rights in relation to Clause 23.2(a) or (b) (Force Majeure);
- (iii) any steps taken by the Authority pursuant to Clause 24 (Exclusion, Step-In, Novation and Termination) except:
  - (A) the Authority's obligation to consult pursuant to Clause 24.3(a) which shall be carried out on a Best for Project basis; and
  - (B) steps taken by the Authority through its participation as a Member of the Alliance Management Board which shall be taken on Best for Project basis except if taken pursuant to Clause 24.3(f) when the Authority's Member may act on a basis which is not Best for Project;
- (iv) any Mandatory Change made by the Authority under the Change Procedure;
- (v) any steps taken by the Authority in relation to Assignment and Novation (Clause 27);



- (vi) any steps taken by the Authority in relation to Change of Control (Clause 29); or
- (vii) any decision by the Authority through its participation as a Member of the Alliance Management Board pursuant to Paragraph 7 (Indexation) of the First AMB Minutes or Paragraph 6 of Schedule 5 (Indexation).

## **7 Term**

7.1 This Agreement shall commence on the Commencement Date and shall continue until the earlier of:

- (a) exclusion of all the Industrial Participants; or
- (b) the end of Phase 2;

save for any obligations which are intended to survive termination or expiry of this Agreement as referred to in Clause 25 (Survivorship).

## **8 Industrial Participants' Warranties**

8.1 Each of the Industrial Participants hereby warrants separately to each of the other Manufacturing Alliance Participants that as at the date hereof:

- (a) it is properly constituted and incorporated under the laws of England and Wales (or, in the case of Babcock, Scotland,) and has the corporate power to own its assets and to carry on its business;
- (b) it has the power to enter into and to exercise its rights and perform its obligations under any Project Agreement to which it is a party;
- (c) all necessary action to authorise the execution of and the performance of its obligations under any Project Agreement to which it is a party has been taken;
- (d) the obligations expressed to be assumed by it under any Project Agreement are legal, valid, binding and enforceable to the extent permitted by law;
- (e) the execution, delivery and performance by it of any Project Agreement to which it is a party does not contravene any provision of:

- (i) any existing Legislation either in force, or enacted but not yet in force, which is or will become binding on it;
  - (ii) its Memorandum and Articles of Association;
  - (iii) any order or decree of any competent court or arbitrator; or
  - (iv) any obligation which is binding upon it or upon any of its assets or revenues;
- (f) no proceedings (whether in any court or pursuant to arbitration, mediation, regulation or other administrative arrangements) are in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under any Project Agreement to which it is a party; and
- (g) it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on its ability to perform its obligations under any Project Agreement to which it is a party;

and the warranties set out in this Clause 8.1 are separate and independent and none shall be given a limited construction.

8.2 The Authority does not give any undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any data, information, document or thing whatsoever including, without limitation, any works completed under the Demonstration Phase Works Contracts.

8.3 Each of the Industrial Participants shall:

- (a) satisfy itself as to the nature and extent of the risks assumed by it under any Project Agreement to which it or any company in its Group is a party; and
- (b) gather all information necessary to perform its obligations under any Project Agreement to which it or any company in its Group is a party.

## **9 Open Book**

9.1 The provisions of Schedule 3 (Open Book) shall apply.

**10 Risk and Reward Incentive Arrangement (RRIA)**

10.1 The provisions of Schedule 4 (Risk and Reward Incentive Arrangement) shall apply.

**11 Indexation**

11.1 The provisions of Schedule 5 (Indexation) shall apply.

**12 Project Controls Requirement**

12.1 The provisions of Schedule 6 (Project Controls Requirement) shall apply.

**13 Major Incidents**

13.1 If, prior to the Vessel Acceptance Date of a Vessel, any incident occurs which causes serious damage to any part of either of CVF 01 or CVF 02, or which leads to a serious breach of security, the Industrial Participants shall, as soon as possible after being so requested by the Authority, convene a formal inquiry under the chairmanship of a senior executive of the Industrial Participants to establish the cause of the incident and, where appropriate, recommend remedial action. However, should the incident be such that the Health and Safety Executive set up an inquiry to investigate the cause then the Industrial Participants' inquiry can be limited to establishing recommendations for the recovery or remedial action.

13.2 The inquiry shall be conducted by the Industrial Participants but the Authority shall have the right to appoint representatives to attend the inquiry in any of the following capacities:

- (a) as members of the board of inquiry;
- (b) in an advisory capacity;
- (c) to question witnesses.

The presence of such Authority representatives shall be without prejudice to the Authority's right to accept or reject the findings and recommendations of the board of inquiry.

13.3 A full report of the inquiry is to be forwarded to the Authority and shall include:

- (a) a verbatim report of the proceedings, signed by all members of the board of inquiry;
- (b) copies of any sketches or diagrams which may have been produced to illustrate the evidence of any witnesses; and
- (c) the conclusions and recommendations of the board of inquiry and if there shall be any difference of opinion among the members on any material point, the grounds of difference are to be stated fully.

13.4 Any such inquiry shall not deliberate on possible consequential adjustments to any Project Agreement.

13.5 Any such inquiry shall be without prejudice to the rights and remedies of the Manufacturing Alliance Participants under any Project Agreement in respect of any loss or damage arising from any such incident.

13.6 Notwithstanding the foregoing sub-Clauses, in certain circumstances the Authority may wish to conduct an inquiry itself. In such cases the Authority shall have the right to require the Industrial Participants, or any person in their employ, to attend the inquiry in any capacity.

13.7 The cost of participation by an Industrial Participant in any inquiry shall be an Incurred Cost but there shall be no Equitable Adjustment.

#### **14 Intellectual Property Rights**

14.1 The provisions of Schedule 8 (Intellectual Property Rights) shall apply.

#### **15 Confidentiality**

15.1 The provisions of Schedule 9 (Confidentiality) shall apply.

#### **16 Facilities**

16.1 The provisions of Schedule 10 (Facilities) shall apply.

#### **17 Capital Expenditure**

17.1 Subject to Clause 17.2 below, the Authority shall pay for any Authority Funded Capex

Items through Industrial Participants being entitled to recover the cost of such items as Incurred Costs.

- 17.2 The Authority's obligation to pay Incurred Costs in respect of the manufacture or acquisition of any Authority Funded Capex Items is conditional upon the relevant Industrial Participant providing such assurance or security (being by way of the creation of a security interest only and not by way of cash or cash deposit) to the Authority as the Authority may reasonably require to ensure that such Authority Funded Capex Items will be available to the relevant Industrial Participant or any of the other Manufacturing Alliance Participants as appropriate for the purposes of the Manufacturing Phase until the end of Phase 2.
- 17.3 The Industrial Participants agree that any Authority Funded Capex Items will only be used by the Industrial Participant which owns or is in possession or control of such Authority Funded Capex Items for the purposes of the Manufacturing Phase until the end of Phase 2 unless the Authority agrees otherwise.
- 17.4 During the Manufacturing Period, the Alliance Management Board shall be entitled to require:
- (a) any Industrial Participant to make available any Authority Funded Capex Item to any Other Industrial Participant; and/or
  - (b) upon any assignment or novation of this Agreement by any Industrial Participant or any Excluded Participant (as the case may be), such Industrial Participant or Excluded Participant to assign or transfer any Authority Funded Capex Item to the assignee or novatee or to any Other Industrial Participant.
- 17.5 At the end of the Manufacturing Period or earlier if approved by the Alliance Management Board, Authority Funded Capex Items shall be disposed of in accordance with the best interests of the Crown. The Authority shall instruct the relevant Industrial Participant as to such disposal and where appropriate the method of crediting the Authority with the proceeds thereof less any cost of disposal incurred by the relevant Industrial Participant.

**18 Information Technology**

18.1 The provisions of Schedule 11 (Information Technology) shall apply.

**19 Government Furnished Assets**

19.1 The provisions of Schedule 12 (Government Furnished Assets) shall apply.

**20 Personnel**

20.1 In order to ensure that the Works are performed in accordance with the terms of the Key Project Agreements, each Industrial Participant shall ensure that its staff engaged on the Project shall be appropriately qualified and experienced to undertake their tasks in accordance with the requirements of the relevant agreement.

20.2 The provisions of Schedule 13 (Personnel) shall apply.

**21 Liability/Indemnity/Insurance**

21.1 The provisions of Schedule 14 (Liability/Indemnity/Insurance) shall apply.

**22 Delay**

22.1 If any party becomes aware of anything (whether or not arising as a result of any act or omission of any party, its employees or subcontractors) which may materially delay or prevent any party from complying with any provision of any Project Agreement and/or achieving the Manufacturing Phase Objective, it shall promptly give written details of the same, the circumstances, reasons, likely duration and any other relevant particulars to the CVF Programme Director.

22.2 All parties shall, pursuant to the Alliance Principles, take all available steps to mitigate the effect of any such matter and any additional costs arising (or which may arise) as a result and the parties shall consult the Alliance Management Board on the management, mitigation and steps to be taken to avoid or reduce the effect of the same on the Project.

22.3 No party shall be in breach of any Key Project Agreement by reason of any delay in performance of any of its obligations due to any delay (other than delay in payment). If any Industrial Participant incurs any additional Incurred Costs as a result of any

delay then these shall be paid by the Authority in accordance with schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract but there shall be no Equitable Adjustment except as provided in Clause 23 (Force Majeure), Schedule 14 (Liability/Indemnity/Insurance) or Schedule 16 (Change Procedure) Paragraph 8 (Mandatory Change) or Paragraph 9.2 (Change in Law) and as otherwise expressly provided for in this Agreement.

**23 Force Majeure**

23.1 If a Force Majeure Event occurs which causes a delay to the Integrated Schedule, the Contract Acceptance Date of the Vessel which is impacted by such delay shall be extended by a corresponding period pursuant to the Change Procedure.

23.2 If a Force Majeure Event occurs and any party considers that such Force Majeure Event will either:

(a) require:

(i) additional Incurred Costs; and/or

(ii) any other payments by the Authority to BVT in respect of that Force Majeure Event pursuant to the provisions of any Key Project Agreement,

which in aggregate exceeds [REDACTED]; or

(b) extend the Contract Acceptance Date for either CVF 01 or CVF 02 by more than [REDACTED],

then such party shall propose a Change in accordance with Schedule 16 (Change Procedure). Such Change shall propose the minimum alteration to the Key Project Agreements as is necessary to deal with the consequences of such event, shall also propose an Equitable Adjustment relating to such Change and shall set out any necessary change to either of the Contract Acceptance Dates. It shall be a term of such Change (amongst other things) that the Manufacturing Alliance Participants shall agree on an Equitable Adjustment. Any failure to agree under this Clause 23.2 shall not constitute a Dispute and shall be resolved by the application of Clause 23.3 below.

- 23.3 If, following the issue of a proposal for a Change pursuant to Clause 23.2 above the Manufacturing Alliance Participants cannot agree the terms of the Change so proposed within 6 months from the date of issue of such Change proposal then the Authority shall within ten (10) Business Days following the end of such six (6) month period or from the date of a resolution of the Alliance Management Board confirming such negotiations have concluded without reaching such agreement (if earlier) either:
- (a) require that by written notice to all of the Industrial Participants the Manufacturing Phase continues to be performed in accordance with its existing contractual terms in which case the Manufacturing Alliance Participants shall agree on an Equitable Adjustment and any necessary change to either of the Contract Acceptance Dates and, to the extent that such continued performance directly causes there to be a breach of any Project Agreement, then the Industrial Participants shall be relieved from such breach; or
  - (b) terminate this Agreement.
- 23.4 Save as provided in Clause 23.3(b) above or in Clause 24 (Exclusion, Step-In, Novation and Termination) a Force Majeure Event shall not entitle any party to terminate this Agreement or issue an Exclusion Notice to any Industrial Participant.
- 23.5 All parties shall, pursuant to the Alliance Principles, take all available steps to mitigate the effect of any Force Majeure Event and any additional costs arising (or which may arise) as a result.

## **24 Exclusion, Step-In, Novation and Termination**

### **24.1 Purpose**

The purpose of this Clause 24 is to establish an appropriate and escalating range of remedies and options available to the Alliance Management Board and/or the Authority so that they are able to react to any failure by any Industrial Participant to perform its obligations in relation to the Manufacturing Phase in a manner which is proportionate to the nature and consequences of such failure.

### **24.2 Exclusion by the Alliance Management Board**

- (a) If, in the opinion of any Manufacturing Alliance Participant, an Industrial



Participant is:

- (i) in material and/or persistent breach of any provision of a Key Project Agreement; and
- (ii) such material and/or persistent breach is inconsistent with continued membership of the Alliance,

such Manufacturing Alliance Participant may request that the Alliance Management Board determines whether the relevant Industrial Participant is, in the opinion of the Alliance Management Board, in such material and/or persistent breach and if so whether such breach is rectifiable or otherwise remediable to the Alliance Management Board's satisfaction. Such request shall be accompanied by such information as the Alliance Management Board may require in order to make such a determination. The relevant Industrial Participant may make representations to the Alliance Management Board.

(b) If the Alliance Management Board determines that the relevant Industrial Participant is:

- (i) in material and/or persistent breach of any provision of a Key Project Agreement; and
- (ii) such material and/or persistent breach is inconsistent with continued membership of the Alliance, and
- (iii) such breach is rectifiable or otherwise remediable to the Alliance Management Board's satisfaction,

then, the Authority shall issue a Rectification Notice to the relevant Industrial Participant and shall send a copy of the same to the other Manufacturing Alliance Participants.

(c) If the Alliance Management Board determines that the relevant Industrial Participant is:

- (i) in material and/or persistent breach of the provisions of a Key Project Agreement; and

- (ii) such material and/or persistent breach is inconsistent with continued membership of the Alliance, and
- (iii) such breach is not rectifiable or otherwise remediable to the Alliance Management Board's satisfaction,

then the Authority shall be entitled to issue an Exclusion Notice to the relevant Industrial Participant and shall send a copy of the same to the other Manufacturing Alliance Participants.

- (d) Notwithstanding the foregoing provisions of this Clause 24.2, BVT shall not be in breach of this Agreement or the Manufacturing Flow Through Contract solely because another Industrial Participant is in material and/or persistent breach of its IP MFTC Sub-Contract.

#### 24.3 Exclusion by the Authority

- (a) Prior to taking any of the steps set out in this Clause 24.3 the Authority shall notify the relevant Industrial Participant and consult the Alliance Management Board and in particular shall consult as to whether any actions proposed to be undertaken by the Authority pursuant to this Clause 24.3 are proportionate to the nature or consequences of any failure by the relevant Industrial Participant and are likely to be Best for Project. Prior to commencing such consultation, the Authority shall issue a notice to each Member of the Alliance Management Board detailing that it wishes to carry out consultations pursuant to this Clause 24.3, the subject matter of the consultation and the programme for the carrying out of the consultation.
- (b) Subject to Clause 24.3(a) above, if any Industrial Participant is in breach of any of the provisions of:
  - (i) Clause 27 (Assignment and Novation);
  - (ii) Clause 29 (Change of Control);
  - (iii) Schedule 3 (Open Book);
  - (iv) Schedule 6 (Project Controls Requirement); or

- (v) Schedule 8 (Intellectual Property Rights) provided that such breach is of an obligation to the Authority rather than to another Industrial Participant;

then, subject to Clause 24.3(d), unless such breach is rectifiable, or otherwise remediable to the Authority's satisfaction, the Authority shall have the right to issue an Exclusion Notice to such Industrial Participant and shall send a copy of the same to the Other Industrial Participants. If such breach is rectifiable, or otherwise remediable as aforesaid, then the Authority shall have the right to send a Rectification Notice to the relevant Industrial Participant and shall send a copy of the same to the Other Industrial Participants. If the Authority elects not to send such a Rectification Notice then it shall not have a right to issue an Exclusion Notice in relation to a rectifiable or otherwise remediable breach unless and until it does send such Rectification Notice and until the provisions of Clause 24.3(a) have been complied with.

- (c) If, in relation to an Industrial Participant, there is an occurrence of any of the events set out in, or if any Industrial Participant is in breach of any of the provisions set out in:
  - (i) DEFCON 515 (Bankruptcy and Insolvency) (and for the purposes of this DEFCON the "Contractor" means any of the Industrial Participants);
  - (ii) DEFCON 520 (Corrupt Gifts and Payments of Commission) (and for the purposes of this DEFCON the "Contractor" means any of the Industrial Participants); or
  - (iii) DEFCON 659 (Security Measures) (and for the purposes of this DEFCON "First Party" means the Authority and "Second Party" means the relevant Industrial Participant)

then, subject to Clause 24.3(a), unless such event or breach is rectifiable or otherwise remediable, in each case to the Authority's satisfaction, the Authority shall have the right to issue an Exclusion Notice to such Industrial Participant and shall send a copy of the same to the Other Industrial Participants. If such breach is rectifiable, or otherwise remediable as aforesaid,

then the Authority shall have the right to send a Rectification Notice to the relevant Industrial Participant and shall send a copy of the same to the Other Industrial Participants. If the Authority elects not to send such a Rectification Notice then it shall not have a right to issue an Exclusion Notice in relation to a rectifiable or otherwise remediable breach unless and until it does send such Rectification Notice and until the provisions of Clause 24.3(a) have been complied with.

- (d) Breaches of Schedule 3 (Open Book) or the Project Controls Requirement which are not themselves rectifiable shall nevertheless be regarded as being rectifiable if the Alliance Management Board determines that:
  - (i) similar breaches by the same Industrial Participant have not been the subject of a Rectification Notice within the previous twelve months; and
  - (ii) it is likely through the implementation of a Rectification Programme pursuant to Clause 24.4, to prevent the repetition of such breach.
- (e) The Authority may terminate this Agreement (and such termination shall not be deemed to be for breach of contract) by issuing an Exclusion Notice to all the Industrial Participants if:
  - (i) at any time the Outturn Cost forecast in the Cost Model exceeds the Project Target Cost at the same economic conditions, provided that such Exclusion Notice will not take effect until:
    - (A)
      - 1) such excess has been reported to the next following meeting of the Alliance Management Board; and
      - 2) such excess has not been removed from the Cost Model within one month of that meeting; and
      - 3) a further meeting of the Alliance Management Board has been held and at the time of which, such excess has not been removed; or

(B) such excess has not been removed from the Cost Model within a period of two months following the issue of such Exclusion Notice

whichever period is the shorter;

- (ii) a Force Majeure Event has occurred, the provisions of Clause 23.3 (Force Majeure) apply and the Authority has elected to terminate pursuant to Clause 23.3(b) (Force Majeure);
  - (iii) the Project Budget Requirement is exceeded because inflation exceeds the Authority's inflation provision in the Project Budget Requirement;
  - (iv) if the Project Budget Requirement is exceeded because the Industrial Participants have extended the Integrated Schedule and the inflationary impact of such extension to the Integrated Schedule exceeds the Authority's inflation provision in the Project Budget Requirement and it is not offset by a compensatory reduction in the forecast Outturn Cost.
- (f) At any time, the Authority may terminate this Agreement (and such termination shall not be deemed to be for breach of contract) by issuing an Exclusion Notice to any one or more or all of the Industrial Participants provided that if the Authority intends to issue an Exclusion Notice to less than all the Industrial Participants then it shall not do so without obtaining the prior written approval of the Alliance Management Board to the same.

#### 24.4 Rectification

- (a) If a Rectification Notice is issued pursuant to any provision of this Clause 24, then it shall specify:
  - (i) that the Industrial Participant is in breach of one or more of the provisions of a Project Agreement;
  - (ii) the type and nature of the breach that has occurred giving reasonable details;
  - (iii) the nature of the rectification or other remediation which is required;

and

- (iv) that the Industrial Participant may be excluded from the Alliance unless:
  - (A) within forty Business Days after the date the Industrial Participant received the Rectification Notice, the Industrial Participant rectifies or remedies the breach in accordance with the requirements of the Rectification Notice; or
  - (B) within twenty Business Days after the date the Industrial Participant received the Rectification Notice, the Industrial Participant puts forward a rectification programme to the Alliance Management Board or the Authority (the relevant entity being determined in accordance with the entity which is due to consider whether such breach is rectifiable or otherwise remediable pursuant to the provisions of this Clause 24) (a "**Rectification Programme**").
- (b) If a Rectification Programme is not accepted by the Alliance Management Board or the Authority (as the case may be), the Industrial Participant shall be given twenty Business Days to agree such changes to it as may be necessary with the Alliance Management Board or the Authority (as the case may be) and, failing which, the Authority shall be entitled to issue an Exclusion Notice to the Industrial Participant in accordance with Clause 24.4(d) (Rectification).
- (c) If the Industrial Participant to whom the Rectification Notice is addressed:
  - (i) rectifies or otherwise remedies the breach in accordance with the requirements of the Rectification Notice and within forty Business Days after the date the Industrial Participant received the Rectification Notice; or
  - (ii) implements the Rectification Programme in accordance with its terms or, if applicable, as changed pursuant to Clause 24.4(b) (and rectifies or otherwise remedies the breach in accordance with such programme),

the Rectification Notice shall be deemed to be revoked and the Authority shall notify the relevant Industrial Participant that no further action is to be taken in relation to the relevant breach.

- (d) If the Industrial Participant who is subject to the Rectification Notice fails to:
- (i) put forward a Rectification Programme in accordance with Clause 24.4(a)(iv)(B);
  - (ii) agree the terms of any proposed Rectification Programme in accordance with Clause 24.4(b);
  - (iii) implement any Rectification Programme in accordance with its terms or, if applicable, as changed pursuant to Clause 24.4(b).; or
  - (iv) rectify or otherwise remediate the breach in accordance with the requirements of the Rectification Notice within forty Business Days after the date the Industrial Participant received the Rectification Notice;

then, following agreement of the Alliance Management Board, in the case of a Rectification Notice issued pursuant to Clause 24.2(b) (Exclusion by the Alliance Management Board) the Authority may either: (a) issue an Exclusion Notice to the relevant Industrial Participant who shall become an Excluded Participant on receipt and the Authority shall send a copy of the Exclusion Notice to the Other Industrial Participants; or (b) exercise its rights under Clause 24.5 (Step-In); or (c) exercise its right under Clause 24.6 (Novation).

## 24.5 Step-In

- (a) Entitlement to exercise Step-In Rights
- (i) Without prejudice to any other right or remedy of the Authority, if an Industrial Participant has failed to comply with a Rectification Programme within the periods set out therein, the Authority may at any time thereafter, provided the Industrial Participant is then continuing to fail to comply with the Rectification Programme, request that the Alliance Management Board immediately meets with a view to

approving the issue of a Step-In Notice to such Industrial Participant (which approval shall not be unreasonably withheld or delayed).

- (ii) A Step-In Notice shall specify:
  - (A) that the Authority will, from such date as shall be specified in the Step-In Notice, exercise its rights to appoint a Step-In Contractor under this Clause 24.5(a) (subject only to the provisions of Clause 24.5(a)(iii) below);
  - (B) the reason that the Authority is exercising its rights to appoint a Step-In Contractor, and the action the Authority wishes to be taken by the Step-In Contractor to rectify and/or to mitigate the effects of the failure by the Industrial Participant to comply with the Rectification Programme together with all things reasonably ancillary thereto;
  - (C) the date on which the Authority will exercise its rights to appoint a Step-In Contractor;
  - (D) the likely duration for which the step-in rights will be exercised;
  - (E) the identity of the Step-In Contractor; and
  - (F) those facilities, equipment and other resources that are currently used or scheduled to be used for the Project that are to be made available to the Step-In Contractor by the relevant Industrial Participant.
- (iii) If the Alliance Management Board approves the contents and issue of a Step-In Notice then it shall also specify on a Best for Project basis, the terms upon which the Step-In Contractor is appointed and which of the Industrial Participants shall enter into the contract with the Step-In Contractor. The Authority shall be entitled immediately thereafter to issue such Step-In Notice to the relevant Industrial Participant and the Step-In Contractor shall be appointed on the terms so specified by the Alliance Management Board. Each Industrial Participant agrees that it



shall immediately on receipt of a Step-In Notice do all such things and execute and deliver all such documents and agreements as may be required or necessary to effect the appointment of the Step-In Contractor on such terms as are specified by the Alliance Management Board. If the Alliance Management Board requires any information about any proposed Step-In Contractor prior to giving such approval and specifying such terms, then it shall request the same from the Authority within the five (5) Business Days of receipt of the draft Step-In Notice and the Authority will provide the same in so far as it is available. If the Alliance Management Board does not meet and approve such Step-In Notice by the later of

- (A) 5 Business Days from receipt of the draft Step-In Notice; and
- (B) the date of receipt of either any information requested by the Alliance Management Board pursuant to this Clause 24.5(a)(iii)(B) or written confirmation from the Authority that such information is not available,

the Authority shall be entitled to issue such Step-In Notice and to specify its terms including the terms on which the Step-In Contractor is contracted.

- (b) A Step-In Contractor shall be entitled to attend but not vote at meetings of the Alliance Management Board unless the Alliance Management Board resolves otherwise.
- (c) Compensation by the Industrial Participant

The Industrial Participant who is subject to a Step-In Notice shall, subject to its cap on liability specified at Schedule 14 (Liability/Indemnity/Insurance) Paragraph 4.2, compensate the Authority for all reasonable costs incurred by the Authority in respect of activities which the Industrial Participant should have performed to meet its obligations (including but not limited to reasonably allocated overheads or other internal costs) that are incurred by the Authority in taking any action in accordance with this Clause 24.5. Subject to the cap on liability specified at Schedule 14 (Liability/Indemnity/Insurance) Paragraph

4.2, the costs of any Step-In Contractor payable pursuant to the Step-In Contractor's contract with the relevant Industrial Participant shall not be recoverable from the Authority by the Industrial Participant as Incurred Costs or otherwise, but shall be borne by the defaulting Industrial Participant (even if they are initially paid by the Industrial Participant with whom the Step-In Contractor is contracted). The costs of the Step-In Contractor may include a reasonable profit element. The Industrial Participant with whom the Step-In Contractor is contracted shall be reimbursed by such defaulting Industrial Participant for any costs paid by it to such Step-In Contractor in accordance with the Step-In Contractor's contract. Notwithstanding any other provision in any of the Key Project Agreements, an amount equal to such costs may be set-off by such Industrial Participant against any sums payable by it to such defaulting Industrial Participant. To the extent that it is not possible to set-off an amount equal to such costs, the Industrial Participant with whom the Step-In Contractor has contracted shall be entitled to invoice the defaulting Industrial Participant monthly for such costs and the defaulting Industrial Participant shall pay such invoice within 20 Business Days of receipt. Once the cap on the defaulting Industrial Participant's liability as specified in Schedule 14 (Liability/Indemnity/Insurance) Paragraph 4.2 is reached any additional costs of any Step-In Contractor payable pursuant to the Step-In Contractor's contract with the relevant Industrial Participant shall be recoverable from the Authority by the defaulting Industrial Participant as Incurred Costs.

(d) Damage and Claims

Neither the Authority nor any third party who is appointed as a Step-In Contractor shall have any liability to such defaulting Industrial Participant for any damage which has occurred prior to the effective date of the Authority's Step-In Notice or which results from a breach by the defaulting Industrial Participant of its obligations under the relevant Manufacturing Phase Works Contract, unless the Authority would otherwise be liable for any such damage under the terms of the provisions of Schedule 14 (Liability/Indemnity/Insurance). Subject to the cap on liability specified at Schedule 14 (Liability/Indemnity/Insurance) Paragraph 4.2, the defaulting Industrial Participant shall compensate the Authority for all and any claims against the

Authority arising as a result of:

- (i) the Authority's exercise of its step-in rights under Clause 24.5(a); and
  - (ii) any breach of contract by the Industrial Participant giving rise to the Step-In Notice.
- (e) Step-Out Notice

Except to the extent otherwise agreed pursuant to the Step-In Contractor's contract:

- (i) if at any time following the implementation of a Step-In Notice, the Alliance Management Board determines that the breach of contract giving rise to the Step-In Notice has been rectified or otherwise remedied in accordance with the Rectification Programme or otherwise, then the Authority shall immediately thereafter issue a Step-Out Notice to the relevant Industrial Participants; and
- (ii) if a Step-Out Notice is issued or if the Authority fails to issue a Step-Out Notice in accordance with Clause 24.5(e)(i) then the arrangements with the Step-In Contractor shall immediately terminate and the Industrial Participant shall continue performance of the relevant Manufacturing Phase Works Contract in respect of which the Step-In Rights were exercised and the Industrial Participant which has contracted the Step-In Contractor shall procure that the Step-In Contractor shall withdraw its personnel or any other resources forthwith.

#### 24.6 Novation

- (a) Subject to Clause 24.6(b) if pursuant to the provisions of this Clause 24, the Authority is entitled to issue an Exclusion Notice to any given Industrial Participant and provided that such Industrial Participant is then continuing to fail to comply with the Rectification Programme, the Authority may on at least twenty (20) Business Days prior written notice to such Industrial Participant and the Alliance Management Board, procure the transfer of such Industrial

Participant's rights and liabilities under the Project Agreements to a Suitable Substitute Contractor pursuant to a Deed of Novation provided that (unless the Alliance Management Board otherwise agrees) the ultimate holding company of the Suitable Substitute Contractor enters into a guarantee with the Authority on substantially the same terms as the Guarantees, a copy of such guarantee shall be provided to the AMB. Each Manufacturing Alliance Participant agrees that it shall do all such things and execute and deliver all such documents as may be required or necessary to effect any such novation.

- (b) The Alliance Management Board may notify (or in default, the Industrial Participants shall notify) the Authority as to whether any person to whom the Authority proposes to transfer the defaulting Industrial Participant's rights and liabilities under the Project Agreements is a Suitable Substitute Contractor, on or before the date falling twenty (20) Business Days after the date of receipt of all information required by the Alliance Management Board to decide whether the proposed transferee is a Suitable Substitute Contractor.
- (c) Immediately on any novation referred to in Clause 24.6(a) becoming effective, the defaulting Industrial Participant shall become an Excluded Participant.

#### 24.7 Consequences of an Exclusion Notice

- (a) If an Exclusion Notice is issued in accordance with the provisions of this Clause 24 the following provisions of this Clause 24.7 shall apply.
- (b) Subject to Clause 24.7(e), 24.7(g), 24.7(h) and 24.7(j) an Excluded Participant's rights, obligations and liabilities (actual and contingent, present and future) in relation to this Agreement shall be as set out in Clause 25 (Survivorship).
- (c) Subject to Clauses 24.7(g), 24.7(h) and 24.7(j):
  - (i) any Key Project Agreement (save for this Agreement) to which the Excluded Participant is a party shall be deemed to have terminated with effect from the date of the relevant Exclusion Notice and the Excluded Participant shall have no further rights, obligations or liabilities thereunder save as is/are specifically provided in that Key Project

Agreement; and

- (ii) the Excluded Participant shall at the request of the Alliance Management Board novate any Sub-Contract or Sub-Alliance Agreement to which the Excluded Participant is a party to another Industrial Participant or otherwise as the Alliance Management Board may direct and all Manufacturing Alliance Participants shall execute and deliver all such documents and agreements as may be required or necessary to effect any such novation.
- (d) The applicable provisions of Clause 24.8 (Compensation on Exclusion) shall apply.
- (e) Unless otherwise agreed by the Alliance Management Board, any payments, which but for the provisions of this Clause 24, would following the date on which an Exclusion Notice comes into effect, become due and payable to an Excluded Participant pursuant to the provisions of Schedule 4 (Risk and Reward Incentive Arrangement), shall accrue to the Authority. The Excluded Participant shall not be liable for repayment of Pain Share after it is excluded, save for any repayment obligation which accrued prior to its exclusion.
- (f) Each of the non-defaulting Manufacturing Alliance Participants shall provide the other Manufacturing Alliance Participants (excluding the Excluded Participant) with such assistance as the Alliance Management Board may determine, and all the Parties (including the Excluded Participant) shall mitigate any costs and/or losses arising in connection with the exclusion of any Excluded Participant from the Alliance.
- (g) Clauses 24.7(b) and 24.7(c) shall apply without prejudice to the rights, remedies and obligations of any of the Parties which have accrued up to the date an Exclusion Notice comes into effect.
- (h) Notwithstanding Clauses 24.7(b) and 24.7(c) if this Agreement is terminated pursuant to Clauses 24.3(e) or 24.3(f) (no fault termination) then the provisions of this Agreement and the other Key Project Agreements shall continue to apply to the extent necessary to facilitate an orderly rundown of the Works, for a period of six months from the date of the relevant Exclusion Notices or such

lesser period as may be agreed by the Alliance Management Board.

- (i) The Excluded Participant(s) shall immediately return to the Authority or the Other IPs (as the case may be) (or, if the Authority or any of the Other IPs so requests by notice in writing, destroy) all property of the Authority (including all GFA which is not embodied in any Vessel, Vessel Part or Ship Deliverable) or the Other IPs (as the case may be) in its possession at the date of termination, including all Technical Information, together with all copies of such Technical Information and shall certify that it has done so, and shall make no further use of such Technical Information, save as specifically permitted under this Agreement;
- (j) Notwithstanding Clauses 24.7(b) and 24.7(c) if any Vessel or Vessel Part or (unless otherwise agreed between the Excluded Participant and the Authority) any Authority Funded Capex Item is located on the property of an Excluded Participant then as soon as practicable, and in any event within six months from the date the relevant Exclusion Notice(s) take effect or such lesser period as may be agreed by the Alliance Management Board, the Authority shall issue the Excluded Participant(s) with instructions to dispose of such Vessel or Vessel Part or (unless otherwise agreed between the Excluded Participant and the Authority) any Authority Funded Capex Item and/or make it or them available to the Authority or any Other Industrial Participant; and
- (k) Save to the extent that such disposal has already been funded by the Authority, the Authority shall in respect of the disposal of any Vessel or Vessel Part under Clause 24.7(j) above pay to BVT and BVT shall pay to that Excluded Participant an amount equal to the fair and reasonable cost (audited at rates not exceeding its then agreed QMAC rates) of complying with such instructions plus ■% in accordance with schedule 6 (Price and Payment) of the MFTC or schedule 6 (Price and Payment) of the relevant IP MFTC Sub-Contract, as appropriate, and there shall be no Equitable Adjustment. The disposal of Authority Funded Capex Items is governed by Clause 17.5.

#### 24.8 Compensation on Exclusion

- (a) The provisions of DEFCON 656 (Break) shall apply to an Excluded Participant

consequent on the issue of an Exclusion Notice relating to it subject to the provision of Clause 24.7(h) and to the following provisions of this Clause 24.8 in lieu of any Incurred Costs that would otherwise have been payable to the Excluded Participant under and in accordance with schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract and the IP MFTC Sub-Contracts as appropriate.

- (b) For the purposes of this Clause 24.8 reference to “fair and reasonable prices or charges” within DEFCON 656 (Break) shall not exceed and shall be allocated in accordance with the relevant agreed QMAC rates for that Industrial Participant.
- (c) In the event an Exclusion Notice is issued relating to an Industrial Participant pursuant to Clauses 24.3(e) or (f) it will be entitled to receive the following compensation for a period not exceeding six (6) months from the date of the Exclusion Notice:
  - (i) sums as provided in DEFCON 656 (Break) subject, in the case of any payments relating to the termination of any Material Contract, to the Procurement Strategy having been complied with in relation there to; and
  - (ii) profit on such sums as set out in the table below directly opposite the Clause reference pursuant to which the Industrial Participant was so excluded.

Clause 24.3(e)(i) (Excessive Outturn Cost)	■%
Clause 24.3(e)(ii) (Force Majeure Event)	■%
Clause 24.3(e)(iii) (Indexation budget exceeded)	■■■■■■■■■■ ■■■■■■■■■■ ■■■■■■■■■■

	██████████ ██████████ ██████████ ██████████ ██████████
Clause 24.3(e)(iv)  (Indexation budget exceeded due to extension to Integrated Schedule by Industrial Participants)	██████%
Clause 24.3(f)  (Authority convenience)	██████%

- (d) In the event an Industrial Participant is excluded pursuant to any provision of this Agreement other than Clauses 24.3(e) and (f) it will be liable to compensate the Authority for all additional costs incurred by the Authority as a result of such exclusion up to the cap on its liability specified at Schedule 14 Paragraph 4.2 (Liability/Indemnity/Insurance).
- (e) If an Exclusion Notice is issued relating to an Industrial Participant pursuant to Clause 24.3(f) then, in considering what is fair and reasonable pursuant to DEFCON 656 (Break), the Authority shall have due regard to the Gain Share then forecast to be payable under Schedule 4 (Risk and Reward Incentive Arrangement).

24.9 Representation

- (a) Subject to Clause 24.9(b) for the purpose of this Clause 24 any reference to the Alliance Management Board shall not include the representative of the Industrial Participant to whom any Rectification Notice, Step-In Notice or Exclusion Notice is addressed or about whom any consultation in relation to any provision of this Clause 24 may be undertaken.



- (b) Notwithstanding anything in Schedule 2 (Alliance Management) to the contrary, if at any time the Alliance Management Board meets in relation to a proposal by the Authority to issue an Exclusion Notice to any, but not all, of the Industrial Participants pursuant to Clause 24.3(f) then the Industrial Participant(s) to whom such Exclusion Notice would be issued shall be entitled to attend and vote at such meeting and no resolution of the Alliance Management Board in relation to such proposal shall be valid unless approved by such Industrial Participant.

#### 24.10 Exclusive Remedies on Termination

The payments in respect of exclusion from this Agreement or a termination of any other Key Project Agreement in each case as set out in this Clause 24 shall constitute the sole and exclusive rights, remedies and liabilities of the Parties in respect of such an exclusion from or termination of this Agreement or any other Key Project Agreement.

#### 24.11 Payment

Any amounts which are due to be paid to or by any of the Industrial Participants pursuant to calculations undertaken under and in accordance with this Clause 24 and claims for payment under this Clause 24 shall be made, paid and satisfied in accordance with the procedure set out in clause 3.6 (Schedule of Requirements for Manufacture, Supply and Delivery) and schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract and the equivalent provisions in the IP MFTC Sub-Contracts as appropriate.

### **25 Survivorship**

- 25.1 If this Agreement is terminated or expires for any reason then such termination or expiry shall be without prejudice to rights accrued as at the date of such termination or expiry and those provisions of this Agreement which are expressly or by implication intended to come into or remain in force and effect following such termination or expiry, shall so continue. In particular and without prejudice to the generality of the foregoing:

- (a) Schedule 4 (Risk and Reward Incentive Arrangement) shall continue in full

force and effect until such time as the last payment has been calculated pursuant to it;

(b) Schedule 8 (Intellectual Property Rights) shall continue in full force and effect; and

(c) Schedule 14 (Liability/Indemnity/Insurance) shall continue in full force and effect.

25.2 On receipt of an Exclusion Notice by the Excluded Participant (which does not cause termination of this Agreement), the Excluded Participant shall no longer have the benefit of its rights under this Agreement save as to rights accrued as at the date of such exclusion and those provisions of this Agreement which are expressly or by implication intended to come into or remain in force and effect following such exclusion shall so continue. In particular and without prejudice to the generality of the foregoing:

(a) Schedule 8 (Intellectual Property Rights) shall continue to apply to the Excluded Participant;

(b) Schedule 14 (Liability/Indemnity/Insurance) shall continue to apply to the Excluded Participant;

(c) any entitlement of the Excluded Participant to appoint any Member(s) to, and participate in either the Alliance Management Board or the Dispute Resolution Panel, shall cease with immediate effect and any such Member(s) shall be deemed to have been removed.

## **26 Variations and Change Procedure**

26.1 The provisions of Schedule 16 (Change Procedure) shall apply.

26.2 Save as set out in the Change Procedure in relation to Major Change, Minor Change or Configuration Management Change, no purported alteration or variation of this Agreement, any other Key Project Agreement or any Guarantee or any termination of a Guarantee (other than in accordance with its terms) shall be effective unless it is agreed in writing by all the Manufacturing Alliance Participants and none of the Manufacturing Alliance Participants shall be obliged to act on a Best for Project basis

in relation thereto.

**27 Assignment and Novation**

27.1 The Key Project Agreements are personal to the Manufacturing Alliance Participants. Subject to the other provisions of this Agreement, no Manufacturing Alliance Participant shall novate, assign, delegate, sub-contract (other than pursuant to Clause 30 (Project Agreements) and the Procurement Strategy), transfer, charge or otherwise dispose of all or any of its rights and responsibilities under any Key Project Agreement.

27.2 No Industrial Participant shall novate this Agreement to a third party (unless the third party is a member of its Group) without the prior written consent of the Authority, such consent to be conditional upon:

- (a) a Deed of Novation (relating to this Agreement) being executed by all the Manufacturing Alliance Participants and such third party;
- (b) any other Project Agreement entered into by such Industrial Participant also being novated to such third party in the form of a Deed of Novation (the necessary changes having been made);
- (c) the third party's ultimate holding company entering into a guarantee with the Authority on substantially the same terms as the Guarantees, a copy of such guarantee shall be provided to the AMB. Upon receipt of such new guarantee, the Authority shall (without prejudice to any claims thereunder made by the Authority prior to such release) release that Industrial Participant's then current Guarantor from the Guarantee in force immediately prior to such receipt, give written notice of such release to such Guarantor and return that released Guarantee to such Guarantor.

27.3 An Industrial Participant may novate the whole of this Agreement to another member of its Group provided that:

- (a) such Industrial Participant's:
  - (i) Manufacturing Phase Works Contract; and

- (ii) any other Project Agreement to which it is a party (and, in the case of BVT seeking to so novate, all of the IP MFTC sub-Contracts),

are simultaneously novated to the same member of each relevant Industrial Participant's Group in the form of a Deed of Novation;

- (b) the member of such Industrial Participants' Group to whom the Project Agreements and the relevant Manufacturing Phase Works Contracts are to be novated is incorporated in the United Kingdom and has its management and control within the United Kingdom; and
- (c) such Industrial Participant gives the other Manufacturing Alliance Participants no less than 10 Business Days' notice of the proposed novations.

27.4 The Authority may novate the whole but not part of this Agreement to any central government department or a Minister of the Crown provided it also novates any other Key Project Agreement to which it is a party and the Guarantees but shall not otherwise novate or transfer its rights and obligations under this Agreement.

## **28 Industrial Participants' Obligations**

28.1 Each of the Industrial Participants hereby agrees with each of the other Manufacturing Alliance Participants that in relation to itself and any other company in its Group which is a party to any of the Key Project Agreements that it will not during the Manufacturing Period without the prior written consent of the Authority:

- (a) cease to be resident in the United Kingdom;
- (b) transfer the whole or substantially the whole of its undertaking, business or trade outside the United Kingdom;
- (c) whether by a single transaction or by a series of transactions (whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets in a manner which will or is likely have a material adverse effect on its ability to perform its obligations under any Project Agreement to which it is a party;
- (d) enter into any other obligation or arrangements, compliance with which will or

is likely to have a material adverse effect on its ability to perform its obligations under any Project Agreement to which it is a party; or

- (e) permit any landlord, mortgagee or other third party any remedy (whether by way of lien or otherwise) which would have a material adverse effect on its ability to perform its obligations under any Project Agreement to which it is party or the Authority's right to legal and beneficial title to the Works.

28.2 Each of the Industrial Participants hereby agrees with each of the other Manufacturing Alliance Participants that in relation to itself and any company in its Group which is a party to a Key Project Agreement that during the Manufacturing Period it shall as soon as reasonably practicable give the other Manufacturing Alliance Participants notice of all litigation, arbitration, administrative or adjudication proceedings before or of any court, arbitrator or adjudicator which would or are likely to have a material adverse effect on its ability to perform its obligations under any Project Agreement to which it is party, such notice shall be given as soon as it becomes aware that the same are threatened (following a letter before action being issued) and immediately after they are commenced.

## **29 Change of Control**

29.1 Subject to Clauses 29.4 and 29.5 below, an Industrial Participant shall provide the Authority as soon as reasonably practicable with prior written notice of any proposed Change of Control of that Industrial Participant. In providing such notice, the Industrial Participant shall not be required to submit any information which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the Industrial Participant in the UK or other jurisdictions where the Industrial Participant may be subject to legal sanction arising from the issue of such information.

29.2 Subject to Clauses 29.4 and 29.5 below, there shall be no Change of Control of any Industrial Participant or its holding companies:

- (a) without the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed. Such approval shall be given or withheld by the Authority notifying the relevant Industrial Participant within 10 Business Days of receipt of the notice of Change of Control from the Industrial

Participant referred to in Clause 29.1 above. If the Authority withholds its approval then it shall provide a statement of reasons for so doing at the same time as it withholds such approval;

- (b) without the ultimate holding company of the party acquiring control entering into a guarantee with the Authority on substantially the same terms as the Guarantees, a copy of such guarantee shall be provided to the AMB. Upon receipt of such new guarantee, the Authority shall (without prejudice to any claims thereunder made by the Authority prior to such release) release that Industrial Participant's then current Guarantor from the Guarantee in force immediately prior to such receipt, give written notice of such release to such Guarantor and return that released Guarantee to such Guarantor.

29.3 The Authority shall be acting reasonably in withholding its approval to any Change of Control in accordance with Clause 29.2 above which results in an Unsuitable Third Party gaining Control.

29.4 Clauses 29.1 and 29.2 above shall not apply to a Change of Control of an Industrial Participant as a result of a voluntary restructuring or amalgamation within that Industrial Participant's Group

29.5 Clauses 29.1 and 29.2 above shall not apply to a Change of Control of an Industrial Participant or any of its holding companies which is listed on a Regulated Investment Exchange as defined in section 285(1)(a) of the Financial Services and Markets Act 2000, or in the case of Thales any broadly equivalent European exchange (nor to the resultant change of control of an Industrial Participant or any holding company which necessarily occurs as an effect of such a Change of Control to such listed company).

29.6 The Authority hereby gives its approval to a Change of Control of BVT where such Change of Control results solely from VT Group PLC (Company No. 1915771) or any member of its Group reducing its share holding or ceasing to hold shares in BVT in accordance with any other agreement which VT Group PLC (Company No. 1915771) has with the Authority in relation to its holding of shares in BVT and BVT shall give the Authority notice of such Change of Control within ten Business Days of such Change of Control taking effect.

- 30.1 Each of the Manufacturing Alliance Participants shall perform its respective obligations under, and observe the provisions of, any Project Agreement to which it is a party.
- 30.2 None of the Industrial Participants shall in relation to any Sub-Alliance Agreements or Material Contracts to which it is a party:
- (a) terminate or agree the termination of all or any part of any such agreement;
  - (b) make or agree to any variation of any such agreement; or
  - (c) enter into (or permit the entry into by any other person of) any agreement replacing all or part of any such agreement,
- unless the proposed course of action (and any relevant documentation) has been approved by the Alliance Management Board.
- 30.3 The prior approval of the Alliance Management Board must be obtained before any Material Contract is entered into or terminated.
- 30.4 In the event that the Alliance Management Board approves a Material Contract which derogates from the Procurement Strategy, any such derogations shall be notified to the Authority in writing for information before the same is executed.
- 30.5 If any Industrial Participant enters into a Material Contract with the consent of the Alliance Management Board under Clause 30.3 above and, where relevant, the Authority under Clause 30.3 above, such consent shall not relieve the Industrial Participant from any liability or obligation under this Agreement.
- 30.6 Each Industrial Participant shall perform its obligations under any Sub-Contract with a Sub-Contractor.
- 30.7 In the event that an Industrial Participant wishes to place a Sub-Contract, the Industrial Participant shall:
- (a) enter into such Sub-Contract in accordance with the Procurement Strategy; and/or
  - (b) where it wishes to derogate from the terms required by the Procurement

Strategy, recommend a solution for approval by the AMB (or the CVF Programme Director to the extent such power is delegated by the AMB to the CVF Programme Director) and shall not enter into any such Sub-Contract without such prior approval.

- 30.8 To the extent that, as at the date hereof, there are Sub-Contracts which have been executed and which do not contain any given provision which is required to be contained pursuant to any obligation specified in any Key Project Agreement, then the relevant Industrial Participant shall use its reasonable endeavours to obtain a variation to such Sub-Contract so as to include such provision unless the Authority agrees otherwise. To the extent that, having used such reasonable endeavours, no such variation is agreed, there shall be no breach of such Key Project Agreement as a result.
- 30.9 Save as set out in Schedule 14 (Liability/Indemnity/Insurance) each Industrial Participant shall be responsible for the acts, omissions, defaults or negligence of its Sub-Contractors under or in relation to the relevant Sub-Contracts, agents or servants as fully as if they were acts, omissions, defaults or negligence of itself.

### **31 Precedence**

- 31.1 Unless otherwise specifically provided herein to the contrary, in the event of a conflict or inconsistency between any provision of any of the Key Project Agreements or any resolution of the Alliance Management Board with any provisions of this Agreement, the order of precedence below shall apply:
- (a) the Clauses, Schedules, Appendices and Annexures of this Agreement (including any DEFCONs but excluding any other documents incorporated by reference);
  - (b) the clauses, schedules, Appendices and Annexures of the MFTC (including any DEFCONs but excluding any other documents incorporated by reference);
  - (c) the IP MFTC Sub-Contracts (including any DEFCONs but excluding any other documents incorporated by reference);
  - (d) the Ship Specification;
  - (e) any other document incorporated into a Key Project Agreement by reference;



- (f) any resolution of the Alliance Management Board (including the resolutions passed at the first meeting of the Manufacturing Phase Alliance Management Board set out in the First AMB Minutes ); and
- (g) any Alliance Strategy Documents.

31.2 When the resolution set out in Paragraph 4 (Build Strategy) of the First AMB Minutes has been made, if and to the extent that there is a conflict between the Build Strategy (BS4) and the Integrated Schedule, Work Breakdown Structure and/or Statement of Work then the Build Strategy (BS4) shall take precedence until the amendments referred to in such resolution have been made in accordance with the Change Procedure.

31.3 Nothing in this Clause 31 shall affect the principle that BVT shall supply the Vessels to the Authority pursuant to the MFTC.

## **32 Compliance with Law**

32.1 All Manufacturing Alliance Participants shall comply with and ensure that its employees, agents and subcontractors comply with all relevant Legislation (including the Data Protection Act 1998, the Health and Safety at Work Act 1974, the Environmental Protection Act 1990 and the Management of Health and Safety at Work Regulations 1999).

32.2 If as a result of any Change in Law any Manufacturing Alliance Participant considers it necessary to propose a Change it shall do so in accordance with the Change Procedure.

## **33 Information and Further Assurance**

33.1 The Industrial Participants shall during the Manufacturing Period:

- (a) promptly provide the Authority with such information about the Works as the Authority shall reasonably require from time to time, whether to enable the Authority to combine the Works with other services, products or goods or otherwise, provided that such requests do not amount to a Change in which case the Change Procedure shall apply;

- (b) co-operate with the Authority and any other party engaged to provide services, materials or equipment to the Authority so as to integrate other services, materials or equipment supplied by the Authority with the Works. Such co-operation shall include, where appropriate, the provision of information and provision of access to the Industrial Participant's operations provided that such co-operation does not amount to a Change in which case the Change Procedure shall apply;
- (c) identify and obtain all consents necessary for the fulfilment of its obligations under the Project Agreements; and
- (d) comply with any reasonable instructions and guidelines issued by the Authority from time to time provided that such compliance does not amount to a Change in which case the Change Procedure shall apply.

33.2 During the Manufacturing Period the Manufacturing Alliance Participants shall, and shall use their respective reasonable endeavours to procure that any necessary third parties shall, each execute and deliver to the other Manufacturing Alliance Participants such other instruments and documents and take such other action as is reasonably necessary to fulfil the provisions of this Agreement in accordance with its terms.

33.3 Subject to Clauses 14 (Intellectual Property Rights) and 15 (Confidentiality) and any associated Schedules, the Manufacturing Alliance Participants shall during the Manufacturing Period promptly notify each other of any modification, upgrade, improvement, enhancement or development to the Works, or which could be applied to the Works in each case on a Best for Project basis.

#### **34 Records and Documentation**

34.1 Each Industrial Participant shall at all times during the Manufacturing Period keep or cause or procure to be kept and retain, and thereafter for not less than 6 years from the end of the Manufacturing Period, accurate accounts and full supporting documentation containing all data reasonably required for the computation and verification of the provision of the Works and all monies payable or paid under any Project Agreement to which that Industrial Participant is a party by the Authority and give the Authority or its agents every reasonable facility from time to time having given reasonable notice in writing during normal business hours to inspect the said accounts records and

supporting documentation and to make copies of or to take extracts from them.

**35 Relationship of the Parties**

- 35.1 No party shall pledge the credit of the other parties (or any one of them) nor represent itself as being the other parties (or any one of them), nor an agent, partner, employee or representative of the other parties (or any one of them) and no party shall hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other parties (or any one of them).
- 35.2 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and any or all of the Industrial Participants or amongst any of the Industrial Participants.
- 35.3 Save as expressly provided otherwise in this Agreement, none of the Industrial Participants shall be, or be deemed to be, an agent of the Authority and none of the Industrial Participants shall hold itself out as having the authority or power to bind the Authority in any way.
- 35.4 None of the parties to this Agreement shall place or cause to be placed any order with suppliers or otherwise incur liabilities in the name of any of the other parties or their representatives.

**36 Notices**

- 36.1 Any notices sent under this Agreement must be in writing and may be delivered by hand or by sending the notice by post or facsimile transmission to the addresses set out at Clause 36.3 below or at such other address as the relevant party may give for the purpose of service of notices under this Agreement and every such notice shall be deemed to have been served upon delivery if served by hand or at the expiration of two (2) Business Days after despatch of the same if delivered by post or at ten hours am local time of the recipient on the next Business Day following despatch if sent by facsimile transmission.
- 36.2 To prove service of any notice it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand and in the case of a notice served by post that the same was duly addressed prepaid and posted in

the manner set out above. In the case of a notice given by facsimile transmission, it shall be sufficient to show that it was despatched in a legible and complete form to the correct facsimile number without any error message provided that on the same day a confirmation copy of the transmission is posted to the recipient by post in the manner set out above. Failure to send a confirmation copy shall invalidate the service of any facsimile transmission.

36.3 The nominated addresses for the parties are:

**(A) Authority**

Defence Equipment and Support  
Capital Ships Directorate  
MoD Abbey Wood  
Ash 0c #3016  
Bristol  
BS34 8JH

Facsimile No. 0117 913 5958

Attention: DES Capital Ships Director

**(B) Babcock Marine (Rosyth) Limited**

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

Facsimile No. 01383 423027

Attention: Company Secretary

Copied to:

Babcock International Group PLC  
2 Cavendish Square

London W1G 0PX

Facsimile No. 020 7291 5055

Attention: Company Secretary

**(C) BAE Systems Marine Limited**

BAE Systems Marine Limited

Bridge Road

Barrow-in-Furness

Cumbria

LA14 1AF

Facsimile No. 01229 873399

Attention: Head of Commercial, CVF Project

**(D) BAE Systems Integrated System Technologies Limited**

BAE Systems Integrated System Technologies Limited

Building 20X

PO Box 5

Golf Course Lane

Filton

Bristol

BS34 7QE

Facsimile No. 0117 918 8008

Attention: Head of Commercial, CVF Project

**(E) BVT Surface Fleet Limited**

Daring Building

Bldg 2-166

Postal Point 100

Portsmouth Naval Base

Portsmouth

Hampshire

PO1 3NJ

Facsimile No. 02392 724694

Attention: Company Secretary

**(F) Thales Naval Limited**

Thales Naval Limited

Building 530

The Crescent

Bristol Business Park

Bristol

BS16 1EJ

Facsimile No. 0117 969 0638

Attention: Head of Commercial, CVF Project

36.4 Any Manufacturing Alliance Participant may change its nominated address or facsimile number by notice to the other Manufacturing Alliance Participants served in accordance with Clause 36.1 above.

**37 Third Party Rights**

37.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person who is not a party to this Agreement (including any member of the Relevant Group of any Industrial Participant, any employee, officer, agent, representative, sub-contractor, Sub-Contractor or Indemnified Sub-Contractor of any Manufacturing Alliance Participant or, in relation to any Industrial Participant, of any member of its Relevant Group) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Manufacturing Alliance Participants which agreement must refer to this Clause 37.

**38 Severability**

38.1 If at any time any part of this Agreement (including any one or more of the Clauses of this Agreement or Paragraphs of the Schedules of this Agreement or any part of one or more of the Clauses of this Agreement or Paragraphs of the Schedules to this Agreement) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and replaced by provisions which shall be determined in accordance with the Change Procedure.

**39 Entire Agreement**

39.1 The Key Project Agreements constitute the entire agreement between all the Manufacturing Alliance Participants relating to the Manufacturing Phase and supersede all prior negotiation, representations or agreements relating to the subject matter between the parties, whether written or oral.

**40 Dispute Resolution Procedure**

40.1 Subject as otherwise specifically provided in this Agreement, any Dispute arising out of or in connection with this Agreement or any of the other Key Project Agreements shall be resolved in accordance with Schedule 17 (Dispute Resolution Procedure).

**41 Law and Jurisdiction**

41.1 This Agreement and any Dispute arising out of or in connection with it, whether such Dispute is contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise, shall be governed by, and construed in accordance with, the laws of England.

41.2 Subject to Clause 40 (Dispute Resolution Procedure) and Schedule 17 (Dispute Resolution Procedure) the Manufacturing Alliance Participants hereby submit to the exclusive jurisdiction of the English courts.

**42 Delivery of Agreement**

42.1 The parties do not intend this Agreement to be delivered by, or to become legally binding on, any of them until the date of this Agreement is written at its head, notwithstanding that one or more of them may have executed this Agreement prior to that date being inserted.

**43 Counterparts**

43.1 This Agreement may be entered into in the form of two or more counterparts each executed by one or more of the parties but, taken together and, provided that each party duly executes such a counterpart, each of the executed counterparts, when duly exchanged or delivered, shall be deemed to be an original, but, taken together, they shall constitute one instrument.

**IN WITNESS OF THE ABOVE** the Corporate Seal of the Secretary of State for Defence has been hereunto affixed and the other parties have executed this Agreement as a deed and the parties have delivered it on the date written at the head of this Agreement.



## **Schedule 1**

### **Definitions and Interpretation**

- 1.1 The headings to Clauses to this Agreement, Paragraphs, Appendices, Annexures and Parts to the Schedules and conditions in the DEFCONS are inserted for convenience only and shall not affect the interpretation or construction of this Agreement or the DEFCONS.
- 1.2 Words expressed in the singular shall include the plural and vice versa. The masculine includes the feminine and vice versa and words importing the neuter include the masculine and feminine
- 1.3 All sums or other consideration calculated or payable in respect of any supply to be made under this Agreement are exclusive of VAT which shall be added, if applicable, at the appropriate rate prevailing at the relevant tax point on receipt of a valid VAT invoice.
- 1.4 The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.5 References to any statute or statutory provision shall include (i) any subordinate Legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.6 The Schedules, Appendices, Annexures and Parts to this Agreement are an integral part of this Agreement and any reference to this Agreement shall include the Schedules, Appendices, Annexures and Parts. All references to Clauses in this Agreement and Paragraphs, Appendices, Annexures and Parts to the Schedules are to the clauses, paragraphs, schedules, appendices, annexures and parts to this Agreement, unless otherwise stated. Any document referred to in this Agreement will not form part of this Agreement unless otherwise stated.
- 1.7 Any term in this Agreement which is defined in the Manufacturing Flow Through Contract and which is not separately defined in this Agreement but which is used in this Agreement or in any DEFCON which applies to this Agreement shall have the

meaning ascribed to that term in the Manufacturing Flow Through Contract unless the context otherwise requires.

1.8 Unless excluded within the terms of this Agreement or where required by law:

(a) references to submission of documents in writing shall include electronic submission; and

(b) any requirement for a document to be signed or references to signatures shall be construed to include electronic signature, provided that a formal method of authentication as agreed between the parties is employed and the agreed method recorded in this Agreement.

1.9 The word ‘**loss**’, where used in any DEFCON only, shall include damage or destruction.

1.10 “**Materiel**” is a generic term meaning equipment (including fixed assets), stores, supplies and spares.

1.11 Any reference to a person includes any legal or natural person, including any individual, company or corporation and also any firm or partnership or other legal entity;

1.12 Any decision, act or thing which any of the Manufacturing Alliance Participants are required or authorised to take or do under this Agreement may be taken or done only by any person authorised, either generally or specifically, by such Manufacturing Alliance Participant pursuant to the Contract Governance Policy to take or do that decision, act or thing on behalf of such Manufacturing Alliance Participant.

1.13 In this Agreement, unless the context otherwise requires:

“**Acceptance**” shall have the meaning ascribed to that term in the Manufacturing Flow Through Contract;

“**Acceptance and Assurance Strategy**” means the acceptance and assurance strategy for the Manufacturing Phase as approved by the Alliance Management Board from time to time;

<b>“Agreement”</b>	means this deed;
<b>“Alliance” (or “ACA” or “Aircraft Carrier Alliance”)</b>	means the Authority and each of the Industrial Participants working together as an alliance in accordance with this Agreement;
<b>“Alliance Charter”</b>	means the document attached at Appendix 3 to the First AMB Minutes;
<b>“Alliance Imagery”</b>	means marks whether registered or unregistered or other graphic representations or symbols used by the Alliance to distinguish the activities of the Alliance when used in conjunction with letterheads, slide projections, presentations, and promotional or publicity material;
<b>“Alliance Management Board” (or “AMB”)</b>	means the executive management board of the Alliance established pursuant to Clause 6 (Alliance Management) and Schedule 2 (Alliance Management);
<b>“Alliance Management Team” (or “AMT”)</b>	means the management team established by the CVP Programme Director as set out in Schedule 2 (Alliance Management);
<b>“Alliance Principles”</b>	has the meaning set out in Clause 5 (Alliance Principles);
<b>“Alliance Strategy Documents”</b>	means such documents as may be identified as alliance strategy documents and which are adopted from time to time by resolution of the Alliance Management Board for the purposes of the Manufacturing Phase;
<b>“Allowable Costs”</b>	means any Incurred Costs agreed as fair and reasonable by the Authority following the Cost Audit by or on behalf of the Authority of the Interim Cost Certificates and Final Cost Certificates of BVT, the Other Industrial Participants and their respective

Audited Sub-Contractors Interim Cost Certificates and Final Cost Certificates in accordance with schedule 6 (Price and Payment) of the MFTC;

**“Alternate Member”**

means an alternate Member listed in the table in Part 3 of Schedule 2 (Alliance Management) having the same requisite authority as a Member or as changed from time to time in accordance with Paragraph 15.2 of Part 1 of Schedule 2 (Alliance Management) (such change to be approved by the Alliance Management Board);

**“AMB Secretary”**

means the secretary to the Alliance Management Board appointed by the Authority from time-to-time;

**“ARM”**

means the software tool holding the Manufacturing Alliance Participants’ risk and opportunity data relating to the Manufacturing Phase;

**“Assessment Phase”**

means the phase of the Project that preceded the Demonstration Phase;

**“Assessment Phase Contracts”**

means the following contracts:

- (a) CBCVF/4020A between the Authority and BAE Systems (Operations) Ltd dated 23 November 1999;
- (b) CBCVF/4020B between the Authority and Thales Naval Limited dated 23 November 1999; and
- (c) CBCVF/00100 between the Authority and Kellogg Brown & Root Limited dated 25 February 2005;

**“Assumptions”**

means those assumptions detailed in Part C of Schedule 7 (Excluded Risks and Assumptions) that the

Project Target Cost is based upon;

**“Authority Deed of Indemnity”**

means each Authority deed of indemnity entered into between the Authority and each Guarantor of even date and **“Authority Deeds of Indemnity”** shall mean all of them;

**“Authority Funded Capex Items”**

means any moveable item agreed after the date hereof to be an Authority Funded Capex Item and the entire cost of which is to be charged to the Manufacturing Phase;

**“Authority Indemnity”**

means the indemnity given by the Authority pursuant to the provisions of Paragraph 10.1 of Schedule 14 (Liability/Indemnity/Insurance);

**“Background Manufacturing Phase Intellectual Property”**

means the Intellectual Property owned by or licensed to each of the Industrial Participants as at the Commencement Date that the Industrial Participants are free to license to one another and to the Authority without violating the terms of any agreement or other arrangement with any third party (excluding those with Other Industrial Participants) and the use of which is necessary for the Industrial Participants to comply with the terms of each of their Manufacturing Phase Works Contracts;

**“BAES”**

means together BAES MARINE and BAES INSYTE or if VT Group PLC (Company No. 1915771) or one of its Group companies ceases to hold shares in BVT in accordance with Clause 29.6 (Change of Control), then together BAES MARINE, BAES INSYTE and BVT;

**“Barge”**

means any barge manufactured or supplied by any of the Industrial Participants as part of the Works or any

barge (but not any tug or other self propelled vehicle) hired or leased from or otherwise supplied by a third party for the purpose of transportation of Vessel Parts;

**“Block”** means anything described as such in the Build Strategy;

**“Best for Project”** means best for the achievement of the Manufacturing Phase Objective;

**“Budget at Completion” or “BAC”** means the Original Budget as amended from time to time by any Changes to the Project Target Cost;

**“Build Strategy”** means the build strategy for the Manufacturing Phase as approved by the Alliance Management Board from time to time;

**“Business Day” or** means any day excluding:

**“business day”**

(a) Saturdays, Sundays and public and statutory holidays in the UK;

(b) privilege days in the UK notified in writing by the Authority to the Industrial Participants at least (10) Business Days in advance; and

(c) such periods of holiday closure of any Industrial Participant’s premises in the UK at which the Works are being performed or delivered of which the Manufacturing Alliance Participants are given written notice by that Industrial Participant at least 10 Business Days in advance;

**“Cardinal Date Programme”** shall have the same meaning ascribed to that term in

the Manufacturing Flow Through Contract;

**“Category 1 Open Book Data”**

is data relating to the Works that is “commercially confidential” and can, subject to the provisions of Annex 2 to Schedule 3 (Open Book), be openly shared between the Manufacturing Alliance Participants, and includes the data listed as such at Annex 1 to Schedule 3 (Open Book);

**“Category 2 Open Book Data”**

is data relating to the Works that is “competition sensitive” and can only be shared with the Authority, CAS and those Industrial Participants who are not competing, or will not be competing, against the disclosing Industrial Participant on other projects, and includes the data listed as such at Annex 1 to Schedule 3 (Open Book);

**“Category 3 Open Book Data”**

is data relating to the Works that is “commercially sensitive” and can only be shared with the Authority and CAS due to the sensitivity of the data, and includes the data listed as such at Annex 1 to Schedule 3 (Open Book);

**“CAS”**

means the Authority’s Cost Assurance Service;

**“Change”**

means any alteration of or variation to any document subject to configuration management pursuant to the Configuration Management Plan (other than the Key Project Agreements), being Major Change, Minor Change and Configuration Management Change;

**“Change in Law”**

means the coming into effect after the Commencement Date of:

- (a) Legislation, other than any Legislation that on the date of this Agreement has been published:

- (i) in a draft Bill as part of the Government Departmental Consultation Paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) as a proposal in Series L of the Official Journal of the European Union;
- (b) any Guidance; or
  - (c) any applicable judgment of a relevant court of law which changes a binding precedent;

**“Change of Control”** means an event whereby any person, or group of persons acting in concert, gains direct or indirect Control;

**“Change Procedure”** means the change control mechanism set out in Schedule 16 (Change Procedure);

**“Claim”** means any claim, action, demand or proceedings;

**“Client Director”** means the person appointed as such from time to time by the Authority;

**“COBRA”** means the software tool holding the costs data of the Manufacturing Alliance Participants associated with the Work Breakdown Structure;

**“Commencement Date”** means 1 July 2008;

**“Common Baseline Design”** means that Technical Information within the Evaluation Data produced for the CVF UK Assessment and Demonstration Phases that is common to both the CVF (UK) STOVL design and the CVF (France) design, but excluding Private Venture



Information that has not been funded under either the Assessment Phase Contracts between the Authority and certain of the Industrial Participants and others or the Demonstration Phase Works Contracts. In respect of such Private Venture Information the Common Baseline Design will comprise only form, fit and function Technical Information and details of the supplier concerned;

**“Common Baseline Design Data Pack”**

means the data pack comprising the Evaluation Data pertaining to the Common Baseline Design including, “Common Baseline Design Data Pack” in Annex A of the MoU;

**“Common Baseline Design Data Pack Licence”**

means the licence agreement for the Common Base Line Design between Thales Naval Limited and BAE SYSTEMS plc and Thales Naval SA, DCN and MOPA2 signed on May 19<sup>th</sup> 2006;

**“Confidential Information”**

means any strategic, technical or commercial information including (without limitation) Open Book Data, specifications, drawings, designs, samples, models, equipment, computer software and know-how originally disclosed by one party (the “**Disclosing Party**”) to another party (the “**Receiving Party**”) directly or through another party either pursuant to this Agreement or under any Manufacturing Phase Works Contract which is either:

- (a) in written, other visual or machine readable form and clearly marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence by the Disclosing Party;
- (b) is communicated orally on a basis of

confidentiality and subsequently presented in written, visual or machine readable form to the Receiving Party within thirty (30) days of such communication in which case all the protections and restrictions in this Agreement relating to the use and disclosure of Confidential Information shall apply during such thirty (30) day period; or

- (c) obtained by demonstration, examination, testing or analysis of any model, process, procedure, hardware, software, material samples or similar means to convey information provided by the Disclosing Party under the terms of this Agreement and/or under any Manufacturing Phase Works Contract even though the requirements in Paragraph (a) above for marking and designation have not been fulfilled;

**“Confidentiality Undertaking”**

means a confidentiality undertaking in the form set out in Annex 3 to Schedule 3 (Open Book);

**“Configuration Management Change”**

shall have the meaning set out in Paragraph 4.1 of Schedule 16 (Change Procedure);

**“Configuration Management Plan”**

means the configuration management plan for the Manufacturing Phase issued by the Industrial Participants in response to DEFSTAN 05-57 (Issue 5, June 2005) as agreed between the Industrial Participants and the Authority and as approved from time to time by the Alliance Management Board;

**“Contract Acceptance Date” or “CAD”**

shall mean 15<sup>th</sup> September 2014 for the First Vessel and 28<sup>th</sup> June 2016 for the Second Vessel;

<b>“Contract Data Requirement List” or “CDRL”</b>	means the list of Data Deliverables in sections 1.33 and 1.34 (Ship Deliverables Register) of the Ship Specification;
<b>“Contract Governance Policy”</b>	means the contract governance policy as approved by the Alliance Management Board from time to time;
<b>“Control”</b>	means the power of a person or group of persons acting in concert, to secure that the affairs of the Industrial Participant are conducted in accordance with the wishes of that person: <ul style="list-style-type: none"> <li>(a) by means of the holding of shares, or the possession of voting powers in, or in relation to, the Industrial Participant; or</li> <li>(b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the Industrial Participant;</li> </ul>
<b>“Cost Model”</b>	means the agreed cost model for the Manufacturing Phase described in the Project Controls Requirements as amended from time to time;
<b>“CVF”</b>	means carrier vessel future;
<b>“CVF 01”</b>	means the CVF aircraft carrier “ <i>HMS Queen Elizabeth</i> ”;
<b>“CVF 02”</b>	means the CVF aircraft carrier “ <i>HMS Prince of Wales</i> ”;
<b>“CVF Intellectual Property”</b>	means Foreground Manufacturing Phase Intellectual Property and Background Manufacturing Phase Intellectual Property;
<b>“Data Deliverable(s)”</b>	means Deliverables which are written documents and

Deliverables which are electronic items such as discs upon which information is stored electronically relating specifically to the design and/or build and/or support of CVF 01 and CVF 02, which are identified as Data Deliverables in the Contract Data Requirements List and excluding, for the avoidance of doubt, Technical Information loaded on the Shared Data Environment, which is not identified as a Data Deliverable;

**“Deductible”**

means an amount of [REDACTED] per accident or occurrence, or per series of accidents or occurrences arising out of the same cause or same event (in each case without any intervening cause or event);

**“Deed of Novation”**

means a deed of novation in the form agreed by the Alliance Management Board from time to time entered into between all the Manufacturing Alliance Participants and either:

(a) a Suitable Substitute Contractor or an Industrial Participant pursuant to Clause 24 (Exclusion, Step In, Novation and Termination); or

(b) a transferee pursuant to either the provision of Clause 27 (Assignment and Novation) or any other agreement between the Manufacturing Alliance Participants;

**“Deliverables”**

means any physical or tangible items delivered or intended to be delivered to the Authority as part of the Works including, without limitation, Data Deliverables;

**“Demonstration Phase”**

means the demonstration phase of the Project being

the period during which the works were carried out pursuant to the Demonstration Phase Works Contracts;

**“Demonstration Phase Alliance Agreement”**

means the alliance agreement dated 13 April 2006 relating to the Demonstration Phase between the Demonstration Phase Alliance Participants;

**“Demonstration Phase Alliance Participants”**

means together:

- (a) the Authority;
- (b) Babcock Support Services Limited;
- (c) BAE Systems Integrated System Technologies Limited;
- (d) BAE Systems Marine Limited;
- (e) Kellogg Brown & Root Limited;
- (f) Thales Naval Limited; and
- (g) VT Shipbuilding Limited;

and any other party to whom a Demonstration Phase Works Contract or Demonstration Phase Alliance Agreement is novated or assigned from time to time in accordance with its terms and **“Demonstration Phase Alliance Participant”** means any one of them;

**“Demonstration Phase Works”**

means the works carried out pursuant to the Demonstration Phase Works Contracts;

**“Demonstration Phase Works Contracts”**

means the following contracts each dated 13 April 2006 relating to the Demonstration Phase between the Authority and each of the following respectively:

- (a) Babcock Support Services Limited;
- (b) BAE Systems Integrated System Technologies

Limited;

- (c) BAE Systems Marine Limited;
- (d) Kellogg Brown & Root Limited;
- (e) Thales Naval Limited; and
- (f) VT Shipbuilding Limited,

as amended, novated or assigned from time to time in accordance with its terms and **“Demonstration Phase Works Contract”** means any one of them;

**“DES Capital Ships Director”**

means the team leader for the Authority’s integrated project team for the Project appointed by the Authority from time to time;

**“Dispute”**

shall have the meaning set out in Paragraph 1 of Schedule 17 (Dispute Resolution Procedure);

**“Dispute Resolution Panel” or “DRP”**

means a panel comprising the Chief of Defence Material for the Authority, the Chairman of BVT and the Chief Executive Officers of the Guarantor for each of Babcock, BAES and Thales who will meet as necessary pursuant to Paragraph 2 of Schedule 17 (Dispute Resolution Procedure) to resolve disputes;

**“Distributed Budget”**

means all budgets that have been assigned to WBS elements, but excludes undistributed budget and Risk Contingency;

**“Earned Value Management System” or “EVMS”**

means an integrated management system which uses earned value to measure progress objectively;

**“ECR” or “Enterprise**

means the enterprise change request document as

<b>Change Request</b>	described in the Configuration Management Plan;
<b>“EISA Agreement”</b>	has the meaning ascribed thereto in Paragraph 9 of Schedule 11 (Information Technology) to this Agreement;
<b>“Equitable Adjustment”</b>	means an adjustment to the Project Target Cost (whether upwards or downwards) and/or the RRIA and/or the Fixed Fee and/or the Cardinal Date Programme consequent upon any Change so that, following adjustment, and to the extent reasonably possible, the Industrial Participants are entitled to an equivalent mark up on any costs to be incurred as they would have been had it been assumed at the Commencement Date that such costs would be incurred;
<b>“Estimate at Completion” or “EAC”</b>	means a forecast of Outturn Cost at the prevailing economic conditions;
<b>“Estimate at Completion (EAC<sub>E</sub>)”</b>	means a forecast of Outturn Cost Indexed in accordance with Schedule 5 (Indexation) and the methodology defined in Paragraphs 5 and 6 of Schedule 5 (Indexation);
<b>“Evaluation Data”</b>	means Technical Information produced for the CVF Assessment and/or Demonstration Phases that is provided by or on behalf of the UK Participant to enable the French Participant to determine its own solution for CVF (France) and thereby the scope of the Common Baseline Design;
<b>“EVM Performance Measurement Baseline” or “PMB”</b>	means the time phased budget plan against which project performance is measured, which includes undistributed budget but does not include Risk Contingency which is isolated above the PMB;

<b>“Excluded Participant”</b>	any Industrial Participant which is excluded from the Alliance in accordance with Clause 24 (Exclusion, Step-In, Novation and Termination);
<b>“Excluded Risks”</b>	means those risks to the achievement of the Manufacturing Phase Objective detailed in Part B of Schedule 7 (Excluded Risks and Assumptions);
<b>“Exclusion Notice”</b>	means a notice issued by the Authority pursuant to Clause 24 (Exclusion, Step-In, Novation and Termination) which shall specify the grounds on which the Exclusion Notice has been issued and which shall have the effects specified in Clause 24 (Exclusion, Step-In, Novation and Termination);
<b>“Existing Insurances”</b>	means such insurance policies as are listed or referred to in Paragraphs 1.1, 1.2 and 1.3 of Annex A to Schedule 14 (Liability/Indemnity/Insurance) and any other insurances which any Industrial Participant may be required to maintain from time to time in accordance with any law or regulation;
<b>“Final Cost Certificate”</b>	shall have the meaning ascribed to that term in the Manufacturing Flow Through Contract;
<b>“Final Target Cost”</b>	means the sum agreed by the parties in accordance with Paragraph 1.2 of Schedule 4 (Risk and Reward Incentive Arrangement) to be calculated as the aggregate of: <ul style="list-style-type: none"> <li>(a) the actual Incurred Costs incurred to end of Phase 1;</li> <li>(b) the estimate of Incurred Costs forecast for completion of the Works as at the end of Phase 1 for the period to the end of Phase 2 set out in the Cost Model at the end of Phase 1 at P70</li> </ul>



(based on the Time Phased Budget);

- (c) the Risk Contingency;
- (d) the Fixed Fee; and
- (e) any Phase 1 Incentive Payment as adjusted in accordance with paragraph 2.5(b) of schedule 6 (Price and Payment) of the MFTC;

**“First AMB Minutes”** means the minutes of the first meeting of the Alliance Management Board attached as Part 4 of Schedule 2 (Alliance Management);

**“First Line Reports”** means all persons performing the Works who will report directly to the CVF Programme Director on a day-to-day basis;

**“First Vessel”** means whichever of the Vessels has the earlier Vessel Acceptance Date;

**“Fixed Fee”** means the sum of [REDACTED] (amended as set out in Paragraph 8 of the First AMB Board Minutes) before being Indexed, being the mark-up on:

- (a) the estimate of Incurred Costs forecast for completion of the Works as at 1<sup>st</sup> April 2006 economic conditions; and
- (b) the Risk Contingency,

which the Authority shall pay to BVT as part of the payment for the Works;

**“Flight Deck”** means the uppermost complete deck of each of CVF 01 and CVF 02 from which aircraft launch and recovery operations occur;

**“Force Majeure Event”**

means any of the following events occurring after the Commencement Date:

- (a) lightning, storm, tempest, flood, earthquakes, riots or civil commotion or (if outside the reasonable control of the relevant Industrial Participant) fire or explosion;
- (b) war, civil war, armed conflict, terrorism;
- (c) nuclear, chemical or biological contamination (unless the source or cause of the same is as a result of the acts or omissions of any party, its employees or subcontractors);
- (d) pressure waves caused by devices travelling at supersonic speeds;
- (e) blockade or embargo;
- (f) national strikes other than strikes of the shipbuilding industry in the UK as a whole; or
- (g) a delay caused by the master of any ship deciding not to put to sea or to delay a voyage due to adverse weather conditions;

**“Foreground  
Manufacturing Phase  
Intellectual Property”**

means any Intellectual Property which relates to the Deliverables and is created during and as part of the Manufacturing Phase, save for any Intellectual Property that is owned by the Authority pursuant to DEFCON 703 (Intellectual Property Rights – Vesting in the Authority);

**“French Co-operation”**

means the exploring of future opportunities for industrial co-operation and cost saving in respect of both CVF (France) and the Project by the Industrial

Participants and French Industry, and where cost saving opportunities are identified which provide mutual benefit adopting appropriate methods for securing and sharing such benefits;

**“French Industry”**

means MOPA2, DCNS, TNF and Aker Yards SA who are parties to a co-operation agreement with BAE Systems plc, VT Shipbuilding Limited, Thales Naval Limited and Babcock Support Services Limited dated 6 November 2007;

**“Gain Share”**

shall have the meaning set out in Schedule 4 (Risk and Reward Incentive Arrangement);

**“GFA”**

means Government Furnished Information (**GFI**), Government Furnished Equipment (**GFE**), Government Furnished Facilities (**GFF**) and Government Furnished Services (**GFS**) and/or Issued Property, including (without limitation) items comprised in the GFA Tool Set, listed in the document with ACA document identifier CVF-10060729;

**“GFA Tool Set”**

means the database bearing that name held on the Shared Data Environment;

**“Group”**

means in relation to any Industrial Participant, a group of companies comprising the Guarantor and every other company which, at any time during the Manufacturing Period, is or becomes a subsidiary company of that Guarantor provided that each such subsidiary company shall only be considered a member of such Group during the period when such company is or remains a subsidiary company of that Guarantor (and for the purposes of this Agreement the term “subsidiary” shall have the meaning given to it by section 1159 and schedule 6 of the Companies Act

2006);

- “Guarantee”** means the guarantee executed on the date hereof given by each Guarantor to the Authority in respect of the relevant Industrial Participant’s participation in the Manufacturing Phase;
- “Guarantor”** means in relation to any Industrial Participant the company which has provided the Guarantee;
- “Guidance”** means any applicable guidance or directions with which any Industrial Participant is bound to comply;
- “Incurred Costs”** means in respect of each Industrial Participant:
- (a) all costs in respect of wages and salaries and all costs of materials, bought out parts and sub-contracted costs of any elements of the Works which are sub-contracted which are properly incurred under the Key Project Agreements in relation to the Works in accordance with the QMAC agreed by the Authority with such Industrial Participant;
  - (b) overhead, administration and HQ charges in accordance with the QMAC agreed by the Authority with such Industrial Participant;
  - (c) those costs approved as such by the Alliance Management Board pursuant to Paragraph 9 (Incurred Costs) of Part 1 of Schedule 2 (Alliance Management); and
  - (d) any other payments made pursuant to the Key Project Agreements;

<b>“Indemnified Costs”</b>	means any sums which are payable by the Authority under the Shipbuilders Risk Indemnity or under the Authority Indemnity;
<b>“Indemnified Event”</b>	means an accident or occurrence, or series of connected accidents or occurrences, arising out of the same cause or same event (in each case without any intervening cause or event) which gives rise to a payment by the Authority under and in accordance with the Authority Indemnity or the Shipbuilders Risk Indemnity;
<b>“Indemnified Non Project Costs”</b>	means any Indemnified Costs which the Authority elects to pay outside the Project in accordance with Paragraph 11.1 of Schedule 14 (Liability/Indemnity/Insurance);
<b>“Indemnified Party”</b>	means, in relation to any indemnity in any Key Project Agreement which is given by one Manufacturing Alliance Participant to any of the other Manufacturing Alliance Participants, a Manufacturing Alliance Participant to whom such indemnity is given;
<b>“Indemnified Project Costs”</b>	means any Indemnified Costs which are not Indemnified Non Project Costs;
<b>“Indemnified Sub-Contractors”</b>	means any Sub-Contractor listed or referred to in Paragraph 13.1 of Schedule 14 (Liability/Indemnity/Insurance);
<b>“Indemnifying Party”</b>	means in relation to any indemnity in any Key Project Agreement which is given by one Manufacturing Alliance Participant to any of the other Manufacturing Alliance Participants, the Manufacturing Alliance Participant who gives such indemnity;
<b>“Independently Developed</b>	means those Deliverables the development of which

<b>Deliverables”</b>	has not been fully funded by the United Kingdom Government as part of the Project;
<b>“Independently Developed Intellectual Property”</b>	means Intellectual Property the generation of which has not been fully funded by the United Kingdom Government as part of the Project;
<b>“Indexation Formula”</b>	means the formula set out in Paragraph 9 of Schedule 5 (Indexation);
<b>“Indexed”</b>	means, in relation to the amount expressed to be Indexed, such amount as at 1st April 2006 plus the cost variation calculated using the Indexation Formula and applied over the relevant period;
<b>“Industrial Participants”</b>	means the parties to this Agreement (other than the Authority) and <b>“Industrial Participant”</b> means any one of them and any permitted successors and assigns;
<b>“Industrial Participant’s Phase 2 Fixed Fee Portion”</b>	shall have the meaning ascribed to that term in Paragraph 6.5 of Schedule 4 (Risk and Reward Incentive Arrangement);
<b>“Initial Target Cost”</b>	means the sum of £3.0725 billion ex-VAT at April 2006 economic conditions (amended as set out in Paragraph 8 of the First AMB Minutes and as adjusted pursuant to Schedule 4 (Risk and Reward Incentive Arrangement)) agreed by the parties based on: <ul style="list-style-type: none"> <li>(a) the estimate of the Allowable Costs for the Manufacturing Phase (based on the Time Phased Budget);</li> <li>(b) the Risk Contingency and opportunities; and</li> <li>(c) the Fixed Fee;</li> </ul>
<b>“Insured Property”</b>	shall have the meaning ascribed to it in the

Shipbuilders Risk Indemnity;

**“Integrated Baseline Reviews” or “IBR”**

means a formal process conducted to assess the content and integrity of the Performance Measurement Baseline. The purpose of the IBR is to achieve and maintain a project and customer understanding of the risks inherent in the PMB and the management control processes that will operate during its execution;

**“Integrated Schedule”**

shall have the same meaning ascribed to that term in the Manufacturing Flow Through Contract;

**“Intellectual Property”**

means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application or any right to apply for any such right or other intellectual property right subsisting anywhere in the world;

**“Interim Cost Certificates”**

shall have the meaning ascribed to it in the Manufacturing Flow Through Contract;

**“Interim Outturn Cost”**

shall mean the aggregate of:

- (a) all Incurred Costs; and
- (b) the Fixed Fee; and
- (c) any Phase 1 Incentive Payment,

in each case which is paid to BVT at the relevant time during the Manufacturing Phase in respect of the performance of the Works under the Manufacturing Phase Works Contracts but shall not include any Gain Share or Pain Share which is payable or which is due, or which has been paid or satisfied, at the relevant time

in respect of Phase 2.

**“IP MFTC Sub-Contracts”** means the agreements relating to the Manufacturing Phase entered into between BVT and each of:

- (a) Babcock;
- (b) BAES MARINE;
- (c) BAES INSYTE; and
- (d) Thales;

on the date hereof and **“IP MFTC Sub-Contract”** means any one of them;

**“Issued Property”** means items comprised in the GFA Tool Set and any other item of GFA issued or otherwise furnished to the Industrial Participants in connection with the Contract by or on behalf of the Authority;

**“Key Anchor Milestones”** shall have the meaning ascribed to that term in the Manufacturing Flow Through Contract;

**“Key Project Agreements”** means together:

- (a) this Agreement;
- (b) the Manufacturing Flow Through Contract;  
and
- (c) the IP MFTC Sub-Contracts;

**“Launch”** means to launch, float up or roll out a Vessel or any block and **“Launching”** will be construed accordingly;

**“Legislation”** means any applicable statute, statutory rule, order, directive, regulation or other instrument having force



of law (including any directive or order promulgated by any competent national or supra national body) and all other legislation for the time being in force;

**“List X Organisation”**

means a Government approved commercial body authorised to handle protectively marked information as further detailed in the Manual of Protective Security;

**“Major Change”**

shall have the meaning set out in Paragraph 2 of Schedule 16 (Change Procedure);

**“Mandatory Change”**

means any Change specified as being mandatory by the Authority;

**“Manufacturing Alliance Participants”**

means subject to the provisions of Clause 24 (Exclusion, Step-In, Novation and Termination):

- (a) the Authority;
- (b) Babcock;
- (c) BAES MARINE;
- (d) BAES INSYTE;
- (e) BVT; and
- (f) Thales

and **“Manufacturing Alliance Participant”** means any one of the above;

**“Manufacturing Flow Through Contract” or “MFTC”**

means the agreement relating to the Manufacturing Phase entered into between the Authority and BVT on the date hereof;

**“Manufacturing Period”**

means the period which starts on the Commencement

Date and subject to Clause 24 (Exclusion, Step-In, Novation and Termination) ends on the expiry of Phase 2;

**“Manufacturing Phase”** means the manufacturing phase of the Project being the Works carried out during the Manufacturing Period in order to achieve the Manufacturing Phase Objective;

**“Manufacturing Phase Objective”** has the meaning given in Clause 4 (Objective);

**“Manufacturing Phase Works Contracts”** means the Manufacturing Flow Through Contract and the IP MFTC Sub-Contracts of even date;

**“Material Contract”** means:

- (a) any Sub-Alliance Agreement;
- (b) any Sub-Contract with an aggregate value in excess of £25,000,000 (twenty-five million pounds) during the Manufacturing Period;
- (c) any Sub-Contract under which any Intellectual Property is created title in which does not vest in the Industrial Participant placing the Sub-Contract and in respect of which there is no DEFFORM 177 entered into by the Sub-Contractor with the Authority; and
- (d) any other contract or arrangement (whether or not reduced to writing) in relation to the Manufacturing Phase other than this Agreement, the Manufacturing Phase Works Contracts, Sub-Alliance Agreements and Sub-Contracts covered by (b) and (c) above which is determined by the Alliance Management Board to be a Material Contract;

**“Member”** means a member of the Alliance Management Board

appointed by the respective Manufacturing Alliance Participant with the requisite authority to act in accordance with Schedule 2 (Alliance Management);

**“Minor Change”**

shall have the meaning set out in Paragraph 3 of Schedule 16 (Change Procedure);

**“Month” or “month”**

means calendar month;

**“MoU”**

means the memorandum of understanding between the French Government and the Authority signed on 6 March 2006 concerning the arrangements for joint definition of a Common Baseline Design and a partnering approach to maximise benefits in their aircraft carrier programmes;

**“Non-Alliance Party”**

means a person who, or an entity which, is not (a) a Manufacturing Alliance Participant or (b) a member of any Manufacturing Alliance Participant’s Group or (c) Staff of a Manufacturing Alliance Participant or Staff of any member of a Manufacturing Alliance Participant’s Group;

**“Open Book”**

means those open book principles set out in Schedule 3 (Open Book);

**“Open Book Data”**

means in relation to each Industrial Participant information that is classified as either Category 1 Open Book Data, Category 2 Open Book Data or Category 3 Open Book Data, but excludes internal management information;

**“Original Budget” or “OB”**

means the sum of:

- (a) the total estimate of cost either allocated to WBS or remaining as undistributed budget required to deliver the Works as at the

Commencement Date;

(b) the Risk Contingency; and

(c) the Fixed Fee;

**“Other Industrial Participants” or “Other IPs”**

means in relation to any of the Industrial Participants all of the other Industrial Participants;

**“Other Project Costs”**

means any costs relating to the achievement of the Manufacturing Phase Objective which are suffered or incurred by any of the Industrial Participants and/or members of their respective Groups during the Manufacturing Period that are not:

(a) Indemnified Costs; or

(b) expressly excluded from the Shipbuilders Risk Indemnity pursuant to clauses 6, 21.c.(1) and (2), 27a or 30 of the Shipbuilders Risk Indemnity; or

(c) amounts payable in respect of any Claim brought, or which could be brought, under the indemnity in Paragraph 6.1 of Schedule 14 (Liability/Indemnity/Insurance); or

(d) any matter within the scope of the Required Insurances,

but which arise solely as a consequence of an Indemnified Event (including, but not limited to, any costs or expense in respect of delay or dislocation to the build programme of the Vessels, and any costs of idle/waiting time of the employees of the Industrial Participants and/or their respective Sub-Contractors, as a result of the Indemnified Event) but excluding any of

the losses referred to in any of Paragraphs (a) to (d) inclusive of Paragraph 2.1 of Schedule 14 (Liability/Indemnity/Insurance);

**“Outturn Cost”**

shall mean the aggregate of:

- (a) Allowable Costs in Phase 1 and Phase 2 in performance of the Manufacturing Phase Works Contracts ; and
- (b) the Fixed Fee (Indexed); and
- (c) the Phase 1 Incentive Payment if any,

but shall not include any Gain Share or Pain Share due in respect of Phase 2 or any VAT which has been paid by the Authority to BVT;

**“P70”**

means such sum as is shown in the Cost Model at the end of Phase 1 as having a 70% probability of being equal to or less than the Outturn Cost;

**“P90”**

means such sum as is shown in the Cost Model at the end of Phase 1 as having a 90% probability of being equal to or less than the Outturn Cost;

**“Pain Share”**

shall have the meaning set out in Schedule 4 (Risk and Reward Incentive Arrangement);

**“Pain Share Cap”**

shall be the maximum level of Pain Share set out in Schedule 4 (Risk and Reward Incentive Arrangement) Paragraph 4.2(b) (iv) or 5.2(b)(iii) as appropriate;

**“Performance Requirements”**

means the requirements or statements set out in the various sections of the Ship Specification under the various headings of Performance Requirements or which are referred to within the Ship Specification as performance requirements or performance statements

or Performance Requirements or Performance Statements and which are listed in the VAM;

**“Permitted Purpose”**

means the performance of obligations and exercise of rights by the parties under this Agreement and any Manufacturing Phase Works Contract;

**“Phase 1”**

means the period which starts on the Commencement Date and which ends at 23:59 on 30 June 2010;

**“Phase 1 Incentive Payment”**

shall have the meaning set out in Paragraph 2.2 of Schedule 4 (Risk and Reward Incentive Arrangement);

**“Phase 1 Mark Up”**

means an amount equal to ■% of the aggregate Allowable Costs incurred by all the Industrial Participants in respect of Phase 1;

**“Phase 2”**

means the period which starts on 1 July 2010 and ends on the later of the D3B Clearance Date for CVF 01 or the D3B Clearance Date for CVF 02;

**“Phase 2 Fixed Fee”**

means an amount equal to the Fixed Fee less the Phase 1 Mark Up;

**“Private Venture Information”**

means Technical Information pertaining to an article and processes the development of which has been independently funded by industry;

**“Procurement Strategy”**

means the procurement strategy for the Manufacturing Phase as approved from time to time by the Alliance Management Board;

**“Project”**

means the design, manufacture, testing, commissioning and integrated logistics support of the Vessels to achieve Vessel Acceptance;

**“Project Agreements”**

means:

- (a) the Key Project Agreements;
- (b) Sub-Alliance Agreements; and
- (c) Material Contracts;

and **“Project Agreement”** means any one of the above;

**“Project Budget Requirement”** means the Authority’s approval for the Concept, Assessment, Demonstration and Manufacturing Phases and revenue from the aircraft carrier cooperation memorandum of understanding with the French government being £3.9 billion excluding VAT;

**“Project Controls Data Set”** means a single project controls data set held by the central Project Control Group;

**“Project Controls Group”** means the group managed by BVT comprising representatives from the Manufacturing Alliance Participants which is responsible for consolidating the individual Industrial Participant project control inputs and providing such reports as the Manufacturing Alliance Participants and CVF Programme Director require;

**“Project Controls Requirement”** means the project controls requirement set out at Schedule 6 (Project Controls Requirement);

**“Project Execution Plan”** means the project execution plan for the Manufacturing Phase as approved from time to time by the Alliance Management Board;

**“Project Target Cost”** means during Phase 1 the Initial Target Cost and during Phase 2 the Final Target Cost;

**“QMAC”** means in relation to each Industrial Participant and any Sub-Contractor, as appropriate, its completed

Questionnaire on the Method of Allocation of Costs as agreed with the Authority from time to time;

**“Rectification Notice”** means a notice issued to any Industrial Participant containing the information specified in Clause 24.4(a) (Rectification);

**“Rectification Programme”** has the meaning ascribed thereto in Clause 24.4(a)(iv)(B) (Rectification);

**“Related Dispute”** shall have the meaning set out in Paragraph 6.1 of Schedule 17 (Dispute Resolutions Procedure);

**“Relevant Group”** means, in relation to any Industrial Participant:

- (a) its Group; and
- (b) any company which at any time during the Demonstration Phase was a subsidiary company of that Industrial Participant’s Guarantor; and
- (c) any company falling or which fell within (a) or (b) above but which has ceased or ceases to be a subsidiary company of that Industrial Participant’s Guarantor

(and for the purpose of this definition, the term “subsidiary” shall have the meaning given to it by section 1159 and schedule 6 of the Companies Act 2006);

**“Relevant Transfer”** has the same meaning as set out in the Transfer Regulations;

**“Relevant Transfer Date”** means the date on which the Relevant Transfer is effected;



<b>“Required Insurances”</b>	means the insurance policies which are listed or referred to in Paragraphs 1, 2, 3 and 4 of Annex A to Schedule 14 (Liability/Indemnity/Insurance);
<b>“Risk and Opportunities Register”</b>	means the risk and opportunities register held in ARM;
<b>“Risk Contingency”</b>	means the estimate of the financial provision as at 1 <sup>st</sup> April 2006 economic conditions within the Project Target Cost for the range of risks to the Manufacturing Phase (other than the Excluded Risks) ;
<b>“RRIA”</b>	means the Risk and Reward Incentive Arrangement set out in Schedule 4 (Risk and Reward Incentive Arrangement);
<b>“Safety Case”</b>	means the safety case for the Vessels developed in accordance with the safety management plan (ACA document identifier CVF-10001236) that covers safety-related CVF activities throughout the CVF lifecycle (from concept to disposal) to ensure that risks to the Vessels’ crew, third parties, material and the environment, as defined in JSP 430 Part 1 and Part 2 and ALARP, are broadly acceptable or tolerable;
<b>“Second Vessel”</b>	means whichever of the Vessels is the second to reach Vessel Acceptance Date;
<b>“Shared Data Environment”</b>	means the shared data environment provided pursuant to the ‘Provision of a Shared Data Environment Service’ agreement between the Authority and BAE Systems (Operations) Limited dated 15 September 2003;
<b>“Shipbuilders Risk Indemnity” or “SRI”</b>	means the indemnity given by the Authority in the form of the policy attached to Schedule 14 (Liability/Indemnity/Insurance) as Annex B (the

**“Policy”**) pursuant to the provisions of Paragraph 9 of Schedule 14 (Liability/Indemnity/Insurance);

**“Ship Specification”**

shall have the meaning ascribed thereto in the MFTC;

**“SRI Defect”**

shall have the meaning ascribed to it in the Shipbuilders Risk Indemnity;

**“Staff”**

means, in relation to any Manufacturing Alliance Participant or in relation to any member of any Manufacturing Alliance Participant’s Group or Relevant Group, as the case may be:

- (a) a director or officer or employee of such Manufacturing Alliance Participant or such member of a Manufacturing Alliance Participant’s Group or Relevant Group, as the case may be, and
- (b) a temporary or contract worker of, or consultant or agent or secondee to such Manufacturing Alliance Participant or such member of a Manufacturing Alliance Participant’s Group or Relevant Group, as the case may be, so long as such person is not a director or officer or employee of another Manufacturing Alliance Participant or of a member of any other Manufacturing Alliance Participant’s Group,

and, in each case, the estate or heirs or dependants of any such person referred to in (a) or (b) who is deceased;

**“Statement of Work”**

means the Statement of Work set out in schedule 2 (Statement of Work) of the MFTC;

<b>“Step-In Contractor”</b>	means such Industrial Participant or third party as specified in a Step-In Notice and being an entity which is technically competent to carry out its obligations;
<b>“Step In Notice”</b>	means a notice issued in accordance with Clause 24.5 (Step-In);
<b>“Step Out Notice”</b>	means a notice issued pursuant to the provisions of Clause 24.5(e) (Step-Out Notice);
<b>“Sub-Alliance(s)”</b>	means any alliances formed by any of the Industrial Participants with Sub-Contractors to achieve any part of the Manufacturing Phase Objective;
<b>“Sub-Alliance Agreement”</b>	means any agreement establishing a Sub-Alliance for the performance of any part of the Works or otherwise in relation to the Manufacturing Phase entered into by any of the Industrial Participants with any third party;
<b>“Sub-Contract”</b>	means any contract or arrangement (whether or not reduced to writing) between any Industrial Participant and a third party in connection with the Manufacturing Phase;
<b>“Sub-Contractor”</b>	means any party to a Sub-Contract other than an Industrial Participant;
<b>“Suitable Substitute Contractor”</b>	means a person approved by the Alliance Management Board or in default thereof, approved by the Industrial Participants (such approval not to be unreasonably withheld or delayed) who: <ul style="list-style-type: none"> <li>(a) is incorporated in, and has management control within, the United Kingdom and is of at least similar financial worth to the Industrial Participant which is to become an Excluded</li> </ul>

	Participant;
	(b) is technically competent to carry out its obligations under this Agreement and the relevant Project Agreements; and
	(c) is able and willing to comply with the Alliance Principles.
<b>“Superstructure”</b>	means those erections above the Flight Deck of CVF 01 or CVF 02;
<b>“Surveillance and Readiness Reviews”</b>	means management reviews to assess the readiness to undertake an IBR or to review the management control processes;
<b>“Technical Information”</b>	means recorded or documented information of a scientific or technical nature whatever the format, documentary characteristics or medium of presentation;
<b>“Technical Publications”</b>	means the whole or any part of operator manuals, handbooks, user guides (including training aids, illustrated parts catalogues, repair and maintenance manuals) called up or provided under any Manufacturing Phase Works Contract (including those set out at Annex E of Schedule 8 (Intellectual Property Rights)), as delivered to the Authority by the Industrial Participants;
<b>“Time Phased Budget”</b>	means the expenditure profile contained within COBRA;
<b>“Transfer Regulations”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
<b>“Transferring Employees”</b>	means the list of employees who are to transfer from

the employment of a Transferring Party to the employment of a Transferee Party as agreed pursuant to Paragraph 2.2 in Schedule 13 (Personnel);

**“Unavailable”**

means, in relation to any risk covered by any of the Required Insurances, that insurance for such risk in the worldwide market with a reputable insurer of good standing is not available to any one or more of the Industrial Participants in respect of the Manufacturing Phase, or the premium payable for insuring the relevant risk with a reputable insurer of good standing is at such a level that insurance for such risk is not generally being procured in the worldwide insurance market by contractors in the United Kingdom for operations in the United Kingdom;

**“Undistributed Budget” or  
“UB”**

means budget applicable to contract work that has not been distributed to specific elements of the WBS;

**“Unit”**

means anything described as a unit in the Build Strategy;

**“Unsuitable Third Party”**

means any Person:

- (a) whose activities do, in the reasonable opinion of the Authority, pose or, in the reasonable opinion of the Authority, could pose a threat to national security, providing that the Authority’s opinion shall be deemed to be reasonable if personally confirmed to the Industrial Participant concerned by a Senior Civil Servant at 2\* level (or equivalent grade) or above;
- (b) whose activities are, in the reasonable opinion of the Authority, incompatible with any

operations or activities carried out by the Authority for the purposes contemplated by this Agreement or any of the Authority's legal duties or other functions;

(c) who is, in the reasonable opinion of the Authority, inappropriate because the Authority has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the suitability of the proposed new third party; and/or

(d) who, if the relevant part of the Statement of Work involves the disclosure of information about a secret matter is not a List X Organisation;

**“Value Added Tax” or  
“VAT”**

means, in the United Kingdom, value added tax and, in other Member States of the European Union, taxes in those states imposed by or in compliance with Council Directive 2006/112/EC of the European Union (as amended from time to time);

**“Vessel Acceptance”**

shall have the meaning ascribed thereto in the MFTC;

**“Vessel Acceptance Date”**

shall have the meaning ascribed thereto in the MFTC;

**“Vessel”**

means either CVF 01 or CVF 02 and **“Vessels”** means both of them;

**“Work Breakdown  
Structure” or “WBS”**

means a product-oriented family tree division of hardware, software, services and other tasks which organises, defines and graphically displays the constituent parts of Works; and

**“Works”**

shall have the meaning ascribed thereto in the MFTC.

## 2 DEFCONS

2.1 The following DEFCONS and no others shall apply to and form part of this Agreement save to the extent of any amendment, clarification or qualification set out in this Agreement or any inconsistency or conflict with any express provision hereof in which event the provisions of this Agreement shall prevail:

DEFCON 14 (Edn 11/05)	Inventions and Designs - Crown Rights and Ownership of Patents and Registered Designs (as amended, clarified and qualified at Paragraph 5.3 of Schedule 8 (Intellectual Property Rights));
DEFCON 15 (Edn 2/98)	Design Rights and Rights to Use Design Information (as amended, clarified and qualified at Paragraph 5.4 of Schedule 8 (Intellectual Property Rights));
DEFCON 16 (Edn 10/04)	Repair and Maintenance Information (as amended, clarified and qualified at Paragraph 5.5 of Schedule 8 (Intellectual Property Rights));
DEFCON 21 (Edn 10/04)	Retention of Records (as amended, clarified and qualified at Paragraph 5.6 of Schedule 8 (Intellectual Property Rights));
DEFCON 76 (Edn 12/06)	Contractor's Personnel at Government Establishments (as amended, clarified and qualified at Paragraph 4.3 of Schedule 14 (Liability/Indemnity/Insurance));
DEFCON 90 (Edn 11/06)	Copyright (as amended, clarified and qualified at Paragraph 5.7 of Schedule 8 (Intellectual Property Rights));
DEFCON 91 (Edn 11/06)	Intellectual Property Rights in Software (as amended, clarified and qualified at Paragraph 5.8 of Schedule 8 (Intellectual Property Rights));
DEFCON 126 (Edn 10/04)	International Collaboration (as amended, clarified and qualified at Paragraph 5.9 of Schedule 8

	(Intellectual Property Rights));
DEFCON 515 (Edn 10/04)	Bankruptcy and Insolvency (as amended, clarified and qualified at Clause 24.3(c)(i) (Exclusion by the Authority);
DEFCON 520 (Edn 07/05)	Corrupt Gifts and Payments of Commission (as amended, clarified and qualified at Clause 24.3(c)(ii) (Exclusion by the Authority);
DEFCON 531 (Edn 05/05)	Disclosure of Information;
DEFCON 632 (Edn 02/07)	Third Party Intellectual Property Rights- Commercial and Non-Commercial Articles and Services (as amended, clarified and qualified at Paragraph 5.11 of Schedule 8 (Intellectual Property Rights));
DEFCON 653 (Edn 03/06)	Pricing on Ascertained Costs (as amended, clarified and qualified at paragraph 1.1 of Schedule 6 (Price and Payment) of the MFTC);
DEFCON 656 (Edn 03/06)	Break (as amended, clarified and qualified by Clause 24.8 (Compensation on Exclusion));
DEFCON 659 (Edn 09/97)	Security Measures (as amended, clarified and qualified by Clause 24.3(c)(iii) (Exclusion by the Authority) (for the purpose of DEFCON 659, the “secret matter” and other documents requiring protective marking are as described in the Authority’s Security Aspects letters, reference CVF/11/13/02/1 - 5 dated 20 June 2008); and
DEFCON 703 (Edn 11/02)	Intellectual Property Rights – Vesting in the Authority (as amended, clarified and qualified at Paragraph 5.12 of Schedule 8 (Intellectual Property Rights)).

2.2 Reference to a DEFCON in this Agreement shall be to that edition of such DEFCON as specified in Paragraph 2.1 of this Schedule 1.



2.3 For the purpose of the DEFCONs applying to and forming part of this Agreement only, the following terms shall have the following meanings:

- “Commercial Officer”** shall have the same meaning ascribed to that term in the Manufacturing Flow Through Contract;
- “Contract”** means the Key Project Agreements;
- “Contractor”** means one or more of the Industrial Participants as the context requires;
- “Contract Price”** shall have the meaning ascribed to that term in the Manufacturing Flow Through Contract; and
- “Representative of the Authority”** means a person duly authorised by the Authority to act for the purposes of that provision who is either identified in the Contract or any subsequent notice as being such.

**Schedule 2**  
**Alliance Management**

**PART 1**

**Alliance Management Board**

**1 Scope**

- 1.1 The Alliance Management Board shall be responsible for managing the Alliance in accordance with the Alliance Principles so that the Manufacturing Phase Objective is achieved and for that purpose the Manufacturing Alliance Participants shall comply with the requirements of this Schedule 2 Part 1.
- 1.2 The matters set out in Paragraphs 2 to 14 below which are preceded by an asterisk shall be reserved matters for which the Alliance Management Board is solely responsible and responsibility for which may not be delegated to any other person or body.
- 1.3 The Authority's restricted matters are set out in Clause 6.6 (Alliance Management).

**2 Implement the Manufacturing Phase – General**

- 2.1 The Alliance Management Board shall:
- (a) formulate, agree and implement strategies for achieving the Manufacturing Phase Objective and the management of the Alliance including considering and adopting Alliance Strategy Documents;
  - (b) oversee the implementation of this Agreement and all other Project Agreements;
  - (c) facilitate the Alliance Principles;
  - (d) \*review and agree the percentage split between EVM and Milestones and the EVM SPI criteria and agree the quarterly Milestones annually in accordance with paragraphs 2.7(c) and 2.7(d) of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract; and
  - (e) monitor the progress of the Manufacturing Phase including, without limitation,

the performance of the Industrial Participants against the EVM and Milestones and maintain the integrity and content of the Cost Model in accordance with the Project Controls Requirement.

### **3 Risk**

3.1 The Alliance Management Board shall:

- (a) monitor, review and manage risks to the Manufacturing Phase;
- (b) monitor the use of the Risk Contingency included in the Project Target Cost by the CVF Programme Director and approve any release of the Risk Contingency for risk mitigation purposes in accordance with the Project Controls Requirement; and
- (c) review and determine any management, mitigation and steps to be taken in relation to material delays to the Project.

### **4 CVF Programme Director**

4.1 The Alliance Management Board shall:

- (a) \*appoint and replace the CVF Programme Director and any successor from time-to-time, determine his terms of reference and delegated powers, review his performance and provide him with strategic direction; and
- (b) \*approve or reject any bonus payments to CVF Programme Director proposed by the DES Capital Ships Director.

### **5 'First Line Reports'/Consultants**

5.1 \*The Alliance Management Board shall approve or reject the appointment and replacement of all First Line Reports from time-to-time who are proposed by the CVF Programme Director and any bonus or other incentive payments to all First Line Reports which shall be recommended by the CVF Programme Director where such payments are to be charged to the Manufacturing Phase as Incurred Costs;

### **6 Entry/Exit of Industrial Participants/Step-In**

6.1 \*The Alliance Management Board shall recommend to the Manufacturing Alliance

Participants whether to allow entry of any new participant(s) to the Alliance in accordance with the relevant provisions of this Agreement.

## **7 Risk and Reward Incentive Arrangement**

7.1 \*The Alliance Management Board shall:

- (a) determine Final Target Cost not less than 20 Business Days before the end of Phase 1 in accordance with Paragraph 1 of Schedule 4 (Risk and Reward Incentive Arrangement);
- (b) make the proposals to the Authority in relation to the amount of the Phase 2 Fixed Fee that is payable pursuant to Paragraph 6.6 of Schedule 4 (Risk and Reward Incentive Arrangement); and
- (c) determine the Pain Share and Gain Share in accordance with Schedule 4 (Risk and Reward Incentive Arrangement).

## **8 Open Book**

8.1 The Alliance Management Board shall take such steps as are required by Schedule 3 (Open Book).

## **9 Incurred Costs and Credits to the Project**

9.1 The Alliance Management Board shall:

- (a) approve or reject any proposal by any Industrial Participant to settle claims by or against such Industrial Participant in respect of or connected with the Manufacturing Phase (including any proposal to make any ex-gratia payment to any Sub-Contractor) where such settlement amounts are to be charged to the Manufacturing Phase as Incurred Costs; and
- (b) approve or reject any proposal by any Industrial Participant to allow bad debts in relation to the Manufacturing Phase which have been written off by such Industrial Participant where the amount of such bad debt write offs are to be charged to the Manufacturing Phase as Incurred Costs.

9.2 The Alliance Management Board shall determine the appropriate treatment, including

credit to the Project, where appropriate, of any sums recovered by any Industrial Participant from any of its Sub-Contractors in connection with the Manufacturing Phase.

## **10 Procurement**

10.1 The Alliance Management Board shall:

- (a) review and approve or reject any Material Contract and:
  - (i) the decision of any competitive tendering process which has been undertaken;
  - (ii) the terms and award of any Material Contract; and
  - (iii) the termination of any Material Contract,in each case in accordance with the Procurement Strategy;
- (b) review and approve or reject any proposal by an Industrial Participant to enter into a Sub-Contract which derogates in any way from the inclusion of all or some of the terms required by the Procurement Strategy; and
- (c) \*review and approve or reject any proposal by an Industrial Participant to enter into a Sub-Contract under which or in connection with which any build of Blocks or Units is to be performed outside of the United Kingdom.

## **11 Management of the MFTC**

11.1 The Alliance Management Board shall:

- (a) \*review, amend and approve the Build Strategy and any changes to it; and
- (b) review and approve or reject any proposal by an Industrial Participant to use a quality accreditation system other than ISO 9001.

## **12 French Co-operation**

12.1 \*The Alliance Management Board shall approve or reject any proposals agreed by the Industrial Participants and French Industry as a result of French Co-operation prior to

the implementation of such proposals.

### **13 Changes**

13.1 The Alliance Management Board shall:

- (a) \*review any Major Change which requires the approval of the AMB in accordance with the Change Procedure and approve or reject the same; and
- (b) \*review and approve or reject any alteration to any of the Alliance Strategy Documents in accordance with the Change Procedure.

### **14 Disputes**

14.1 \*The Alliance Management Board shall seek to resolve disputes in relation to the Manufacturing Phase in accordance with Schedule 17 Paragraph 1 (Dispute Resolution Procedure).

### **15 Members and Alternate Members**

15.1 Each of the Manufacturing Alliance Participants shall, subject to the provisions of this Agreement, appoint from time-to-time to, and maintain at all times on, the Alliance Management Board a Member, and subject to the aforesaid may remove or replace any Member appointed by them. Unless otherwise agreed in writing by the Alliance Management Board, and subject to Paragraph 15.5 below, any such appointment or removal shall take effect upon a notice in writing. The Manufacturing Alliance Participants hereby agree that the initial Members shall be those set out at Part 3 to this Schedule 2 (Alliance Management).

15.2 Any Member may, by giving notice in writing to the AMB Secretary, appoint an Alternate Member and may, in the same way, remove or replace such Alternate Member. An Alternate Member shall be entitled to attend, be counted in the quorum and vote at any meeting at which the Member appointing him is not personally present and, in the absence of his appointing Member do all the things which his appointing Member is entitled to do. The Manufacturing Alliance Participants hereby agree that the initial Alternate Members shall be those set out at Part 3 to this Schedule 2 (Alliance Management).

- 15.3 Each of the Manufacturing Alliance Participants shall ensure that its Member or Alternate Member attends all of the meetings of the Alliance Management Board and that its Member or Alternate Member participates fully.
- 15.4 For the purposes of Paragraph 15.1 above:
- (a) subject to Paragraph 15.4(b) below BAES MARINE and BAES INSYTE shall together be entitled to appoint and remove one Member of the Alliance Management Board;
  - (b) if VT Group PLC (Company No. 1915771) or one of its affiliates ceases to hold shares in BVT, then BAES MARINE, BAES INSYTE and BVT shall together be entitled to appoint and remove only one Member of the Alliance Management Board; and
  - (c) if any Industrial Participant or any member of any Group obtains Control of another Industrial Participant, then such Industrial Participants shall, subsequently, together be entitled to appoint, remove and retain one Member of the Alliance Management Board.
- 15.5 The CVF Programme Director may not be appointed a Member or an Alternate Member of the Alliance Management Board.

## **16 Proceedings of Members**

- 16.1 The Alliance Management Board shall meet as required but in any event not less than once each month.
- 16.2 The Member (or in his absence the Alternate Member) appointed by the Authority shall be the Chairman.
- 16.3 The Members may regulate their proceedings as they see fit save as set out in this Schedule 2 (Alliance Management).
- 16.4 Any Member (or in his absence his Alternate Member) may itself or may request the AMB Secretary to call a meeting of the Alliance Management Board. Any Member (or in his absence his Alternate Member) and/or the CVF Programme Director may submit to the AMB Secretary items for the agenda, the text of any resolutions

proposed to be passed at the meeting and any supporting documents, papers and reports to be submitted to any meeting of the Alliance Management Board.

16.5 Prior to any meeting of the Alliance Management Board the AMB Secretary shall:

- (a) distribute the agenda of any meeting and the text of any resolutions proposed to be passed at the meeting to Members not less than five (5) Business Days in advance of the meeting; and
- (b) distribute to Members any documents, papers and reports not less than three (3) Business Days in advance of the meeting;

and no matter shall be considered at the relevant meeting which has not been notified in accordance with this Paragraph 16.5 unless the Alliance Management Board determines otherwise at the relevant meeting.

16.6 Save as set out in this Paragraph 16.6, no matter shall be decided at any meeting unless a quorum is present. Subject to the provisions of Clause 24 (Exclusion, Step-In, Novation and Termination) a quorum shall not be present unless all Members of the Alliance Management Board (or their Alternate Members) are in attendance. When considering the exclusion of an Industrial Participant pursuant to Clause 24 (Exclusion, Step-In, Novation and Termination) then the provisions of Clause 24 (Exclusion, Step-In, Novation and Termination) shall apply and the quorum shall be all Members (or their Alternate Members) excluding (for such matter) the Member (or his Alternate Member) appointed by the relevant Industrial Participant to whom any Rectification Notice or Exclusion Notice is addressed. Subject to Clause 24.9(b), the Member (or Alternate Member) of any such Industrial Participant may attend but not vote on such matter. Save as set out in this Paragraph 16.6, a Member (or his Alternate Member) may vote on any matter and be included for the purpose of a quorum at any meeting at which the matter is considered including, without limitation, any change to a Manufacturing Phase Works Contract or the entering into, or a change to, a Material Contract to which the Manufacturing Alliance Participant who appointed him is a party.

16.7 A meeting of the Alliance Management Board may consist of a conference between Members (or their Alternate Members) who are not all in one place, but each of which is able directly or by telephonic or video communication to speak to each of the others,



and to be heard by each of the others simultaneously. A Member (or their Alternate Member) taking part in such a conference shall be deemed to be present in person at the meeting and shall, subject to Paragraph 16.6 above, be entitled to vote and/or be counted in the quorum accordingly. At the discretion of the Chairman, such a meeting shall be deemed to take place where the largest group of Members (or their Alternate Members) are assembled or where the Chairman is located.

16.8 Each Member (or their Alternate Member) shall have one vote of equal weight.

16.9 Subject to Paragraph 16.6 above, all matters arising at any meeting of the Alliance Management Board shall be determined unanimously and only by resolution and no such resolution shall be effective unless approved in writing and signed by all the Members (or their Alternate Members).

16.10 Subject to the provisions of this Agreement, a resolution made by the Alliance Management Board shall be binding on the Alliance.

## **17 Notices**

17.1 Each Member (and their Alternate Member) and the CVF Programme Director shall be entitled to receive notice of meetings of the Alliance Management Board at his usual address (postal, facsimile) or as otherwise notified to the AMB Secretary.

## **18 Minutes**

18.1 The AMB Secretary shall produce, or procure the production of, any written resolution and shall produce any meeting minutes of the Alliance Management Board which shall be distributed to the Members (and their Alternate Members) of the Alliance Management Board and the CVF Programme Director not more than five (5) Business Days following the meeting. The approval or amendments and approval of the minutes shall be on the agenda of the next following Alliance Management Board meeting.

## **19 Non-Voting Attendance at Meetings of Alliance Management Board**

19.1 The following people only shall be entitled to attend but not vote at the meetings of the Alliance Management Board:

- (a) anyone to whom the Alliance Management Board extends an invitation from time to time;
- (b) the DES Capital Ships Director (unless he is attending in his capacity as an Alternate); and
- (c) the CVF Programme Director;

and each of the Manufacturing Alliance Participants shall otherwise ensure that none of its other employees, agents or representatives (other than its Member or Alternate Member ) attends.

**20 Authority reserved posts within the Alliance**

- 20.1 The deputy of the Project Controls Group shall be an Authority appointment unless the Authority agrees otherwise.

## **PART 2**

### **CV Programme Director**

The CVF Programme Director shall be responsible for delivering the Manufacturing Phase Objective on a day to day basis in accordance with the authority delegated by the Alliance Management Board from time to time by resolution of the Alliance Management Board.

**PART 3**

**Alliance Management Board Members and Alternate Members**

<b><u>Alliance Participant</u></b>	<b><u>Member</u></b>	<b><u>Alternate Member</u></b>
<b>Authority</b>	<b>Dr Andrew Tyler (Chairman)</b>	<b>Rear Admiral Robert Love</b>
<b>Babcock</b>	██████████	██████████
<b>BAES</b>	██████████	██████████
<b>BVT</b>	██████████	██████████
<b>Thales</b>	██████████	██████████
<b>In attendance</b>	<b>AMB Secretary</b>  <b>DES Capital Ships Director</b>  ████████████████████	

**PART 4**

**MINUTES OF FIRST MEETING OF MANUFACTURING PHASE ALLIANCE  
MANAGEMENT BOARD**

AMB-MPA-01-08

**AIRCRAFT CARRIER ALLIANCE**

MINUTES of a meeting of the Alliance Management Board of the Aircraft Carrier Alliance held at [ ] on day of [ ] 2008 at hours

---

**Name**

**Organisation**

**PRESENT:**

**IN ATTENDANCE**

**1 Appointment of Chairman**

**IT WAS RESOLVED THAT** Dr Andrew Tyler be hereby appointed Chair of the Alliance Management Board.

The Chair noted that the meeting was and is hereby convened pursuant to Schedule 2 (Alliance Management) of the Aircraft Carrier Manufacturing Alliance Agreement entered into on the date hereof amongst 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

(the "MAA").

The Chair further noted that the proceedings of meetings of the AMB are governed by Schedule 2 Part 1 of the MAA.

**2 Adoption of Management Organisation Chart**

An organisation chart of the management of the Manufacturing Phase by the Alliance (a copy of which is attached to these minutes as Appendix 1) was produced to the meeting and carefully considered by the Alliance Management Board and **IT WAS RESOLVED THAT** such chart be and is hereby adopted as the management organisation chart for the Manufacturing Period.

**3 Adoption of Strategies and plans for the Aircraft Carrier Alliance**

The following strategy documents and plans were produced to the meeting and carefully considered by the Alliance Management Board:

- (a) Acceptance and Assurance Strategy (ACA document identifier CVF 10035281 version 2 draft 3);
- (b) Build Strategy (ACA document identifier CVF-10027003 version 3KD4, version 2 );
- (c) Configuration Management Plan (ACA document identifier CVF-00000091version 31 issue 11);
- (d) Procurement Strategy ((ACA document identifier CVF-10063688 version 2.2; and
- (e) Project Execution Plan (ACA document identifier CVF-10022441 version 5.

**IT WAS RESOLVED THAT:**

- (a) the following documents be and are hereby adopted as Alliance Strategy Documents for the Project:
  - (i) the above Acceptance and Assurance Strategy;
  - (ii) subject to Paragraph 4 below, the above Build Strategy (version 3KD4);

- (iii) the above Configuration Management Plan;
  - (iv) the above Procurement Strategy; and
  - (v) the above Project Execution Plan;
- (b) the following documents shall be developed and amended for consistency with the Key Project Agreements:
- (i) the above Acceptance and Assurance Strategy;
  - (ii) the above Configuration Management Plan; and
  - (iii) the above Procurement Strategy;
- (c) the Project Execution Plan shall be developed and amended for consistency with the Key Project Agreements, the Statement of Work and the project plans and procedures; and
- (d) the Authority will within a period of three (3) months of the Commencement Date produce a contract governance policy for all of the Manufacturing Alliance Participants for approval by the Alliance Management Board.

#### **4 Build Strategy**

An updated Build Strategy (version BS4, ACA document identification CVF-10062102 version 9) was produced to the meeting which constituted a review of the baseline Build Strategy (version 3KD4) and identified potential schedule float opportunities in the detailed resourced schedule and in particular:

- retains the existing Industrial Participant allocation of Lower Blocks;
- increases the size of the 3 central Upper Blocks, one above each of Lower Blocks 2, 3 and 4;
- limits build at BAES Marine of Lower Block 3 up to 3 Deck;
- assembles the ship bow first (taking advantage of Lower Block 2 earlier availability);

- initially, generates float in the Integrated Schedule for CVF 01 and CVF 02; and
- the remaining sponsons and the islands will be competed on a Best for Project basis.

The AMB reviewed the revised build strategy, BS4, and agreed that it should be no worse than cost neutral compared to 3KD4. **IT WAS THEREFORE RESOLVED THAT** build strategy (version BS4) be and is hereby adopted as the Build Strategy and as an Alliance Strategy Document for the Project and that the Project baselines including Cost Model, COBRA, Integrated Schedule, Risk and Opportunities Register, Work Breakdown Structure and Statement of Work will be amended in accordance with the Change Procedure accurately to reflect Build Strategy (BS4) within four months of the Commencement Date but without any change to the Initial Target Cost. If it is found that the Build Strategy (BS4) is not cost neutral the Integrated Schedule, Work Breakdown Structure and Statements of Work shall still be amended in accordance with the Change Procedure accurately to reflect the Build Strategy (BS4) and the AMB may then decide to either modify the Build Strategy (BS4) or move to a lower cost alternative.

As part of the above review, the impact of the Build Strategy (BS4) on BAES Marine's price estimates will also be reviewed with the Authority by BAES Marine to determine:

- (a) the effect of the revised overhead recovery rates;
- (b) the amount of contribution derived from CVF throughput from the Authority's Astute programme overhead reduction; and
- (c) the cost and overhead recovery mechanism for the central assembly shop to support CVF lower block 03 build to 3 deck.

## **5 Ship Specification**

The meeting noted that the current version of the Ship Specification is version 6.16.

The meeting noted that the Engineering Standards set out in the Ship Specification (version 6.16) do not currently include various standards included in the engineering



standards tracking database which are stated to be mandatory but not contractual.

**IT WAS RESOLVED** that within a period of three months from the Commencement Date the Manufacturing Alliance Participants would review such standards in the tracking database against the Ship Specification to agree their applicability and contractual status and to correctly incorporate such standards (if any) into the Ship Specification as appropriate in accordance with the Change Procedure.

The meeting noted that Sections 1.1 (Introduction) and 1.2 (Standards and Applicability) of the Ship Specification are inconsistent with the terms of the Key Project Agreements and **IT WAS RESOLVED** that within a period of three months from the Commencement Date the Manufacturing Alliance Participants would review and amend such Sections to remove any inconsistencies.

The meeting noted that Section 1.29 (Acceptance) of the Ship Specification is inconsistent with the terms of the Key Project Agreements and **IT WAS RESOLVED** that within a period of three months from the Commencement Date the Manufacturing Alliance Participants would review and amend such Section so as to be consistent with schedule 4 (Acceptance) of the MFTC and then incorporate such Section as amended into schedule 4 (Acceptance) of the MFTC and such Section shall therefore be amended to read “See schedule 4 (Acceptance) of the MFTC”.

## **6 Appointment of CVF Programme Director**

The terms of reference for the CVF Programme Director (a copy of which is attached to these minutes as Appendix 2) were produced to the meeting and the Chair proposed that [REDACTED] be appointed to the post of [REDACTED] on the said terms of reference. **IT WAS RESOLVED THAT** [REDACTED] be and is hereby appointed [REDACTED] on the said terms of reference.

## **7 Indexation**

At the time of contract signature there was no agreement on what was the best methodology to index the Final Target Cost during Phase 2.

The Authority’s view was that the target profile should be revised and fixed for 24 month periods and it is this profile that is used for indexation as the default position

for Phase 2.

The view of the Industrial Participants was that the target profile should only be contractually revisited at the end of Phase 2 and revised retrospectively to reflect the actual % spend in each period of 12 months. (Note that only the target value could be escalated not the actual cost incurred.) It would be this profile that was indexed for comparison with the actual outturn costs. This position was laid out in a letter EL/JDA/010039 from [REDACTED] to the Authority's Director General Ships, Andrew Tyler dated 12<sup>th</sup> December 2007.

Accordingly, it has been agreed that following a review of the practical effect of the application of the indexation methodology during Phase 1 the AMB will agree an amendment to the indexation methodology for Phase 2 by the 30 December 2009 or the Authority's view that the target profile should be revised and fixed for periods of 24 months will be applied as the agreed default position for Phase 2.

### **Resolution**

The AMB agreed that this was a significant issue and **IT WAS RESOLVED THAT** the AMB would attempt to agree the Phase 2 indexation methodology by 30 December 2009.

## **8 Adjustment of Initial Target Cost**

The Manufacturing Alliance Participants recognise that the Initial Target Cost of £3.0725 billion, [REDACTED], [REDACTED], has been set in accordance with reference CBCVF/00201 dated 18 June 2008 and CBCVF/00201/1 dated 27 June 2008 by having the estimated costs and profit at April 2006 economic conditions of the engineering transition stage of the Demonstration Phase (being 1<sup>st</sup> July 2007 to the end of the Demonstration Phase) removed and £20 million at April 2006 economic conditions for Demonstration Phase deferrals and RFSP gap items, and any Changes requested and agreed by the Authority identified as "additional customer requirements", included. **IT WAS RESOLVED THAT** the above Initial Target Cost, including the above Fixed Fee, shall be adjusted at equivalent economic conditions once the costs and profit up to the end of the Demonstration Phase have been invoiced, audited and reconciled.

**9      Quality Plan**

**IT WAS RESOLVED THAT** within a period of three (3) months of the Commencement Date BVT, with the Other Industrial Participants, would produce a quality plan which is consistent with AQAP 2105 for approval by the Authority.

**10     Annex C to Schedule 8 (Intellectual Property)**

**IT WAS RESOLVED THAT** within a period of three (3) months from the Commencement Date the list of Independently Developed Deliverables set out at Annex C to Schedule 8 (Intellectual Property Rights) would be agreed.

**11     Other**

**11.1** Terms defined in the MAA or MFTC shall bear the same meanings herein.

**11.2** **IT WAS NOTED THAT** as the Authority will fund the purchase of the Goliath crane by Babcock, the Goliath Crane is an Authority Funded Capex Item and **IT WAS RESOLVED THAT** on disposal of the Goliath crane the net proceeds will be credited to the Project in a manner to be agreed by the Alliance Management Board.

**11.3** **IT WAS NOTED THAT** BVT and Babcock have given their commitment to cooperate with the Authority to facilitate completion of the Authority’s financial and legal due diligence exercise on each of them within twelve months of the Commencement Date.

**12     Close**

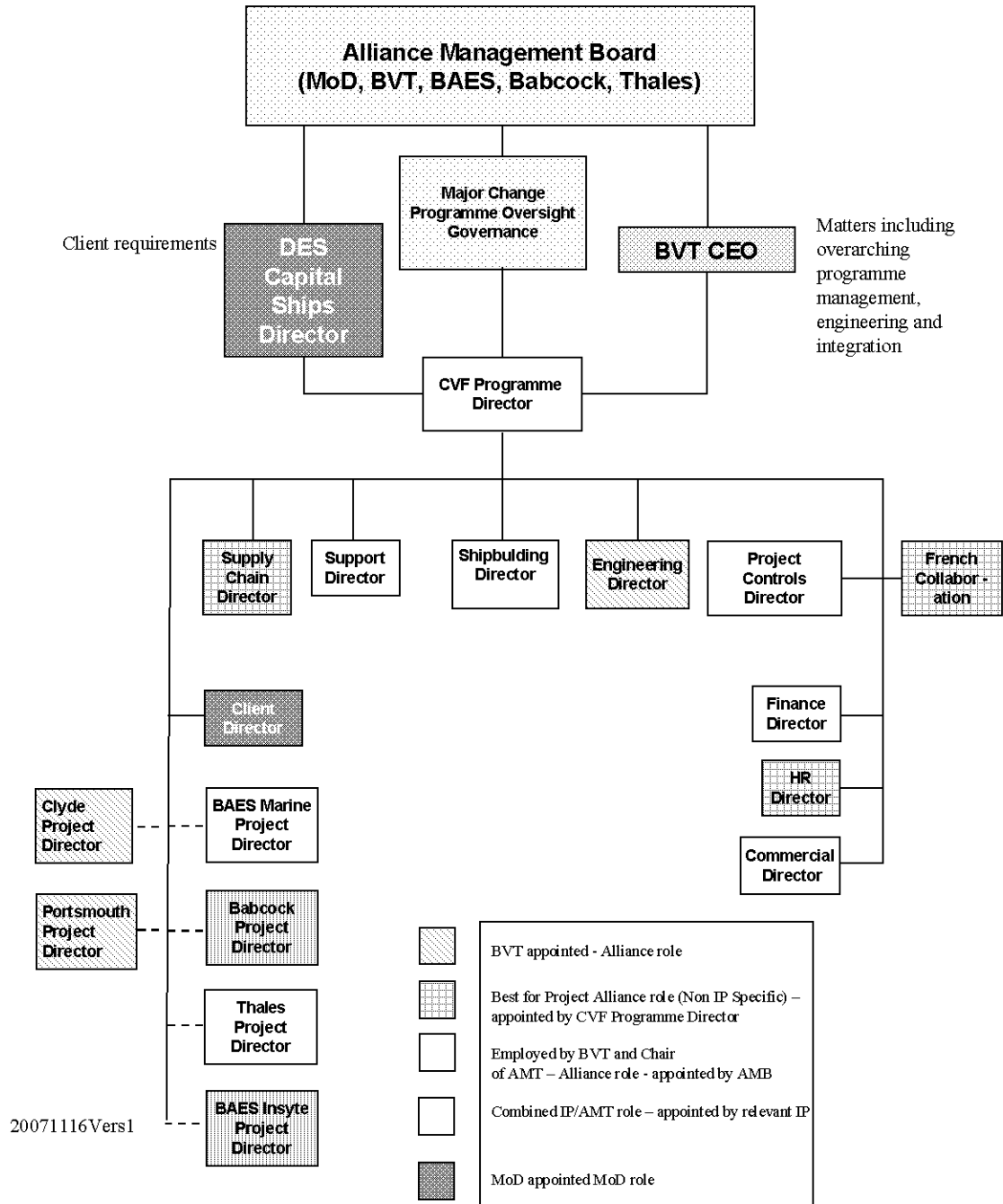
There being no further business the meeting was concluded.

.....

Chair

**Appendix 1 to Part 4  
Management Organisation Chart**

# Management Organisation Chart



20071116Vers1

**Appendix 2 to Part 4**  
**CVF Programme Director**  
**Terms of Reference**

**Scope**

The CVF Programme Director shall have the following responsibilities:

**Implement the Manufacturing Phase – General**

- (a) formulate and implement strategies for achieving the Manufacturing Phase Objective;
- (b) facilitate the Alliance Principles;
- (c) review, monitor and report to the Alliance Management Board on a regular basis the progress of the Manufacturing Phase including, without limitation, the performance of the Industrial Participants:
  - (i) against the Project Target Cost and Integrated Schedule in accordance with processes drawn from, and managed by BVT under its Statement of Work; and
  - (ii) against the EVM and Milestones; and
  - (iii) against the Project Control Requirements in maintaining the integrity and content of the Cost Model;
  - (iv) against the Ship Specification in respect of their technical performance and management of Acceptance; and
  - (v) in the implementation of the Key Project Agreements;
- (d) implement the Project Controls Requirement;
- (e) ensure the implementation by the Industrial Participants of Alliance Strategy Documents;
- (f) establish a functional reporting line to BVT for:

- (i) the purpose of drawing on BVT's processes and procedures during the Manufacturing Phase;
  - (ii) the overarching leadership of engineering, integration and programme management; and
  - (iii) the purpose of governance and functional processes and procedures as well as the overall administration of the MFTC; and
- (g) establish a reporting line to DES Capital Ships Director in respect of the Authority's requirements and the Authority's governance/assurance issues;

**'First Line Reports'/Consultants/Personnel**

- (h) recommend to the Alliance Management Board for approval the appointment and replacement from time-to-time of First Line Reports in accordance with the organisation chart attached as Appendix 1 to the First AMB Minutes and recognising that certain appointments will be the responsibility of specific Industrial Participants who shall be chosen on a Best for Project basis and who shall together with the Client Director and the CVF Programme Director form the Alliance Management Team;
- (i) recommend to the Alliance Management Board for approval any bonus or other incentive payments to all First Line Reports over £1,000;
- (j) award any bonus or other incentive payments up to £1,000 where such are to be charged to the Manufacturing Phase as Incurred Costs;
- (k) approve the appointment of any consultants or professional advisers to advise any of the Industrial Participants in connection with the Manufacturing Phase where such payments are to be charged to the Manufacturing Phase as Incurred Costs;

**Risk**

- (l) monitor and review all risks to the Manufacturing Phase and recommend solutions to such;

- (m) implement and manage the Project Controls Requirement to control and record the use of the Risk Contingency contained within the Project Target Cost and approve any release of the Risk Contingency for risk mitigation purposes which is less than £10,000,000 (ten million pounds) per event in each case in accordance with the Project Controls Requirement;

#### **French Co-operation**

- (n) represent the Authority and the Industrial Participants as directed by the Alliance Management Board in discussions with French Industry regarding any arrangements proposed by the Industrial Participants and French Industry as a result of French Cooperation and seeking the approval of the Alliance Management Board to such proposals prior to the implementation of such proposals.

#### **Changes**

- (o) review and approve or reject any Change which may be made with the approval of the CVF Programme Director in accordance with the Change Procedure;

#### **Communication**

- (p) approve, in consultation with the DES Capital Ships Director, Alliance media handling including but not limited to presentations at conferences, press contact and formal press releases.

**Appendix 3 to Part 4**  
**Aircraft Carrier Alliance**  
**Charter**

**OUR MISSION:**

To achieve Vessel Acceptance of each of CVF 01 and CVF 02 by their respective Contract Acceptance Dates, at or below the Final Target Cost and in accordance with the Ship Specification.

**OUR CONDUCT:**

The Alliance Management Board members and the nominated representatives of our respective organisations, have committed to:

- be accountable for and act always for the benefit of the Alliance and its objective;
- create an environment built on trust, honesty and co-operation, openly communicating with and respecting other members of the Alliance and their opinions;
- create an environment where health and safety is paramount;
- operate and foster a no fault, no blame and a no surprises culture;
- challenge convention and tradition where this promotes efficiency and innovation;
- promote opportunities for personal development and increased job satisfaction;
- celebrate and reward success;
- provide support for individuals where success is not achieved; and
- maintain a unified approach to internal and external briefing.

As the Alliance Management Board members of the respective organisations we fully endorse this Charter and give our full personal commitment and support to the Aircraft Carrier Alliance.

MoD:



Babcock:

BAE Systems:

BVT:

Thales:

Dated: \_\_\_\_\_

## **PART 5 – The Alliance Management Team**

### **1 The Alliance Management Team**

- 1.1 The CVF Programme Director, the First Line Reports and the Client Director shall form the AMT and be entitled to attend all meetings of the AMT.
- 1.2 Any Industrial Participant that is not represented in the First Line Reports shall also be entitled to send a representative to all meetings of the AMT.
- 1.3 Each Industrial Participant shall be entitled to participate in and have visibility of decision making within the AMT.

### **Schedule 3**

#### **Open Book**

- 1 Any disclosure of Open Book Data shall be subject to the Data Protection Act 1998 and, save as expressly stated otherwise in this Schedule 3, the provisions of Schedule 8 (Intellectual Property Rights) and Schedule 9 (Confidentiality).
- 2 References to CAS in this Schedule 3 shall be to CAS or to such other Authority representative as notified to and agreed by the Industrial Participants from time to time (such agreement not to be unreasonably withheld or delayed).
- 3 Subject to Annex 2 to this Schedule 3, the Industrial Participants shall share Category 1 Open Book Data amongst themselves, and the Industrial Participants agree to provide each other with the same level of Category 1 Open Book Data.
- 4 Notwithstanding the restrictions on the disclosure of Open Book Data set out in Annex 2 to this Schedule 3, each Industrial Participant shall be able to request from any Other Industrial Participant disclosure of any additional Open Book Data that is fundamental in the understanding of the Cost Model. Such a request will be made to the Industrial Participant who holds such Open Book Data with a sufficient rationale to justify the request along with the names of those individuals to whom the Open Book Data would be passed. The Industrial Participant who holds such Open Book Data will consider the request in good faith, discuss if there is an appropriate basis for disclosure of such Open Book Data, and inform the requesting Industrial Participant of whether it will disclose such Open Book Data.
- 5 The Industrial Participants shall provide to the Authority and CAS on request:
  - 5.1 access to all Open Book Data and, where appropriate, provide the Authority and CAS with copies of the Open Book Data (at the Authority's cost). Without prejudice to the generality of this Paragraph 5.1, this shall include the Authority and CAS being given access to all cost data and supporting information to support the agreement of labour and overhead rates for the Works in accordance with the relevant IPs normal QMAC arrangements (with the Authority being able to use, but not disclose, such data to certify to the Other Industrial Participants the correctness of labour and overhead rates used by such Industrial Participant) and all other cost components made available

under DEFCON 653 (Pricing on Ascertained Costs) and the General Notice to Defence Contractors No. 1 in line with the current business cost collection processes, cost levels and profit margins relating to the Works; and

5.2 access to data from other Authority projects in which they are participating, that is necessary to assure the Authority that the Manufacturing Phase is not bearing an inappropriate overhead loading or cost migration from other Authority projects with the Industrial Participants.

6 Each Industrial Participant shall:

6.1 nominate an individual with specific responsibility for the preparation and maintenance of the financial and management Open Book Data that is available to the Authority and/or CAS under this Schedule 3; and

6.2 maintain and provide such Open Book Data in an agreed form and, further, provide any summary of such Open Book Data as required by the Authority and/or CAS to agreed timescales.

7 Each Industrial Participant shall maintain books of account relating to the provision of the Works and in so doing shall observe the requirements of:

7.1 UK Generally Accepted Accounting Practice (UK GAAP), consisting of all extant Statements of Standard Accounting Practice (SSAPs), Financial Reporting Standards (FRSs), Urgent Issues Task Force Abstracts, those provisions of the Companies Act 1985 and 2006 in force at the relevant time which relate to company accounts and books of account and any relevant industry-specific authoritative guidance, as amended from time to time; or

7.2 international generally accepted accounting practice, comprising to the extent adopted by the European Commission, all extant International Financial Reporting Standards (IFRSs), International Accounting Standards (IASs), interpretations of the International Financial Reporting Interpretations Committee and its predecessor body, and other relevant industry-specific authoritative guidance, as amended from time to time.

8 Each Manufacturing Alliance Participant shall be entitled to appoint (at their own cost)

an independent financial auditor to conduct an independent financial audit of any non-competed element of the Incurred Costs or the monthly reporting of the Cost Model during the Manufacturing Phase. If the Manufacturing Alliance Participants agree, such audit may be undertaken by an auditor on behalf of all of the Manufacturing Alliance Participants in which case the cost of such audit will be an Incurred Cost. Such joint or any audit by the Authority in accordance with this Paragraph 8 may extend to assessing the efficacy of the financial reporting systems and controls maintained by each Industrial Participant or the central project controls team managed by CVF Programme Director. The terms of reference and results of any such joint audit shall be available to the AMB.

- 9 The Industrial Participants agree that the Authority, CAS and the Comptroller and Auditor General will, on reasonable prior notice, have access to such of its Open Book Data as the Authority, CAS and the Comptroller and Auditor General reasonably considers necessary and will be entitled to require and receive copies (at the Authority's cost) of any such Open Book Data on demand. Such Open Book Data will not be disclosed to the Authority's representatives who are not employees of or advisers to government organisations without the prior written agreement of the relevant Industrial Participant.
- 10 The Authority may nominate CAS to undertake both financial and management audits in relation to this Agreement and/or the Manufacturing Phase Works Contracts. CAS shall, on reasonable prior notice, be allowed direct access to both the relevant Industrial Participant's personnel and Open Book Data.
- 11 The Authority and/or CAS may at any time, on reasonable prior notice, undertake any inspection of any of the Works, and make any audit or check of any aspect of any Industrial Participant's performance of this Agreement and their respective Manufacturing Phase Works Contracts as reasonably required by the Authority in accordance with this Schedule 3 or where the same shall have been requested by the National Audit Office.
- 12 For the purpose of:
  - 12.1 the examination and certification of the accounts of the Authority; or

12.2 any examination pursuant to section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Authority has used its resources;

the Comptroller and Auditor General may examine such documents relating to expenditure and income in respect of the Works and forming part of the Open Book Data as he may reasonably require which are owned, held or otherwise within the control of the Industrial Participants and may require the Industrial Participants (at the Authority's cost) to produce such oral or written explanations as he considers necessary.

13 Without prejudice to the generality of this Schedule 3, the Industrial Participants shall on reasonable prior notice provide the Authority, CAS and the Comptroller and Auditor General with full access to the right of inspection of and (at the Authority's cost) extraction from all records whether manual or on computer which are owned, held or otherwise within the control of the Industrial Participants that relate to the Authority's property (both real and personal) leased to or otherwise made available to an Industrial Participant in connection with the Works. All such records shall be retained by the Industrial Participants for a period of 6 years after their responsibilities for such property have been discharged.

14 The Industrial Participants shall promptly provide all reasonable co-operation in relation to any inspection, audit or check undertaken by the Authority and/or CAS and/or the Comptroller and/or the Auditor General in accordance with this Schedule 3, including:

14.1 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to the Open Book Data during such inspection, audit or check;

14.2 making, granting or procuring visibility of any documents and records forming part of the Open Book Data available for inspection and (at the Authority's cost) providing a reasonable number of copies of any such documents or records requested and/or granting copying facilities for the purposes of making such copies;

14.3 complying with the Authority's and/or CAS's reasonable requests for access to

personnel engaged in such Industrial Participant's performance of this Agreement and their respective Manufacturing Phase Works Contracts; and

- 14.4 support and assistance at their own facilities that the Authority and/or CAS require in order to discharge their functions, including allowing the Authority and/or CAS to use suitable office accommodation where necessary.
- 15 The Industrial Participants will note the Authority's compliance with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. In the event that the Authority is required to provide information to a person as a result of a request made to it under the Freedom of Information Act 2000, the Authority shall give prior notice to an Industrial Participant if it intends to release any information relating to that Industrial Participant. The Authority shall adhere to the requirements of the Freedom of Information Act 2000 in disclosing information relating to this Agreement and/or the Manufacturing Works Contracts and to the respective Industrial Participant.
- 16 Any Dispute arising from the application of this Schedule 3 shall be resolved in accordance with Schedule 17 (Dispute Resolution Procedure) on the question of the principle involved, without the Open Book Data which is subject to the Dispute being disclosed.
- 17 In complying with the terms of this Schedule 3 each Manufacturing Alliance Participant shall ensure that any disclosure of Open Book Data does not breach competition laws in any relevant jurisdiction.

## **Annex 1 to Schedule 3**

### **Categories of Open Book Data**

#### **1 Category 1 Open Book Data**

1.1 Category 1 Open Book Data includes the following Open Book Data:

- (a) costed work breakdown structure, Cobra and ARM data and interface definition;
- (b) quantities of key materials, e.g. steel, pipes etc;
- (c) material pricing in the following categories with the exception of information related to LRR, MRR, CMS, METOC, AGMA, INE and T2CV
  - a. new design (i.e. development);
  - b. modification and/or integration of “military off the shelf” and “commercial off the shelf”
  - c. existing “military off the shelf”, ”commercial off the shelf” and consumables;
  - d. on site subcontractor services;
  - e. other services, e.g. design, consultancy, transport etc; and
  - f. Sub-Alliance;
- (d) engineering man hours for design stages 1, 2 and 3;
- (e) Manufacturing Phase specific engineering norms;
- (f) high level pricing rates, i.e. at a total price level or cost per hour including overhead;
- (g) total production man hours and Project specific man-hours at a total trade split



level;

- (h) Project specific production norms;
- (i) test, commissioning, integration and trials man hours;
- (j) project management man hours;
- (k) overall resource profiles for the Manufacturing Phase;
- (l) Manufacturing Phase specific resource profiles at trade split levels;
- (m) capacity and footprint profiles for the Manufacturing Phase;
- (n) Build Strategy and Integrated Schedule data;
- (o) details of necessary Manufacturing Phase specific capital expenditure for both facilities and engineering toolsets etc; and
- (p) Risk and Opportunity Management Plan and the detailed Risk Registers.

## 2 Category 2 Open Book Data

2.1 Category 2 Open Book Data includes the following Open Book Data:

- (a) pricing information for LRR, MRR, CMS, METOC, AGMA, INE and T2CV equipments that are considered "competition sensitive"; and
- (b) any other elements including technical, engineering and commercial information that are considered as "competition sensitive" by the appropriate Industrial Participant.

3 Category 3 Open Book Data;

3.1 Category 3 Open Book Data includes the following Open Book Data:

- (a) the detailed build up of all rates;
- (b) detailed man hour breakdowns including detailed build up of norms;
- (c) norm data relating to other Authority contracts;
- (d) resource profiles overlaying the Manufacturing Phase with other contracts;
- (e) capacity analysis overlaying Manufacturing Phase with other contracts;
- (f) detailed information as to how capital expenditure is recovered if not charged directly to the Project;
- (g) detailed costing information on Category 2 Open Book Data: and
- (h) the data and information made available to the Authority and CAS under Paragraphs 5.1 and 5.2 of this Schedule 3, other than that data and information that is Category 1 Open Book Data or Category 2 Open Book Data.

**Annex 2 to Schedule 3**  
**Procedure for the Protection of Open Book Data**

1 Category 1 Open Book Data

1.1 Category 1 Open Book Data shall only be disclosed to individuals who have a need to have access to such Category 1 Open Book Data.

1.2 Notwithstanding the provisions of Paragraph 2(a) of Schedule 9 (Confidentiality), Category 1 Open Book Data will not be disclosed to any Sub-Contractor contracted to any of the Industrial Participants without the disclosing Industrial Participant's prior written consent.

2 Category 2 Open Book Data

2.1 Prior to disclosure, all Category 2 Open Book Data shall be suitably marked as either "Category 2" or "competition sensitive".

2.2 Each Industrial Participant shall put in place a "firewall" process in relation to any Category 2 Open Book Data on a case by case basis, in order to limit the disclosure of Category 2 Open Book Data to individuals who need access to such Category 2 Open Book Data and who are not and will not be involved in a competition with the disclosing Industrial Participant concerning such Category 2 Open Book Data.

2.3 Notwithstanding the provisions of Paragraph 2 of Schedule 9 (Confidentiality), Category 2 Open Book Data shall only be disclosed to individuals who have signed a Confidentiality Undertaking and whose employing Industrial Participant has countersigned such Confidentiality Undertaking.

3 Category 3 Open Book Data

3.1 Neither the Authority nor CAS will disclose Category 3 Open Book Data to any third party, including any Other Industrial Participant or member of the AMT.

**Annex 3 to Schedule 3**  
**CVF Confidentiality Undertaking**

**THIS UNDERTAKING** is made this \_\_\_\_\_ day of \_\_\_\_\_

BY

Name .....

Address .....

Alliance role .....

And

Employing Industrial Participant name .....

Employing Industrial Participant address .....

.....

**TO:**

Babcock Marine (Rosyth) Ltd, BAE Systems Marine Ltd, BAE Systems Integrated System Technologies Ltd, BVT Surface Fleet Limited and Thales Naval Ltd (the “**Industrial Participants**”)

**WHEREAS:**

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

Manufacturing Phase Objective.

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

**UNDERTAKING:**

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

or control of the undersigned to the disclosing Industrial Participant at any time upon request.

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

**Signed**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Signed**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Schedule 4**

### **Risk and Reward Incentive Arrangement**

#### **1 Final Target Cost, Phase 1 Incentive and General**

- 1.1 Throughout Phase 1 the Parties shall advance the design, engineering and procurement of the Works including commencement of manufacture to a stage whereby the Integrated Schedule, supply and build packages can be defined with greater certainty as to the costs of the Works than is possible as at the date hereof in order for the Alliance Management Board to determine pursuant to Paragraph 2.1 below a Final Target Cost which is less than the Initial Target Cost (to the extent possible).
- 1.2 Not less than thirty (30) Business Days before the end of Phase 1, the CVF Programme Director shall report the proposed Final Target Cost calculated at P70 in accordance with the Project Controls Requirement and the Alliance Management Board shall, within twenty (20) Business Days of receipt of such report, determine the Final Target Cost in accordance with the provisions of Paragraph 2.1 below, and the Parties shall be bound by such determination.
- 1.3 The Final Target Cost shall be determined pursuant to Paragraph 2.1 below for the purpose of determining:
- (a) whether or not a Phase 1 Incentive Payment shall be payable pursuant to Paragraphs 1.4 and 1.5 below; and
  - (b) pursuant to Paragraphs 1.4 and 1.5 below which of the share line arrangements set out in Paragraphs 4.1 and 5.1 (and their respective related provisions in this Schedule) shall apply for the purpose of determining the relevant Gain Share or Pain Share, if any, which shall apply for the purpose of Phase 2.

When the relevant share line arrangements have been determined pursuant to Paragraphs 1.4 and 1.5 below, there shall be no change in such determination or in the applicable share line diagram or its associated provisions and none of the Manufacturing Alliance Participants shall be under any obligation to re-negotiate the applicable share line arrangements and related provisions contained within this



Schedule 4 at any time unless it is agreed pursuant to and in accordance with the Change Procedure.

- 1.4 If it is determined pursuant to Paragraph 2.2 below that a Phase 1 Incentive Payment is payable to BVT:
  - (a) the Final Target Cost will, for the purpose of calculations relating to Phase 2 only, include a Phase 1 Incentive Payment as calculated in accordance with Paragraph 2.2 below; and
  - (b) the provisions of Paragraph 4 shall apply for the purpose of determining the amount of any Pain Share or Gain Share which is payable.
- 1.5 If it is determined pursuant to Paragraph 2.3 below that no Phase 1 Incentive Payment is payable to BVT, then the provisions of Paragraph 5 below shall apply for the purpose of determining the amount of any Pain Share or Gain Share which is payable.
- 1.6 At the same time as it is determined, pursuant to the provisions of Paragraph 2 below, whether or not a Phase 1 Incentive Payment is payable, the AMB shall determine the Final Target Cost at P70 and P90 and the difference between the P70 and P90 values shall determine the value of the plateau as indicated in Paragraphs 4 and 5 below, respectively, of this Schedule 4.
- 1.7 Any amounts which are due to be paid to or by BVT or any of the Other Industrial Participants pursuant to calculations undertaken under and in accordance with this Schedule 4 shall be paid or satisfied in accordance with schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract and the IP MFTC Sub-Contracts as appropriate.

## **2 Phase 1 Incentive Regime**

- 2.1 Within twenty (20) Business Days of receipt by the AMB of the report from the CVF Programme Director of the proposed Final Target Cost pursuant to Paragraph 1.2 above, the Authority shall calculate pursuant to Paragraph 2.2 below on a provisional basis and the AMB shall determine and notify the Manufacturing Alliance Participants whether or not on the basis of the figures available prior to the Cost Audit for Phase 1 a provisional payment in respect of the Phase 1 Incentive Payment is payable pursuant

to paragraph 2.5(a) of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract. Following the Cost Audit the process shall be repeated using the figures determined in accordance with that Cost Audit for the purpose of determining pursuant to paragraph 2.5(b) of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract the amount of any final payment in respect of the Phase 1 Incentive Payment. For the purpose of determining whether or not any Phase 1 Incentive Payment is payable the Initial Target Cost and the Final Target Cost at P70 shall each be Indexed in accordance with the provisions of Schedule 5 (Indexation) so that they are compared at the same economic conditions.

2.2 If:

(a) the Final Target Cost (excluding any Phase 1 Incentive Payment), Indexed in accordance with Paragraph 2.1 above;

is less than

(b) the Initial Target Cost Indexed in accordance with Paragraph 2.1 above,

then ■% of the difference between (a) and (b) (the “**Phase 1 Incentive Payment**”) shall be paid by the Authority to BVT at the commencement of Phase 2 in accordance with paragraph 2.5 of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract.

2.3 If:

(a) the Final Target Cost (excluding any Phase 1 Incentive Payment), Indexed in accordance with Paragraph 2.1 above;

is equal to or greater than

(b) the Initial Target Cost Indexed in accordance with Paragraph 2.1 above,

then no Phase 1 Incentive Payment shall be payable to BVT from the Authority under this Schedule 4.

2.4 In the event the Alliance Management Board has not confirmed or is unable to confirm the amount of the Final Target Cost and whether or not any provisional or final

payment in respect of the Phase 1 Incentive Payment is payable within the relevant periods specified in Paragraphs 1.2 and 2.1 above, respectively, it shall be determined in accordance with the Dispute Resolution Procedure.

### 3 Phase 2 Incentive Regime

- 3.1 The RRIA in relation to Phase 2 is based on sharing any under or over spend between the Authority and BVT determined through comparisons, carried out during and following Phase 2 of the Outturn Cost with the Final Target Cost. For the purpose of such comparisons of the Final Target Cost with the Outturn Cost, the Final Target Cost shall be Indexed and shall include any Phase 1 Incentive Payment which is determined to be payable in accordance with Paragraph 2.2 above.

The amount of any Gain Share or Pain Share shall be determined in accordance with the provisions of Paragraphs 3 to 5, inclusive, of this Schedule 4.

- 3.2 Any Gain Share or Pain Share shall be calculated using the provisions of Paragraph 4 below or using the provisions of Paragraph 5 below, as determined in accordance with Paragraph 1.5 or 1.6 above, as the case may be.
- 3.3 If the Outturn Cost or Interim Outturn Cost is greater than the Final Target Cost (as calculated in accordance with Paragraph 3.1 above), an amount or amounts calculated in accordance with Paragraph 4 or Paragraph 5 below, as appropriate, and identified in such Paragraphs as the Pain Share, (the “**Pain Share**”) shall be due and payable by BVT to the Authority and such amount or amounts shall be paid or satisfied in accordance with the provisions of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract. For the final calculation of any Pain Share, the Outturn Cost will be adjusted to follow the Allowable Costs reconciliation pursuant to paragraph 1.5 of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract.
- 3.4 If the Outturn Cost is less than the Final Target Cost then the difference between the two shall be shared by the Authority and BVT in accordance with Paragraph 4 or Paragraph 5 below, as appropriate. BVT’s proportion is identified in such Paragraphs as the Gain Share (the “**Gain Share**”) and shall be payable by the Authority to BVT in accordance with paragraph 2.8 of schedule 6 (Price and Payment) of the

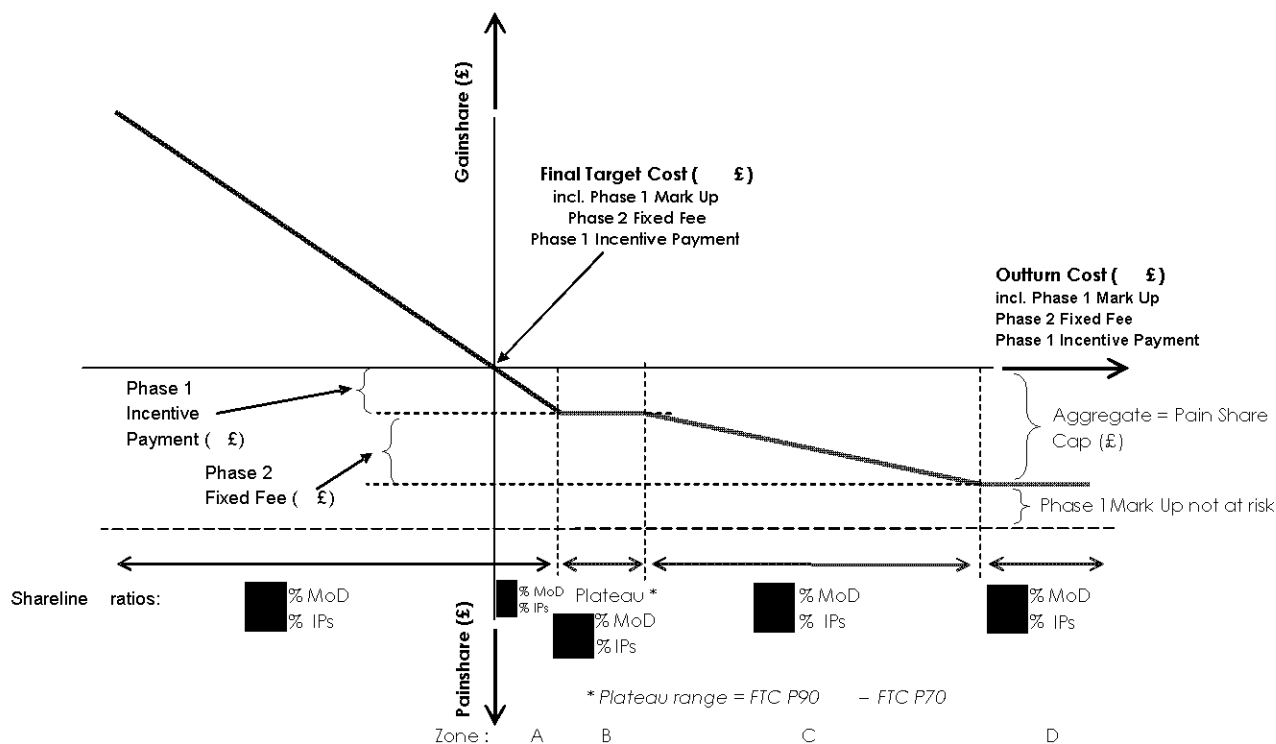
Manufacturing Flow Through Contract.

- 3.5 When comparing the Interim Outturn Cost or the Outturn Cost with the Final Target Cost (as calculated and indexed in accordance with Paragraph 3.1 above) for the purpose of determining any Gain Share or Pain Share, the Final Target Cost shall take into account any adjustments to the Final Target Cost agreed in accordance with the Change Procedure.
- 3.6 Within one month of Vessel Acceptance of the Second Vessel, and again within one month of the D3B Clearance Date of the Second Vessel, and again following the Cost Audit of the Phase 2 Final Cost Certificates the Authority shall calculate any Gain Share payable to BVT or any Pain Share payable by BVT in each case in accordance with the provisions of this Schedule 4, and shall notify the Alliance Management Board and each of the Industrial Participants of such calculation.
- 3.7 Within ten (10) Business Days of the issue of the Authority's notice pursuant to Paragraph 3.6 above, the Alliance Management Board shall confirm such calculation and notify the Manufacturing Alliance Participants accordingly that payment is due in accordance with paragraph 2.8 and the other provisions of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract.
- 3.8 In the event the Alliance Management Board has not confirmed or is unable to confirm any Gain Share or Pain Share payable within thirty (30) Business Days of the issue of the Authority's notice pursuant to Paragraph 3.6 above it shall be determined in accordance with the Dispute Resolution Procedure.

**4 Calculation of Gain Share or Pain Share, if any, where a Phase 1 Incentive Payment has been paid**

- 4.1 If in accordance with the provisions of Paragraph 1.4 above the provisions of this Paragraph 4 apply, then the Gain Share or Pain Share, if any, shall be determined in accordance with the following provisions of this Paragraph 4 including the following shareline.

## Phase 2 Shareline $FTC < ITC$



4.2 If the Final Target Cost is less than the Initial Target Cost, then:

(a) Gain Share

if the Outturn Cost is less than the Final Target Cost, then the applicable Gain Share shall be calculated in accordance with the shareline set out in Paragraph 4.1 above i.e. ■% share of the difference shall be the Gain Share which shall be payable to BVT and ■% share of the difference shall be retained by the Authority. The Gain Share shall be paid by the Authority to BVT in addition to payment of Allowable Costs and the Phase 2 Fixed Fee in accordance with schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract;

(b) Pain Share

if the Outturn Cost or Interim Outturn Cost exceeds the Final Target Cost, then the applicable Pain Share shall be calculated by the Authority in accordance with the shareline set out in Paragraph 4.1 above and more particularly in steps in the order set out below:

(i) repayment of any Phase 1 Incentive Payment paid, by way of set off

against invoices. Set off shall be in the proportions ■% BVT and ■% Authority of Incurred Costs until the full value of the Phase 1 Incentive Payment has been repaid (Zone A);

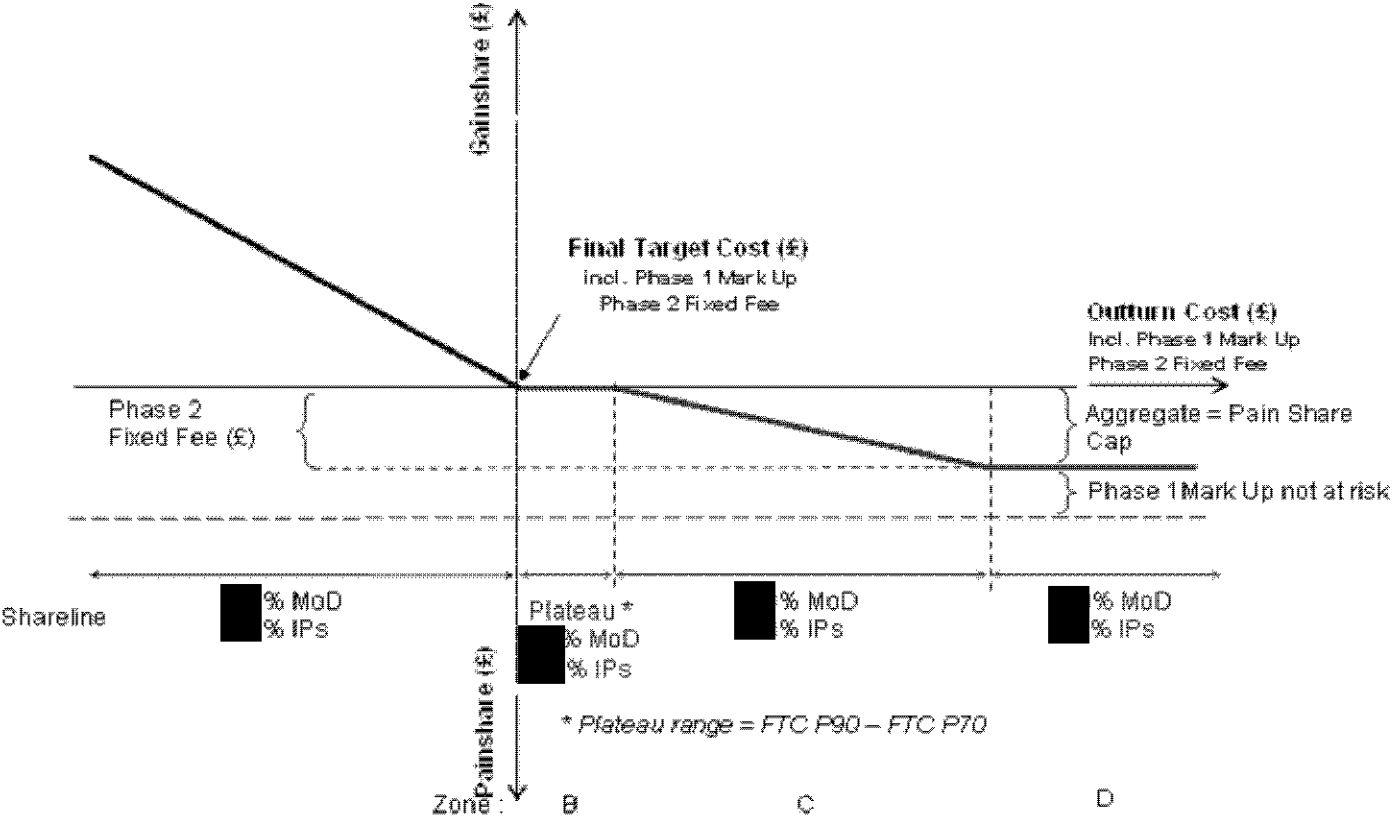
- (ii) the Authority will then continue to pay the Incurred Costs until such further Incurred Costs equal the value of the P70 to P90 plateau as determined under Paragraph 1.6 above (Zone B);
- (iii) repayment of any Phase 2 Fixed Fee paid, by way of set off against invoices issued pursuant to schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract in the proportions ■% BVT and ■% Authority until such time as the Phase 2 Fixed Fee is repaid in full (Zone C); and
- (iv) thereafter, the Pain Share will be capped at the total of (i) and (iii) above and thereafter Incurred Costs only will be paid (Zone D).

4.3 If the Pain Share Cap is reached, then BVT shall thereafter perform the terms of this Agreement in return for Allowable Costs only.

**5 Calculation of Gain Share or Pain Share, if any, where a Phase 1 Incentive Payment has not been paid**

5.1 If in accordance with the provisions of Paragraph 1.5 above the provisions of this Paragraph 5 apply, then the Gain Share or Pain Share, if any, shall be determined in accordance with the following provisions of this Paragraph 5 including the following shareline.

# Phase 2 Shareline $FTC \geq ITC$



5.2 If the Final Target Cost is a figure equal to or greater than the Initial Target Cost, then:

(a) Gain Share

(b) if the Outturn Cost is less than the Final Target Cost, then the applicable Gain Share shall be calculated in accordance with the shareline set out in Paragraph 5.1 above. i.e. ■% share of the difference shall be the Gain Share which shall be payable to BVT and ■% share of the difference shall be retained by the Authority. The Gain Share shall be paid by the Authority to BVT in addition to payment of Allowable Costs and the Phase 2 Fixed Fee in accordance with schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract;  
Pain Share

if the Outturn Cost or Interim Outturn Cost exceeds the Final Target Cost, then the applicable Pain Share shall be calculated in accordance with the shareline set out in Paragraph 5.1 above and more particularly in steps in the order set out below:

(i) the Authority will continue to pay the Incurred Costs until such further Incurred Costs equal the value of the P70 to P90 plateau (Zone B);

(ii) of any Phase 2 Fixed Fee paid by way of set off against invoices issued pursuant to schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract in the proportions ■% BVT and ■% Authority until such time as Phase 2 Fixed Fee is repaid in full (Zone C);

(iii) thereafter, the Pain Share will be capped at the total of (ii) above and Incurred Costs only will be paid (Zone D).

5.3 If the Pain Share Cap is reached, then BVT shall thereafter perform the terms of this Agreement in return for Allowable Costs only.

## **6 Allocation of any Gain Share and Pain Share between Industrial Participants and application to Fixed Fee apportionment**

6.1 Any Gain Share or Pain Share allocated between the Industrial Participants pursuant to



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

<b>Industrial Participant</b>	<b>Proportion</b>
BVT	47%
BAES MARINE	10%
BAES INSYTE	10%
Babcock	19%
Thales	14%

6.2 The amount of Fixed Fee at April 2006 economic conditions payable to BVT pursuant to the provisions of schedule 6 (Price and Payment) to the Manufacturing Flow Through Contract or payable by BVT pursuant to schedule 6 (Price and Payment) of any of the IP MFTC Sub-contracts shall be allocated between the Industrial Participants at the amounts set out below which shall be Indexed:

<b>Industrial Participant</b>	<b>Amount at April 2006 economic conditions</b>
██████████	██████████
██████████████████	██████████
██████████████████	██████████
██████████	██████████

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

- 6.3 To the extent that an Industrial Participant has not been paid its proportion of the Fixed Fee, Statement of Work transfers between Industrial Participants shall not affect the Fixed Fee allocation set out in the table at Paragraph 6.2 above until a cumulative transfer value of £10 million has been reached, at which point the Fixed Fee shall be reallocated between the relevant Industrial Participants at a flat rate of ■% of the cost of Work transferred.
- 6.4 Each Industrial Participant’s share of the Phase 2 Fixed Fee shall be an amount equal to their share of the Fixed Fee set out in the table at Paragraph 6.2 above less that Industrial Participant’s Phase 1 Mark Up.
- 6.5 At the beginning of Phase 2 the sum calculated pursuant to Paragraph 6.4 above when expressed as a percentage of the aggregate Phase 2 Fixed Fee shall be that portion of the Phase 2 Fixed Fee to which that Industrial Participant is entitled (“**Industrial Participant’s Phase 2 Fixed Fee Portion**”).
- 6.6 The Phase 2 Fixed Fee payable in accordance with Paragraph 6.2 above shall be set annually in relation to the Time Phased Budget. The actual amounts payable shall be proposed by the Alliance Management Board and agreed by the Authority at the commencement of Phase 2 and reviewed on an ongoing annual basis.

## **7 No Profit payable on Sub-Contracts to Industrial Participants Group**

- 7.1 The Manufacturing Alliance Participants agree that, except as provided below, it is not appropriate for any member of an Industrial Participant’s Group to receive any profit for carrying out any part of the Works as this would be in addition to profit included within any Outturn Cost claimed directly or indirectly by any Industrial Participant to which an Industrial Participant may be entitled under any Key Project Agreement. It

is therefore agreed that if and to the extent that any contract for Works or part thereof is awarded to any person(s) by any Industrial Participant without first having been won by that/those person(s) in a free and fair competition, and if such person(s) is (are) a member of an Industrial Participant's Group, then such Sub-Contract shall be awarded at a price which does not allow that/those person(s) to make a profit which is additional to that which the Industrial Participant is entitled to earn in relation to such work. If such contract is awarded in a free and fair competition to any third party or a member of an Industrial Participant's Group then such award may be at a price which includes a reasonable element of profit. This shall not prevent BVT from paying the Fixed Fee to the Industrial Participants in accordance with the IP MFTC Sub-Contracts.

## Schedule 5

### Indexation

- 1 The Initial Target Cost is established at April 2006 economic conditions and excludes any provision for inflation.
- 2 The inflation provision for the Manufacturing Phase is held by the Authority within the Project Budget Requirement.
- 3 The Industrial Participants will be paid Incurred Costs at outturn economic conditions plus ■% on Allowable Costs in Phase 1 and the Phase 2 Fixed Fee Indexed to the due date for payment in Phase 2.
- 4 The Indexation Formula will be applied quarterly to the Project Target Cost in accordance with this Schedule 5 to compare:
  - 4.1 At the end of Phase 1:

The Initial Target Cost with the Final Target Cost, both at 2009 economic conditions in order to determine whether any Phase 1 Incentive Payment will be payable.
  - 4.2 At the end of Phase 2:

The Final Target Cost with the Outturn Cost, both at prevailing economic conditions on the Vessel Acceptance Date of the Second Vessel, in order to calculate whether there is any Pain Share or Gain Share under Schedule 4 (Risk and Reward Incentive Arrangement).
- 5 The Indexation Formula will be applied to the Project Target Cost at April 2006 economic conditions to the Vessel Acceptance Date of the Second Vessel on the basis of the Timed Phased Budget which will be revised by the AMB for Indexation purposes 15 months after the Commencement Date and at the end of Phase 1.
- 6 The indexation methodology for Phase 2 will be agreed by the AMB no later than 30 December 2009. In the event that such agreement cannot be reached, the default position will be that the Time Phased Budget will be revised for Indexation purposes every 24 months from the commencement of Phase 2.

7 In relation to the default position of every 24 months during Phase 2 any request, action or Change by the Authority which results in a material change to the spend profile will entitle the Industrial Participants to re-profile accordingly in addition to the revisions contemplated in Paragraphs 5 and 6 above.

8 Indexation of Sub-Contract Costs

8.1 Indexation of the Sub-Contractor costs will be applied to the material and labour elements using the applicable indices in the Indexation Formula. The split between labour and materials will need to be agreed to feed into the whole project labour and material split. An initial estimate of this split will be provided to the Authority by the Industrial Participants through the CVF Programme Director within 3 months of the Commencement Date. This split will be amended at the point that the indexation formula is agreed with each Sub-Contractor and fed into the whole project Indexation Formula.

8.2 Indexation will apply to all Sub-Contract elements of the Project Target Cost.

9 Indexation Formula

$$CV_j = (1 - NVE) \left[ PlannedLabourContent_j \left( \frac{L_{ij} - L_o}{L_o} \right) + PlannedMaterialContent_j \left( \frac{M_{ij} - M_o}{M_o} \right) \right]$$

Where:

CV<sub>j</sub> is the cost variation due to indexation for period j.

“Planned Labour Content<sub>j</sub>” is the labour figure in the Project Target Cost breakdown as per the latest agreed Time Phased Budget for period j.

“Planned Material Content<sub>j</sub>” is the material figure in the Project Target Cost breakdown as per the latest agreed Time Phased Budget for period j.

“j” is the period in consideration being a 3 month period.

“NVE” is the non variable element of [REDACTED].

“L” represents the labour index “JVVF (Average Earnings Index for Engineering and Allied Industries, excluding bonuses and not seasonally adjusted)”;

“M” represents the material index “RBBH (Materials and Fuels for Ships and Boats)”;

“L<sub>ij</sub>” is the average of the labour index for the period of 3 months prior to j (so that provisional or firm indices should be available). If the CV is required for the costs in the second quarter of the financial year from July to September, the average of the labour index from April to June shall be employed.

“L<sub>0</sub>” is the average of the labour index for the period of 6 months prior to the base date of the estimates. If the base date is April 2006, the average of the labour index from November 2005 to April 2006 shall be employed.

“M<sub>ij</sub>” and “M<sub>0</sub>” are defined in the same way as “L<sub>ij</sub>” and “L<sub>0</sub>”.

In order to provide a “running total” of aggregate cost variation at the latest economic conditions the Indexation Formula shall also be applied to the estimated costs after period j.

To determine estimates of cost variations to complete against the latest agreed Time Phase Budget, forecast indices where actual indices (whether firm or provisional) are not available for the retrospective period shall be employed.

## 10 Indices Review

10.1 The Authority or the Industrial Participants may propose to the Alliance Management Board alternative indices to those in the Indexation Formula in the event of significant over or under recovery for inflation in relation to changes in general economic conditions on planned cost or in the event the indices cease to be published. If following a review of such proposal by the Alliance Management Board a change to the indices used in the Indexation Formula is agreed, it shall be documented by following the Change Procedure. Any such Change to the indices used in the Indexation Formula may be made not more than once in each period of 24 months commencing on the Commencement Date. No such Change shall have any retrospective effect. The alternative indices will only be used following the date of such Change.

10.2 For the purposes of the indices review in Paragraph 10.1 above, the following are the metrics to be used for comparison of actual inflation incurred with the indexation of

the Project Target Cost over the same period:

- (a) the Indexation Formula will separately establish the indexed labour and material elements of the Project Target Cost to enable comparison with actual labour and material costs incurred over the same period (with labour and material costs incurred being recorded in COBRA);
- (b) the Industrial Participants shall measure the difference between the weighted average labour inflation of the shipyards and the general engineering industry index in the Indexation Formula. Should this differential cause significant over or under recovery for inflation it shall be reported to the Alliance Management Board for mitigation action where appropriate;
- (c) material inflation incurred will be recorded in separate invoices for inflation from suppliers for fixed price materials. A comparison of prices paid against the price in COBRA can be made for the quantities in the bill of materials originally forecast.

## Schedule 6

### Project Controls Requirement

#### **Alliance Project Control Principles & Objectives**

1. The following principles shall apply to monitoring and control of the Manufacturing Phase:

- a. All Industrial Participants will implement an Earned Value Management System, which fulfils the requirement of the UK APM Guideline for the UK (Issue 1);
- b. A central Alliance EVMS will be used to collate and report Industrial Participant information against the project structures set in Paragraph 3;
- c. The Alliance Project Master Schedule and EVM Performance Measurement Baseline shall be aligned;
- d. All procured items shall be reported using either full EVM in accordance with ACA Project Control Performance Management Reporting Requirements (ACA document identifier CVF-10035651) or milestone based EVM techniques as agreed with the Authority;
- e. The Industrial Participants shall provide accurate and timely performance management information in an agreed format in accordance with ACA Project Control Performance Management Reporting Requirements (ACA document identifier CVF-10035651);
- f. The Project Controls Data Set shall be held by the Project Control Group with open access as specified in Schedule 3 (Open Book);
- g. The Project Control Group will determine and execute project control strategy; and
- h. Allocation of the Risk Contingency shall be managed by the CVF Programme Director in accordance with the Configuration Management Plan (ACA document identifier CVF-00000091 version 11);

2. In reporting to the CVF Programme Director the Project Control Group shall:

- a. Provide an objective, timely and accurate analysis of the progress and cost of the Manufacturing Phase for the Authority and the Industrial Participants;



- b. Ensure that engineering, procurement and shipbuild functions within each of the Industrial Participants have appropriate coherent and consistent metrics and measurement techniques in place to accurately reflect progress;
- c. Maintain, manage and report the Project Controls Data Set;

### **Structures**

3. The following project breakdown structures shall be used for planning, cost allocation and reporting:

- Work Breakdown Structure (WBS)                      ACA document identifier CVF-10021276
- Resource Breakdown Structure (RBS)                ACA document identifier CVF-10043155
- Organisation Breakdown structure (OBS)        ACA document identifier CVF-10043156
- Responsibility Assignment Matrix (RAM)    ACA document identifier CVF-10061511

3.1 The RAM shall be produced by the Project Controls Group for agreement with the Authority within three (3) months of the Commencement Date.

### **Cost Model**

4. The Cost Model for the Manufacturing Phase consists of the data contained within the different databases (set out below and in Annex A to this Schedule 6) combined to generate the reports contained within Paragraphs 12 and 13 below:

- Cobra for cost/EVM data, Cobra contains budget, actual cost, earned value, and forecasts by RBS against WBS by Control Account. It contains the Time Phased Budget. It also contains the escalation model for budget and risk contingency;
- ARM contains risks and opportunities, associated mitigation or realisation plans and any cost schedule impact;
- Pertmaster schedule risk tool (cost impact consolidated into ARM) contains the project risk network;
- Microsoft Project contains the Alliance Project Master Schedule; and

- Oracle contains the remaining elements, including the manual inputs, the means for extracting data and the overall summary.
5. A master data and assumptions list (ACA document identifier CVF-10061883) shall be prepared by the Project Controls Group within three (3) Months of execution of this Agreement to support the Cost Model. A Cost Model procedure (ACA document identifier CVF-10061885) shall also be prepared by the Project Controls Group within three (3) Months of execution of this Agreement to detail the control and validation checks to be performed and responsibilities.
  6. A Financial Management Plan is required from each IP within three (3) Months of execution of this Agreement that details the responsibilities, systems and processes that enables it to interface to central Alliance processes set out in ACA Project Control Performance Management Reporting Requirements (ACA document identifier CVF-10035651).

#### **Earned Value Management (EVM) Requirement**

7. Earned Value Management shall be used as the basis of reporting Project performance management in accordance with the UK APM Guideline for the UK (Issue 1), including period and cumulative data. The ACA Project Control Performance Management Reporting Requirements (ACA document identifier CVF-10035651) defines the timetable, Industrial Participant data input requirements and format. It also contains the EVM ruleset to enable the consistent application of EVM across the Manufacturing Phase. The data is held by RBS against WBS element by the Industrial Participant.
8. Variance reports shall be produced by the Industrial Participants in accordance with the ACA Project Control Performance Management Reporting Requirements (ACA document identifier CVF-10035651) or as otherwise agreed by the CVF Programme Director.

#### **Risk Management**

9. The risk and opportunity management plan (ACA document identifier CVF-00012883) defines the process for the management of risk and opportunities.

10. Quantitative risk analysis shall be routinely performed three (3) monthly or after a major Integrated Schedule re-baseline. The analysis inputs and detailed methodology shall be agreed with the Authority and Industrial Participants. The following basic methodology shall be used for the three monthly quantitative risk analysis and to determine the Final Target Cost:

- a. A best and worst case estimate will be identified based on risk and opportunity against the monthly EAC generated from the ACA EVMS at level 2/3 of the WBS by the AMT;
- b. Risks and opportunities shall be assessed prior to modelling to ensure no `double counting`;
- c. Appropriate risks and opportunities shall be subject to “Monte Carlo” simulation to generate S curves;
- d. Schedule risk analysis shall be performed by modelling appropriate risks and uncertainties using the Pertmaster schedule risk tool to determine any delay and associated costs to the Project and the probabilistic S curve for the Integrated Schedule;
- e. The cost results shall be combined in ARM to generate combined pre and post mitigated S curves to enable the probabilistic outturn estimate (eg. P10, 50, 70, 90 etc) to be determined; and
- f. The analysis shall be performed by the Project Controls Group using the data held in the ARM tool and Pertmaster schedule risk tool as the source.

### **Cost Model Change Management**

11. The Configuration Management Plan (ACA document identifier CVF 00000091 (version 11)) defines the process to be utilised to manage and control changes to the Original Budget, programme schedules, the project breakdown structures listed in Paragraph 3 above and the Risk Contingency. It also defines the approval levels and Authority involvement.

### **Reporting**

12. The monthly reporting cycle is defined in the ACA Project Control Performance Management Reporting Requirements (ACA document identifier CVF-10035651). The format of the monthly progress report shall enable comparison between the Initial Target Cost and the EAC, utilising data submitted by the Industrial Participants to the Project Controls Group for analysis and collation. A monthly progress report is published that details period and cumulative progress, the Cost Model status in relation to the Initial Target Cost or Final Target Cost as appropriate, risk profiles/reports (which shall be produced three (3) monthly) and significant planned changes. This forms the input to the monthly AMT progress review meeting. Minutes of this meeting are taken and any corrective actions are recorded.
13. The following reports shall be produced by the Project Controls Group generally in the form set out in Annexes B-G to this Schedule 6 (note that the codes and figures used in Annexures B-G to this Schedule 6 are for illustrative purposes only):
- a. EVM cost performance reports , as follows:
    - WBS Level 1; and
    - WBS to Level 2/3 by Industrial Participant, as appropriate;
  - b. Resource profiles: planned, actual and forecast to agreed level of WBS;
  - c. EAC trend comparison (the CAM/ICAM view) compared to two independent Estimates at Completion (IEAC) based on CPI and CPI\*SPI;
  - d. EAC<sub>e</sub> for the Manufacturing Phase;
  - e. Variance reports;
  - f. Overall SPI/CPI Trend curves for the Manufacturing Phase;
  - g. Forecast Pain Share and Gain Share based on EAC;
  - h. Top 10 risks, opportunities, mitigation/realisation progress metrics, sum of the probability X most likely cost by WBS and waterfall charts for the overall Manufacturing Phase;
  - i. SOFT Reports;
  - j. Alliance Project Master Schedule statused and critical path analysis/progress;
  - k. Change log highlighting significant future Changes and their impact on cost and the Integrated Schedule; and
  - l. Predicted Monthly budget profiles from Cobra by Industrial Participant/WBS/RBS as required by the Authority on an ad hoc basis.

14. The Incurred Costs element of the EAC will be reported monthly on an actual cost basis by the relevant Industrial Participant to the Project Controls Group and reconciliation with the Interim Cost Certificate and Final Cost Certificate audits will be required. The forecast element of the EAC will be reported monthly by the relevant Industrial Participants to the Project Controls Group at prevailing economic conditions.
15. The Industrial Participants shall submit the following data on a monthly basis into the Project Controls Group for collation and analysis:
  - a. The Incurred Costs element of the EAC in accordance with Paragraph 14 above;
  - b. The forecast element of the EAC in accordance with Paragraph 14 above; and
  - c. The percentage complete against each WBS element;
16. The Industrial Participants shall submit the risks and opportunities data into the ARM toolset on a three (3) monthly basis.

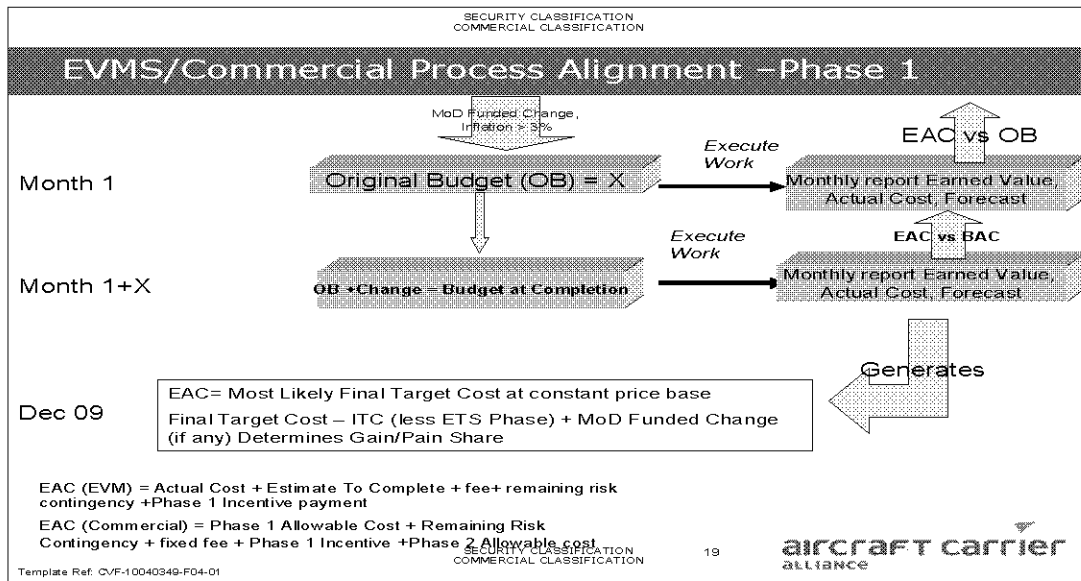
### **Indexation Management Methodology**

17. The Project Controls Group will apply Indexation to the Project Target Cost in accordance with Schedule 5 (Indexation) three (3) Monthly from the Commencement Date.
18. The EAC<sub>e</sub> will be reported by the Project Controls Group three (3) Monthly, with trend indices being used for the forecast element of the EAC<sub>e</sub>, for comparison with the Indexed Project Target Cost. Indexation “what if” scenarios will be run using Cobra by the Project Controls Group as required.

### **Initial Target Cost and Final Target Cost**

19. The Original Budget shall be allocated in accordance with the Work Breakdown Structure and the data held in COBRA and associated opportunities identified in the Risk and Opportunities Register. Cost Account Managers shall be measured against meeting such allocation of the Original Budget, stretch targets and realising such opportunities in order to meet or better the Project Target Cost.

20. The Initial Target Cost shall be a cost reporting reference point and shall be tracked as Work is executed. The EVM system provides a monthly view of earned value, Incurred Costs claimed to date and EAC against the Original Budget. The monthly EAC provides a view of the most likely Final Target Cost. A probabilistic Final Target Cost at P70 is to be established using the methodology defined in Paragraph 10.



**Figure 1- EVMS/Commercial Process Alignment –Phase 1**

### Schedule Management

21. The planning hierarchy and statusing rules are defined in the ACA Planning Hierachy and Statusing rule with ACA document identifier CVF-10060539. All summary and detailed schedules shall be coherent with each other both horizontally and vertically. The Alliance Project Master Schedule shall be statused and updated (i.e. start and finish dates) on a monthly basis based on schedule data provided by the Industrial Participants into Cobra. Anchor milestones shall be established to report float/slippage. Critical path and float/slippage reporting are to be undertaken in accordance with the ACA Planning Hierachy and Statusing rule with ACA document identifier CVF-10060539. Monthly tracking milestones aligned to the Alliance Project Master Schedule and PMB shall be established annually by agreement with the Authority.

### Project Control Process

22. There shall be a monthly scrutiny review and reporting cycle including :

- Industrial Participant Cost Account Manager Internal review;
- Alliance Management Team Director Cost Account Manager reviews; and
- Alliance Management Team progress review meeting.

23. The Work scope and the appropriate element of the Original Budget are formally delegated by the CVF Programme Director to the relevant Cost Account Manager who shall have the responsibility for delivering and reporting their Work scope within that appropriate element of the Original Budget and to schedule.

24. Changes to each Industrial Participant's appropriate elements of the Original Budget and requests for allocation of any Risk Contingency are raised and processed in accordance with the Change Procedure.

### **Information Access**

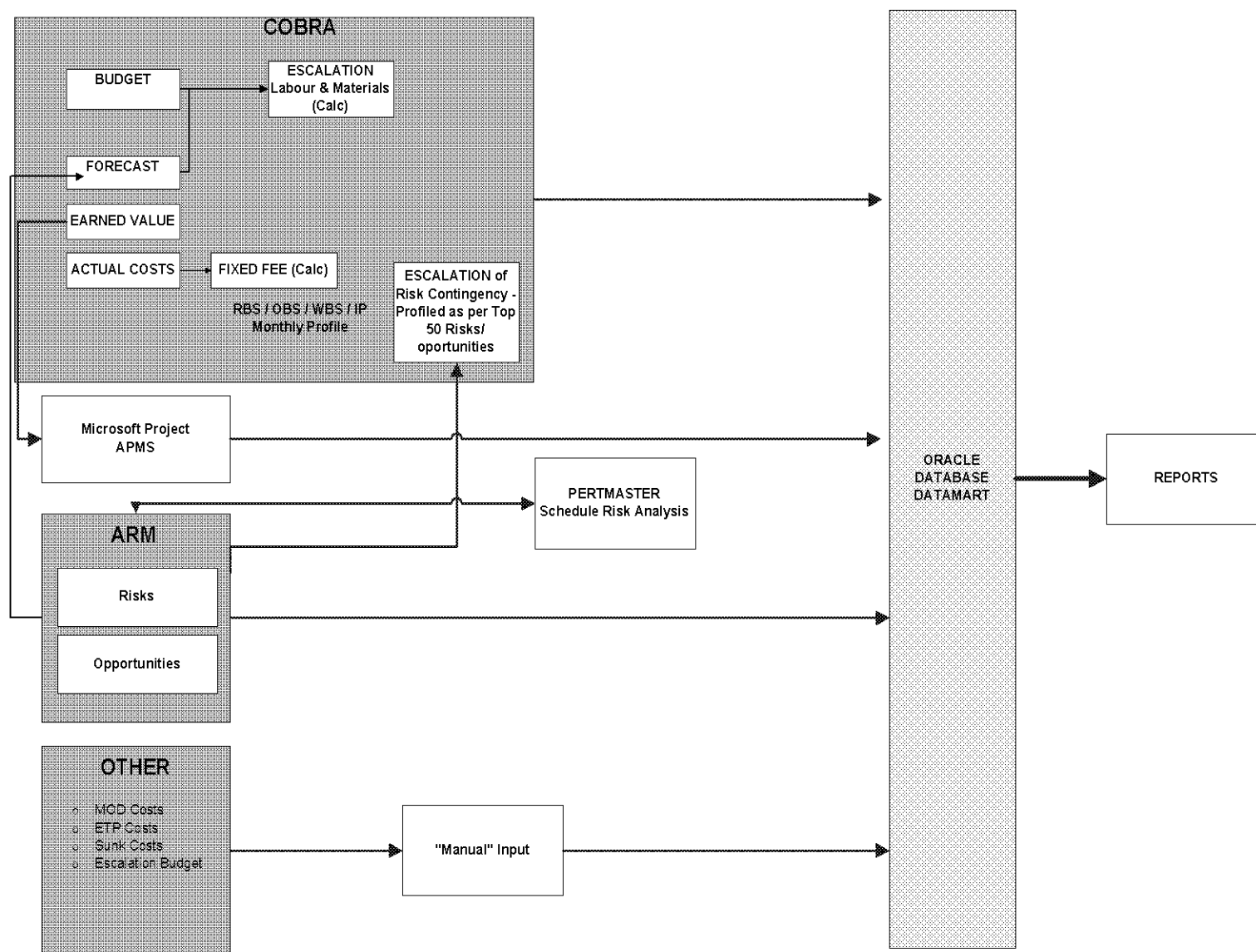
25. The Shared Data Environment shall be utilised for accessing the Cost Model, EVM data down to an agreed level of the WBS and variance reports. Access to these elements of the Shared Data Environment will be controlled by the Cost Model security procedure (ACA document identifier CVF-10064465) (such procedure to be produced by the Project Controls Team for agreement with the Authority within three (3) months of the Commencement Date) and instructions shall be provided to enable users to access and manipulate such data.

### **Governance**

26. Governance arrangements in relation to this Schedule 6 shall be by agreement between the Authority and the Industrial Participants as follows:

- The Industrial Participants and the Authority will have the right to review and audit the agreed single Cost Model using an independent auditor or technical adviser; and
- There will be a programme of Integrated Baseline Reviews and Surveillance and Readiness Reviews.

**CVF Cost Model Schematic**





Basic Cost Model Report Comparing BAC with EAC

**COST SUMMARY REPORT**

As Base Cost Elements	BAC	Nov 07 EAC
1.PMB		
A.Alliance Management		
B.Engineering		
C.Procurement		
D.Shipbuild		
F.In Service Support		
G.Other		
U.Undistributed Budget		
<b>Sub Total</b>		
2.Risk Contingency		
3.Profit		
<b>Sub Total</b>		
4.Unconsumed Escalation Budget		
<b>Sub Total</b>		
5.Demonstration Phase		
6.MoD Costs		
7.MoD Sunk Costs		
8.Attribution of CRH		
9.French Contribution		
<b>Project Budget Requirement</b>		

<b>Original Budget</b>	
<b>Change</b>	
<b>Budget At Completion</b>	
<b>Revised Target Cost</b> (includes MoD funded Change)	
<b>Delta</b>	
<b>Original Risk Contingency</b>	
<b>Current Risk Contingency Margin</b>	
<b>Post Mitigated Risk Forecast</b>	
<b>Pre Realised Opportunity Forecast</b>	

**Cost Report Comparing ITC, Original Budget and EAC**

Description	Initial Target Cost	Changes	Revised Target Cost	Original Budget	Changes	Budget at Completion	Actual Cost	Estimate To Go	Estimate at Completion	Variance EAC-BAC	Variance EAC-Target
	A	B	C	D	E	F	G	H	I-G/H	J-I/E	K-L/C
Alliance Management											
Engineering											
Procurement											
Shipbuild											
Other											
UB											
Risk Contingency											
Fixed fee											
<b>Project Target Cost</b>											
Escalation											
Demo Phase											
MoD Costs											
MoD Sunk Costs											
Attributed to O'H											
French Contribution											
<b>Project Budget Requirement</b>											

All figures are constant price basis

### 3 Point EAC Forecast Report

		SECURITY CLASSIFICATION		COMMERCIAL CLASSIFICATION	
3 Point Forecast Report Example data (to agreed level of WBS only)					
WBS	Desc	BAC	Worst	EAC Achievable	Best
<b>A</b>	<b>Alliance Management</b>				
A.1	Project Management Services				
A.2	IM/IT				
A.3	Procurement Management				
A.5	Support				
A.6	Client Assurance				
A.7	Commercial				
A.8	Human Resources				
A.9	Finance				
<b>B</b>	<b>Engineering</b>				
B.1	Systems Design				
B.2	Stage 2/3 Mobilisation				
B.3	Stage 2/3 Management				
B.4	Design Support				
B.5	Mission Systems Integration				
B.6	Stage 2/3 Wholeship Engineering				
B.7	Production Engineering (Stage 2)				
B.8	Production Outputs (Stage 3)				
B.9	Stage 2/3 Engineering Support to Build				
B.A	Engineering Project Management				
<b>C</b>	<b>Procurement</b>				
C.1	Hull & Superstructure				
C.2	Propulsion				
C.3	Electrical				
C.4	Control & Communications				
C.5	Auxiliary Systems				
C.6	Outfit & Furnishings				
C.9	Aviation				
C.A	Miscellaneous				
<b>D</b>	<b>Shipbuild, Integration &amp; Trials</b>				
D.1	CVF 01 Construction				
D.2	CVF 02 Construction				
D.3	Facilities				
D.A	Shipbuild Management				
<b>U</b>	<b>Undistributed Budget</b>				
	<b>Grand Total</b>				

This report is intended to provide a '3 point EAC' view.



Template Ref: CVF-10040349-F04-01

**Probability X Most Likely Cost Report By CAM**

SECURITY CLASSIFICATION  
COMMERCIAL CLASSIFICATION

# Cost/Risk Report Example

Report similar to CWBS

WBS Code	Procurement Package	Supplier Name	CAM	Total £	Opportunities £	Risks £
C.4.11	Combat Management system (CMS)	INSYTE				
C.4.12	Long Range Radar (LRR)	INSYTE				
C.4.13	Medium Range Radar (MRR)	not yet known				
C.4.14	Precision Approach Radar (PAR)	not yet known				
C.4.15	Identify Friend or Foe (IFF)	not yet known				
C.4.16	Glide Path Camera (GPC)	not yet known				
C.4.17	Electro Optic System (EOS)	not yet known				
C.4.18	Joint Precision Approach Landing System (JPALS)	GFA				
C.4.19	Tactical Area Navigation (TACAN)	GFA				
C.4.20	Close in Weapons System (CIWS)	GFA				
C.4.21	Small Calibre Gun IPMD (SCG)	GFA				
C.4.22	Surface Ship Torpedo Defence (SSTD) IPMD : FBWV	GFA				
C.4.23	Integrated Navigation & Bridge System (INBS)	not yet known				
C.4.24	Metrological & Oceanographic Systems (METOC)	INSYTE				
C.4.25	Visual Surveillance System (VSS)	not yet known				
C.4.26	Nav & Signal Lights, Shapes & Sounds (NLSS)	not yet known				
C.4.27	Pole Mast (PM)	not yet known				
C.4.28	Direction Finder (DF)	not yet known				
C.4.29	Application Services (AS)	GFA				
C.4.30	JCA Aircraft Mission Support (JCAMS)	GFA				
C.4.31	Air Group Management Application (AGMA)	not yet known				
C.4.32	Operational Planning Applications (OPA)	GFA				

Provides overview of risk/opportunity by owner

SECURITY CLASSIFICATION  
COMMERCIAL CLASSIFICATION

**Variance Report Template – IP by WBS**

SECURITY CLASSIFICATION  
COMMERCIAL CLASSIFICATION

Variance Analysis Report Template

**SUMMARY ANALYSIS**

- Summary of overall performance (cost, schedule, KPI's)
- Differences between LRE's (Current Vs Previous)
- Differences between Budget and LRE
- Other pertinent summary level commentary

**CONTROL ACCOUNT(S)**

- Identify each control account by ACA Name /Reference no with a variance exceeding ACA tolerance threshold

**ANALYSIS OF SIGNIFICANT VARIANCES**

- Identify and describe each type and magnitude of variance
- Explanation of variance (including cost & usage)

**CORRECTIVE ACTION(S)**

- What actions are planned / in place to correct the significant variances noted above.
- In what timeframe will these corrective actions be effected / completed
- What cost / schedule impacts will result from implementation of the corrective actions

Template Ref: CVF-10040349-F04-01

SECURITY CLASSIFICATION  
COMMERCIAL CLASSIFICATION

11



**EVM Reports**

CODE	ELEMENT DESCRIPTION	PERCENT COMPLETE	CUMULATIVE			ESTIMATE TO COMPLETE	ESTIMATE AT COMPLETE	BUDGET VARIANCE	CF	SF
			PLANNED	EARNED	ACTUAL					
			(1)	(2)	(3)					
	OVERALL									
A	Alliance management									
B	Engineering									
B.1	Systems Design									
B.2	Stage 2.3 Mobilisation									
B.3	Stage 2.3 Management									
B.4	Design Support to Production Engineering, Assembly, Test & C									
B.5	Mission Systems Integration									
B.6	Stage 2.3 Wholeship Engineering									
B.7	Production Engineering (Stage 2)									
B.8	Production Outputs (Stage 3)									
B.9	Stage 2.3 Engineering Support to Build									
B.9	Engineering Project Management									
C	Procurement									
D	Shipbuild, Integration and Trials									
G	G&A									
U	Undistributed Budget									

CODE	ELEMENT DESCRIPTION	PERCENT COMPLETE	CUMULATIVE			ESTIMATE TO COMPLETE	ESTIMATE AT COMPLETE	BUDGET VARIANCE	CF	SF
			PLANNED	EARNED	ACTUAL					
			(1)	(2)	(3)					
	OVERALL									
CVF.01	BAE SFS									
CVF.02	BAE Submarines									
CVF.03	BES									
CVF.04	VT									
CVF.05	Thales									
CVF.06	BAE Insite									
CVF.07	Alliance management									

## Schedule 7

### Excluded Risks and Assumptions

#### **Part A**

1. The Project Target Cost does not include any costs which may arise from an Excluded Risk occurring.
2. Save as otherwise expressly agreed in the Key Project Agreements including without limitation:
  - a. Change in Law;
  - b. Force Majeure; and
  - c. Schedule 14 (Liability/Indemnity/Insurance),

all costs which arise from any risks other than Excluded Risks are covered by the Risk Contingency included within the Project Target Cost.

3. If an Excluded Risk arises (other than Risk No 310 (Inflation) the consequences of which are addressed in Sub-Clauses 24.3(e)(iii) and (iv)) and any party considers that such Excluded Risk will require a Change then such party shall propose a Change. Such Change shall propose the minimum alteration to the Key Project Agreements as is necessary to deal with the consequences of such Excluded Risk arising and there shall be an Equitable Adjustment.
4. If an in-fill Assumption as detailed in Part C of this Schedule 7 fails to materialise or proves to be incorrect, there shall be an Equitable Adjustment.
5. If a throughput Assumption as detailed in Part C of this Schedule 7 fails to materialise or proves to be incorrect, which has a material effect on the overhead recovery (under or over recovery), then there shall be an Equitable Adjustment.
6. If any other Assumption fails to materialise or proves to be incorrect, there shall be an Equitable Adjustment.
7. All costs that arise from an Excluded Risk occurring or failure of an Assumption to materialise or an Assumption proving to be incorrect shall be deemed to be Incurred

Costs.

8. Such costs shall be paid to the extent that the Alliance Management Board is satisfied that the affected Industrial Participant(s) has taken all steps reasonably available to it to mitigate such cost arising from the occurrence of an Excluded Risk or failure of an Assumption to materialise or an Assumption proving to be incorrect.
9. Where Assumptions relate to opportunities included in the Risk and Opportunities Register as an opportunity against the Project Target Cost, the relevant parties will work together to realise such opportunities.

### **Part B - Excluded Risks**

- 1 The Excluded Risks are those risks set out in the Risk and Opportunities Register at the Commencement Date with the following numbers:
  - i. Risk No 91 - any UK DII delay or scope changes will have an adverse effect on Information System and will not meet CVF required by dates;
  - ii. Risk No 310 – the Authority holds the budget for inflation outside the Project Target Cost and there is a risk that it is insufficient;
  - iii. Risk No 373 – the Ship Specification may not be achievable using the GFA;
  - iv. Risk No 737 - caveated security domains shall not be fully supported in DII adopted GFA applications or networks;
  - v. Risk No 739 – CVF Mission System ISTAR facilities are not sufficient to enable full JCA capability;
  - vi. Risk No 750 – structural design of hangar deck (plate thickness and scantlings) not suitable for accommodation of the JCA Air System (Air Vehicle and associated support equipment);
  - vii. Risk No 753 – JCA take off scatter does not meet current assumptions. (The pilot will be able to control the aircraft within +/-3m during the take off run based upon JSF being no worse than legacy STOVL aircraft);



- viii. Risk No 754 – CVF Link 16 is not inter-operable with JCA Link 16 solution;
- ix. Risk No 755 – CVF not able to support the full band-width requirements of JCAMS;
- x. Risk No 758 – Mission Systems provisions for the storage of JCA post flight data does not meet the needs of the JSF developed processes;
- xi. Risk No 759 – JCA Equipment Shock Requirements outside CVF Shock Policy;
- xii. Risk No 760 – JCA Mission Support equipment and personnel in CVF Mission Support Complex is not subject to change and could be insufficient to enable JCA to achieve optimal capability;
- xiii. Risk No 761 - Mission System architecture not constrained by the implementation of DII and can support the ALIS Architecture;
- xiv. Risk No 762 - JCA RADAR Communication, Navigation and ID Systems (CNI) Radio Frequency energy has a detrimental effect on CVF and its personnel;
- xv. Risk No 766 - CVF Mission System Architecture supports the OMSE architecture.
- xvi. Risk No 768 - Mission Systems supports all of the data interfaces expected by the ALIS and OMSE applications.
- xvii. Risk No 769 - CVF General Arrangement, weight, power and cooling provision for JCA Engineering Support Equipment is not sufficient.
- xviii. Risk No 813 - flight deck strength is not sufficient to enable JCA operations with expected capability and support equipment post Lloyd Rules submission and pre construction.
- xix. Risk No 814 – that flight deck strength is not sufficient to enable JCA operations with the expected capability and support equipment.

- xx. Risk No 851 – that JCA power requirements will not be met by CVF.
- xxi. Risk No 888 - Mission System Infosec architecture does not support the security architecture required by the JCA Air System.
- xxii. Risk No 889 - CVF Mission Systems Integration Strategy does not support existing contractual commitments of Team-JSF.
- xxiii. Risk No 890 - CVF security accreditation evidence will not be sufficient to enable the authorities (US and UK) to enable operation of JCA from CVF.
- xxiv. Risk No 899 - CVF physical design does not protect Special Access Required data in accordance with US requirements for the protection of data.
- xxv. Risk No 901 - CVF workshops and Hangar / Flight maintenance services can not support JCA requirements.
- xxvi. Risk No 1302 - Hellfire electro magnetic environment is not compatible with CVF.
- xxvii. Risk No 1303 - Stingray electro magnetic environment is not compatible with CVF.
- xxviii. Risk No 1304 - LW30 (lightweight gun) electro magnetic environment is not compatible with CVF and
- xxix. Risk No 1305 - ASRAAM is not compatible with magazine environment.

### **Part C: Assumptions**

- 1 The following Assumptions form the basis on which the Project Target Cost has been calculated:
  - i. Overheads at BAES Marine reflect a contribution from CVF throughput towards the Authority's Astute programme overheads of £19.6m the benefit of which has been included in the Risk and Opportunities Register as an opportunity against the Project Target Cost.

- ii. Co-operation continues with France on an industry to industry basis that shall deliver savings in procurement and through life costings of £13.6m from Risk and Opportunities Register at the Commencement Date.
- iii. Overhead rates are based upon pension contribution costs at October 2006 economic conditions.
- iv. The Project Target Cost does not include the outcome of the pensions shortfall contribution currently under negotiation between BAE Systems Plc and the Authority.

v. [REDACTED]:

a. [REDACTED]:

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

c. [REDACTED]

- vi. Savings of £40m arising from the formation of BVT are included as an opportunity in the Risk and Opportunities Register at the date of the Key Project Agreements, of which £20m is directly attributable to CVF labour reduction and £20m will be realised by industry rationalisation and credited to the Authority for CVF purposes.
- vii. BAES Marine has assumed that its yard at Barrow-in-Furness will have available to it a central assembly shop and that the Victorian boilershop at BAES Marine yard at Barrow-in-Furness will be refurbished to support the CVF lower block 03 build at such yard and that the Project contribution is £7 million at 2006 economic conditions for the central assembly shop.
- viii. Financing costs excluded on basis of neutral cash flow for payments.

## **Schedule 8**

### **Intellectual Property Rights**

#### **1 Material disclosed to or by the Alliance Management Board during the Manufacturing Phase**

- 1.1 Subject to any pre-existing rights (other than CVF Intellectual Property) which are brought to the attention of the Manufacturing Alliance Participants at the time of disclosure, each of the Manufacturing Alliance Participants shall have a non-exclusive licence, free of charge or royalty, to use any information disclosed to or at the Alliance Management Board by any of the Manufacturing Alliance Participants, for the sole purpose of managing the Project and performing their allocated tasks pursuant to the Works.
- 1.2 Copyright in any material produced by or on behalf of the Alliance Management Board such as minutes and reports (but excluding the material produced as part of the Works) will, unless otherwise determined by the Alliance Management Board, vest in the Crown. Subject to any security and necessary confidentiality constraints, the Manufacturing Alliance Participants shall have a non-exclusive licence, free of charge or royalty, to use any such material and exercise such Crown copyright for the purposes of the Project (including without limitation the release of information for the purpose of financial scrutiny and accounting by appointed auditors under regulatory requirements).

#### **2 Alliance Imagery**

- 2.1 All Alliance Imagery shall be owned absolutely by, and is hereby vested in the Crown.
- 2.2 Subject to Paragraph 2.3 below the Authority hereby grants the Industrial Participants a non-exclusive right, free of charge or royalty, to use for the duration of the Project all or any Alliance Imagery solely for purposes related to the Project.
- 2.3 The Industrial Participants shall not use any Alliance Imagery in any manner that might disparage or cause embarrassment to the Authority or the Crown. Any commercial use of the Alliance Imagery shall require the prior written consent of the Authority.

### **3 Intellectual Property Ownership and User Rights of the Industrial Participants**

- 3.1 Subject to any Sub-Contractor or third party rights as described at Paragraph 3.3 below BAES Marine and Thales shall jointly own all Foreground Manufacturing Phase Intellectual Property. Any Industrial Participant generating or (pursuant to Paragraph 3.3 below) acquiring ownership of any Foreground Manufacturing Phase Intellectual Property will assign, free of charge, with full title guarantee all its rights in such Foreground Manufacturing Phase Intellectual Property generated or acquired from time to time to BAES Marine and Thales jointly.
- 3.2 The Manufacturing Alliance Participants agree that BAES Marine and Thales may at any time assign their respective interests in CVF Intellectual Property provided that:
- (a) any such assignment shall be subject to the explicit acceptance by the assignee of the obligations owed and user rights granted to the Authority and the Other Industrial Participants pursuant to the Key Project Agreements and any DEFFORM 177 agreements entered into between the Industrial Participants and the Authority pursuant to the Key Project Agreements;
  - (b) the assignment document shall include a term which states expressly that such assignment is subject to the obligations owed and rights granted to the Authority under this Schedule 8 and such term shall be expressed to be binding on all of the assignee's successors in title; and
  - (c) notice of such assignment shall be given to the Authority and to the Other Industrial Participants.
- 3.3 BAES Marine and Thales will grant to each of the Other Industrial Participants, free of charge, a non-exclusive licence to use and to sub-license the use of the Foreground Manufacturing Phase Intellectual Property that is owned by them or licensed to them from time to time on terms that allow sub-licensing, for the purpose of enabling the Other Industrial Participants to perform their allocated tasks under the Manufacturing Phase Works Contracts or (subject to the approval of the Alliance Management Board in the case of any proposed sub-licensing) to fulfil any support obligations in respect of CVF 01 and CVF 02. To the extent that any Foreground Manufacturing Phase Intellectual Property is generated by any Sub-Contractor of an Industrial Participant or

by any other third party then, in the event that the Sub-Contractor or third party is not prepared to assign the same to the relevant Industrial Participant, then the Industrial Participant entering into the Sub-Contract with such Sub-Contractor or dealing with the third party shall use reasonable endeavours to procure that the Industrial Participants shall have free of charge a non-exclusive licence to use and to sub-license the use of such Sub-Contractor/third party Foreground Manufacturing Phase Intellectual Property for the purposes and on the terms described in this Paragraph 3.3.

3.4 Each of the Industrial Participants will grant to each of the Other Industrial Participants, free of charge, a non-exclusive licence to use and to sub-license the use of Background Manufacturing Phase Intellectual Property that is owned by it or licensed to it from time to time on terms that allow sub-licensing, for the purpose of enabling such Other Industrial Participants to perform their allocated tasks under the relevant Manufacturing Phase Works Contracts or (subject to the approval of the AMB in the case of any proposed sub-licensing) to fulfil any support obligations in respect of CVF 01 and CVF 02. To the extent that any Background Manufacturing Phase Intellectual Property is owned by any Sub-Contractor of an Industrial Participant or by any other third party, then that Industrial Participant shall use reasonable endeavours to procure that the Industrial Participants shall have free of charge a non-exclusive licence to use and to sub-license the use of any Sub-Contractor/third party generated Background Manufacturing Phase Intellectual Property for the purposes and on the terms described in this Paragraph 3.4.

3.5 Where an Industrial Participant requires and requests Technical Information relating to the Deliverables from another Industrial Participant who owns or is permitted to use and disclose such Technical Information (the “Technical Information Controller”), for the purpose of enabling the Industrial Participant to perform its allocated tasks under the Manufacturing Phase Works Contracts, the Technical Information Controller shall make such Technical Information available free of charge to the requesting Industrial Participant for such purpose.

3.6 Where an Industrial Participant requires and requests Technical Information relating to the Deliverables from a Technical Information Controller for the purpose of enabling it to fulfil any support obligations in respect of CVF 01 and CVF 02, the Technical Information Controller shall make such Technical Information available to the

requesting Industrial Participant for such purpose at a charge which reasonably reflects the costs of compiling, preparing and delivering such Technical Information.

- 3.7 Without derogating from the licences to be granted to the Other Industrial Participants under Paragraphs 3.3 and 3.8, and subject to any obligations owed to the Authority under the Key Project Agreements, BAES Marine and Thales as joint owners of the Foreground Manufacturing Phase Intellectual Property shall each have the right, independently of and without being liable to involve or compensate the other, to use and/or exploit and/or license the Foreground Manufacturing Phase Intellectual Property without the other's consent, but shall give notice in writing to the other following the grant of any licence of Foreground Manufacturing Phase Intellectual Property.
- 3.8 Where any Industrial Participant other than BAES Marine or Thales generates, either alone or jointly with another Industrial Participant, any Foreground Manufacturing Phase Intellectual Property which is assigned to BAES Marine and Thales pursuant to Paragraph 3.1, BAES Marine and Thales shall, in addition to the licence to be granted pursuant to Paragraph 3.3, grant to such Industrial Participant, free of charge, a non-exclusive licence of such Foreground Manufacturing Phase Intellectual Property, including a right to sublicense, for purposes beyond the Project and such Industrial Participant shall give notice in writing to BAES Marine and Thales of the grant of any such sub-licence.
- 3.9 Subject to Paragraph 9 below, where any Industrial Participant (or any member of its Group), receives any consideration for the grant of, or agreement to grant, a licence or for the exercise of a right granted in respect of such licence or for the exercise of rights under a licence in respect of any CVF Intellectual Property in relation to another aircraft carrier or its equivalent, then the Industrial Participant shall notify the Authority of such consideration and such consideration (less the commercial exploitation levy to be paid to the Authority in accordance with Paragraph 9 below), shall be shared by the Industrial Participants.
- 3.10 Without prejudice to the Authority's rights under DEFCON 15 (Design Rights and Rights to Use Design Information) and DEFCON 91 (Intellectual Property Rights in Software) or under any provision of any Manufacturing Phase Works Contract or any



commercial exploitation agreement entered into between the Authority and any Industrial Participant concerning the collection of any commercial exploitation levy by the Authority, the granting by any Industrial Participant (or any member of its Group) to the French Government or French Industry of any rights to use any CVF Intellectual Property for the design, manufacture and support of an aircraft carrier for the French Government in excess of rights granted under the Common Baseline Design Data Pack Licence, for which the Industrial Participant is to receive consideration (“French Receipts”), shall be regulated as follows:

- (a) the relevant Industrial Participant or Industrial Participants shall promptly notify the Authority of the proposed grant of CVF Intellectual Property user rights to the French Government or French Industry and shall provide details of the CVF Intellectual Property in respect of which the user rights are proposed to be granted and the delivery timescales;
- (b) the relevant Industrial Participant or Industrial Participants shall keep the Authority informed as to the likely French Receipts through the monthly EAC reporting process to enable the Authority to forecast the potential offset as detailed at Paragraph 3.10(d) below;
- (c) the relevant Industrial Participant or Industrial Participants shall agree with the Authority the final value of the French Receipts;
- (d) upon their receipt, the French Receipts shall be offset against the Allowable Costs, such offset to be effected in the monthly invoice following the receipt of the French Receipts; and
- (e) the relevant Industrial Participant or Industrial Participants, shall if requested by the Authority, provide sufficient documentary evidence to the Authority to enable it to verify the offset.

3.11 Where an Industrial Participant ceases to be a member of the Manufacturing Phase Alliance then the licences granted by such Industrial Participant pursuant to this Schedule 8 in respect of the CVF Intellectual Property shall continue for the purpose of enabling the Other Industrial Participants to perform their allocated tasks under the Manufacturing Phase Works Contracts and (subject to the approval of the Industrial

Participant (which shall not be unreasonably withheld or delayed) and whilst it exists the Alliance Management Board in the case of any proposed sub-licensing) to fulfil any support obligations in respect of CVF 01 and CVF 02.

3.12 Where an Industrial Participant requires Technical Information (relating to a Deliverable) not already provided under the Key Project Agreements from an Industrial Participant, who is the Technical Information Controller of such Technical Information but who has ceased to be a member of the Manufacturing Alliance, for the purpose of enabling the Industrial Participant to perform its allocated tasks under the Manufacturing Phase Works Contracts or to fulfil any support obligations in respect of CVF 01 and CVF 02, the Technical Information Controller shall make such Technical Information available to the relevant Industrial Participant for such purpose at a charge which reasonably reflects the costs of compiling, preparing and delivering such Technical Information.

3.13 All Technical Information and design works generated during and as part of the Manufacturing Phase in which CVF Intellectual Property subsists shall be marked with an appropriate legend in substantially the following form:

“This document and the information contained herein are commercially confidential and subject to the disclosure and user rights of the Crown and of any Manufacturing Alliance Participant under the Manufacturing Phase Alliance Agreement (Contract No CBCVF/00201) and may only be used and disclosed with the permission of the rights owner.

copyright [*year of generation*] [*name of copyright owner*]

e.g. copyright 2008 BAE Systems plc/Thales Naval Limited

e.g. copyright 2008 Rolls Royce”

Industrial Participants shall also mark documents with appropriate security classifications as required under the Agreement.

Any Work (as defined in DEFCON 90 (Copyright)) that is subject to special conditions or any third party rights pursuant to clause 5 of DEFCON 90 (Copyright)

will need to be marked accordingly.

- 3.14 Without prejudice to the terms of DEFCON 632 (Third Party Intellectual Property Rights – Commercial and Non-Commercial Articles and Services), no Industrial Participant shall have any liability to or recourse against any Other Industrial Participant for infringement of third party Intellectual Property committed by it in its performance of its allocated tasks under the Manufacturing Phase Works Contracts and attributable wholly and directly to the use of the CVF Intellectual Property, including any design work or Deliverables generated and/or delivered during and as part of the Manufacturing Phase. Where any third party claims that any Deliverable or any part thereof infringes such third party's Intellectual Property the Industrial Participant responsible for the production or delivery of the Deliverable or part thereof claimed to be infringing shall take appropriate steps to rectify the situation, which may include seeking any consent necessary for the use of the Deliverable or part thereof or by using or providing an alternative Deliverable or part thereof in respect of which the third party makes no infringement claim. The Industrial Participants shall promptly report to one another and to the AMB in writing particulars of any third party allegations of which they become aware to the effect that any Deliverable or any part thereof infringes any third party Intellectual Property and shall provide reasonable assistance to the relevant Industrial Participant in taking such appropriate steps.
- 3.15 Where the Authority requires any consent from BAES Marine and Thales then the Authority may rely on the consent of either BAES Marine or Thales as the consent from both BAES Marine and Thales.
- 3.16 For the avoidance of doubt the provisions of this Paragraph 3 shall not prejudice and shall be subject always to any obligations owed to the Authority (including a requirement to pay any commercial exploitation levy) and to the Authority's Intellectual Property user rights as set out expressly in this Schedule 8 and in any other Project Agreement and to any applicable security constraints and national export controls.

#### **4 Technical Assistance Agreements**

4.1 In the event that any Manufacturing Alliance Participant requires Technical Information from a provider within the United States for the purpose of the Project, that Manufacturing Alliance Participant shall:

- (a) if required, enter into a technical assistance agreement with such provider and arrange for any associated export licences;
- (b) ensure that such technical assistance agreements and export licences are applied for, obtained, renewed and maintained in such a manner as to enable that Manufacturing Alliance Participant to perform its obligations in respect of any Manufacturing Phase Works Contract;
- (c) ensure that the Authority is given the prior opportunity to be a signatory to any technical assistance agreement;
- (d) if applicable, seek the right to release the Technical Information supplied under the technical assistance agreement to all Manufacturing Alliance Participants;
- (e) ensure that any Sub-Contractors appointed by it comply with the provisions of Paragraphs 4.1(a) to (d) above as if they were the Manufacturing Alliance Participant; and
- (f) identify any Technical Information covered by any such technical assistance agreement and any relevant restrictions applicable thereto when disclosing such Technical Information to another Manufacturing Alliance Participant.

4.2 Each Manufacturing Alliance Participant shall, where applicable, co-operate with the implementation of any technical assistance agreement by assisting in the issuing of any user-certificates or similar documentation, required in any applicable case.

#### **5 Authority's Intellectual Property User Rights and Application of DEFCONS**

5.1 The rights of the Authority to use the CVF Intellectual Property (and its ancillary obligations) shall accrue to the Authority in accordance with the DEFCONS and provisions, as detailed below. The disclosure of information under the Manufacturing Phase shall be dealt with in accordance with Clause 15 (Confidentiality) and Schedule

9 (Confidentiality) of this Agreement and in accordance with DEFCON 531 (Disclosure of Information) as stated at Paragraph 5.10 below. DEFCON 531 (Disclosure of Information) shall apply to the Data Deliverables as supplied by the Industrial Participants to the Authority.

5.2 All Technical Information to be provided under the Contract Data Requirements List will be subject to the applicable DEFCONS listed below and “Information” in DEFCONS 15 (Design Rights and Rights to Use Design Information), 16 (Repair and Maintenance Information) and 21 (Retention of Records) shall be read as meaning Technical Information and the rights described in DEFCONS 15 (Design Rights and Rights to Use Design Information), 16 (Repair and Maintenance Information) and 21 (Retention of Records) shall apply accordingly.

5.3 DEFCON 14 (Inventions and Designs - Crown Rights and Ownership of Patents and Registered Designs) shall apply to the Key Project Agreements with the following clarification and qualification:

(a) Where any invention or design to which the provisions of DEFCON 14 (Inventions and Design – Crown Rights and Ownership of Patents and Registered Design) apply is created outside the UK and where local laws so require, any application may, notwithstanding the provisions of clause 2c) of DEFCON 14 (Inventions and Design – Crown Rights and Ownership of Patents and Registered Design), be made under equivalent conditions of secrecy at the local patent office of the territory where the invention or the design was created. Where local laws so require, the supply of a copy of the application under clause 4a) of DEFCON 14 (Inventions and Design – Crown Rights and Ownership of Patents and Registered Design) shall be subject to any necessary approval of the local patent office but the application number and date of filing shall be notified to the Authority in all cases; and

(b) Clause 15 of DEFCON 14 (Inventions and Design – Crown Rights and Ownership of Patents and Registered Design) shall be without prejudice to the Industrial Participant’s right to seek separately the willing assignment of Foreground Manufacturing Phase Intellectual Property on fair and reasonable terms for the benefit of the Alliance save that such right shall not be exercised

as being a requirement of the Authority.

5.4 DEFCON 15 (Design Rights and Rights to Use Design Information) shall apply to the Key Project Agreements with the following clarification and qualification:

- (a) Under “Application” the relevant Contract Data Requirement(s) form is (DEFFORM 315 Edn 2/98) as attached at Annex A to this Schedule 8;
- (b) Clause 12 of DEFCON 15 (Design Rights and Rights to Use Design Information) shall apply only to Articles which are installed systems, that is finished equipment supplied separately and mounted on/in CVF 01 or CVF 02 or any prefabricated section of CVF 01 or CVF 02 and shall not apply to the Hull or the Superstructure, or to items which would normally be considered to be part of the Hull or Superstructure (e.g. inter-compartmental distribution systems, pipe runs, cabling etc.) which are within the domain of the shipbuilder and the Industrial Participants responsible for fitting out CVF 01 and CVF 02; and
- (c) A licence in accordance with DEFCON 15 (Design Rights and Rights to Use Design Information) to use any Independently Developed Intellectual Property contained within any manufacturing data pack as detailed in the relevant Contract Data Requirement shall be included in the price to be paid by the Authority for CVF 01 and CVF 02 under the Key Project Agreements.

5.5 DEFCON 16 (Repair and Maintenance Information) shall apply to the Key Project Agreements with the following clarification:

- (a) Under “Application” the relevant Contract Data Requirement(s) form is (DEFFORM 315 Edn 2/98) as attached at Annex A to this Schedule 8; and
- (b) For the avoidance of doubt “Operation” shall be construed as including training for operation of Articles.

5.6 DEFCON 21 (Retention of Records) shall apply to the Key Project Agreements with the following clarification, extension and amendment:

- (a) Under “Application” the relevant Contract Data Requirement(s) form is

(DEFFORM 315 Edn 2/98) as attached at Annex A to this Schedule 8;

- (b) DEFCON 21 (Retention of Records) shall also apply to all copyright works procured under DEFCON 90 (Copyright), DEFCON 91 (Intellectual Property Rights in Software) and to any Technical Publications detailed at Paragraph 6 below; and
- (c) In accordance with clause 3 of DEFCON 21 (Retention of Records) the “Control Copy” shall be held for 25 years following the termination or expiration of the Manufacturing Flow Through Contract.

5.7 DEFCON 90 (Copyright) Copyright shall apply to the Key Project Agreements with the following clarification and modification:

- (a) The nations prescribed for the purposes of clause 4 c) of DEFCON 90 shall be the NATO nation states, Sweden, Australia and New Zealand and any nation state to whom the Authority disposes of CVF 01 and/or CVF 02; and
- (b) In clause 4 reference to “the Contract” shall be deemed to be to the Key Project Agreements.

5.8 DEFCON 91 (Intellectual Property Rights in Software) Intellectual Property Rights In Software shall apply to the Key Project Agreements with the following clarification:

- (a) a licence in accordance with DEFCON 91 (Intellectual Property Rights in Software) to use any “Deliverable Software” as defined in clauses 1a) and 1b) of DEFCON 91 (Intellectual Property Rights in Software) shall be included in the price to be paid by the Authority for CVF 01 and CVF 02 under the Key Project Agreements;
- (b) The nations prescribed for the purposes of clause 3e) of DEFCON 91 (Intellectual Property Rights in Software) shall be the NATO nation states, Sweden, Australia and New Zealand and any nation state to whom the Authority disposes of CVF 01 and/or CVF 02; and
- (c) For the purposes of clause 1b) of DEFCON 91 (Intellectual Property Rights in Software), “Deliverable Software” means all software, including software

modules, that are software Deliverables or are included in Deliverables that are either fully or substantially funded by the Authority, including the source code, object code and other documentation relating to such software Deliverables listed in the software Assurance Plan at Section 1.33 of the Ship Specification and the additional software models listed in the Ship Deliverables Register at Section 1.34 of the Ship Specification. The Industrial Participants will provide a detailed list of all Deliverable Software (as defined in DEFCON 91 (Intellectual Property Rights in Software)) prior to the end of Phase 1.

5.9 DEFCON 126 (International Collaboration) International Collaboration shall apply to the Key Project Agreements with the following clarification:

- (a) The period prescribed for the purposes of clauses 2 and 3 of DEFCON 126 (International Collaboration) shall be 50 years from the Commencement Date of the Manufacturing Flow Through Contract.

5.10 DEFCON 531 (Disclosure of Information) shall apply to the Data Deliverables as supplied by the Industrial Participants to the Authority.

5.11 DEFCON 632 (Third Party Intellectual Property Rights - Commercial and Non-commercial Articles and Services) shall apply to the Key Project Agreements with the following clarification:

- (a) Clause 6 of DEFCON 632 (Third Party Intellectual Property Rights - Commercial and Non-commercial Articles and Services) shall not apply to patents or registered designs owned by the Other Industrial Participant(s).

5.12 DEFCON 703 (Intellectual Property Rights - Vesting in the Authority) shall apply to this Agreement with the following clarification:

- (a) The provisions of DEFCON 703 (Intellectual Property Rights - Vesting in the Authority) shall apply only to the items listed at Annex B to this Schedule 8.

5.13 In order that the Authority can fulfil its role within the Alliance the Industrial Participants shall permit the Authority to use such CVF Intellectual Property and Technical Information as is necessary for such purpose.



## **6 Technical Publications**

- 6.1 The Industrial Participants shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any Technical Publications and to circulate, use or have used such Technical Publications for any United Kingdom Government purpose, except for the purpose of manufacturing equipment to which the Technical Publication relates.
- 6.2 In the event that any Technical Publication is used by or for the Authority (or by or for any third party to which it was circulated pursuant to Paragraph 6.1 above) otherwise than for the purpose for which the Technical Publication was supplied in accordance with any Manufacturing Phase Works Contract, or if any part of such Technical Publication is amended or extended without the authorisation of the relevant Industrial Participant, the Industrial Participant shall have no liability whatsoever for any direct or indirect consequences, including losses, damages or injuries caused to the Authority or any third party, arising from any use of the unauthorised amended or extended part of the Technical Publication or from use of the relevant Technical Publication otherwise than for the purpose for which the Technical Publication was supplied.

## **7 Notification of Independently Developed Deliverables**

- 7.1 The Industrial Participants hereby confirm to the Authority that as far as they are aware at the Commencement Date all items comprising the Hull and Superstructure are fully funded under the Project.
- 7.2 Following the Commencement Date if any items of the Hull and Superstructure are proposed to be Independently Developed Deliverables the Industrial Participants shall notify and consult the Authority immediately and shall not take any action in respect of such items unless and until their inclusion in the Manufacturing Phase is approved by the Authority.
- 7.3 Set out at Annex C to this Schedule 8 are the non Hull and Superstructure Deliverables (including but not limited to software) which the Authority has accepted for the purposes of the Manufacturing Phase Works Contracts are Independently Developed Deliverables.
- 7.4 BVT and the Authority shall keep the list at Annex C up to date and any further

amendments to the list shall be agreed by BVT and the Authority with the aim of them agreeing a final list by the end of Phase 1.

## **8 Independently Developed Software Licences**

- 8.1 Use of software that is not “Deliverable Software” as defined in DEFCON 91 (Intellectual Property Rights in Software) shall be licensed to the Authority at no additional charge and such licences shall be procured by the Industrial Participants by either the relevant Industrial Participant entering into a direct licence with the Authority for such use or by the Industrial Participant procuring that the relevant Sub-Contractor who owns or is appropriately licensed in respect of the use of such software enters into a direct licence or sub-licence with the Authority for such use. Such direct licences or sub-licences shall only be procured where the Authority deems them appropriate and necessary and, where the Authority deems them so appropriate and necessary, they shall where possible be in the Authority’s standard DEFFORM 701 (Edn 09/05) or any standard software licence that has already been agreed or that may be agreed in the future between the Authority and the Industrial Participant or the Authority and the Sub-Contractor as applicable. The Industrial Participants shall not place any Sub-Contract or order for any software which would constitute an Independently Developed Deliverable without the Authority having first agreed the form of the direct licence or sub-licence agreement as between the Authority and the relevant Sub-Contractor (where the Authority considers a direct licence or sub-licence is required).
- 8.2 Where there is no express licence governing the Authority’s use of any software which is contained in an Independently Developed Deliverable common law rights shall apply.
- 8.3 In the event of any conflict between any provision of any express software licence granted directly to the Authority by an Industrial Participant pursuant to Paragraph 8.1 above and any other provision of the Key Project Agreements, the provisions of the Key Project Agreements shall take precedence.
- 8.4 The Industrial Participants shall identify and use reasonable endeavours to ensure that their Sub-Contractors identify the Authority funded modules of software Deliverables that are partially funded by the Authority under the Project.

## **9 Commercial Exploitation Levy**

- 9.1 The terms upon which the Industrial Participants shall pay to the Authority commercial exploitation levy (including the amount of commercial levy payable) in respect of an exploitation of Foreground Manufacturing Phase Intellectual Property by any Industrial Participant (or any member of its Group) pursuant to DEFCONS 15 (Design Rights and Rights to use Design Information) and 91 (Intellectual Property Rights in Software) are set out in the Commercial Exploitation Agreement(s) provided at Annex D to this Schedule 8.
- 9.2 The parties agree that the sale or grant of a licence to manufacture articles that are defined as Deliverables under the Demonstration Phase Agreements shall be treated as falling within DEFCON 15 (Design Rights and Rights to use Design Information) for the purpose of commercial exploitation levy.

## **10 Interface and Performance Data and Data relating to Independently Developed Deliverables**

- 10.1 Without prejudice to the Authority's rights under any applicable DEFCON or under any provision of the Key Project Agreements, clauses 4(a), (b) and (c) of DEFCON 90 (Copyright) will apply to all interface Deliverables (such as but not limited to Data Exchange Specifications).
- 10.2 The Industrial Participants acknowledge that during the term of this Agreement the Authority may need to exercise its right to compete future production orders for Deliverables, including alternatives to Independently Developed Deliverables, and the Industrial Participants accept that the Authority may from time to time require additional Technical Information, including performance and interface data, relating to the Deliverables, including Independently Developed Deliverables, to enable other competent third party contractors to meet the Authority's production requirements for such Deliverables, including alternatives to Independently Developed Deliverables. Accordingly, the Industrial Participants shall at the Authority's request provide all Technical Information strictly necessary for such Authority requirements, and the Authority shall have the right to use such Technical Information, for the purpose set out in this Paragraph 10.2, and the cost to the Industrial Participants of providing such Technical Information for such use shall be borne by the Authority and an Equitable

Adjustment shall be made accordingly.

## **11 Discontinuation of Supply or Support**

11.1 Each Industrial Participant shall notify the Authority as soon as it becomes aware of any circumstance which may affect its ability to continue to supply or support any article installed or mounted within or on CVF 01 or CVF 02, including any Independently Developed Deliverable.

11.2 In the event of any Industrial Participant being unable or, unwilling on fair and reasonable terms, to continue to supply or support any article installed or mounted within or on CVF 01 or CVF 02, including any Independently Developed Deliverable, the Authority shall have the right to:

- (a) secure from the relevant Industrial Participant the delivery of a technical data package in respect of that article, such technical data package to comprise information to such extent and depth necessary to enable the Authority (or a third party authorised by the Authority) to replicate and support such article. The technical data package shall be marked as being the property of the Authority and shall be made available for collection at the Industrial Participant's premises for the in-service life of CVF 01 and CVF 02. Legal title to the physical media comprised within the technical data package shall vest with the Authority as the technical data package is assembled; and
- (b) use the information comprised within the technical data package for manufacture of the article or any part thereof with or without modifications and for support purposes.

11.3 The Authority may from time to time during the term of this Agreement request an Industrial Participant to produce a technical data package and place such package into escrow and such Industrial Participant shall comply with such request save that the Authority shall pay all costs associated with the production of such package and the escrow.

11.4 The obligation under Paragraphs 11.1 and 11.2 above shall not apply to:

- (a) Technical Information that has already been wholly supplied within any

manufacturing data pack or support data pack specifically called for under the Key Project Agreements; or

- (b) in so far as Paragraphs 11.1 and 11.2 apply to any Independently Developed Deliverable supplied by a Sub-Contractor where a DEFFORM 177 agreement has been signed between the Sub-Contractor and the Authority.

11.5 No transfer of ownership of any Intellectual Property nor any grant of any rights in excess of those expressly granted in this Paragraph 11 shall be implied by the provisions of this Paragraph 11.

## **12 Minimum Rights**

12.1 Without prejudice to the Authority's rights under any applicable DEFCON or under any provision of the Key Project Agreements, the Authority shall have the following rights in respect of all Technical Information which comprises or is contained within a Data Deliverable:

- (a) the right to copy that Technical Information and to circulate it within any United Kingdom Government Department (which term includes the United Kingdom Armed Forces) provided that no part of the same is made available to any third party; and
- (b) the right to issue in confidence to a third party that Technical Information or any copy of the same or any part thereof for the purpose of achieving Vessel Acceptance of CVF 01 and CVF 02; certification by any recognised certification organisation; development of standards; assessment, testing or evaluation purposes to enable the Authority to perform its duties in regard to safety and environmental protection or in response to any emergency or threatened emergency including without limitation salvage, but such disclosure of the Technical Information will be strictly limited to that necessarily required for the purposes set out in this Paragraph 12.1(b).

12.2 With respect to all interior and exterior surface photographs of CVF 01 and CVF 02, and certificates for CVF 01 and CVF 02 which are Data Deliverables, the Authority shall have the additional right to copy, use and issue to any third party such photographs and certificates for any purpose relating to CVF 01 and CVF 02 including

(without limitation), any statutory requirement, upkeep, update and upgrade, operational purposes, ship familiarisation and training and publicity.

### **13 Appointment of Sub-Contractors**

- 13.1 Where an Industrial Participant proposes to place a Sub-Contract or order which is to involve the generation of Foreground Manufacturing Phase Intellectual Property the Industrial Participant will give the Authority 15 Business Days notice of such proposed Sub-Contract or order in order that the Authority may put in place a direct agreement with such Sub-Contractor such direct agreement to be based on the template provided at Annex F to this Schedule 8. The payment of the Sub-Contractor under the relevant Sub-Contract or order which involves the generation of Foreground Manufacturing Phase Intellectual Property shall be conditional upon the Sub-Contractor entering into such a direct agreement with the Authority.
- 13.2 The Industrial Participants shall provide reasonable assistance to the Authority in compiling a list of critical items required under the Manufacturing Phase for which there are no substitutes in the market and for which security of supply could be affected if the supplier ceased production of such critical items (the “**Critical Items**”) and the Authority shall keep the Industrial Participants informed of the Critical Items from time to time.
- 13.3 Where an Industrial Participant proposes to place a Sub-Contract or order which is to involve the supply of Critical Items the Industrial Participant shall notify the Authority which shall decide in its absolute discretion whether it wishes to put in place a direct agreement with such Sub-Contractor or supplier such direct agreement to be based on the template provided at Annex F to this Schedule 8.
- 13.4 The Authority shall notify the relevant Industrial Participant within 15 Business Days of being notified of the proposed placing of the Sub-Contract or order relating to a Critical Item whether it wishes to put a direct agreement in place with such Sub-Contractor or supplier.
- 13.5 Where the Authority notifies the Industrial Participant in accordance with Paragraph 14.4 above that it wishes to put a direct agreement in place the Sub-Contract or order to be entered into between the Industrial Participant and the Sub-Contractor or supplier

shall be conditional upon such direct agreement being entered into between the Authority and the Sub-Contractor or Supplier.

#### **14 Flow Down to Sub-Contractors**

- 14.1 In addition to DEFCONS 14 (Inventions and Designs – Crown Rights and Ownership of Patents and Registered Designs) and 126 (International Collaborations), the Industrial Participants shall ensure that the requirements and obligations set out in Paragraphs 7 and 13 and Paragraphs 14.1 to 14.5 of this Schedule 8 are flowed down to and included in all Sub-Contracts.
- 14.2 The Industrial Participants shall ensure that the rights and obligations under DEFCON 632 (Third Party Intellectual Property Rights – Commercial and Non-Commercial Articles and Services) as between the Authority and the Industrial Participant are flowed down to and included in all Sub-Contracts so as to apply as between the Industrial Participant and the Sub-Contractor.

#### **15 Shared Data Environment**

- 15.1 Each Industrial Participant will load all data contained in the CDRL which it generates or is within its control, and all data contained in any Sub-Contractor contract data requirements list, which it is free to disclose, on the Shared Data Environment, as detailed at Schedule 11 (Information Technology), as soon as is reasonably practicable following the creation or receipt of such data by the Industrial Participant. For the avoidance of doubt “load” shall mean to place information on the Shared Data Environment or make it accessible to the Shared Data Environment so that it can be retrieved by one or more users.

#### **16 Preservation of Rights**

- 16.1 The provisions of this Schedule 8 are without prejudice to the rights of the Manufacturing Alliance Participants accrued or acquired under the Assessment Phase or Demonstration Phase or any other Authority project.

**Schedule 8 Annex A**  
**Contract Data Requirement**

1. <u>ITT/Contract Number</u>  CBCVF/00201	2. <u>CDR Number</u>  CDR 1	3. <u>Data Category</u>  Manufacture and Support	4. <u>Contract Delivery Date</u>  As defined in Ship Spec 1.34
5. <u>Equipment/Equipment Subsystem Description</u>  CVF		6. <u>General Description of Data Deliverable</u>  Manufacture and Support Data Pack documentation, as listed in the attached Appendix and as detailed in the Ship Deliverables Register (Ship Spec 1.34)	
7. <u>Purpose for which data is required</u>  The documentation (in some cases in the form of stateboards or notices) is provided in sufficient detail to enable the manufacture and commissioning of subsequent CVF vessels, and the support and operation of CVF vessels when in service. It is also to be used to tender for contracts.		8. <u>Intellectual Property Rights</u>  a. <u>Applicable DEFCONs</u>  DEFCONs 15, 16 and 21 (as clarified and qualified within Schedule 8)  b. <u>Special IP Conditions</u>	
9. <u>Update/Further Submission Requirements</u>  Nil			
10. <u>Medium of Delivery</u>  As defined in Ship Spec 1.34		11. <u>Number of Copies</u>  As defined in Ship Spec 1.34	

Appendix:

1. List of Manufacture and Support Data Pack Deliverables.

**APPENDIX 1 TO CDR 1**  
**(DEFFORM 315 (Edn 2/98))**



**LIST OF MANUFACTURE AND SUPPORT DATA PACK DELIVERABLES**

<b>Para</b>	<b>Deliverables</b>	<b>DEFCON 15 (Edn 02/98) Applicable</b>	<b>DEFCON 16 (Edn 10/04) Applicable</b>
1008	Report of Docking/Slipping/Launch	Yes	Yes
1009	Complete Set of completed Test Forms and associated certificates	Yes	Yes
1015	Radioactive Source Register & Source List	Yes	Yes
1019	Copies of Class approval plans and design documents	Yes	Yes
1029	Engine International Air Pollution Prevention (EIAPP) Certificates and associated Technical Files for the main Diesel engines	Yes	Yes
1309	Fixed Facilities Check List iaw Ship Spec 9.42	Yes	Yes
1036	Main NBCD Incident Board iaw Ship Spec 1.22	Yes	Yes
1038	Weapon Section Base Board	Yes	Yes
1039	SHIPHAZ Control Stateboard iaw Ship Spec 6.28	Yes	Yes
1040	ME Hazard Board iaw Ship Spec 6.28	Yes	Yes
1301	Sea Survival Equipment Plans	Yes	Yes
1051	Wheelhouse Poster iaw Ship Spec 1.6	Yes	Yes
1052	Pilot Card iaw Ship Spec 1.6	Yes	Yes
1053	Equipment Start/Stop Routine Boards	Yes	Yes
1054	Centreline Hosereel Coverage Plans iaw Ship Spec 8.29	Yes	Yes
1056	Master Key Index	Yes	Yes
1307	Telephone Directories iaw Ship Spec 5.24	Yes	Yes
1060	Records of all ACA/Class agreements to any deviations/concessions from the technical requirement with reason and status of departure	Yes	Yes
1062	Ship's Drawings (to include Drawing Index): a. General Arrangements (1:100 and 1:1000 Scales) b. Compartment Arrangement Drawings c. Equipment General Arrangement, Assembly, Sub-Assembly and Detail Drawings d. Component Arrangement and Detail Drawings e. Maintenance Envelopes (Ship Spec 1.9) f. Removal Routes (Ship Spec 1.9) g. Structural Drawings (scantling plans) h. Electrical Drawings, including wiring connection diagrams in CMPIC i. Hull and Marine Engineering Ship Systems Drawings j. Machinery Seating Drawings k. Watertight Boundary and Sub-division Plans l. Ammunition Routes (Ship Spec 5.44)	Yes	Yes
1313	Combat System Drawings	Yes	Yes
1312	Fit to Receive Log	Yes	Yes
1063	Copies of final CAD Models as produced during Stage 2/3 Engineering	Yes	Yes
1064	Tank Calibration Document	Yes	Yes
1066	Docking Plan, including docking drawings consisting of Profile, Plan, Section, Tables and Curves	Yes	Yes
1067	Salvage and Towing Pack	Yes	Yes
1069	Details of Hull Form, to include: a. Reasons for selection of principal dimensions, coefficients and other form parameters; b. Lines Plan. c. Hull Form Definition presented as a numerical table	Yes	Yes

	of offsets.		
1070	Weight Summaries Information to include: a. Weight listing (showing margins, VCG, LCG, TCG); b. Summary of Budget Weights and centres; c. Calculated tank calibration tables/curves in booklet form.	Yes	Yes
1072	Hydrostatics and Stability information, to include: a. Design Calculations. b. Paramarine Computer Model.	Yes	Yes
1073	Resistance and Propulsion calculation details, to include: a. Resistance and Propulsion estimates; b. Propeller Design; c. Power/Speed/RPM for specified hull conditions.	Yes	Yes
1074	Endurance calculation details, to include speeds, hotel loads and propulsion modes for specified the hull conditions at Sea Trials, Start of Life and End of Life.	Yes	Yes
1075	Manoeuvrability calculation details, to include: a. Predicted performance; b. Design Features.	Yes	Yes
1076	Seakeeping calculations, to include: a. Predicted Performance; b. Design Features.	Yes	Yes
1077	Structural Design calculations, to include: a. Longitudinal Strength (stating assumed weight distribution(s) and material properties); b. Midship section; c. Transverse strength; d. Bulkheads, Superstructures; e. Vibration.	Yes	Yes
1078	Vulnerability details, to include: a. Design features (Sub-division/zoning, fire protection, fragment and splinter protection, system redundancy, etc). b. QinetiQ SURVIVE Vulnerability Model.	Yes	Yes
1079	Weapon and Sensor systems design details, to include: a. Weapons fitted/FTR/FFBNW/IPMD; b. Weapon/sensors arcs; c. Aerial and signalling Rig; d. SHIPHAZ/RADHAZ Drawing.	Yes	Yes
1080	Ship's System design calculation details, to include: a. Electrical power generation/conversion/ distribution (including load charts); b. Chilled Water system and air conditioning; c. Fresh water and salt water systems; d. Pressurised air systems; e. Fuel systems.	Yes	Yes
1094	Maintenance Records within the Unit Maintenance Management System (UMMS)	Yes	Yes
1095	Maintenance Planning and Scheduling information within the Unit Maintenance Management System (UMMS)	Yes	Yes
1096	Lifting Equipment Registers	Yes	Yes
1098	Pressure Vessel Register	Yes	Yes
1100	Flexible Hose Register	Yes	Yes
1101	Breathing Apparatus Register	Yes	Yes
1102	Survival and Safety Equipment Register	Yes	Yes
1103	Lubrication Schedule (Super Platform Systems)	Yes	Yes
1104	Lubrication Schedule (Mission Systems)	Yes	Yes
1105	Software/Hardware Register	Yes	Yes

1106	Cathodic Protection Log	Yes	Yes
1107	Integrated Platform Management System (IPMS) Control & Instrumentation Database	Yes	Yes
1108	COSHH Master Assessment Log/Register	Yes	Yes
1109	Hazardous Materials Register D 3203 Part 1	Yes	Yes
1110	Security Furniture Register iaw Ship Spec 1.17	Yes	Yes
1111	Populated Defect and Deficiency Recording System (D3B)	Yes	Yes
1112	Material State Portfolio	Yes	Yes
1113	Ship Fit Definition (i.e. Ship Equipment List)	Yes	Yes
1114	Vessel Shore Support Statement	Yes	Yes
1116	Upkeep Models	Yes	Yes
1117	Through Life Cost Models	Yes	Yes
1303	CVF Complement Models	Yes	Yes
1118	SAM Availability Models	Yes	Yes
1119	SAILOR Flight Deck Operations Models	Yes	Yes
1126	Initial Provisioning Lists (Platform)	Yes	Yes
1127	Initial Provisioning Lists (Mission Systems)	Yes	Yes
1128	Scale Records	Yes	Yes
1129	On Board Stores Documentation (OBSD) including the Consolidated Allowance List (CAL)	Yes	Yes
1130	PHS&T Lists	Yes	Yes
1132	First Outfit of Stores (FOS) Storing Plan	Yes	Yes
1137	Support and Test Equipment Lists (Platform)	Yes	Yes
1314	Support and Test Equipment Lists (Mission Systems)	Yes	Yes
1144	Armament Warrant	Yes	Yes
1145	Rigging Warrant Document iaw Ship Spec 6.34	Yes	Yes

**Schedule 8 Annex B**  
**DEFCON 703 – Intellectual Property Rights**

ITT/Contract Number: CBCVF/00201

CDR Number: CDR 2

General Description of Data Deliverable

Book of Reference (BR) sections under Crown Copyright, as listed below and as detailed in the Ship Deliverables Register (Ship Spec 1.34):

<b>Para</b>	<b>Deliverables</b>
1088	CBRN and DC&FF equipment outfit list for incorporation in BRD 2170(3) NBCD Equipment Outfit
1305	Amendment to BR 0766 Embarked Aviation Operating Handbook to cover CVF Aviation Facilities for incorporation into BR 0766
1306	Amendment to BR 0766 Embarked Aviation Operating Handbook to cover CVF Air Traffic Control Procedures for incorporation into BR 0766

Purpose for which data is required

Books of Reference (BRs) are required to facilitate the safe operation of CVF platform systems and aircraft.

Applicable IPR DEFCONs

DEFCON 703

Note: Contract delivery dates, medium of delivery and numbers of copies are as defined in Ship Spec 1.34.

**Schedule 8 Annex C**

**Independently Developed Deliverables developed by the Industrial Participants**

**A Hardware (non software)**

(i) Commercial Off The Shelf (COTS) and Military Off The Shelf (MOTS)

(ii) Partially Funded

**B Software**

(i) Commercial Off The Shelf (COTS) and Military Off The Shelf (MOTS)

(ii) Partially Funded

The list only applies to those Independently Developed Deliverables developed by the Industrial Participants themselves and shall be agreed with the Authority within three (3) Months of the Commencement Date.



**Schedule 8 Annex D**  
**Commercial Exploitation Agreements**

**Commercial Exploitation Levy Agreement No: - CEA/0510/07/08**

**Sales of Software**

This AGREEMENT is made the .....day of ..... 2008

BETWEEN

THE SECRETARY OF STATE FOR DEFENCE (hereinafter called 'the Ministry') of the one part; and

.....  
.....(hereinafter called 'the Contractor(s)' which expression where the context so admits or requires shall include its successors in title) of the other part.

WHEREAS:

- (1) By virtue of conditions of (a) Contract(s) between the Contractor and the Ministry the Contractor has developed certain Computer Software for the Ministry and is the beneficial owner of all intellectual property rights therein;
- (2) By virtue of the conditions of said Contract(s) the Contractor is permitted to commercially exploit said Computer Software provided that he first agrees with the Ministry the sum or sums which should reasonably be paid to the Ministry having regard to the amount paid or payable to the Contractor by the Ministry under the Contract(s) and other relevant Contracts.
- (3) The parties hereto have agreed that the aforementioned sum or sums payable and the conditions governing payment thereof shall be as set forth in the following Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

## Definitions

- 1) In this Agreement the following terms shall have the following meanings:
  - a) 'Contract(s)' means any Demonstration Phase Works Contract or Manufacturing Phase Works Contract relating to/for the Demonstration Phase and Manufacturing Phases, all as defined under the Manufacturing Phase Alliance Agreement No CBCVF/00201.
  - b) 'Contract(s) Software' means any computer program or part thereof generated under the Contract(s) which uses the design produced under the Contract(s) including any adaptation, extraction, translation, modification or enhancement thereof and any associated documentation such as program user guides.
  - c) 'Contractor' means all parties to the Manufacturing Phase Alliance Agreement save for the Ministry and includes any subsidiary company or associated company of the Contractor.
  - d) 'Sale' means any sale transaction, lease or hire of, or the grant of an end-user licence in respect of, the Contract(s) Software in whole or in part by the Contractor, and derived terms such as 'selling' shall be construed accordingly.
  - e) 'Bureau Services' - means a service whereby the benefit of the Contract(s) Software is provided to a customer for gain, without transfer of the Contract(s) Software to the customer.
  - f) 'Leviable Transaction' means any transaction giving rise to levy under this agreement, and shall include a transaction for the supply of the Contract(s) Software and the grant of licences and shall also include a transaction for Bureau Services.
  - g) 'Contractor's Selling Price' means the price for which the Contractor invoices his customer before the deduction of any discounts but excluding such of the following elements as are applicable and can be identified to the satisfaction of the Ministry;



- i) Freight costs and insurance
- ii) Packaging not developed at UKG expense
- iii) The cost of ECGD servicing and other sales finance charges
- iv) any charges relating to MOD inspection.
- v) Installation and commissioning costs incurred where installation and commissioning formed no part of the work under the Contract(s) but excluding the cost of providing any warranty.
- vi) Agent's fees and commissions.
- vii) Value Added Tax where applicable.

Provided that any element of Profit which the Contractor has included in the above items (i) to (vii) shall not be so included.

- h) 'Profit' other than for the purposes of the above proviso to sub-clause (g) above means the difference between the Contractor's Selling Price and the allowable costs as prescribed by the Ministry for the purpose of the Sale in question provided such difference is a positive sum.

### **Sales and Licences**

- 2) Should the Contractor sell any Contract(s) Software or any material reproducing the Contract(s) Software other than for any purpose set out in Clause 8 hereof the Contractor shall pay to the Ministry:
  - a) A levy for the use of the CVF Intellectual Property (as defined under the Manufacturing Phase Alliance Agreement) enshrined in the Contract(s) Software

including copyright to be calculated at ■% of the Contractor's Selling Price.

- b) Alternatively, levy on individual sales (for which purpose contemporaneous sales of the same equipment to the same customer will count as one sale) will be payable on an appropriate profit-sharing basis to be agreed between the Contractor and the Ministry before the contract of sale is entered into. The threshold for such levy may be agreed from time to time by the Ministry on a case by case basis, in relation to future sales.
- 3) Should the Contractor grant a licence to reproduce the Contract(s) Software and to enable the Licensee to sell the Contract Software(s) or should the Contractor assign or otherwise dispose of his rights in the Contract(s) Software, the Contractor shall pay the Ministry a levy calculated at 50% of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof.

Provided that:

- a) The Contractor shall not assign or grant an exclusive licence or otherwise dispose of his rights in the Contract(s) Software without the prior written consent of the Ministry, which consent shall not be unreasonably withheld. It will be a condition of consent that the terms of the said assignment or said exclusive licence or disposition shall be consistent with the terms and conditions of this Agreement and that before entering into an Agreement to assign or grant an exclusive licence or otherwise dispose of his rights in the Contract(s) Software the Contractor shall ensure that the proposed assignee or the proposed exclusive licensee enters into an agreement with the Ministry reserving to the Ministry the rights granted to it in the Contract(s);
- b) Where the consideration comprises wholly or in part some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing ■% of what may be reasonably regarded as the value of the said benefit; and
- c) The Contractor shall not grant any licence or make an assignment or otherwise dispose of his rights in the Contract(s) Software where there is no consideration, or

only nominal consideration, without first agreeing with the Ministry what levy (if any) should reasonably be paid to the Ministry in respect of such licence assignment or disposition of rights.

- 4) If the Contractor uses the Contract(s) Software to develop other computer software, and the Contractor wishes to enter into a Sale involving the computer software as developed, then the Contractor shall notify the Ministry prior to the said Sale, and the levy due upon the said Sale shall be agreed upon between the Ministry and the Contractor.
- 5) The Contractor shall not place in the public domain or disclose to a third party the Contract(s) Software nor any computer software developed by use of the Contract(s) Software without first notifying the Ministry and agreeing with the Ministry the amount of levy that shall be payable in respect of such placement or disclosure.
- 6) Where an agreement for the maintenance of the Contract(s) Software between the Contractor and another party for a fee also includes the supply of the Contract(s) Software not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable price for the Supply of the Contract(s) Software.
- 7) Subject to Clause 8 below payment of levy is deemed to include payment for the use of any intellectual property rights owned by the Ministry (or in the case of copyright, administered for commercial exploitation by the Ministry) which is in the Contractor's possession and is necessary in connection with the Sale or other transaction giving rise to levy under this Agreement.
- 8) This Agreement does not provide a right to use or include payment for the use of any intellectual property rights (or in the case of copyright, administered for commercial exploitation by the Ministry) which are administered and managed on behalf of the Ministry by the Meteorological Office.
- 9) It shall be the sole responsibility of the Contractor to ensure that he has secured adequate rights from any third party to use and exploit elements of the Contract(s) Software in which CVF Intellectual Property are owned by such third party.

10) No levy shall be payable in respect of ;

- a) the supply of the Contract(s) Software to the Ministry;
- b) the supply of the Contract(s) Software under any transactions with the Ministry's Agents or its contractor or sub-contractor where the Contract(s) Software can be clearly identified as being supplied to meet the requirements of the Ministry.

**Sales or Licensing of Adaptations, Extraction's, Translations, or Enhancements of the Contract(s) Software.**

11) Sales involving, or licences to reproduce, adaptations, extraction's, translations or enhancements of the Contract(s) Software shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for software that was not developed at UK Government expense.

**Contract Software for Contractor's Own Use.**

12) Without prejudice to Clause 3 above unless the Contract(s) Software is subsequently sold, no levy shall be due where the Contractor reproduces the Contract(s) Software solely for his own research or development purposes or for his own demonstration or sales promotion purposes. Contract(s) Software reproduced and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clauses 2 to 6 hereof.

**Abatement of Levy**

13) Where, in the circumstances of an individual Sale, the Contractor considers that the effect upon his selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice his chances of completing the Sale or would result in an unreasonably low profit, it shall be open to the Contractor before the Sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 15 and 16 herein. Provided that the Contractor's Cost Accounting System is adequate in the opinion of the Ministry to provide the statements

for allowable costs necessary to implement the scheme such approval shall not be unreasonably withheld.

- 14) The abatement scheme shall generally determine levy on the basis of outturn profitability of the Sale in question expressed as a percentage of the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:
- a) The first ■% of profit on cost shall be retained by the Contractor.
  - b) The remaining profit, without upper limit, shall be shared between the Ministry and the Contractor in the ratio of ■ until a total profit of 25% on cost has been reached, and thereafter in a ratio to be agreed between the Ministry and the Contractor.
- 15) Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revised by either party for the Sale in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it is so desired, to verify the statement. Where the value of the sale is less than ■ any abatement levy may at the discretion of the Ministry be settled (before the Sale Contract is entered into) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the Ministry.
- 16) Where an abatement scheme has been approved in accordance with Clauses 13 to 15 of this Agreement the Contractor shall be liable for an interim payment of levy in accordance with the provisions of Clause 20 of this Agreement at one-half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the Sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.

### **Cancelled Orders**

- 17) Where a Sale is cancelled and the Contractor has received any payments, whether from his customer or otherwise, which he is entitled to retain, in respect of work done or in

hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to the Ministry acquisition team named in the Contract and shall provide such information as may be necessary or reasonably required for the determination of the levies payable under this clause. If a sale is entered into which involves any Contract(s) Software or any adaptation, extraction, translation or enhancement thereof which was involved in the said cancelled Sale levy will again be due on the above-mentioned basis.

### **Accounting**

- 18) The liability of the contractor to the Ministry for any sum due under this Agreement shall accrue:
- a) in respect of sales on the date of delivery.
  - b) in respect of cancelled Sales, six months after the date of termination or such longer period as may be agreed between the Contractor and the Ministry.
  - c) in the case of licences, assignment or other disposition of rights in the Contract(s) Software on the date of receipt by the Contractor of each payment.
- 19) The Contractor shall prepare statements which contain information concerning every Sale, licence, assignment or disposition of rights or other Leviable Transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:
- a) The nature of the Leviable Transaction (making clear under which of the Clauses 2 to 12 hereof it falls), and the date thereof and the name and address of the other party or parties thereto;
  - b) In the case of a Sale the number of copies of the Contract(s) Software sold, the selling price and in any other case, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof.

- c) In the case of any other Leviable Transaction, the gross receipts in money by the Contractor and the nature and value of any consideration other than money in respect thereof.
  - d) Any other matters relevant to determining the levy payable;
  - e) The sum (to the nearest pound) computed to be payable by the Contractor to the Ministry in respect of each transaction (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).
- 20) The Contractor shall supply to FMSSC, Group 34, Mersey House, Drury Lane, Liverpool L2 7PX two copies of the Statement at six monthly intervals commencing with the first Sale or licensing, assignment or disposition of rights arrangements.
- 21) The statement shall be provided not later than two months after the close of the period to which it relates and 'nil' statements shall thereafter be provided whenever appropriate. Where there are 'nil' returns over a number of years and no evident prospect of a future leviable activity or receipt the Contractor should approach the Ministry acquisition team commercial officer regarding future reporting arrangements.
- 22) Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by FMSSC. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.
- 23) Should the Contractor fail to provide Statements within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.
- 24) Two copies of an annual certificate that the sum reported on the Statements are correct and complete in accordance with the Contractor's books of account and records, or that no Sale has been made or licence assignment or disposition of rights in the Contract

Software granted or other Leivable Transactions entered into, shall be obtained by the Contractor from his auditor and shall be forwarded to FMSSC, not later than six months after the end of the Contractor's financial year.

- 25) The Contractor shall maintain proper books of accounting records at his premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office for the purpose of verifying that the terms and conditions of this Agreement are being complied with.
- 26) Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Ministry or with any Department of Her Majesty's Government.
- 27) The Contractor shall notify the Ministry acquisition team named in the Contract(s), quoting the number of the Contract, of details of all transactions involving the Contract(s) Software as set out in (a), (b) and (c) below:
  - a) Immediately it becomes apparent to the Contractor that a Sale (or contemporaneous Sale of the same software to the same Contractor) which is of value above [REDACTED] (or such higher value as may be notified by the Ministry from time to time) to the Contractor may arise, and the Contractor shall notify the said Ministry acquisition team of the estimated value.
  - b) In the event of negotiations for the grant of a licence, assignment or other disposition of rights relating to the Contract(s) Software, immediately a draft licence, assignment or other such document pertaining to the said disposition has been prepared, and shall supply a copy of the said document to the Ministry acquisition team.
  - c) Immediately it becomes apparent to the Contractor that any change in the situations referred to in sub-clause (a) and (b) of this clause is likely to occur.

## **Export Licence**



28) Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:

- a) obtaining the necessary export licences as applicable to any overseas sale; or
- b) obtaining any necessary release for security restrictions in force for the Contract(s) Software.

29) The Contractor is advised to consult the Defence Export Services Organisation St Georges Court, 2-12 Bloomsbury Way, London WC1A 2SH, on a case by case basis, before making offers to sell or licence the Contract(s) Software overseas.

**Arbitration**

30) All disputes, differences or questions between the parties to this agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Contractor) or their Umpire, in accordance with the Arbitration Act 1996.

**Law**

31) This Agreement shall be construed as a contract made in England and shall be subject to English Law.

Signed:

Signed:

Date

Date

**Ministry of Defence Commercial Exploitation Levy Agreement No:-  
CAE/0502/07/08**

**Sales of Contract Articles (excluding software)**

This AGREEMENT is made the .....day of ..... 2008

BETWEEN:

THE SECRETARY OF STATE FOR DEFENCE (hereinafter called 'the Ministry') of the one part; and

.....  
.....(hereinafter called 'the Contractor(s)' which expression where the context so admits or requires shall include its successors in title) of the other part.

**Interpretation**

- 1) In this Agreement the following shall have the effect with respect to interpretation:
  - a) 'the Contract(s)' mean(s) any Demonstration Phase Works Contract or Manufacturing Phase Works Contract relating to/for the Demonstration Phase and Manufacturing Phase, all as defined under the Manufacturing Phase Alliance Agreement No CBCVF/00201.
  - b) 'Contract Article' means any article produced under the Contract(s) which uses the design produced under the Contract(s), and includes any sub-assemblies, components or spares thereof;
  - c) 'Government-funded tooling' means jigs and tools, etc, provided or paid for by the Ministry and required for the production of a Contract Article;
  - d) the 'Contractor' means all parties to the Manufacturing Phase Alliance Agreement save for the Ministry and includes any subsidiary or associated company of the Contractor;
  - e) 'Leviable Transaction' means a sale or any other transaction giving rise to levy under

this Agreement;

f) the 'Contractor's selling price' means, subject to the proviso hereto, the price for which the Contractor invoices his customer but excluding the cost of such of the following elements as are applicable and can be identified to the satisfaction of the Ministry:

i) Freight costs and insurance

ii) Cost of packing not developed at UK Government expense

iii) The cost of ECGD servicing and other sales finance charges including interest on customer credit

iv) The cost of any Ministry inspection

v) Installation and commissioning costs where installation and commissioning form no part of the work under the development contract(s)

vi) Agents' fees and commission

vii) The price paid by the Contractor for an article or articles supplied to him by a third party for incorporation in the Contract Article, but only if such third party has a separate commercial exploitation agreement with the Ministry relating to such article or articles and has been informed by the Contractor that such article or articles are being used for a leviable transaction

viii) Value Added Tax where applicable.

Provided that any element of profit which the contractor has included in the above items (i) - (viii) shall not be so included.

g) 'Profit' other than for the purposes of the proviso to sub-clause (f) of this Clause means the difference between the Contractor's selling price and the allowable costs prescribed by the Ministry for the purpose of the sale in question, provided such

difference is a positive sum.

### **Sales and Licences**

- 2) Should the Contractor sell any Contract Article, other than for any purpose set out in Clauses 5 and 6 hereof, the Contractor shall pay to the Ministry:
  - a) a levy of the Contractor's selling price, or a fixed fee, for the use of the CVF Intellectual Property (as defined under the Manufacturing Phase Alliance Agreement) to be calculated as shown in the table at Clause 2) c) below.
  - b) a levy of ██████████ of the Contractor's selling price for the use of Government-funded tooling except that the rate of ██████████ shall be reduced appropriately where a substantial part of jigs and tools etc used in connection with a sale or other transaction has not been provided or paid for by the Ministry.

Alternatively, levy on individual sales (for which purpose contemporaneous sales of the same equipment to the same customer will count as one sale) will be payable on an appropriate profit-sharing basis to be agreed between the Contractor and the Ministry before the contract of sale is entered into. The threshold for such levy may be agreed from time to time by the Ministry on a case by case basis, in relation to future sales.

c) The levies are shown in the following table:-

Item	MCAA Sched.8 Clause ref.	Description	DEFCON	Levy	Jigs and tools levy % (if appropriate)
1 (Design)	3.10	Levy, in respect of further sales to France, of design information in excess of the rights accruing under Common Baseline Design Data Pack Licence	15/90	██████████	██
2 (Design/ Manufacture/ Support)	3.9	Levy in respect of a grant of any rights to use any Foreground Manufacturing Phase CVF Intellectual Property (other than (1) above.)	15/90	██	██
3 (Equipment)	-	Levy of sales of any ship equipment for which the IP rights have been assigned to the Industrial Participants (e.g. no DEFFORM 177 agreement exists.)	15	██	██
4 (Equipment)	-	Levy in respect of sales of any ship equipment for which the IP rights have not been assigned (and therefore a DEFFORM 177 agreement exists.)	15 / 91	████████████████████	

3) With regard to Item 2 in the above table and any other licence to manufacture granted by the Contractor in respect of Contract Articles, the Contractor shall pay to the Ministry a levy calculated at █████ per cent of the gross receipts of the Contractor in money by way of royalties, licence fees or otherwise in respect thereof:

Provided that:

a) where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payments (as the case may be), consist of or include a sum representing █████ per cent of what may reasonably be regarded as the value of the said benefit; and

- b) the Contractor shall not grant any licence for which there is no consideration, or only nominal consideration, without first agreeing with the Ministry what levy if any should reasonably be paid to the Ministry in respect of such licence; and
  - c) where the licensee pays for parts supplied in addition to paying his licence fee for manufacturing Contract Articles, levy on such parts shall be due in accordance with Clause 2 above in addition to the rate due under this clause. The receipts by the Contractor in respect of such parts shall not be regarded as receipts in respect of the licence on which the levy of ■■■ per cent is charged.
- 4) Payment of levy is deemed to include payment for the use of any industrial property rights owned by the Ministry in connection with a sale or other transaction giving rise to levy under this Agreement.
- 5) No levy shall be payable in respect of:
- a) purchases by the Ministry;
  - b) sales to another UK Government Contractor or sub-contractor when the Contract Articles concerned can be clearly identified as being supplied to meet the requirements of the Ministry;
  - c) substantial individual equipments not developed at UK Government expense.
- 6) In the case of sales to the Government of Australia, whether directly or under a sub-contract, of Contract Articles which are Guided Weapons or other items which have been developed with the aid of the Joint Project facilities at the Weapons Research Establishment, Woomera, and of spares for elements of such systems, the levy shall be restricted to a charge for the use of Government-funded tooling in accordance with Clause 2(b).

#### **Sales of or Licensing of Spares or Parts**

- 7) The sale of or licence to manufacture spares or parts of Contract Articles shall attract levy in accordance with this Agreement unless the Ministry agrees that an allowance may be made for any elements of the design of any such spare or part that were not developed at UK Government expense or a reduced rate of levy shall apply on all such spares and parts where there are practical difficulties in distinguishing between those which attract the full rate of levy, those which attract a reduced rate of levy and those on which no levy is due.

### **Derivatives**

- 8) Should the Contractor sell, refurbish, recondition, maintain, lend, hire, or grant a licence to manufacture any articles in any further stage of development or articles based on the design of, or using design features of, or being a scaled version of, the Contract Article, levy calculated in accordance with this Agreement shall be due to the Ministry only to such extent as shall be reasonable in the circumstances. Subject to this the provisions of this Agreement shall apply.

### **Refurbishing or Reconditioning**

- 9) If the Contractor, for resale or otherwise, refurbishes or reconditions any Contract Articles (except at no charge to the customer under defects liability obligations) the Contractor shall pay to the Ministry a levy consisting of:
- a) a sum calculated in accordance with this Agreement on the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles; and
  - b) a sum for any use of Government-funded tooling (other than any used only in the manufacture of the said new sub-assemblies, components and spare parts) calculated as in Clause 2(b) on the Contractor's selling price of the said reconditioned or refurbished Contract Articles after deduction of the selling price of any new sub-assemblies, components and spare parts embodied in the reconditioned or refurbished Contract Articles.

### **Maintenance Agreements**

- 10) Where an agreement for the maintenance of Contract Articles between the Contractor and another party for a fee includes the provision of parts and spares of such Contract Articles not separately invoiced, a levy calculated in accordance with this Agreement will be due on that proportion of the maintenance fee which represents a reasonable estimate for the provision of such parts and spares.

#### **Loan or Hire of Contract Articles**

- 11) Should the Contractor enter into any Agreement for lending any Contract Articles or for otherwise making such Articles available to a third party except by way of sale, the Contractor shall pay to the Ministry a levy calculated as specified under Clause 2 hereof of the gross receipts of the Contractor.

Provided that:

- a) where the consideration consists wholly or in part of some benefit other than money the levy shall, in lieu of or in addition to such payment (as the case may be), consist of or include a sum calculated in accordance with Clause 2 hereof and based on what may be reasonably regarded as the value of the said benefit; and
- b) the Contractor shall not enter into any Agreement (as set out in this clause) for which there is no consideration, or only nominal consideration, unless the Ministry has agreed what levy, if any, should reasonably be paid to the Ministry in respect of such Agreement.
- 12) Unless the Contract Article is subsequently sold, no levy shall be due where the Contractor makes a Contract Article solely for his own research or development purposes or for his own demonstration or sales promotion purposes, except in respect of use of Government-funded tooling. Contract Articles made and used by the Contractor for any other purpose shall attract levy at normal rates in accordance with Clause 2.

#### **Abatement of Levy**



- 13) Where, in the circumstances of an individual sale, the Contractor considers that the effect upon his selling price of inclusion of levy rates calculated in accordance with Clause 2 would be such as to prejudice his chances of completing the sale, or would result in an unreasonably low profit, it shall be open to the Contractor before the sale contract is entered into to seek the approval of the Ministry to an abatement scheme in accordance with the provisions of Clauses 14 and 15 herein. Provided that the Contractor's cost accounting system is adequate in the opinion of the Ministry to provide the statements of allowable costs necessary to implement the scheme such approval will not be unreasonably withheld.
- 14) The abatement scheme shall generally determine levy on the basis of outturn profitability of the sale in question expressed as a percentage on the allowable costs as prescribed for this purpose by the Ministry and shall apply as follows:
- a) where Government-funded tooling is used, the [REDACTED] percent of profit on cost shall be payable to the Ministry;
  - b) the next [REDACTED]% of profit on cost (or the initial [REDACTED]% where sub-clause 14(a) does not apply) shall be retained by the Contractor;
  - c) the remaining profit, without upper limit, shall be shared between the Ministry and the Contractor in the ratio of [REDACTED] until a total profit of [REDACTED]% on cost has been reached, and thereafter in the ratio of X:1.
- [REDACTED]

- 15) Once a request to apply the abatement scheme has been approved by the Ministry it shall not thereafter be revoked by either party for the sale in question. The Contractor shall provide on request and in a specified form a certified statement of costs and profitability and such facilities as may be necessary for the Ministry, if it so desires, to verify the statements. Where the value of the sale is less than [REDACTED] any abatement of levy may at the discretion of the Ministry, be settled (before the sale contract entered into is concluded) on the basis of the expected outturn profitability provided the request for abatement is supported by adequate evidence and reasonable notice is given to the

Ministry.

### **Notification of Leviable Transactions**

- 16) The Contractor shall notify details including, where appropriate, the expected value of the sale, to the Ministry acquisition team named in the Contract quoting the number of the Contract/CEL Agreement No.:
- a) in respect of a sale of any Contract Articles or of a development or derivation thereof
    - i) as soon as it becomes apparent that a sale (or contemporaneous sales of the same equipment to the same customer) above █████ in value (or such higher value as may be notified by the Ministry from time to time) may arise;
    - ii) immediately a first sale of lesser value is entered into;
  - b) immediately any negotiations for the grant of a licence for the manufacture of any Contract Articles, or of a development or derivation thereof, is entered into (the Ministry reserves the right in this connection to be supplied with a copy of the terms of the licence agreement); or
  - c) in respect of any leviable transaction other than a sale or licence relating to any Contract Articles, or to a development or derivation thereof
    - i) immediately the transaction is entered into where the rate of levy is laid down in this Agreement;
    - ii) immediately negotiations are entered into where the appropriate rate of levy has not been agreed;
  - d) when any proposed extension or alteration to the transactions set out in (a) (i), (b) or (c) (ii) is considered.

### **Cancelled Orders**

- 17) Where a sale is cancelled after some work in aid of the sale involving the use of

Government-funded tooling has been undertaken, a levy shall be due in respect of such use calculated on a fair and reasonable basis. Where the Contractor has received any payments, whether from his customer or otherwise which he is entitled to retain, in respect of work done or in hand, or in respect of any claim arising out of the cancellation, levy shall also be due on a fair and reasonable basis having regard to the reasonable costs and claims which the Contractor may have to meet therefrom. The Contractor shall notify any such cancellation to the Ministry acquisition team named in the Contract and shall provide such information as may reasonably be required for the determination of the levies payable under this Clause. Should any Contract Article (or article falling under Clause 8) manufactured or in course of manufacture prior to cancellation subsequently be re-sold levy will again be due on the normal basis.

- 18) The liability of the Contractor to the Ministry for any sum due under this Agreement shall accrue:
- a) in respect of sales, on the date of delivery ex-Contractor's works or, where the sale contract so prescribes, upon shipment;
  - b) in respect of cancelled sales, six months after the date of cancellation or such longer period as may be agreed;
  - c) in the case of licences, and in any other case in which levy is based on gross receipts by the Contractor in respect of an agreement relating to Contract Articles, on the date of receipt by the Contractor of each payment;
  - d) in respect of the use of Government-funded tooling where no other liability for levy arises, upon completion of the work in question, except that if the work takes longer than a year interim payments of levy will accrue as deliveries take place. In the event of cancellation of the sale liability will accrue six months thereafter;
  - e) in respect of any Variation of Price settlements on receipt of payment by the Contractor.

Payment of levy shall be in accordance with the Accounting provisions at Clauses 21-26

below.

- 19) Where an abatement scheme has been approved in accordance with Clauses 13-15 the Contractor shall be liable for interim payment of levy in accordance with the provisions of Clause 18 at one half the appropriate unabated levy rate unless the Ministry agrees otherwise. A final adjustment to or from the Ministry shall be made as soon as it is practicable after completion of the sale. The Ministry reserves the right to review and alter interim rates of levy from time to time and agrees to carry out such a review upon request by the Contractor.
- 20) Should the Contractor fail to provide statements under Clause 22 within a reasonable time the Ministry reserves the right to assess the levy payable and to recover the same.

### **Accounting**

- 21) The Contractor shall supply to FMSSC, Receipts, Group 34, Mersey House, Drury Lane, Liverpool L2 7PX, two copies of a statement (see Clause 22) at ..... intervals commencing with first sale or licensing arrangements (see Clause 16).
- 22) The statement shall contain information concerning every sale, licence or other transaction in respect of which levy accruing during the period to which the statement relates is payable, and in particular shall specify:
  - a) the nature of the transaction (making clear under which of the Clauses 2-12 hereof it falls) and the date thereof and the name and address of the other party or parties thereto;
  - b) in the case of a sale, the quantity and type of equipment sold, the selling price, and in any other case, the gross receipts in money in respect thereof and the nature and value of any consideration other than money;
  - c) any other matters relevant to determining the levy payable;
  - d) the sum (to the nearest pound) computed to be payable by the Contractor to the

Ministry in respect of each transactions (including a provisional sum in any case in which the sum depends upon a reasonable figure yet to be agreed with the Ministry).

- 23) The statement shall be provided not later than two months after the close of the period to which it relates once a first sale or licensing has been agreed and 'nil' statements shall thereafter be provided whenever appropriate. Where there are NIL returns over a number of years and no evident prospect of a future leviable activity or receipt the contractor should approach the Ministry acquisition team commercial officer regarding future reporting and future CEL arrangements.
- 24) Each statement shall be accompanied by a payment covering the accrued levy calculated by the Contractor to be due and set out in the statement (plus VAT where applicable). Invoices in respect of any other accrued levy will be issued to the Contractor by FMSSC, Receipts Group 34, Liverpool. Payments (including VAT where applicable) shall be made to the Secretary of State for Defence at the address to which statements are to be supplied, or at the address stated on the invoice, as appropriate.
- 25) Two copies of an annual certificate that the sums reported on the statements are correct and complete and in accordance with the Contractor's books of account and records or that no sales have been made or licences granted or other leviable transactions entered into, shall be obtained by the Contractor from his Auditors and shall be forwarded to the FMSSC not later than six months after the end of the Contractor's financial year.
- 26) For the purpose of verifying the statements the Contractor shall maintain proper books of account and records at his premises and shall make them available for inspection at all reasonable times by the representatives of the Ministry and of the National Audit Office.

### **Recovery of Sums Due**

- 27) Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under any contract with the Ministry or with any Department or Office of Her Majesty's Government.

**Arbitration etc**

28) This Agreement shall be considered as an agreement made in England and subject to English Law.

29) All disputes, differences or questions between the parties to this Agreement with respect to any matter arising out of or relating to this Agreement shall be referred to the arbitration of two persons (one to be appointed by the Ministry and one by the Contractor) or their Umpire, in accordance with the provisions of the Arbitration Act 1996.

30) Nothing in this Agreement shall be construed as relieving the Contractor from responsibility for:

a) obtaining the necessary export licence as applicable to any overseas sale;

b) obtaining any necessary release from security restrictions in force for the Contract Articles.

31) Contractors are advised to consult the Defence Export Services Organisation St Georges Court, 2-12 Bloomsbury Way, London WC1A 2SH, on a case by case basis before making offers to sell Contract Articles overseas.

Signed:

Signed:

Date

Date

**Schedule 8 Annex E**  
**Technical Publications**

Paragraph 6 of this Schedule 8 applies to the following Technical Publications, as listed below and as detailed in the Ship Deliverables Register (Ship Spec 1.34):

<b>Para</b>	<b>Deliverables</b>
1055	DC & FF Compartment 'Kill Cards' (Door Notices)
1083	Navigational Data Book
1084	Ship Information Book
1085	Marine Engineering Guide
1086	Weapon Engineering Guide
1087	Ship NBCD Class Book and Ship Stability and Survivability Book
1089	Ship Oil Pollution Emergency Plan (SOPEP)
1310	Aviation Facilities Log
1090	DC & FF Compartment 'Kill Cards'
1092	Platform Integrated Electronic Technical Publications (IETPs)
1093	Mission Systems Integrated Electronic Technical Publications (IETPs)
1124	Training Media for CVF specific training requirements and liaison with lead schools for the delivery of training

Purpose for which data is required

Technical Publications are required to facilitate the safe commissioning, operation and maintenance of the CVF platforms, including all platform related systems and embarked aircraft and boats, and to enable appropriate responses to be made to emergency situations.

Note: Contract delivery dates, medium of delivery and numbers of copies are as defined in Ship Spec 1.34.

**Schedule 8 Annex F**  
DEFFORM 177 (Edn 03/80) Agreement  
**Ministry of Defence**  
**Design Rights and Patents**  
**(Contractor – MoD Agreement)**

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2008

BETWEEN (name of CVF Equipment Contractor)

whose registered office is at (address)

(hereinafter called "the Contractor") of the one part and THE SECRETARY OF STATE FOR DEFENCE (hereinafter called "the Secretary of State") of the other part

WHEREAS:-

1. The Secretary of State has concluded a (CVF) Manufacturing Phase Alliance Agreement with BVT Surface Fleet Limited ("BVT"), Babcock Marine (Rosyth) Limited, BAE Systems Integrated System Technologies Limited, BAE Systems Marine Limited and Thales Naval Limited

bearing the reference number CBCVF/00201, and has placed a Manufacturing Flow-Through Contract (MFTC) with BVT, reference CBCVF/00202, the effect of which is that the costs of design and development under the Manufacturing Phase (including the cost referable to sub-contracts hereinafter referred to) will be substantially borne by the Secretary of State.

2. BVT has in turn placed MFTC Sub-Contracts with the following companies:

Babcock Marine (Rosyth) Limited (Contract reference BVT/CVF/001)

BAE Systems Integrated System Technologies Limited (Contract reference BVT/CVF/002)

BAE Systems Marine Limited (Contract reference BVT/CVF/003)

Thales Naval Limited (Contract reference BVT/CVF/004)

who, together with BVT, for the purposes of this DEFFORM 177 Agreement are referred to



as the "CVF Industrial Participants" for the execution of relevant works in connection with the MFTC.

3. \*\*\*\*\* (name of the relevant CVF Industrial Participant in (2) above) now wishes to place with \*\*\*\*\* (Contractor's name) a contract bearing the reference number \*\*\*\*\* for part of the work to be performed under (the MFTC/his MFTC sub-contract in paragraph 1/2 above).

4. The CVF Industrial Participant contemplates that the sub-contract with his Contractor will include design, development and supply of certain components needed for the performance of (the MFTC/his MFTC sub-contract).

5. The CVF Industrial Participant has now informed the Secretary of State that for the purpose of performing (the MFTC/his MFTC sub-contract) he wishes to place with his Contractor a sub-contract for the design and development of the items described in the First Schedule (hereinafter called "the sub-contract items") and has requested the Secretary of State's approval of the sub-contract accordingly.

6. With a view to securing to the Secretary of State rights as regards inventions, designs and other related matters in respect of any sub-contract, the Manufacturing Phase Alliance Agreement provides that the CVF Industrial Participant shall not enter into any sub-contract for any component aforesaid without obtaining the prior approval of the Secretary of State.

7. The Secretary of State has signified his willingness to approve the sub-contract on condition that in consideration of his giving approval the Contractor enters into a direct Agreement with the Secretary of State concerning the matters hereinafter appearing and the Contractor has signified his willingness to enter into such an agreement.

NOW THIS AGREEMENT is made in consideration of the premises and of the rights and liabilities hereunder mutually granted and undertaken. WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:-

1. The Contractor and the Secretary of State hereby agree to be bound to each other by the provisions of the conditions as set out in the schedules hereto.

2. No extension alteration or variation in the terms of the sub-contract between the CVF Industrial Participant and the Contractor and no other agreement between the CVF Industrial Participant and the Contractor relating to the work to be done under the sub-contract or any modification now or hereafter made thereto shall prejudice the operation of this Agreement which shall in all respects apply to the sub-contract as so extended altered varied supplemented or modified as if such extension alteration variation supplementation or modification had been originally provided for in the sub-contract and the expression "the sub-contract items" shall have effect accordingly.

IN WITNESS whereof the parties hereto have set their hands the day and year first before written

Signed on behalf of  
the Contractor

Signed on behalf of  
the Secretary of  
State for Defence

THE FIRST SCHEDULE

The Sub-Contract Items covered by this DEFFORM 177 Agreement are:-

Description of Equipment:  
.....

Deliverable Information to which this Agreement relates

As listed in Schedule C2 of the Contractor's sub-contract as shown in the notes to the

DEFCONs below

The Contractor shall from time to time inform the Authority of any additions or amendments to the sub-contract items.

---

## THE SECOND SCHEDULE

Subject to the provisions of the Third Schedule, the Clauses which apply to this Agreement are as follows:-

### A. GENERAL IPR DEFENCE CONDITIONS

DEFCON 14 (Edn 11/05) - Inventions and Designs - Crown Rights and Ownership of Patents and Registered Designs.

DEFCON 15 (Edn 02/98) - Design Rights and Rights To Use Design Information

- (a) In the absence of a DEFFORM 315, the relevant Contract Data Requirements under Clause 1 “Application” of DEFCON 15, are as listed in Parts 1 – 13 inclusive of Schedule C2 of the Contract.

DEFCON 16 (Edn 10/04) - Repair and Maintenance Information

- (a) In the absence of a DEFFORM 315, the relevant Contract Data Requirements, under Clause 1 “Application” of DEFCON 16, are as listed in Parts 1 – 13 inclusive of Schedule C2 of the Contract.

DEFCON 21 (Edn 10/04) - Retention of Records

- (a) (a) In the absence of a DEFFORM 315, the relevant Contract Data Requirements under Clause 1 “Application” of DEFCON 21, as listed in Parts 1 - 13 inclusive of Schedule C2 of the Contract.
- (b) Note: The period prescribed for Clause 3 of DEFCON 21 shall

be ten years.

DEFCON 90 (Edn 11/06) - Copyright.

- (a) For the purposes of Clause 4(c) of DEFCON 90, the "prescribed nations" are any of the member nations of NATO, Sweden, Australia and New Zealand.

DEFCON 91 (Edn 11/06) - Intellectual Property Rights in Software.

For the purposes of Clause 3.5 of DEFCON 91, the "prescribed nations" are any of the member nations of NATO, Sweden, Australia and New Zealand.

For the purposes of DEFCON 91, the Deliverable Software is that software, or software modules, developed and delivered to enable the equipment to achieve its CVF Acceptance criteria.

DEFCON 126 (Edn 10/04) - International Collaboration Clause.

- (i) The 'period prescribed' for the purposes of paragraphs 2 and 3 of DEFCON 126 shall be 25 years.

DEFCON 531 (Edn 05/05) - Disclosure of Information

DEFCON 632 (Edn 10/04) - Third Party Intellectual Property Rights – Commercial and Non-Commercial Articles and Services.

## B. SPECIFIC CONDITIONS

### 1. Minimum Rights Clause

1.1 Without prejudice to the Secretary of State's rights under any applicable DEFCON, the Secretary of State shall have the following rights in respect of all Technical Information which comprises or is contained within a Deliverable being procured under the sub-contract placed on the Contractor:

- (a) the right to copy that Technical Information and to circulate it within any United Kingdom Government Department (which term includes the United Kingdom Armed

Forces) provided that no part of the same is made available to any third party; and

- (b) the right to issue in confidence to a third party that Technical Information or any copy of the same or any part thereof for the purpose of acceptance of CVF 01 and CVF 02; certification by any recognised certification organisation; development of standards; assessment, testing or evaluation purposes to enable the Secretary of State to perform its duties in regard to safety and environmental protection or in response to any emergency or threatened emergency including without limitation salvage, but such disclosure of the Technical Information will be strictly limited to that necessarily required for the purposes set out in this paragraph 1.1(b).

1.2 With respect to all interior and exterior surface photographs of CVF 01 and CVF 02, and certificates for CVF 01 and CVF 02 which are Deliverables, the Secretary of State shall have the additional right to copy, use and issue to any third party such photographs and certificates for any purpose relating to CVF 01 and CVF 02 including (without limitation), any statutory requirement, upkeep, update and upgrade, operational purposes, ship familiarisation and training and publicity.

## 2. Technical Publications

The contractor shall ensure that the Authority has the right to copy, amend, extend or have copied, amended or extended any technical publication called for under the sub-contract or any part thereof including any such part when incorporated in any amended or extended version of such technical publication, and to circulate, use or have used said technical publication including any amended or extended version and any copies thereof for any United Kingdom Government purpose but not for the purpose of manufacturing equipment to which the technical publication relates.'

## 3. Security of Supply

In the event of the Contractor entering into administration, receivership, winding up or liquidation, or being unable or unwilling on fair and reasonable terms to continue to support the sub-contract items the Authority shall have the additional right to:

- (a) secure from the Contractor the delivery of a technical data package to comprise information to such extent and depth necessary to enable the Authority (or a third party authorised by the Authority) to replicate and support the Sub-contract items. The

technical data package shall be marked as being the property of the Authority and shall be made available for collection at the Contractor's premises. Legal title to the physical media comprised within the technical data package shall vest with the Authority as the technical data package is assembled; and

- (b) use the information comprised within the technical data package for manufacture or for any support purpose.

#### 4. Further Sub-contracts

4.1 The Contractor shall not place any further sub-contract or order involving design or development work or the procurement of a critical item under the sub-contract without the prior written approval of the Secretary of State. In cases where new Intellectual Property is likely to be created, such approval shall be conditional on the further sub-contractor having first entered into a direct agreement with the Secretary of State (DEFFORM 177) as to the disposition of Intellectual Property Rights. Unless otherwise advised such direct agreement shall reflect mutatis mutandis the provisions of this Second Schedule. The Contractor shall give as much written notice as possible to the Secretary of State concerning any proposals to place such work with specific further sub-contractors.

4.2 Where the Contractor proposes to place a sub-contract which is to involve the supply of critical items (items for which there are no substitutes in the market and for which security of supply could be affected if the Contractor ceased production of such critical items) the Contractor shall notify the Authority which shall decide in its absolute discretion whether it wishes to put in place a direct agreement with such sub-contractor for the purposes of ensuring security of supply of the critical item. The Contractor shall provide reasonable assistance to the Authority in determining whether it is procuring any critical items.

4.3 The provisions of this Second Schedule shall be included mutatis mutandis in all further sub-contracts placed by the Contractor except where there is already a direct DEFFORM 177 agreement in existence, except that:

- a. In the general DEFCONs:
  - (i) Where "the Contractor" is stated "the Sub-Contractor" shall be substituted.
  - (ii) Where "the Authority" is stated "the Secretary of State" shall be substituted.
  - (iii) Where "Contract" is stated "sub-contract" shall be substituted.

- (iv) Where "sub-contractor" is stated "further sub-contractor" shall be substituted.
- (v) Where "sub-contract" is stated "further sub-contract" shall be substituted.
  
- b. In the Specific Conditions:
  - (i) Where "Contractor" is stated "the Sub-Contractor" shall be substituted.

Ministry of Defence

**CONTRACT DATA REQUIREMENT**

1. <u>ITT/Contract Number</u>	2. <u>CDR Number</u>	3. <u>Data Category</u>	4. <u>Contract Delivery Date</u>
5. <u>Equipment/Equipment Subsystem Description</u>		6. <u>General Description of Data Deliverable</u>	
7. <u>Purpose for which data is required</u>		8. <u>Intellectual Property Rights</u> a. <u>Applicable DEFCONs</u>  b. <u>Special IP Conditions</u>	
9. <u>Update/Further Submission Requirements</u>			



10. <u>Medium of Delivery</u>	11. <u>Number of Copies</u>

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THE THIRD SCHEDULE

CONTRACTOR’S INDEPENDENTLY DEVELOPED PRODUCTS

1. The items listed on the Annex to this Third Schedule are those accepted by the Secretary of State for the purposes of the sub-contract and this Agreement as being Independently Developed. By "Independently Developed" is meant any item whose development was not funded in whole or in part by the Secretary of State under this Project.

2. In the event of the Secretary of State seeking competitive tenders for any future support of the carrier vessels, the Contractor accepts that the Secretary of State may from time to time require additional performance and interface data and other information to enable the Secretary of State itself or other competent contractors to meet the support requirements of the Secretary of State, including using alternatives to the private venture items. The Contractor shall, at the request of the Secretary of State, provide for such use all such information to the Secretary of State and the cost of providing such information shall be payable to the Contractor.

**Annex to the Third Schedule**

**DEFFORM 177 – LIST OF INDEPENDENTLY DEVELOPED INTELLECTUAL PROPERTY BEING EMPLOYED ON THE SUB-CONTRACT– INTERIM / FINAL\***

**Guidance**

A. Sections 1 and 2 of this form aim to capture the main Independently Developed items - items which the Contractor has developed without using UKG funding. If there is any known Independently Developed intellectual property from a Third Party this should be captured in the second section. Where the design is still developing, an initial submission may be followed up by a final submission when the design is mature but the Ministry will need to be assured that additional Independently Developed items pre-existed the date of the Sub-Contract.

**1. Contractor’s own Independently Developed (funded) Intellectual Property:-**

Equipment / Process	Part / Drawing / Reference No:	Patent / Registered Design No if applicable	PV or Third Party funding	Date

(add further rows as necessary)

**2. Third Party's (i.e. further sub-contractor or Contractor) own Independently Developed (funded) Intellectual Property:-**

Equipment / Process	Part / Drawing / Reference No:	Patent / Registered Design No if applicable	PV or Third Party funding	Date

**Schedule 9**  
**Confidentiality**

**1 Definitions and Interpretation**

1.1 For the purpose of this Schedule 9 the Manufacturing Alliance Participants will be referred to individually as “**Party**” and together as “**Parties**” save for where as otherwise stated.

“**Group**” for the purposes of this Schedule 9 only Group shall have the meaning as given at Schedule 1 (Definition and Interpretation) to this Agreement in relation to the Industrial Participants and shall mean in relation to the Authority any UK Government department or agency. The restrictions in Paragraph 2 to this Schedule 9 shall not apply to the extent that the Receiving Party:

- (a) exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Agreement and/or any Manufacturing Phase Works Contract;
- (b) has the right to use or disclose the Confidential Information pursuant to any other terms and conditions of this Agreement and/or any Manufacturing Phase Works Contract; or
- (c) can show
  - (i) that the information was or has become published or publicly known otherwise than as a result of a breach of the provisions of this Agreement and/or any Manufacturing Phase Works Contract and/or any other agreement between the Disclosing Party and the Receiving Party or either of them or their associated companies;
  - (ii) that the information was lawfully obtained by the Receiving Party from a third party who lawfully acquired it and who has himself full rights of disclosure;
  - (iii) that the information was already in its unrestricted possession at the date of receipt of the Confidential Information from the Disclosing Party; or

- (iv) that the information was derived independently of any Confidential Information.

### **Confidentiality Undertaking**

2 In consideration of the foregoing and subject to the provisions of Schedule 3 (Open Book), each Receiving Party undertakes as follows:

- (a) to keep confidential and not to disclose Confidential Information received under this Agreement and/or any Manufacturing Phase Works Contract to any third party without the prior written consent of the Disclosing Party other than to (i) a member of the Receiving Party's Group or (ii) any Sub-Contractor contracted to any of the Manufacturing Alliance Participants or to a member of any Industrial Participant's Group in connection with the Permitted Purpose, provided that such members of the Receiving Party's Group and Sub-Contractors give written undertakings of confidentiality to the Receiving Party on terms no less onerous than those contained in this Schedule 9 and on the basis that any party shall be liable to the other Parties for any breach by its Group of the undertakings contained in this Schedule 9 as if they were party to this Agreement;
- (b) not to disclose such Confidential Information to any personnel within its own Group, other than those personnel who have a need to receive such Confidential Information for the Permitted Purpose;
- (c) not to use or allow to be used such Confidential Information otherwise than solely for the Permitted Purpose unless (and then only to the extent to which) a further use is specifically authorised in writing by the Disclosing Party;
- (d) to procure that each person, to whom Confidential Information is disclosed under this Agreement and/or any Manufacturing Phase Works Contract pursuant to Paragraph 2(b) above is made aware of the provisions of this Schedule 9 prior to such disclosure to it and that each such person undertakes in writing to the Receiving Party to equivalent provisions of confidentiality as this Schedule 9;
- (e) to promptly notify the Disclosing Party upon becoming aware of any breach or

impending breach of confidence owed by any person to the Receiving Party to whom the Receiving Party has disclosed Confidential Information and give all necessary assistance and take all reasonable steps which Disclosing Party may wish to take to prevent or obtain compensation for such breach or threatened breach;

- (f) to ensure that any proprietary marking applied by the Disclosing Party to such Confidential Information is reproduced on any copy, reproduction or reduction to writing or other material form of presenting the information and such copying, reproduction and reduction is done only to the extent necessary for the Permitted Purpose;
- (g) not to copy, reproduce or reduce to writing any part of such Confidential Information except as may be reasonably necessary for the Permitted Purpose; and
- (h) comply with any restrictions on disclosure and circulation of commercial information which are contained in any other agreements between any Manufacturing Alliance Participants relating to the Manufacturing Phase.

3 If the Receiving Party receives a requirement for disclosure of Confidential Information from any court, tribunal, government department or agency or other official body of competent jurisdiction (an “**Official Request**”) the Receiving Party shall provide the Disclosing Party with prompt written notice of any such Official Request so that the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Schedule 9 in respect of the Official Request. If, in the absence of a protective order or other remedy the Receiving Party is nonetheless legally compelled to disclose Confidential Information pursuant to the Official Request the Receiving Party may disclose only that portion of the Confidential Information which is legally required to be disclosed.

4 The Receiving Party shall not be in breach of this Agreement where it can show that any disclosure of Confidential Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 (“**the Act**”) or the Environmental Information Regulations 2004 (“**the Regulations**”). To the extent permitted by the time for compliance under the Act or the Regulations, the Receiving

Party shall consult the Disclosing Party where the Receiving Party is considering the disclosure of Confidential Information under the Act or the Regulations and, in any event, shall provide prior notification to the Disclosing Party of any decision to disclose the Confidential Information. The Disclosing Party acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Confidential Information in order to comply with the Act or the Regulations is a matter in which the Receiving Party shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this Paragraph 4 shall affect the Disclosing Party's rights at law.

- 5 The obligation on the Receiving Party to keep Confidential Information confidential to itself will be satisfied by the Receiving Party if it uses the same controls as it employs to avoid disclosure, publication and dissemination of its own Confidential Information of a similar nature, provided not less than a reasonable standard of care is used.
- 6 Nothing in this Schedule 9 shall replace or prejudice any government security classification referenced on any part of the Confidential Information and the Receiving Party (save for the Authority) undertakes to respect and observe any such classification and comply with all matters relating to it.
- 7 This Schedule 9 shall not be construed as granting either expressly or impliedly any rights or licences under patents, copyright or under any other form of Intellectual Property belonging to or at the disposal of the Disclosing Party in relation to any Confidential Information of the Disclosing Party.
- 8 Each party shall perform its respective obligations under this Schedule 9 without charge to the other Parties.
- 9 This Schedule 9 is intended to facilitate only the exchange of Confidential Information and is not intended to be, and shall not be construed to create a teaming agreement, joint venture, association, partnership, or other business organisation or agency arrangement and no party shall have the authority to bind any of the others without the other Parties' separate prior written agreement.
- 10 On termination or expiration of this Agreement and/or any Manufacturing Phase

Works Contract between it and the Authority for any reason, the Receiving Party (other than the Authority) shall not retain any Confidential Information disclosed to it under this Agreement and/or any Manufacturing Phase Works Contract by another party, and shall upon the Disclosing Party's written request, either return immediately to the Disclosing Party or destroy all such Confidential Information which is in a tangible form and is in the possession or control of the Receiving Party pursuant to this Agreement and/or any Manufacturing Phase Works Contract together with all copies, unless it can establish that it is the owner of any underlying Intellectual Property in such Confidential Information, and shall make no further use, copy or disclosure of any of the Confidential Information.



## Schedule 10

### Facilities

- 1 All Manufacturing Alliance Participants shall ensure that its employees, officers and agents and in the case of any Industrial Participant the employees, officers and agents of its Group companies (to the extent applicable) will observe the site rules and regulations for visitors/sub-contractors from time to time of any Industrial Participant when they are on that Industrial Participant's site. Site rules may cover HSE and security as well as other matters.
- 2 DEFCON 76 will apply in relation to the employees, officers and agents of any Industrial Participants and the employees, officers and agents of its Group companies (to the extent applicable) when on the Authority's sites.
- 3 Each Manufacturing Alliance Participant shall provide its current site rules to each other Manufacturing Alliance Participant on request, including any requirements which apply specifically to the Manufacturing Phase.
- 4 All Manufacturing Alliance Participants shall ensure that its employees, officers and agents and the employees, officers and agents of its Sub-contractors will have the necessary security clearances at any other Manufacturing Alliance Participant's site.
- 5 In relation to the temporary occupation of premises and other facilities at any Industrial Participant host site:
  - (a) use of the agreed premises and facilities (including utilities consumed) within the pre-notified limits will be for a peppercorn (payable by the occupying party). The associated costs will be recovered by the host Industrial Participant under its Manufacturing Phase Works Contract;
  - (b) the requirements for occupation including the numbers of personnel, category of accommodation, facilities and services required, start date and vacation date will be agreed not less than 60 Business Days in advance with the host Industrial Participant unless the relevant Manufacturing Alliance Participants agree otherwise;
  - (c) the terms of occupation will, unless otherwise agreed in writing be the same as

those which apply to other licensees or (as appropriate) tenants at the host Industrial Participant's site from time to time. The host Industrial Participant will provide its current terms on request. Where appropriate the licensing/tenant Manufacturing Alliance Participant and the host Industrial Participant will enter into a licence agreement or lease on these or similar terms as agreed;

- (d) office premises and other premises and facilities will be used solely for the purpose of performance of the Manufacturing Phase Works Contracts unless otherwise agreed in writing with the host Industrial Participant. The premises will (unless otherwise agreed in writing with the host Industrial Participant) be vacated by the licensing/tenant Industrial Participant on completion of the relevant parts of its Statement of Work and by the Authority at the end of Phase 2;
- (e) unless otherwise agreed in writing, the host Industrial Participant will be entitled to relocate the licensing/tenant Manufacturing Alliance Participant to alternative suitable premises and facilities with equivalent IT and support services at the same site on reasonable notice;
- (f) requirements in relation to use and areas and facilities to be made available shall be as detailed in the host Industrial Participant's Statement of Work in the relevant Manufacturing Phase Works Contracts.

## Schedule 11

### Information Technology

- 1 BVT shall provide such backbone information technology (hardware, software and support) as necessary to provide commonality of information systems and management among the Manufacturing Alliance Participants being the Shared Data Environment (also known as the “Backbone System”) provided in accordance with the Statement of Work.
- 2 Each of the Manufacturing Alliance Participants shall remain responsible for its own information technology systems (other than the agreed Backbone System) and the interface hardware and software between the Backbone System and its systems. For the avoidance of doubt, such systems will remain the property of the Manufacturing Alliance Participant concerned.
- 3 Title in any hardware, and title or user rights (as the case may be) forming part of the Backbone System as may be acquired by any Industrial Participant from any supplier shall vest in the Industrial Participant who actually procures the same whilst such Industrial Participant remains a member of the Alliance. Such Industrial Participant shall grant a royalty-free licence to use such hardware and/or software during the Manufacturing Period to the Authority and to all Other Industrial Participants. In the case of such licence to the Industrial Participants, the licence is granted only to the extent necessary for the performance of the scope of work of such Industrial Participant from time to time under their respective Manufacturing Phase Works Contract. In the event that such Industrial Participant is excluded from the Alliance in accordance with Clause 24 (Exclusion, Step-In, Novation and Termination) during the Manufacturing Period, the Alliance Management Board shall determine the title, users rights and location of such hardware and software relating to the Backbone System and direct the Excluded Participant accordingly and the Excluded Participant shall comply with any such direction of the Alliance Management Board.
- 4 All Manufacturing Alliance Participants undertake to comply with any anti-virus policy agreed by them from time to time in force, and, in the absence of such a policy, to take all reasonable and prudent steps to prevent any computer software virus, or any

other form of computer corruption or contamination entering the Backbone System.

- 5 BVT and the procuring Industrial Participant shall ensure that all hardware or software relating to the Backbone System shall be procured on terms that enable the licences referred to in Paragraph 3 above to be granted.
- 6 BVT and any procuring Industrial Participant shall advise all other Manufacturing Alliance Participants of the terms on which any hardware or software relating to the Backbone System has been procured, including, without limitation, intellectual property rights, confidentiality requirements, indemnities and limits of liability. Each Manufacturing Alliance Participant utilising any hardware or software supplied pursuant to this Schedule 11 shall do so subject to such notified terms and the provisions of Schedule 14 (Liability/Indemnity/Insurance) shall apply in relation to any failure to do so.
- 7 Each Manufacturing Alliance Participant shall be responsible for ensuring that its respective information technology hardware and software, interfacing with the Backbone System, is maintained in good order and condition, so as to facilitate efficient data transfer.
- 8 *Not used*
- 9 BVT agrees to procure that BAE Systems (Operations) Limited shall novate the Electronic Information Sharing Agreement between the Authority and BAE Systems (Operations) Limited dated 3 March 2005 (the “**EISA Agreement**”) to BVT as soon as is reasonably practicable after the Commencement Date subject to the consent of the “Users” (as defined in the EISA Agreement) and the Authority and BVT agree to accept such novation.
- 10 Until novation of the EISA Agreement to BVT, BVT will procure that BAE Systems (Operations) Limited shall provide and operate the Shared Data Environment, as defined in the EISA Agreement, in accordance with the provisions of the EISA Agreement.

- 11 Each Manufacturing Alliance Participant (for the purposes of this Paragraph 11 the “Indemnifying Party”) hereby indemnifies each other Manufacturing Alliance Participant (for the purposes of this Paragraph 11 the “Indemnified Party”), against:
- (a) any liability of the Indemnified Party to any Non-Alliance Party, arising solely and directly from a breach by the Indemnifying Party of any of the Indemnifying Party’s obligations under Paragraphs 3 and 6 of this Schedule; and/or
  - (b) any liability of the Indemnified Party to any Non-Alliance Party, arising solely and directly from the failure of the Indemnifying Party to advise the Indemnified Party of any relevant restrictions on use of such Non-Alliance Party’s proprietary hardware or software which restrictions were known to the Indemnifying Party; and/or
  - (c) any liability of the Indemnified Party to any Non-Alliance Party, arising solely and directly from any breach by the Indemnifying Party of any licence granted by the Indemnified Party to the Indemnifying Party pursuant to Paragraph 3 of this Schedule.

## Schedule 12

### Government Furnished Assets

#### 1 GFA Tool Set

- 1.1 The GFA detailed in the GFA Tool Set shall be issued, free of charge to the relevant Industrial Participants for embodiment and support to embodiment in the Vessel(s). The Industrial Participants acknowledge and agree that save for the GFA detailed in the GFA Tool Set, the Authority shall have no obligation to any of the Industrial Participants to provide any other GFA to the Industrial Participants for the purposes of enabling the Industrial Participants to achieve the Manufacturing Phase Objective.
- 1.2 All GFA shall remain the property of the Authority. It shall be used in the performance by the Industrial Participants of their obligations under the Manufacturing Phase Works Contracts and for no other purpose, without the prior approval in writing of the Authority.
- 1.3 Neither the Industrial Participants, nor any Sub-Contractor, nor any other person, shall have a lien on GFA, for any sum due to any Industrial Participant, subcontractor or other person, and the Industrial Participants shall take all such steps as may be necessary to ensure that the title of the Authority, and the exclusion of any such lien, are brought to the notice of all Sub-Contractors and other persons dealing with any GFA.
- 1.4 Any GFA requirements, information and certification shall be compatible with the Vessel(s) transverse engineering and integrated logistics support requirements only in so far as the same are set out in the GFA Tool Set. In the event of any incompatibility of any GFA with the Vessel(s) transverse engineering and integrated logistics support requirements as set out in the GFA Tool Set, the Authority shall either modify its requirements for the Vessel(s) through a Change or a concession or modify the GFA requirements, information and certification to ensure that they are compatible.

#### *Receipt*

- 1.5 Subject to Paragraphs 1.6 and 1.9 below, not later than 15 Business Days after receipt of GFA, the receiving Industrial Participant shall:

- (a) check the GFA to verify that it corresponds with the GFA specified in the GFA Tool Set;
  - (b) conduct a reasonable visual inspection;
  - (c) conduct any additional inspection and testing as may be necessary and practicable to check that the GFA is not defective or deficient for the purpose for which it has been provided; and
  - (d) notify the Authority of any defects, deficiencies or discrepancies discovered.
- 1.6 Where any GFA is packaged it shall not be unpacked earlier than is necessary. The period identified at Paragraph 1.5 above shall count from the date on which packages are opened.
- 1.7 Subject as provided in this Paragraph 1.7, the Authority shall within a reasonable time after receipt of any notice under Paragraph 1.5(d) replace, re-issue or authorise repair of any GFA agreed to be defective or deficient. If appropriate, the Authority shall also issue written instructions for the return or disposal of the defective or deficient GFA. In the event that any defect or deficiency notified under this Paragraph 1.7 is caused by the gross negligence of an Industrial Participant or its employees or any of its subcontractors or any of their employees the provisions of this Paragraph 1.7 shall continue to apply save that the grossly negligent Industrial Participant shall reimburse the Authority for the cost of such repair, re-issue or replacement and that such reimbursement shall not be an Allowable Cost.
- 1.8 In the event that the Authority fails to provide, replace, or authorise repair of any defective or deficient GFA within a reasonable time of receipt of a notice in accordance with Paragraph 1.5(d), and provided that the Industrial Participants have taken all reasonable measures to mitigate the consequences of any such delay on the Manufacturing Phase, then, on any request made by any Industrial Participant for a Change to be made to take account of the impact of such delay, a Change shall be made in accordance with the Change Procedure to effect an Equitable Adjustment
- 1.9 Paragraphs 1.5 to 1.8, inclusive, shall not apply in the following circumstances:
- (a) where GFA is issued for the purpose of repair, overhaul, conversion or other

work to be performed on the GFA, inspection of such property shall be as specified in the GFA Tool Set;

- (b) where the relevant Industrial Participant can show that the GFA cannot be fully tested until it has been integrated with other items, inspection of such property shall be as specified in the GFA Tool Set; and
- (c) where Special Jigs and Tools etc. become GFA under DEFCON 23.

### *Custody*

1.10 Subject to Paragraph 1.13 below and to any limitation or exclusion of liability as may be specified in this Agreement, the Industrial Participants shall be responsible for the safe custody and due return of GFA, whether or not incorporated into the Works, and shall be responsible for all loss or damage thereto, until re-delivered in accordance with the Authority's instructions or until the Vessel Acceptance Date for the Second Vessel.

1.11 The Authority or the Industrial Participants shall be responsible for such calibration and maintenance of the GFA as is specified in the GFA Tool Set.

1.12 If requested, the Authority, within a reasonable time, and where practicable before delivery of the GFA, shall notify the receiving Industrial Participant of the value of the GFA.

1.13 The Industrial Participants shall not be liable in respect of:

- (a) defects or deficiencies notified to the Authority in accordance with Paragraph 1.5 or latent defects which the relevant Industrial Participant can show could not reasonably have been discovered by means of the activities described at Paragraph 1.5;
- (b) fair wear and tear in GFA resulting from its normal and proper use in the execution of this Agreement (except insofar as the deterioration is contributed to by any misuse, lack of care or want of maintenance required pursuant to Paragraph 1.11 by an Industrial Participant);
- (c) GFA rendered unserviceable as a direct result of ordinary performance of this



Agreement; or

- (d) any loss or damage to GFA arising from:
  - (i) aircraft or other aerial devices or objects dropped from them, including pressure waves caused by aircraft or such devices whether travelling at sonic or supersonic speeds;
  - (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
  - (iii) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof; or
  - (iv) riot, civil commotion, civil war, rebellion, revolution, insurrection, military or usurped power or acts of the Queen's enemies.

*Accounting and Return of GFA*

1.14 Each Industrial Participant shall:

- (a) open and maintain a Public Store Account (PSA) in accordance with DEF STAN 05-99;
- (b) ensure that all property of the Authority recorded in the PSA, including but not limited to GFA, is available for inspection by the Authority at any reasonable time; and
- (c) on being given two months notice or such other period as has been stated in this Agreement permit, and co-operate with, the Authority to conduct audits of the property of the Authority recorded in the PSA in a manner to be determined by the Authority and where the Authority has reasonable grounds to believe that the property of the Authority has not been used in accordance with the terms of issue then these audits may be conducted without notice.

1.15 Once title in Special Jigs, Tools etc has passed to the Authority in accordance with clause 4 of DEFCON 23 each Industrial Participant shall record that equipment in the PSA in accordance with DEF STAN 05-99.

- 1.16 At the Vessel Acceptance Date for the Second Vessel each Industrial Participant shall forward a list of GFA still held by the Industrial Participants to the Authority's Commercial Officer named in this Agreement. Return or disposal of such GFA will be as instructed by the Authority within two months of the Industrial Participant's written request to do so.
- 1.17 On the date of signature of this Agreement, the GFA Tool Set will comprise an initial list of items that will be refined and developed by agreement between the Authority and the Industrial Participants during Phase 1 under configuration management in accordance with the Configuration Management Plan and provided always that any such refinement and development shall not constitute a Change or an additional requirement on the Authority unless agreed in accordance with the Change Procedure. By the end of Phase 1, the GFA Tool Set will be fully developed with the intention that it can then be finally agreed between the Authority and the Industrial Participants.
- 1.18 Any changes to the items comprised in the GFA Tool Set shall be made in accordance with the Change Procedure.
- 1.19 If the parties agree, pursuant to and in accordance with the Change Procedure, that any equipment previously to be provided by any Industrial Participant is, instead, to be provided by the Authority as part of the GFA Tool Set, then such Change shall be made in accordance with the Change Procedure and shall include an Equitable Adjustment.

## 2 GFA – Authority's obligations

- 2.1 The Authority shall provide/deliver the agreed GFA in accordance with the requirements detailed in the GFA Tool Set (where applicable this will reference the agreed point of delivery, acceptance events, condition, standard and/or functionality of the GFA in accordance with any agreed requirements).
- 2.2 Where detailed in the GFA Tool Set the Authority shall provide:
- (a) any necessary support (including facilities if required, but not including through life support) to enable integration and trials of the GFA (including resolution of any interface issues that arise) up to the relevant Vessel Acceptance Date. Such support shall include (but not be limited to) any

- necessary tools and test equipment, setting to work and commissioning spares;
- (b) any necessary training, spares, handbooks and maintenance and operations instruction; and
- (c) sufficient numbers of appropriately qualified and trained personnel to the receiving Industrial Participant free of charge to install, integrate, maintain and calibrate the GFA once delivered.

#### Repair/Replacement

- 2.3 In the event an item of GFA, while in the care and custody of an Industrial Participant is either lost or damaged, the Authority shall within a reasonable time after receipt of a notice from the Industrial Participant notifying the Authority of such loss or damage and the provision of such supporting evidence as the Authority may reasonably require, either at its sole option:
- (a) replace or repair any GFA agreed to be lost or damaged; or
  - (b) authorise the relevant Industrial Participant to replace or repair any GFA agreed to be lost or damaged in which case the relevant Industrial Participant shall promptly proceed to replace or repair the GFA as authorised; and
  - (c) if appropriate, the Authority shall also issue written instructions for the return or disposal of the damaged GFA.
- 2.4 If the Authority replaces or repairs any GFA under Paragraph 2.3(a) above, the cost of such replacement or repair up to the amount of the Deductible shall be deducted from the Project Target Cost.
- 2.5 If an Industrial Participant replaces or repairs any GFA under Paragraph 2.3(b) above, then Schedule 14 (Liability/Indemnity/Insurance) shall apply in relation to the costs thereof.
- 2.6 Any GFA-to-GFA interfaces between items of GFA and any necessary GFA-to-GFA direct integration activity required in relation to the interfaces of those items of GFA shall be carried out and certified to the relevant Industrial Participant by the Authority. Any GFA-to-Industrial Participant interfaces, being interfaces between items of GFA

and items which are not GFA, and any necessary GFA-to-Industrial Participant integration activity required in relation to such items shall be carried out by the relevant Industrial Participant.

2.7 In the event of late delivery or non-provision of any GFA by the Authority which adversely impacts on the Integrated Schedule:

- (a) the Authority and the Industrial Participants shall use all reasonable endeavours to mitigate the effect (including the consequential impact of carrying out any delayed trials or retrials) of any such late delivery or non-provision and, to the extent reasonably practicable, the Industrial Participants shall continue with the construction, testing and commissioning of the Vessel(s) in accordance with the Key Project Agreements but subject to the provisions of Paragraphs 2.7(b) and 2.7(c) below;
- (b) the Industrial Participants shall carry out the Works such that the appropriate part of the Vessel(s) is/are fit to receive the missing GFA insofar as is reasonably practicable and cost effective;
- (c) where the missing GFA prevents the Industrial Participants from testing, commissioning and demonstrating the performance of any other equipment or systems impacted by the missing GFA which are their responsibility, then such activities shall not be required to be performed and Vessel Acceptance of the relevant Vessel shall not be delayed and the Authority shall arrange at its own cost, the installation and if necessary any associated trials of any such missing GFA post-Vessel Acceptance Date; and
- (d) in the event that the Authority or any Industrial Participant considers that, having complied with the provisions of Paragraph 2.7(a), a Change is required then such party shall request a Change and the provisions of the Change Procedure shall apply including if appropriate and agreed between the Authority and the Industrial Participants, an Equitable Adjustment.

## Schedule 13

### Personnel

#### **1 Transfer Regulations – the Authority**

1.1 Neither the Authority nor the Industrial Participants envisage any circumstances in which an employee of the Authority will transfer to the employment of any Industrial Participant or any Sub-Contractor by virtue of the Transfer Regulations or otherwise by operation of law as a result of any transaction or arrangement contemplated by this Agreement or any associated agreement.

1.2 In the event that a claim or allegation is made by

- (a) an employee of the Authority (an “Unexpected Employee”); or
- (b) any other person:

that the Unexpected Employee has transferred to an Industrial Participant or Sub-Contractor (and in this Paragraph 1.2 references to an Industrial Participant shall also be to a Sub-Contractor) by virtue of the Transfer Regulations and this Agreement, or otherwise by operation of law as a result of any transaction or arrangement contemplated by this Agreement or any associated agreement, the party receiving the claim or allegation shall notify the Authority within 20 Business Days of receiving written notification of the Unexpected Employee’s or any other person’s claim or allegation, whereupon:

- (a) the Authority shall be given 30 Business Days either to offer re-employment to the Unexpected Employee on terms that the employee previously enjoyed and on the basis that continuity of service is preserved, to the extent permitted by law or take such other steps so as to effect a written withdrawal of the claim or allegation; and
- (b) in the event that the claim or allegation in respect of the Unexpected Employee is not withdrawn or resolved within 30 Business Days of the Authority being so notified by the Industrial Participant, the Industrial Participant may within a further 10 Business Days terminate the Unexpected Employee’s employment; and

- (c) following the expiry of the time periods set out in Paragraphs 1.2(a) and 1.2(b) above, the Authority shall reimburse the Industrial Participant for any of the following liabilities incurred by the Industrial Participant in dealing with or disposing of the Unexpected Employee's claim or allegation of the following:
  - (i) any liabilities acquired by virtue of Regulation 13 of the Transfer Regulations in relation to the Unexpected Employee or which arise as a direct result of acts or omissions of the Authority prior to the transfer of the Unexpected Employee;
  - (ii) any liabilities relating to the termination of the Unexpected Employee's employment provided the Industrial Participant has satisfied the conditions specified in Paragraph 1.4;
  - (iii) any liabilities incurred under a settlement of the Unexpected Employee's claim which was reached with the express permission of the Authority;
  - (iv) reasonable administrative costs incurred by the Industrial Participant in dealing with the Unexpected Employee's claim or allegation, subject to a cap per Unexpected Employee of £5,000; and
  - (v) legal and other professional costs reasonably incurred;
- (d) the Industrial Participant shall be deemed to have waived its right to reimbursement as per Paragraph 1.2(c) above if it fails without reasonable cause to take any action in accordance with any of the timescales referred to in this Paragraph 1.2.

1.3 Any reimbursement of the Industrial Participant by the Authority under Paragraph 1.2(c) above shall be by way of payment as an Incurred Cost with an Equitable Adjustment .

1.4 The Industrial Participants each warrant that, in dealing with any Unexpected Employee they will:

- (a) where possible, seek to effect any dismissal of any Unexpected Employee

fairly and in accordance with the terms and conditions of employment of the Unexpected Employee and in accordance with any applicable collective agreements; and

- (b) comply with all relevant statutory obligations which are imposed on an employer;
- (c) where possible, effect any dismissal of any Unexpected Employee fairly; and
- (d) where not legally possible to effect a dismissal fairly in the circumstances, use their reasonable endeavours to minimise any claims and/or liabilities arising from the Unexpected Employee's dismissal;

and it will be for the relevant Industrial Participant if so requested to demonstrate to the reasonable satisfaction of the Authority that in any particular case the dismissal was effected fairly or that appropriate steps have been taken to minimise claims or liabilities.

- 1.5 If it is agreed between the Authority and any Industrial Participant that it has become necessary or desirable to transfer employees of the Authority to that Industrial Participant, the transfer of those employees will be effected in accordance with the law, Government and Authority policy in force at that time.

## **2 Transfer Regulations – Industrial Participants Arrangements**

- 2.1 The Industrial Participants agree that any circumstances which are likely to result in a Relevant Transfer or other transfer by operation of law as a result of any transaction or arrangement contemplated by this Agreement or any associated agreement are promptly notified by the party first becoming aware of them to all other affected parties (including any relevant Sub-Contractor) and to the Authority.

- 2.2 Within 14 Business Days of the notice referred to in Paragraph 2.1 being issued, all affected parties shall meet and agree whether those circumstances should be dealt with as an Unintended Transfer (as defined in Paragraph 3.2) and dealt with in accordance with Paragraph 3 below or should be dealt with as an Intended Transfer (as defined in Paragraph 4.1) and dealt with in accordance with Paragraph 4 below. At that meeting, a list of Transferring Employees shall be agreed if the circumstances are to be treated

as an Intended Transfer. In the absence of agreement within 7 Business Days of that meeting, the matter shall be resolved in accordance with Schedule 17 (Dispute Resolution Procedure).

### **3 Unintended Transfers**

- 3.1 The Industrial Participants and the Authority acknowledge that a transfer of employment may result from circumstances which may arise during the term of this Agreement (or any associated agreement) or as a result of the transactions contemplated by them which are not intended or expected to result in any transfer of the employment of any person between the Industrial Participants or from any Industrial Participant to the Authority or between any of those parties and any Sub-Contractor or between Sub-Contractors whether as a result of the Transfer Regulations or otherwise by operation of law as a result of any transaction or arrangement contemplated by this Agreement or any associated agreement. For the avoidance of doubt, any potential transfer of an Authority employee shall be dealt with in accordance with Paragraph 1 and shall be excluded from the scope of Paragraphs 2, 3 and 4.
- 3.2 Nevertheless all Industrial Participants and the Authority acknowledge that such transfers may unintentionally occur or be alleged to occur or if it is agreed at a meeting held in accordance with Paragraph 2.2 or determined in accordance with Schedule 17 (Dispute Resolution Procedure) in the absence of agreement that the relevant circumstances are to be treated as set out in Paragraph 3.7 below (an “**Unintended Transfer**”) and shall ensure that all reasonable and lawful steps are taken to resolve the situation to the reasonable satisfaction of the pre-transfer employer (the “**Transferring Party**”), the post-transfer employer (the “**Transferee Party**”) and the relevant employee (the “**Unintended Employee**”) including (without limitation) by:
- (i) the Transferring Party taking reasonable steps to remove the Unintended Employee from the scope of any possible transfer; or
  - (ii) the Transferring Party drawing to the attention of the Unintended Employee his right to object to any possible transfer of employment to the Transfer Party; or



- (iii) where a transfer has already occurred, the Transferring Party with the co-operation of the Transferee Party offering to the Unintended Employee re-engagement with the Transferring Party on the terms that the employee previously enjoyed and on the basis that continuity of service is preserved, to the extent permitted by law

provided always that none of these steps shall preclude the secondment or assignment of any person from one party to another where the interests of the project require it.

- 3.3 The Transferring Party shall indemnify the Transferee Party and the Authority against any costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of any claim brought against the Transferee Party or the Authority by or on behalf of the Unintended Employee which arises out of the transfer or alleged transfer or out of the remedial actions taken under Paragraph 3.2 above, whether or not such remedial actions succeed in resolving the situation.
- 3.4 Without prejudice to Paragraph 3.3 above, the Transferee Party shall indemnify the Transferring Party and the Authority against any costs (including reasonable legal costs) losses and expenses and all damages, fines and liabilities arising out of any claim brought against the Transferring Party or the Authority by or on behalf of the Unintended Employee which relates wholly or mainly to acts or omissions of the Transferee Party which directly affect the Unintended Employee and which either (a) are not envisaged by this Agreement or (b) take place without the express consent of the Transferring Party and the Authority.
- 3.5 All Industrial Participants agree that they will use all reasonable endeavours to comply with any applicable statutory information and consultation duties arising from any transfer of employment and/or from any proposed remedial action under Paragraph 3.2 above.
- 3.6 All Industrial Participants agree to co-operate in good faith to ensure that their respective employees (other than any Unintended Employees for whom remedial action under Paragraph 3.2 above is in progress) remain employed by them and that they will not take any step which is calculated or likely to disturb that position or to impose any additional cost or liability on any other party which relates to employees

other than those specifically envisaged by this Agreement.

3.7 If, either during or on termination of this Agreement (however arising) any Unintended Employees are or will be employed by (or allege that they are or will be employed by) any party other than the appropriate Transferring Party whether as a result of the Transfer Regulations or otherwise by operation of law as a result of any transaction or arrangement contemplated by this Agreement or any associated agreement:

- (a) the Transferring Party and the Transferee Party will for a period not exceeding 6 weeks take or continue to take remedial action as envisaged under Paragraph 3.2 above with a view to procuring the continued or renewed employment by the Transferring Party of that Unintended Employee; and
- (b) if, at the end of the 6 week period referred to in Paragraph 3.7(a) such remedial action has not been successful, the Transferee Party will be entitled to terminate the employment of that Unintended Employee and the Transferring Party will indemnify the Transferee Party and the Authority against any costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and liabilities arising out of any claim brought against the Transferring Party or the Authority by or on behalf of the Unintended Employee which arises out of the transfer or alleged transfer, out of remedial actions taken under Paragraph 3.2 above and out of the termination of the Unintended Employee's employment, provided always that such termination is implemented lawfully and in accordance with good industrial relations practice.

#### **4 Intended Transfers**

4.1 Where it is agreed in accordance with Paragraph 2.2 above (or determined in accordance with Schedule 17 (Dispute Resolution Procedure) in the absence of agreement), that the specific circumstances in question amount to a Relevant Transfer which is to transfer the employment of the Transferring Employees in accordance with the Transfer Regulations (an "Intended Transfer"), then Paragraphs 4.2 to 4.8 below shall apply.

- 4.2 With effect from the Relevant Transfer Date, the contracts of employment of any Transferring Employees together with any collective agreements relating to the Transferring Employees will have effect from the Relevant Transfer Date as if originally made between the Transferee Party and the Transferring Employees save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme or to any Transferring Employee who objects under Regulation 4(7) of the Transfer Regulations.
- 4.3 The Transferring Party and the Transferee Party shall (and shall procure that any relevant Sub-Contractors shall):
- (a) before and in relation to the Relevant Transfer liaise with each other and shall co-operate with each other in order to implement effectively the smooth transfer of Transferring Employees to the Transferee Party; and
  - (b) comply with their respective obligations under the Transfer Regulations including their obligations to inform and consult under Regulation 13 of the Transfer Regulations.
- 4.4 The Transferring Party shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation all wages, bonuses, commissions, holiday entitlement taken up to the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in respect of the period prior to the Relevant Transfer Date.
- 4.5 The Transferee Party shall have responsibility for all emoluments and outgoings (including without limitation all wages, bonuses, commissions, holiday entitlement taken after the Relevant Transfer Date, PAYE, national insurance contributions and contributions to retirement benefit schemes) in relation to the Transferring Employees with effect from and including the Relevant Transfer Date.
- 4.6 The Transferring Party shall indemnify the Transferee Party against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:
- (a) any claim or claims by any Transferring Employee brought against the Transferee Party at any time arising out of or in connection with any acts or

omissions of the Transferring Party which occurred prior to the Relevant Transfer Date;

- (b) any claim or claims by any Transferring Employee or trade union or other employee representative brought against the Transferee Party whether before or after the Relevant Transfer Date, arising out of any failure by the Transferring Party to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Transferring Employee;

provided that any losses, costs, expenses, compensation, fines and liabilities arising out of such claims are not payable as a result of any act or omission of the Transferee Party.

4.7 The Transferee Party shall indemnify the Transferring Party against all reasonable costs (including reasonable legal costs) losses and expenses and all damages, compensation, fines and liabilities arising out of or in connection with:

- (a) any claim or claims brought by any Transferring Employee against the Transferring Party arising out of or in connection with any acts or omissions of the Transferee Party which occurred on or after the Relevant Transfer Date;
- (b) any claim or claims brought by any Transferring Employee or Trade Union or other employee representative brought against the Transferring Party arising out of any failure by the Transferee Party to comply with its obligations under Regulation 13 of the Transfer Regulations in respect of any Transferring Employee;

provided that any losses, costs, expenses, compensation, fines and liabilities arising out of such claims are not payable as a result of the act or omission of the Transferring Party.

4.8 The Transferee Party shall indemnify the Transferring Party in respect of all reasonable costs (including reasonable legal costs), losses and expenses and all damages, compensation, fines and other liabilities arising out of or in connection with or as a result of any act or proposal by the Transferee Party prior to or following the Relevant Transfer Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of the Transfer Regulations and / or to make a substantial

change on or after the Relevant Transfer Date to the working conditions of any Transferring Employee to the material detriment of that Transferring Employee. For the purposes of this Paragraph the expressions “repudiatory breach”, “substantial change” and “material detriment” shall have the meanings as are ascribed to them for the purposes of Regulation 4(9) and 4(11) of the Transfer Regulations.

## Schedule 14

### **Liability/Indemnity/Insurance**

#### **1 Interpretation**

- 1.1 In the event of any inconsistency between this Schedule 14 and the Policy in Annex B, this Schedule 14 shall prevail.

#### **2 General limitations and exclusions on liability of Manufacturing Alliance Participants to each other**

- 2.1 Save as otherwise expressly provided in this Schedule 14 (including Annexes A and B to this Schedule 14), each of the Manufacturing Alliance Participants agrees that it shall not make any claim against any other Manufacturing Alliance Participant, or against any member of any other Manufacturing Alliance Participant's Group, or against any of their respective Staff, in contract or at law (including in negligence of any degree or for any other tort, delict, strict liability, statutory liability or otherwise) for any direct, indirect, incidental or consequential or other loss or damage, of whatsoever kind, including, but not limited to:

- (a) loss of entitlement to perform any of the Works;
- (b) loss of business opportunity, including in relation to any aspect of the Manufacturing Phase or any subsequent phase of the Project including through life support;
- (c) loss of actual or anticipated profit and/or actual or anticipated income and/or actual or anticipated revenue (pursuant to the provisions of Schedule 4 (Risk and Reward Incentive Arrangement) or otherwise); or
- (d) damage to reputation,

arising from the performance, non-performance, variation, breach, termination or expiry of any Key Project Agreement or the exclusion of any Industrial Participant

pursuant to the provisions of Clause 24 (Exclusion, Step-In, Novation and Termination).

- 2.2 The express liabilities and remedies set out in the Key Project Agreements are the sole and exclusive remedies and liabilities of the Manufacturing Alliance Participants to each other in respect of their rights, obligations and liabilities arising under or in respect of the Key Project Agreements and are to the exclusion and in lieu of any other liabilities, remedies and warranties express or implied, in contract and/or in law (including, but not limited to, negligence of any degree or other tort, delict, strict liability, statutory liability or otherwise).
- 2.3 The provisions of clause 5 (Rectification of Defects) of and schedule 4 (Acceptance) to the Manufacturing Flow Through Contract and the provisions of clause 5 (Rectification of Defects) of and schedule 4 (Acceptance) to the IP MFTC Sub-Contracts in respect of Defects, and the provisions of Clause 24 (Exclusion, Step-In, Novation and Termination), constitute the sole and exclusive remedies of the Authority, and the sole and exclusive liability of the Industrial Participants to the Authority or to any of the Other Industrial Participants, for rectification of Defects.
- 2.4 Nothing in this Schedule 14 shall apply to prevent any Manufacturing Alliance Participant from seeking specific performance or any injunction or any other equitable relief other than damages, in respect of any breach by any other Manufacturing Alliance Participant of any provision of any Key Project Agreement, including any Claim for re-performance under clause 5 (Rectification of Defects) of and schedule 4 (Acceptance) to the Manufacturing Flow Through Contract and the provisions of clause 5 (Rectification of Defects) of and schedule 4 (Acceptance) to the IP MFTC Sub-Contracts in respect of Defects.
- 2.5 Given the complexity and scale of the Works and the Manufacturing Phase, the innovative nature of the Key Project Agreements and the Manufacturing Alliance Participants' decision on economic grounds not to obtain project specific insurances in the commercial market, the Manufacturing Alliance Participants acknowledge and agree that the exclusions and limitations of liability set out in this Schedule 14:
- (a) are fair and reasonable in the context of the Manufacturing Phase Objective, the Alliance Principles and the other provisions of the Key Project Agreements

(including the provisions at Schedule 4 (Risk and Reward Incentive Arrangement) and the indemnity provisions of this Schedule 14);

- (b) have been openly and knowingly agreed to following detailed negotiations between them;
- (c) are intended to have full legal effect between them,

and that each of the Manufacturing Alliance Participants will each bear any loss which it is not entitled to recover from another Manufacturing Alliance Participant as a result of any express exclusion or limitation or other provision set out in this Schedule 14.

2.6 Notwithstanding any other provision of the Key Project Agreements, no Industrial Participant shall be entitled to recover any cost, expense, loss, compensation or damages or to make a Claim against the Authority in respect of any such cost, expense, loss, compensation or damages, to the extent that it, or any other Industrial Participant or any member of any Industrial Participant's Group or (subject to the proviso below) any member of any Industrial Participant's Relevant Group or any of their respective Staff, has previously been compensated in respect of such cost, expense, loss compensation or damages (provided however that the reference in the foregoing provisions of this Paragraph 2.6 to any member of an Industrial Participant's Relevant Group shall only apply if that member was a member of that Industrial Participant's Group at the time when such cost, expense, loss, compensation or damages was so compensated).

2.7 Save as otherwise expressly provided in this Schedule 14, the provisions of this Schedule 14 shall continue to apply to each Manufacturing Alliance Participant, and to the members of each Manufacturing Alliance Participant's Group, notwithstanding any termination or expiry of this Agreement and notwithstanding that any Industrial Participant may become an Excluded Industrial Participant.

### **3 Limitations and exclusions on liability of Industrial Participants to each other**

3.1 Any Industrial Participant (a "**Claimant IP**") may bring a Claim against another Industrial Participant (a "**Respondent IP**") only in respect of or arising from each or any of the following:



- (a) any sum due for payment by the Respondent IP to the Claimant IP under the terms of any Key Project Agreement to which the Respondent IP and the Claimant IP are parties (including in respect of any Incurred Costs, any amount in respect of Gain Share or Pain Share or any repayment of any amount wrongly or over-paid, in each case whether by way of direct payment, set-off or reimbursement), other than any payment due pursuant to any of the provisions referred to in Paragraphs 3.1(b) or (c) of this Schedule 14;
- (b) direct loss or damage suffered or incurred by the Claimant IP and arising directly from any of the following:
  - (i) breach by the Respondent IP of any obligation to the Claimant IP under Schedule 8 (Intellectual Property Rights) (including any breach by the Respondent IP of any licence granted by the Claimant IP to the Respondent IP under, pursuant to or in accordance with such Schedule 8);
  - (ii) breach by the Respondent IP of any obligation to the Claimant IP under Schedule 9 (Confidentiality);
  - (iii) breach by the Respondent IP of any obligation to the Claimant IP under any agreement covering the occupation of any facilities described or referred to in Schedule 10 (Facilities);
  - (iv) breach by the Respondent IP of any obligation under Schedule 13 (Personnel);
- (c) to enforce or obtain payment due from the Respondent IP to the Claimant IP under or pursuant to any indemnity given by the Respondent IP to the Claimant IP in:
  - (i) Paragraph 11 of Schedule 11 (Information Technology);
  - (ii) Paragraphs 3.3, 3.4, 3.7(b), 4.6, 4.7 and 4.8 of Schedule 13 (Personnel);
  - (iii) Paragraph 6 of this Schedule 14

provided that nothing in this Paragraph 3.1 shall allow any Industrial Participant, or

through it any member of that Industrial Participant's Group, to claim from another Industrial Participant any indirect, incidental or consequential or other loss or damage, of whatsoever kind, including those matters detailed at Paragraphs 2.1(a) to 2.1(d) inclusive above, incurred or suffered by any Industrial Participant or any member of any Industrial Participant's Group other than:

- (A) any such losses or damages which the Claimant IP is liable to pay to any Non-Alliance Party, to the extent that such liability of the Claimant IP to such Non-Alliance Party results from a breach by the Respondent IP referred to in Sub-Paragraph 3.1(b) above; or
- (B) any such losses or damages which the Claimant IP is liable to pay to any Non-Alliance Party, to the extent such liability to such Non-Alliance Party is indemnified by the Respondent IP under any of the indemnities referred to in Sub-Paragraph 3.1 (c)(i) and (ii) above; or
- (C) any such losses or damages which the Claimant IP or any member of its Group is liable to pay to any Staff of the Respondent IP or to any Staff of a member of the Respondent IP's Group, to the extent that such liability to such Staff is indemnified by the Respondent IP under the indemnity referred to in Sub-Paragraph 3.1(c)(iii) above.

#### **4 Limitations and exclusions on liability of Industrial Participants to the Authority**

4.1 The Authority may bring a Claim against any Industrial Participant only under Paragraph 4.3 and/or in respect of or arising from each or any of the following:

- (a) any sum due for payment by that Industrial Participant to the Authority under the terms of any Key Project Agreement to which that Industrial Participant and the Authority are parties, (including in respect of any Incurred Costs, any amount in respect of Gain Share or Pain Share or any repayment of any amount wrongly or over-paid and any amount arising from a breach of any open book provision, in each case whether by way of direct payment, set-off or reimbursement), other than any payment due pursuant to any of the provisions referred to in Paragraphs 4.1(b), (c), (d) or (e) of this Schedule 14;
- (b) subject to Paragraph 4.2, direct loss or damage suffered or incurred by the

Authority and arising directly from each or any of the following:

- (i) breach by that Industrial Participant of any obligation to the Authority under Schedule 8 (Intellectual Property Rights) (including any breach by that Industrial Participant of any licence granted by the Authority to that Industrial Participant under, pursuant to or in accordance with such Schedule 8);
  - (ii) breach by that Industrial Participant of any obligation to the Authority under Schedule 9 (Confidentiality);
  - (iii) breach by that Industrial Participant of any obligation under Schedule 13 (Personnel);
- (c) to enforce or obtain payment due from that Industrial Participant to the Authority under or pursuant any indemnity or reimbursement obligation given by that Industrial Participant to the Authority in:
- (i) Paragraph 11 of Schedule 11 (Information Technology);
  - (ii) Paragraph 1.7 of Schedule 12 (Government Furnished Assets);
  - (iii) Paragraphs 3.3, 3.4, 3.7(b), 4.6, 4.7 and 4.8 of Schedule 13 (Personnel);
- (d) to enforce or obtain payment due to the Authority pursuant to Clause 24 (Exclusion, Step-In, Novation and Termination) arising from the exercise by the Authority of its rights under Clause 24 (Exclusion, Step-In, Novation and Termination); and
- (e) to enforce or obtain payment due to the Authority in respect of any liability of that Industrial Participant to the Authority under or pursuant to the indemnity set out in Paragraph 6 of this Schedule 14,

provided that nothing in this Paragraph 4.1 shall allow the Authority to claim from any Industrial Participant any indirect, incidental or consequential or other loss or damage, of whatsoever kind, including those matters detailed at Paragraphs 2.1(a) to 2.1(d) inclusive above, incurred or suffered by the Authority other than:

- (A) any such losses or damages which the Authority is liable to pay to any Non-Alliance Party to the extent that such liability of the Authority to such Non-Alliance Party results from a breach by that Industrial Participant referred to in Sub-Paragraph 4.1(b) above or is indemnified by that Industrial Participant under any of the indemnities referred to in Sub-Paragraph 4.1(c) above; or
- (B) any such losses or damages which the Authority is liable to pay to any Staff of that Industrial Participant or to any Staff of a member of that Industrial Participant's Group, to the extent that such liability of the Authority to such Staff is indemnified by that Industrial Participant under the indemnity referred to in Sub-Paragraph 4.1(e) above.

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

<u>Name of Industrial Participant</u>	<u>Cap on Aggregate Liability</u>
BVT	██████████
BAES MARINE	██████████
BAES INSYTE	██████████
Babcock	██████████
Thales	██████████
TOTAL	██████████

4.3 The Authority may bring a Claim against any Industrial Participant under DEFCON 76 (Edn 7/99) relating to damage to Government Property caused and occurring during and in the course of performance of the Manufacturing Phase, provided that for the purposes of the application of clause 4 of such DEFCON, the maximum liability of each Industrial Participant per occurrence, or series of related occurrences, arising out of the same cause or same event (in each case without any intervening cause or

event) shall be [REDACTED] and there shall be no limit on the number of occurrences, or series of related occurrences, arising out of the same cause or same event (in each case without any intervening cause or event) in respect of which an Industrial Participant may incur liability under DEFCON 76; and under DEFCON 76 the expression “Government Establishment” or “site” shall not include the Vessels or any Vessel Parts and the expression “Government Property” shall not include the Vessels or any Vessel Parts or any GFA.

## **5 Limitations and exclusions on liability of the Authority to the Industrial Participants**

5.1 Any Industrial Participant may bring a Claim against the Authority only in respect of or arising from any of the following:

- (a) any sum due for payment by the Authority to that Industrial Participant under the terms of any Key Project Agreement to which the Authority and that Industrial Participant are parties (including in respect of any Incurred Costs, any amount in respect of Gain Share, and any repayment of any amount wrongly or over-paid, in each case whether by way of direct payment, set-off or reimbursement), other than any payment due pursuant to any of the provisions referred to in Paragraphs 5.1(b) or (c) of this Schedule 14;
- (b) direct loss or damage suffered or incurred by that Industrial Participant and arising directly from any of the following:
  - (i) breach by the Authority of any obligation to that Industrial Participant under Schedule 8 (Intellectual Property Rights) (including any breach by the Authority of any licence granted by that Industrial Participant to the Authority under, pursuant to or in accordance with such Schedule 8);
  - (ii) breach by the Authority of any obligation of the Authority to that Industrial Participant under Schedule 9 (Confidentiality);
  - (iii) breach by the Authority of any obligation to that Industrial Participant under any agreement covering the occupation of any facilities described or referred to in Schedule 10 (Facilities); or

- (iv) breach by the Authority of any obligation of the Authority under Schedule 13 (Personnel);
- (c) to enforce or obtain payment due from the Authority to that Industrial Participant under or pursuant to any indemnity given by the Authority to that Industrial Participant in
  - (i) Paragraph 11 of Schedule 11 (Information Technology);
  - (ii) Paragraphs 3.3, 3.4, 3.7(b), 4.6, 4.7 and 4.8 of Schedule 13 (Personnel);
  - (iii) Paragraph 6 of this Schedule 14;
  - (iv) the Authority Indemnity;
  - (v) the SRI,

provided that nothing in this Paragraph 5.1 shall allow any Industrial Participant or through it any member of an Industrial Participant's Group to claim from the Authority any indirect, incidental or consequential or other loss or damage, of whatsoever kind, including those matters detailed at Paragraphs 2.1(a) to 2.1(d) inclusive above, incurred or suffered by any Industrial Participant or any member of any Industrial Participant's Group other than:

- (A) any such losses or damages which the claiming Industrial Participant is liable to pay to any Non-Alliance Party, to the extent that such liability of that Industrial Participant to such Non-Alliance Party results from a breach by the Authority referred to in Sub-Paragraph 5.1(b) above; or
- (B) any such losses or damages which the claiming Industrial Participant is liable to pay to any Non-Alliance Party, to the extent that such liability to such Non-Alliance Party is indemnified by the Authority under any of the indemnities referred to in Sub-Paragraph 5.1(c)(i), (ii) and (iv) above; or
- (C) any such losses or damages which the claiming Industrial Participant or any member of its Group is liable to pay to any Staff of the Authority to the extent that such liability to such Staff is indemnified by the Authority under the indemnity referred to in Sub-Paragraph 5.1(c)(iii) above.

5.2 The Authority shall have no liability to any Industrial Participant or through it any member of an Industrial Participant's Relevant Group in respect of the failure of any Other Industrial Participant to comply with its obligations under any Key Project Agreement.

**6 Indemnities from the Manufacturing Alliance Participants to each other**

6.1 Each Manufacturing Alliance Participant (the Indemnifying Party) shall indemnify and keep indemnified each other Manufacturing Alliance Participant (the Indemnified Party), in full and on demand, against all Claims (and related costs, charges and legal expenses), which are brought by any Staff of the Indemnifying Party or any Staff of any member of the Indemnifying Party's Group, against the Indemnified Party and/or against any member(s) of the Indemnified Party's Group, in respect of personal injury, death, sickness, illness or disease of such Staff of the Indemnifying Party or any such Staff of any member of the Indemnifying Party's Group, attributable to an event or act or omission occurring prior to the end of Phase 2 and arising out of and during course of the performance of the Works and provided that such act or omission did not occur after such Staff ceased to be Staff in relation to the Indemnifying Party or any member of the Indemnifying Party's Group.

6.2 The indemnity in Paragraph 6.1 shall apply notwithstanding the negligence or breach of duty (whether statutory or otherwise) of (a) any Indemnified Party and/or (b) any member of an Indemnified Party's Group and/or (c) any Staff of an Indemnified Party or any Staff of any member of its Group.

6.3 Each Manufacturing Alliance Participant shall use its reasonable endeavours to obtain a waiver of subrogation rights from its respective insurers in relation to its employer's liability insurance, in order that Paragraph 6.1 can operate as intended. To the extent that any Manufacturing Alliance Participant is unable to obtain such a waiver then the Alliance Management Board shall meet with a view to determining how best to manage any Claims referred to in Paragraph 6.1 involving that Manufacturing Alliance Participant.

6.4 None of the provisions of Paragraphs 1 to 5 and 7 to 13, inclusive, shall apply to prevent the application or operation of Paragraphs 6.1 to 6.3, inclusive. If any Industrial Participant is obliged, pursuant to the indemnity in Paragraph 6.1 of this

Schedule 14, to indemnify any other Manufacturing Alliance Participant, then that Indemnifying Party shall not directly or indirectly bring a Claim against the Authority under the Authority Indemnity or the SRI in respect of any amount payable by that Indemnifying Party under the indemnity in Paragraph 6.1.

- 6.5 Each Manufacturing Alliance Participant shall indemnify and keep indemnified each other Manufacturing Alliance Participant, in full and on demand, against all Claims (and related costs, charges and legal expenses), which such other Manufacturing Alliance Participant incurs or suffers, arising from any Claim by any member of the first Manufacturing Alliance Participant's Group or any Staff of any member of such Group, or any Indemnified Sub-Contractor of such first Manufacturing Alliance Participant, in tort only (including negligence of any degree and any delict) for any direct, indirect, incidental or consequential or other loss or damage of whatsoever kind, arising due to any act and/or error and/or omission and/or defect and/or deficiency and/or non-conformance in the performance of the Works and/or the Demonstration Phase Works, if and to the extent that such Claim would have been prohibited by Clause 2.1 if such Claim had been brought by the first Manufacturing Alliance Participant against any other Manufacturing Alliance Participant.

## **7 Waiver in respect of liability for the Works**

7.1 Subject to, and without prejudice to:

- (a) all other provisions of this Schedule 14; and
- (b) the Industrial Participants' obligations under the Key Project Agreements to rectify Defects; and
- (c) the rights and obligations of the Manufacturing Alliance Participants under Clause 24 (Exclusion, Step-In, Novation and Termination),

the Authority otherwise hereby waives and releases the Industrial Participants and all members of each Industrial Participant's Relevant Group, and their respective Staff, and all Indemnified Sub-Contractors, from any and all liability to the Authority of whatsoever kind (including, but not limited to, liability arising from breach of contract, negligence of any degree or other tort, delict, strict liability, statutory liability or otherwise) for any losses and/or costs and/or damage to property of the Authority



(including, but not limited to, the Vessels and the Authority's aircraft), and/or personal injury and/or death and/or sickness and/or illness and/or disease of any Staff of the Authority, resulting or arising from the Works being defective or deficient or containing errors or omissions or otherwise not being in accordance with the Key Project Agreements.

## **8 Insurance**

- 8.1 Subject to any determination made by the Alliance Management Board pursuant to Paragraph 8.5, each of the Industrial Participants shall, at its own cost, effect and keep in place the Required Insurances with reputable insurers of good standing at all times during the Manufacturing Phase unless and until it becomes an Excluded Participant.
- 8.2 Each of the Industrial Participants shall, on the written request of the Authority from time to time during the Manufacturing Phase, provide the Authority with a certificate of insurance to show that the Required Insurances are being maintained in accordance with Paragraph 8.1 and are in full force and effect.
- 8.3 Subject to any determination made by the Alliance Management Board pursuant to Paragraph 8.5, in the event that any Industrial Participant fails to maintain any of the Required Insurances during the Manufacturing Phase, the Authority may (following 10 Business Days notice to such Industrial Participant) itself provide or arrange such insurance and may recover the cost of such insurance from the Industrial Participant, as a debt due to the Authority from the Industrial Participant.
- 8.4 None of the Industrial Participants shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur, which would entitle any insurer to refuse to pay a claim made under any of the Required Insurances.
- 8.5 If, during the Manufacturing Phase, any of the Required Insurances should become Unavailable, the relevant Industrial Participant shall, as soon as reasonably practicable, inform the Alliance Management Board and all other Manufacturing Alliance Participants and explain the action that it intends to take to restore the Required Insurance or to manage the risk in the event that no insurance cover is available for a particular risk. The Alliance Management Board shall determine

whether such action is sufficient and, if it is not, the Alliance Management Board shall determine what other action should be taken and the Industrial Participant shall comply with such determination.

- 8.6 Each Industrial Participant shall maintain the Required Insurances required to be maintained by it, and will claim under its Required Insurances for any matter arising which is within the scope of such Required Insurances.

## **9 Shipbuilders Risk Indemnity**

- 9.1 Subject to the provisions of Paragraphs 4, 6, 8, 9.2 and 11 and in accordance with the provisions of Paragraph 12, the Authority agrees to indemnify each Industrial Participant in full in the terms of the Policy as if the Authority were an insurer and each Industrial Participant were an assured, from and against all Claims, losses and costs made against or suffered or incurred by such Industrial Participant and/or any member of its Relevant Group and/or any of its Indemnified Sub-Contractors, to the extent that such Claims, losses or costs are in respect of, and are covered by, the Policy.
- 9.2 The SRI shall not apply to the extent that any Claim (which is the subject of any claim under the SRI) is or should have been covered by any Required Insurance maintained, or which should have been maintained, by an Industrial Participant pursuant to Paragraph 8 of this Schedule 14, and which is recovered under any such Required Insurance, or would have been recoverable under any such Required Insurance but for any act or omission of the relevant Industrial Participant, or any member of its Relevant Group on whose behalf the relevant Industrial Participant makes the claim, or any of their respective Staff.
- 9.3 Following the termination or expiry of any Key Project Agreement, each Industrial Participant shall continue to be indemnified under the SRI in accordance with its terms for the duration of the SRI as set out in the SRI.
- 9.4 The Authority acknowledges that claims may be made under the SRI after the expiry of the SRI in respect of Indemnified Events arising during the term of the SRI.

**10 Indemnity from the Authority in respect of Claims arising from Third Parties**

10.1 Subject to Paragraphs 10.2 and 11 and in accordance with Paragraph 12, the Authority shall indemnify and keep indemnified each Industrial Participant in full against:

- (a) any amount that such Industrial Participant and/or any member of such Industrial Participant's Relevant Group, and/or their respective Staff, and/or any of such Industrial Participant's Indemnified Sub-Contractors, is/are required by a court or arbitrator to pay; and
- (b) any amount which such Industrial Participant and/or any member of such Industrial Participant's Relevant Group, and/or their respective Staff, and/or any of such Industrial Participant's Indemnified Sub-Contractors, is/are required to pay as a result of an Authority-approved settlement; and
- (c) any legal costs or other expense incurred by such Industrial Participant and/or any member of such Industrial Participant's Relevant Group, and/or their respective Staff, and/or any of such Industrial Participant's Indemnified Sub-Contractors, and approved by the Authority (such approval not to be unreasonably withheld or delayed);

in each case in respect of any Claim (including, but not limited to, Claims based on breach of contract, negligence of any degree or other tort, delict, strict liability, statutory liability or otherwise) made by any Non-Alliance Party at any time after the Commencement Date against such Industrial Participant and/or against any member of such Industrial Participant's Relevant Group, and/or against their respective Staff, and/or against any of such Industrial Participant's Indemnified Sub-Contractors, for any loss and/or cost and/or damage (including, but not limited to, loss of or damage to any aircraft or any other property and/or in respect of personal injury and/or death and/or sickness and/or illness and/or disease), in each case due to any act and/or error and/or omission and/or defect and/or deficiency and/or non-conformance in the performance of the Works and/or the Demonstration Phase Works (including, without limitation, the design, manufacture, build, test and the use of the Vessels before and/or after Vessel Acceptance). For the purposes of this Paragraph 10.1 only, "Non-Alliance Party" shall not include any company who was a member of an Industrial

Participant's Group at the time when the Indemnified Event occurred in respect of which the Claim is made.

- 10.2 The Authority Indemnity shall not apply to the extent that such Claim, loss, cost, damage, personal injury, death, sickness, illness or disease which is the subject of a claim under the Authority Indemnity is or should have been covered under any Required Insurance maintained, or which should have been maintained, by an Industrial Participant pursuant to Paragraph 8 of this Schedule 14, and which is recovered under any such Required Insurance, or would have been recoverable under any such Required Insurance but for any act or omission of the relevant Industrial Participant, or any member of its Relevant Group on whose behalf the relevant Industrial Participant makes the Claim, or any of their respective Staff.
- 10.3 In consideration of the Authority giving the Authority Indemnity, each of the Industrial Participants which was also a Demonstration Phase Alliance Participant hereby gives up and waives all rights under the indemnity given under paragraph 3 of section C of schedule 10 to the Demonstration Phase Works Contracts (the "**DPWC Indemnity**") and releases the Authority from any and all liability to such Industrial Participant in relation to the DPWC Indemnity.

## **11 Payment of claims and Deductibles**

### **11.1 Determination as to category of costs arising from an Indemnified Event**

- (a) Each Industrial Participant shall, promptly after becoming aware of the occurrence of any event which could give rise to a Claim under the SRI or the Authority Indemnity, give notice of such event to the Authority.
- (b) If there is a Claim made during the Manufacturing Period under the Authority Indemnity or the Shipbuilders Risk Indemnity for Indemnified Costs incurred or to be incurred by an Industrial Participant or by any member of its Relevant Group or by any Indemnified Sub-Contractor (other than in respect of liability to a Non-Alliance Party which is not an Indemnified Sub-Contractor, when the provisions of Paragraph 11.1(c) apply), then such Indemnified Costs shall be categorised, through an election made by the Authority, at its discretion but subject as provided below in this Paragraph 11.1, as follows:

- (i) as Indemnified Project Costs, which shall be recoverable through the Project subject to and in accordance with Paragraph 11.2(b); or
- (ii) as Indemnified Non Project Costs, all of which shall be paid outside the Project in accordance with Paragraph 11.2(a); or
- (iii) partly as Indemnified Project Costs to be paid through the Project (in accordance with Paragraph 11.2(b)), with the balance being categorised as Indemnified Non Project Costs to be paid outside the Project (in accordance with Paragraph 11.2(a),

provided that, to the extent any Indemnified Costs relate to any Works (including, but not limited to, rectification or repair of consequential damage to any Vessel or Vessel Part or other Insured Property caused by a Defect) and arise from an Indemnified Event under the Authority Indemnity or the SRI, such Indemnified Costs shall be categorised as Indemnified Project Costs and shall be paid through the Project.

- (c) If there is a Claim made during or after the Manufacturing Period under the Authority Indemnity or the Shipbuilders Risk Indemnity, in each case in respect of any Indemnified Event occurring during the Manufacturing Period, for Indemnified Costs payable in respect of any liability of an Industrial Participant or any member of its Relevant Group, or (under the Authority Indemnity) any of their respective Staff, or any Indemnified Sub-Contractor, to a Non-Alliance Party which is not an Indemnified Sub-Contractor, then the Authority shall elect to pay such Indemnified Costs either:

- (i) directly to such Non-Alliance Party (but only if and to the extent that the liability has been incurred but not yet paid to such Non-Alliance Party); or
- (ii) directly to the claiming Industrial Participant,

and in each case any Indemnified Costs paid by the Authority in respect of any liability to a Non-Alliance Party (which is not an Indemnified Sub-Contractor) shall always be deemed Indemnified Non Project Costs paid outside the Project, whether paid by the Authority directly to such Non-Alliance Party or

whether paid directly to the claiming Industrial Participant.

- (d) If there is a Claim made at any time after the end of Manufacturing Period under the Authority Indemnity, in respect of any Indemnified Event occurring after the Manufacturing Period, for Indemnified Costs incurred or to be incurred by an Industrial Participant or by any member of its Relevant Group, or by any of their respective Staff, or by any Indemnified Sub-Contractor, such Indemnified Costs shall be categorised as Indemnified Non Project Costs and shall be paid in accordance with Paragraph 11.2(a).

## 11.2 Payments in respect of Indemnified Events

- (a) Indemnified Non Project Costs
  - (i) Save as set out in Paragraph 11.3(e), the full amount of all Indemnified Non Project Costs shall be paid or reimbursed by the Authority outside the Project by a payment made directly by the Authority either to the relevant Non-Alliance Party (in accordance with Paragraph 11.1(c)(i) above) or to the relevant Industrial Participant. Any such sum shall be paid by the Authority by way of a lump sum within 30 days of receipt of an invoice therefor. The relevant Non-Alliance Party or Industrial Participant shall only be entitled to submit such invoice upon any one of the following:
    - (A) submission to the Authority of a court order or judgment or arbitration award requiring the payment of such sum; or
    - (B) submission to the Authority of the settlement agreement or document confirming and evidencing an Authority-approved settlement for the payment of such sum; or
    - (C) submission of its claim to the Authority for such sum, together with such supporting evidence or information as the Authority may reasonably require from the relevant Non-Alliance Party or Industrial Participant, and agreement by the Authority to the claim (such agreement not to be unreasonably withheld or delayed).

No payment or reimbursement of Indemnified Non Project Costs shall be claimed or paid as Incurred Costs.

- (ii) In relation to each Claim for which any Indemnified Non Project Costs are payable or reimbursable by the Authority (whether directly to a Non-Alliance Party or directly to the claiming Industrial Participant), the Deductible applicable to such Claim shall be satisfied in accordance with the provisions of Paragraph 11.3, and save as set out in Paragraph 11.3(e) there shall be no deduction in respect of such Deductible from any amount payable or reimbursable in respect of such Indemnified Non Project Costs pursuant to Paragraph 11.2(a)(i) above.
- (iii) Other than any deduction from the Project Target Cost in accordance with the provisions of Paragraphs 11.2(a)(ii) and 11.3(a), there shall not be any Equitable Adjustment or any other change to the Project Target Cost in respect of any Indemnified Non Project Costs.

(b) Indemnified Project Costs

- (i) The full amount of all Indemnified Project Costs incurred by any Industrial Participant shall be paid by the Authority as Incurred Costs and recovered by that Industrial Participant under and in accordance with clause 5 (if applicable) and schedule 6 (Price and Payment) of the relevant Manufacturing Phase Works Contract (as appropriate).
- (ii) In relation to each Claim for which any Indemnified Project Costs are recovered, the Deductible applicable to such Claim shall be satisfied in accordance with the provisions of Paragraph 11.3, and there shall be no deduction in respect of such Deductible from any Incurred Costs paid in respect of such Indemnified Project Costs pursuant to Paragraph 11.2(b)(i) above.
- (iii) There shall be an Equitable Adjustment in respect of Indemnified Project Costs.

(c) Other Project Costs

- (i) The full amount of all Other Project Costs incurred by any Industrial Participant shall, subject to Paragraph 11.2(e)(i), be paid by the Authority as Incurred Costs and recovered by that Industrial Participant under and in accordance with clause 5 (if applicable) and schedule 6 (Price and Payment) of the relevant Manufacturing Phase Works Contract (as appropriate).
  - (ii) It is agreed and acknowledged that although the costs and expenses excluded under clause 6 of the SRI are excluded from the definition of "Other Project Costs", nevertheless the full amount of all such costs and expenses will also be paid by the Authority as Incurred Costs and recovered by that Industrial Participant under and in accordance with clause 5 and schedule 6 (Price and Payment) of the relevant Manufacturing Phase Works Contract (as appropriate).
  - (iii) In relation to each Claim in respect of which any Other Project Costs are recovered, the Deductible applicable to such Claim shall be satisfied in accordance with the provisions of Paragraph 11.3 and there shall be no deduction in respect of the Deductible from any Incurred Costs paid in respect of such Other Project Costs pursuant to Paragraph 11.2(c)(i) above.
  - (iv) There shall not be any Equitable Adjustment in respect of any Other Project Costs unless Paragraph 11.2(d) applies.
- (d) If any single Indemnified Event causes a delay in the Integrated Schedule of more than [REDACTED] and/or causes the Industrial Participants to suffer or incur Other Project Costs in excess of [REDACTED] in aggregate, excluding VAT, then there shall be an Equitable Adjustment in respect of the full amount of all such Other Project Costs (not just in respect of the excess over [REDACTED]).
- (e) If a sum is payable pursuant to this Schedule 14 by the Authority:
- (i) to an Excluded Participant in respect of Other Project Costs or Indemnified Non Project Costs; or



- (ii) to an Industrial Participant who is not an Excluded Participant in respect of an Indemnified Event occurring after the end of the Manufacturing Period,

then, subject to the right of the Authority to set-off or claim payment of any amount payable in respect of Gain Share or Pain Share pursuant to Schedule 2 (Risk and Reward Incentive Arrangement) or schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract, such sum shall be paid by the Authority to the relevant Excluded Participant or Industrial Participant by way of a lump sum within 30 days of receipt of an invoice therefor. The relevant Excluded Participant or Industrial Participant shall only be entitled to submit such invoice following submission of its claim to the Authority together with such supporting evidence or information as the Authority may reasonably require from the relevant Excluded Participant or Industrial Participant and agreement by the Authority to the claim (such agreement not to be unreasonably withheld or delayed).

- (f) If and to the extent that any court or arbitrator awards to an Industrial Participant, or to any member of its Relevant Group, any damages or other sum or legal and/or other expenses which have previously been paid by the Authority pursuant to the SRI or the Authority Indemnity, and that Industrial Participant or that member of its Relevant Group then receives payment of the whole or any part of the amount of such damages or other sum or legal and/or other expenses so paid pursuant to such an award, then that Industrial Participant shall reimburse/ pay the Authority:
  - (i) that portion of the amount so received by that Industrial Participant or that member of its Relevant Group pursuant to such award which corresponds to any amount previously paid by the Authority pursuant to the SRI or the Authority Indemnity; and
  - (ii) that portion of any interest received by that Industrial Participant or that member of its Relevant Group pursuant to such award, which is in respect of the amount reimbursed in (i) above for the period after such amount was paid by the Authority,

within thirty (30) days of receipt of such amount by that Industrial Participant or that member of its Relevant Group pursuant to such award. To the extent such reimbursement includes the Deductible, the Project Target Cost shall be increased by the amount of such Deductible reimbursed.

(g) If any Manufacturing Alliance Participant (the “**Recipient MAP**”) is liable to pay tax on any sum payable to it by any other Manufacturing Alliance Participant (the “**Paying MAP**”) pursuant to this Schedule 14, or if any Paying MAP is liable to deduct withholding tax on any sum payable by such Paying MAP to a Recipient MAP pursuant to this Schedule 14, then the Paying MAP shall pay such additional amount as is required to ensure that the net amount received and retained by the Recipient MAP (after tax) will equal the full amount which would have been received and retained by the Recipient MAP (after tax) but for the loss or damage that is the subject of the payment, taking into account:

- (i) any tax the Recipient MAP would have been liable to pay in respect of any income, profits or gains that would have been earned, accrued or received but for the loss or damage in question; and
- (ii) any tax credit, deduction or repayment to which the Recipient MAP is entitled in connection with either that loss or damage or any related expenditure or withholding;

provided that, in respect of any amount(s) capped under Paragraphs 4.2 and/or 4.3, nothing in this Paragraph 11.2(g) shall oblige any Industrial Participant to pay any amount to the Authority in excess of such cap(s), and this Paragraph 11.2(g) shall not be applied to exceed such cap(s).

(h) No premium is payable by any Manufacturing Alliance Participant in respect of any indemnity in this Schedule 14.

### 11.3 Deductibles

(a) Subject to Paragraphs 11.3(c) and 11.3(d), in relation to any Claim or Claims brought under the SRI and/or the Authority Indemnity in respect of any one Indemnified Event, and irrespective of the number of Industrial Participants or

Excluded Participants making such Claim or Claims and whether such Claim or Claims give rise to Indemnified Project Costs or Indemnified Non Project Costs or Other Project Costs (or any combination of such categories of costs):

- (i) there shall be one Deductible per Indemnified Event; and
- (ii) subject to Paragraph 11.3(e), an amount equal to
  - (A) the full amount of the Deductible,or, if less
  - (B) the amount of such Claim or, if more than one, the aggregate of such Claims

shall be deducted from the Project Target Cost.

- (b) No Deductible shall be taken into account in relation to any Industrial Participant's cap on its liability to the Authority under Paragraphs 4.2 and/or 4.3.
- (c) In relation to a Claim made by any Industrial Participant, the Authority Indemnity shall apply without any Deductible from the earlier of:
  - (i) the date upon which all Industrial Participants become Excluded Participants; or
  - (ii) the end of the Manufacturing Period; or
  - (iii) the D3B Clearance Date for the Vessel in relation to which that Claim is made.
- (d) In relation to a Claim made by any Industrial Participant, the Shipbuilders Risk Indemnity shall apply without any Deductible from the date upon which all Industrial Participants become Excluded Participants.
- (e) In the event that:
  - (i) a Claim is made under the Shipbuilders Risk Indemnity after the Manufacturing Period and after final cost accounting for the Project

has been concluded, in respect of an Indemnified Event which occurred during the Manufacturing Period; and

- (ii) the full amount of the Deductible for such Indemnified Event has not already been deducted from the Project Target Cost pursuant to Paragraph 11.3(a)(ii) above; and
- (iii) the full amount of the Pain Share Cap has not been reached (as detailed at Paragraphs 4.2 or 5.2 of Schedule 4 (Risk and Reward Incentive Arrangement)),

then the Relevant Proportion of any part of the Deductible for such Indemnified Event which has not already been deducted from the Project Target Cost pursuant to Paragraph 11.3(a)(ii) above shall be deducted from the amount payable by the Authority under the Shipbuilders Risk Indemnity in respect of such Claim.

The “Relevant Proportion” shall, for the purposes of this Paragraph 11.3(e) be calculated based on the applicable Gain Share or Pain Share at the final cost accounting for the Project as if the Deductible had been taken into account for the purposes of such final cost accounting.

- (f) In the event of any amount being deducted under Paragraph 11.3(e) from any amount payable by the Authority to an Industrial Participant in respect of a Claim under the Shipbuilders Risk Indemnity, then all of the Other Industrial Participants shall share in the burden of such deduction, in the same proportions as their allocated shares in any Pain Share/Gain Share as set out in Paragraph 6.1 of Schedule 4 (Risk and Reward Incentive Arrangement). Such sharing in the burden of the deduction shall be effected by means of the Other Industrial Participants paying to the claiming Industrial Participant their respective shares of the amount deducted within 30 days of being invoiced for that percentage share by the claiming Industrial Participant.

## **12 Conduct of Claims**

- 12.1 In order to facilitate the resolution or defence of any Claim which is the subject of any indemnity set out or referred to in this Schedule 14, the Indemnified Party shall:

- (a) as soon as reasonably practicable on becoming aware of it, give notice of the Claim or the circumstances likely to give rise to the Claim to the Indemnifying Party; and
- (b) at the request of the Indemnifying Party:
  - (i) allow and assist the Indemnifying Party to take over conduct, defence and settlement of the Claim; and
  - (ii) if so, co-operate and give the Indemnifying Party reasonable assistance in connection with the defence of the Claim, at the Indemnifying Party's cost, and not at any time admit liability or attempt to settle or compromise the Claim without the prior written consent of the Indemnifying Party.

12.2 Each Indemnified Party which seeks to recover under any indemnity set out or referred to in this Schedule 14 shall use reasonable endeavours to mitigate its loss and to minimise the amount to be paid to resolve and/or conclude the Claim and all costs and other amounts incurred in the conduct, defence and settlement of the Claim.

12.3 In relation to any Claim made against a Manufacturing Alliance Participant by a Non-Alliance Party, such Manufacturing Alliance Participant (a "**Joining Party**") shall, subject to Paragraph 12.1(a), be entitled to join any other Manufacturing Alliance Participant (a "**Joined Party**") as a co-defendant to such Claim for the sole purposes of defending such Claim or to claim a contribution (where allowed by Paragraphs 3 to 6 of this Schedule 14) in respect of such Claim. For the purposes of this Schedule 14, such a joinder shall not be considered to be a Claim by the Joining Party against the Joined Party but shall be considered to be a Claim by the Non-Alliance Party directly against the Joined Party.

12.4 In order to enable an Industrial Participant to claim under the SRI and/or the Authority Indemnity in respect of any Claim and/or loss and/or cost and/or damage (including, where relevant, in respect of personal injury and/or death and/or sickness and/or illness and/or disease) made against or incurred or suffered by any member of such Industrial Participant's Relevant Group or any of its Staff, or any of such Industrial Participant's Indemnified Sub-Contractors, such Claim and/or loss and/or damage

and/or cost shall be deemed to have been made against, or incurred or suffered by, that Industrial Participant.

### **13 Sub-Contractors**

13.1 Notwithstanding any other provision in this Schedule 14, the benefit of the waiver in Paragraph 7, the Authority Indemnity and the SRI shall each apply:

- (a) to any Sub-Contractor which is a member of an Industrial Participant's Relevant Group at the time of entry into the Sub-Contract; in its capacity as a member of that Industrial Participant's Relevant Group;
- (b) to any Sub-Contractor which becomes a member of an Industrial Participant's Relevant Group at any time after it has entered into a Sub-Contract with any member of such Industrial Participant's Relevant Group, provided that each such Sub-Contractor has satisfied the Authority, and the Authority has confirmed its agreement (not to be unreasonably withheld or delayed) that it is satisfied, that the Sub-Contractor has not included within the prices in its Sub-Contract any amount in respect of insurance against the liabilities which are covered (in lieu of insurance) by the waiver in Paragraph 7, and/or the SRI and/or by the Authority Indemnity;
- (c) to the following proposed Sub-Contractors with effect from each such entity becoming a Sub-Contractor, as if each such Sub-Contractor were a member of the Group of the Industrial Participant with whom it has entered into a Sub-Contract:
  - (i) a joint venture company to be incorporated after the date of this Agreement by McNulty Offshore Construction Limited and A&P Tyne Limited for the purpose of carrying out part of the Works;
  - (ii) McNulty Offshore Construction Limited (company number: 05359663);
  - (iii) A&P Tyne Limited (company number: 05127750);
  - (iv) Rolls-Royce Power Engineering p.l.c. (company number: 01305027);
  - (v) Converteam UK Limited (company number: 05571739); and

(vi) L-3 Communications Marine Systems UK Limited (company number: 05341813; and

(d) to any entity which becomes a Sub-Contractor after the Commencement Date and in relation to which the Authority has agreed in writing that the provisions of this Paragraph 13.1 shall apply (in relation to which one factor shall be that the Sub-Contractor has not included within the prices in its Sub-Contract any amount in respect of insurance against the liabilities which are covered, in lieu of insurance, by the waiver in Paragraph 7 and/or the SRI and/or by the Authority Indemnity).

13.2 Each Industrial Participant undertakes to ensure that the prices of its Sub-Contractors who are members of its Group do not include any amount in respect of insurance against the liabilities which are covered (in lieu of insurance) by the waiver in Paragraph 7, and/or by the SRI and/or by the Authority Indemnity.

## Annex A – Insurances

Each Industrial Participant shall effect and keep in place the insurances set out in this Annex A.

### **1 Third Party Public Liability (Non Marine/Non Aviation) Insurance**

#### 1.1 Interest

Subject to Paragraph 5.2, non marine/non aviation legal liability of the Industrial Participant to pay damages (including claimants' costs and expenses) in respect of or consequent upon:

- (a) death or injury to or sickness, anguish or shock whether mental or otherwise, or illness or disease contracted by any person;
- (b) loss or damage to property,

arising out of and in connection with the business of the Industrial Participant and its participation in the Manufacturing Phase.

#### 1.2 Minimum insurance cover

Not less than:

- (e) ten million pounds (£10 million) in respect of any one occurrence or series of occurrences; and
- (f) five million pounds (£5 million) in the aggregate during the policy period in respect of sudden, accidental and unintended pollution liability.

### **2 Employers' Liability Insurance**

#### 2.1 Interest

Legal liability of the Industrial Participant to pay damages (including claimants' costs and expenses) in respect of or consequent upon death or bodily injury to or sickness, illness or disease contracted by any employee during the course of their employment with the Industrial Participant during the Manufacturing Phase.



## 2.2 Limit of insurance cover

Not less than the minimum amount required by the relevant Legislation from time to time.

## 3 Motor Third Party Liability Insurance

### 3.1 Interest

Legal liability of the Industrial Participant to pay damages (including claimants' costs and expenses) in respect of or consequent upon:

- (a) death or bodily injury to any person;
- (b) loss or damage to property;

occurring during the Manufacturing Phase and arising out of the use of mechanically propelled land motor vehicles in circumstances where they are required to be compulsorily insured by legislation applicable in respect of such land motor vehicles.

### 3.2 Limit of insurance cover

Not less than the minimum amount required by the relevant legislation from time to time.

## 4 Other Statutory Insurances

4.1 Any insurances other than those set out at Paragraphs 1, 2 and 3 of this Annex A which any Industrial Participant is required to maintain from time to time by any Legislation.

## 5 General

5.1 Each of the Required Insurances shall provide indemnity to principal (the Authority) to the extent necessary and appropriate to provide coverage (up to the amounts of cover under the respective policies).

5.2 Save to the extent that the insurances listed in Paragraphs 2, 3 and 4 above do so, the Required Insurances shall not be required to cover or apply to any costs and/or losses and/or liability arising from or caused by defects and/or deficiencies and/or non-

conformances and/or errors and/or omissions in (i) any Works performed during the Manufacturing Phase and/or (ii) any Demonstration Phase Works, or arising from or caused by any Indemnified Event, since any such costs, losses and liability are waived and/or indemnified by the waiver and/or indemnities in Paragraphs 7, 9 and 10 of this Schedule 14 and/or under the Demonstration Phase Works Contracts.

## Annex B

### SHIPBUILDERS' RISK INDEMNITY POLICY

This Policy, subject to the provisions Paragraphs 4, 6, 8, 9.2 and 11, and in accordance with the provisions of Paragraph 12, of Schedule 14 (Liability/Indemnity/Insurance) of the Manufacturing Phase Alliance Agreement (“**Schedule 14**”), forms the Policy for the purpose of the Shipbuilders Risk Indemnity set out in Paragraph 9 (Shipbuilders Risk Indemnity) of Schedule 14.

This Policy is subject to English Law and Practice and shall be construed in accordance with Schedule 14.

Definitions in the Manufacturing Phase Alliance Agreement shall apply and have effect in relation to the words and expressions used in this Policy, unless expressly stated to the contrary.

All references in this Policy to the Manufacturing Phase Alliance Agreement are to the agreement to which this Policy is attached as Annex B to its Schedule 14.

In the event of any inconsistency between Schedule 14 and this Policy, Schedule 14 shall prevail.

#### A. SCHEDULE

##### ASSURED

This Policy insures each of the Industrial Participants only.

Claims may only be brought under this Policy by each Industrial Participant for Claims against and/or costs and/or losses incurred or suffered by the following parties (each individually referred to in this Policy as an “**Assured**”):

- (a) that Industrial Participant;
- (b) each member of that Industrial Participant’s Relevant Group, including when acting in its capacity as a Sub-Contractor ; and
- (c) whichever of the following specific Sub-Contractors are Sub-Contractors of that Industrial Participant:
  - (i) a joint venture company to be incorporated after the date of this Agreement by McNulty Offshore Construction Limited and A&P Tyne Limited for the purpose of carrying out part of the Works;
  - (ii) McNulty Offshore Construction Limited (company number: 05359663);
  - (iii) A&P Tyne Limited (company number: 05127750);
  - (iv) Rolls-Royce Naval Power Engineering p.l.c. (company number: 01305027 ) ;
  - (v) Converteam UK Limited (company number: 05571739) ; and
  - (vi) L-3 Communications Marine Systems UK Limited (company number 05341813); and
- (d) any other Sub-Contractor of that Industrial Participant agreed in writing by the Authority.

DESCRIPTION OF VESSEL/S

CVF01  
CVF02

PERIOD

This Policy shall commence on the Commencement Date and shall continue until the end of the D3B Clearance Date of the Second Vessel, save that in respect of the First Vessel it will cease at the end of the D3B Clearance Date of the First Vessel.

SUM INSURED

The sum insured is the Contract Price as may be amended, plus the replacement cost (including VAT, if applicable and to the extent not recoverable by the Assured) of:

- (a) all articles supplied or loaned to the Assured by or on behalf of the Authority (including GFA); and
- (b) all property of any Non-Alliance Party supplied or loaned to the Assured for which the Assured has accepted responsibility and which is in the care, custody or control of, or used by, the Assured,

in each case for the purpose of the Manufacturing Phase Alliance Agreement and/or the Manufacturing Flow Through Contract and/or the IP MFTC Sub-Contracts (the “**Sum Insured**”).

DEDUCTIBLE

■ each accident or occurrence or series of connected accidents or occurrences arising out of the same cause or the same event (in each case without any intervening cause or event) in accordance with Clause 12 of this Policy.

B. CONDITIONS

1. SUBJECT MATTER INSURED

- a. Subject to sub-Clause 1b., this Policy covers the Vessels, any Barge, any blocks and all Vessel Parts and everything connected therewith, including articles supplied by the Assured or supplied or loaned to the Assured by or on behalf of the Authority (including GFA), and all property of any Non-Alliance Party supplied or loaned to the Assured for which the Assured has accepted responsibility and which is in the care, custody or control of, or used by, the Assured, in each case for the purpose of the

Manufacturing Phase Alliance Agreement and/or the Manufacturing Flow Through Contract and/or the IP MFTC Sub-Contracts (the "**Insured Property**").

b. This Policy shall cease to apply to the First Vessel from the end of the D3B Clearance Date of the First Vessel.

## 2. DURATION

a. This Policy commences on the Commencement Date and shall continue until the end of the D3B Clearance Date of the Second Vessel, save that in respect of the First Vessel it will cease at the end of the D3B Clearance Date of the First Vessel.

b. This Policy covers the Insured Property hereby insured whilst under construction, conversion, repair, refit, erection, reconstruction, re-erection, installation, re-installation, trials and all other work of every description whatsoever as may be undertaken by the Assured in respect of the Insured Property at any of the yards or premises owned, occupied, or used by the Assured.

Including, but not limited to:

(1) shop risks, storage risks, prefabrication risks, risks on materials (raw and shaped as well as finished objects in course of construction);

(2) launching, re-launching, fitting out, tests, trials, trial trips and trips, of every description whatsoever, as and where required;

(3) taking on board any weapons, armaments, ordnance, missiles and ammunition;

(4) docking, undocking, being placed upon pontoons, loading, unloading, proceeding to and returning from the trial course.

## 3. TRANSITS

a. This Policy also covers the Insured Property whilst in transit from any port or ports, place or places to any port or ports, place or places by any conveyance - land, water, (including barges) and air.

b. Such transits are subject to the Institute Cargo Clauses 'A' (CL252 1/1/82) insofar as cover hereunder is extended thereby.

## 4. DEVIATION OR CHANGE OF VOYAGE

Any deviation or change of voyage is covered provided notice is given to the Authority as soon as practical after receipt of advice by the Assured.

## 5. PERILS

Subject always to its terms, conditions and exclusions, this Policy covers all risks of loss or damage to the Insured Property caused and discovered during the period of this insurance, including but not limited to loss or damage caused by the firing of guns, torpedoes, missiles and aviation risks such as aircraft movement, airport risks and air traffic control risks.

6. FAULTY DESIGN AND/OR FAULTY WORKMANSHIP AND/OR LATENT DEFECT

Save as otherwise provided in this Clause 6, this Policy shall not pay any cost or expense of repairing, modifying replacing or renewing any part condemned solely in consequence of the discovery of a latent defect or a defectively or faultily designed, manufactured, welded, fitted, installed or arranged part or parts of the Insured Property (for the purposes of this paragraph referred to as the 'SRI Defect') including but not limited to the cost or expense of:

- a. preparing new plans, drawings, arrangements, designs and specifications to remedy the SRI Defect;
- b. all work undertaken to gain access to and to rectify the SRI Defect including but not limited to the opening up, examining, dismantling, removing, re-installing, re-welding and re-testing of any part or parts of the Insured Property;
- c. the repair or replacement of any component or sub-system of any Insured Property which contains the defective part and which has been damaged or destroyed or which fails to function as a consequence of the SRI Defect;
- d. any betterment or alteration in design.

However, with the exception of Clause 6c., it is not the intention of this Clause to exclude consequential damage to the Insured Property caused by the SRI Defect.

7. NEW FOR OLD

Average is payable without deduction new for old, whether the average be particular or general.

8. POLLUTION HAZARD

This Policy covers loss of or damage to the Insured Property caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from a peril covered by this Policy.

9. LAUNCHING AND DOCKING

- a. This Policy is to pay all expenses incidental to, occasioned by or in consequence of sticking or any other accident or failure whatsoever in Launching.
- b. In the event of any accident to or the discovery of any defect (whether latent or otherwise) in the Insured Property or the property mentioned in sub-sub-Clause 9(d)(1)

below necessitating the postponement of a Launch, or for the safety of the venture it is necessary to postpone the Launch, this Policy is to pay all expenses incidental thereto or occasioned thereby or in consequence thereof.

c. Such expenses referred to in sub-Clauses 9(a) and 9(b) above shall include, but are not limited to, any expenses that may be necessary in re-laying and re-greasing the ways, re-dredging the launching channel, in respect of timbers and other materials, and completing the Launch.

d. It is further agreed that this Policy will pay in addition separately:

(1) all loss of or damage to or destruction of the ways and/or ground and/or any other property of the Assured or for which the Assured are responsible directly or indirectly occasioned by, happening through or in consequence of any such sticking or any other accident or failure whatsoever in Launch;

(2) any sum or sums which the Assured shall become liable to pay and shall pay in respect of any legal or contractual liability, claim, demand, damages, and/or expenses :

(i) directly or indirectly occasioned by, happening through or in consequence of any such sticking or any other accident or failure whatsoever in Launching;

(ii) for damage caused by timber or other materials used in connection with or set adrift by Launching;

(iii) for any liability arising out of or in connection with Launching ceremonies.

e. This Policy shall pay the costs and expenses incurred in docking or dry-docking the Vessels or any blocks following a casualty to examine for damage whether or not damage is found to have been sustained.

## 10. TRIALS

In the event of the failure of or abandonment of or any accident during any trial or test arising from any perils covered by this Policy, this Policy is to pay all additional expenses incurred in completing and re-running or repeating such trial or trials or test or tests .

## 11. NAVIGATION

This Policy shall pay all costs and expenses incidental to, occasioned by or in consequence of any movement of a Vessel or block or other Insured Property whatsoever carried out:

a. with leave to proceed (whether loaded, in ballast or otherwise) at all times to and from any wet or dry docks, harbours, quays, slipways, gridirons, ways, cradles and pontoons for any purpose whatsoever, to shift, to sail with or without Pilots, to tow and

be towed, to assist vessels and craft in all situations to any extent and for any purpose whatsoever, to fire guns, torpedoes and missiles, to test armaments, to store, load, shift and discharge ammunition and explosives, to load bunkers (whether coal, oil or other fuel) and cargo (whether on behalf of the Assured or others), to adjust compasses, and to use forges and other fires and lights during work on the Vessels, all as often as may be required and whether or not for fitting out, docking, trials or delivery; and

b. notwithstanding anything in the foregoing to the contrary in respect of voyages of any distance in tow (provided that such voyage shall have been notified to the Authority in advance), and further provided that any towing shall only be undertaken following approval of tug, tow, towage and stowage arrangements by a warranted surveyor and any recommendations by such surveyor shall have been complied with by the Assured.

## 12. DEDUCTIBLE

a. With respect to any claim arising from a peril insured against under this Policy (including claims under Clauses 15, 18, 20 and 21 of this Policy), the Deductible shall be dealt with in accordance with Paragraph 11.3 of Schedule 14. The expense of sighting the bottom after stranding, if reasonably incurred specially for the purpose, shall be paid even if no damage be found. This Clause 12 shall not apply to a claim for total or constructive total loss of a Vessel or, in the event of such a claim, to any associated claim under Clauses 18, 20 and 21 of this Policy arising from the same cause or same event (in each case without any intervening cause or event).

b. Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this Policy the Deductible to be applied (in accordance with Paragraph 11.3 of Schedule 14) to the claim shall be the proportion of the above Deductible that the number of days of such heavy weather falling within the period of this Policy bears to the number of days of heavy weather during the single sea passage. The expression 'heavy weather' in this Clause shall be deemed to include contact with floating ice.

c. Excluding any interest comprised therein, recoveries against any claim which is subject to the above Deductible shall be reimbursed to the Authority in full in accordance with Paragraph 11.2(f) of Schedule 14.

d. Interest comprised in recoveries shall be apportioned between the Assured and the Authority, taking into account the sums paid by the Authority and the dates when such payments were made, notwithstanding that by the addition of interest the Authority may receive a larger sum than he has paid.

e. The Deductible shall apply to each accident or occurrence or to any series of accidents or occurrences arising from the same cause or same event (in each case without any intervening cause or event), irrespective of the number of Assureds claiming under this Policy as a result of such accident or occurrence or such series of accidents or occurrences.

## 13. UNREPAIRED DAMAGE



In no case shall the Authority be liable for unrepaired damage in addition to a subsequent total loss sustained during the period covered by this Policy or any extension thereof.

14. TOTAL LOSS

a. In ascertaining whether a Vessel or any block or other Insured Property hereby insured is a constructive total loss the value thereof, subject to it being no more than the Sum Insured, shall be taken as the repaired value and nothing in respect of the damaged or break-up value shall be taken into account.

No claim for constructive total loss of a Vessel or block or other Insured Property based upon the cost of recovery and/or repair shall be recoverable hereunder unless such cost would exceed the lesser of the repaired value or the Sum Insured.

b. When a claim for total loss of a Vessel or any block or other Insured Property is admitted hereunder and expenses have been reasonably incurred in salvaging or attempting to save that Vessel or block and/or other Insured Property, and there are no proceeds or the expenses exceed the proceeds, this Policy shall pay such expenses or the expenses in excess of the proceeds as the case may be.

15. GENERAL AVERAGE AND SALVAGE

a. This Policy covers each Vessel's and/or block's and/or other Insured Property's proportion of salvage, salvage charges and/or general average, but in the case of general average sacrifice of a Vessel or block or other Insured Property, the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

b. Adjustment to be according to the law and practice pertaining to the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

c. When a Vessel or block or other Insured Property sails in ballast, not under charter, the provisions of the York-Antwerp Rules 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of that Vessel or block or other Insured Property (as the case may be) at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

d. No claim under this Clause shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

16. CHANGE OF INTEREST

Any change of interest in the Vessels or any block or other Insured Property hereby insured shall not affect the validity of this Policy.

17. ASSIGNMENT

The Assured may only novate, assign, transfer, charge or otherwise dispose of its interest as part of a novation, assignment, transfer, charge or otherwise pursuant to the provisions of clause 27 (Assignment and Novation) of the Manufacturing Phase Alliance Agreement.

18. COLLISION LIABILITY

a. The Authority agrees to indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for:

- (1) loss of or damage to any other vessel or property thereon;
- (2) delay to or loss of use of any such other vessel or property thereon;
- (3) general average of, salvage of, or salvage under contract of, any such other vessel or property thereon;

where such payment by the Assured is in consequence of any Vessel or block or other Insured Property hereby insured coming into collision with any other vessel.

b. The cover provided by this Clause 18 shall be in addition to the cover provided by the other terms and conditions of this Policy and shall be subject to the following provisions:

- (1) Where an insured Vessel or block or other Insured Property is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 18 shall be calculated on the principle of cross-liabilities as if the respective owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision. Notwithstanding the foregoing, in all cases the Authority shall indemnify the Assured in full regardless of the application of the principle of cross-liabilities and shall then be entitled to seek reimbursement from such other vessel.
- (2) In no case shall the Authority's total liability under sub-Clauses 18(a) and 18(b) exceed the Sum Insured in respect of any one such collision.

c. The Authority will also pay the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, with the prior written consent of the Authority.

EXCLUSIONS

d. Providing always that this Clause 18 shall in no case extend to any sum which the Assured shall pay for or in respect of:

- (1) removal or disposal of obstruction, wrecks, cargoes or any other thing whatsoever;
- (2) any real or personal property or thing whatsoever except other vessels or property on other vessels;
- (3) the cargo or other property on, or the engagements of, the insured Vessels or blocks;
- (4) loss of life, personal injury or illness;
- (5) pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which an insured Vessel or block or other Insured Property is in collision or property on such other vessels).

19. SISTER SHIP

Should an insured Vessel or block or other Insured Property come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of owners not interested in the Vessels or blocks or other Insured Property hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Authority and the Assured.

20. SUE AND LABOUR

- a. In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this Policy.
- b. Subject to the provisions below and to Clause 12 of this Policy the Authority will contribute to charges properly and reasonably incurred by the Assured, their servants or agents for such measures. General Average, collision defence or attack costs and costs incurred by the Assured in avoiding, minimising or contesting liability covered by Clause 21 of this Policy are not recoverable under this Clause 20.
- c. Measures taken by the Assured or the Authority with the object of saving, protecting or recovering the subject matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.
- d. The sum recoverable under this Clause shall be in addition to the loss otherwise recoverable under this Policy but shall in no circumstances exceed the Sum Insured under this Policy.

21. PROTECTION AND INDEMNITY

- a. This Policy will indemnify the Assured for any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable, for any

claim, demand, damages and/or expenses, where such liability is in consequence of any of the following matters or things and arises from an accident or occurrence during the period of this Policy:

- (1) loss of or damage to any fixed or movable objects or property or other thing or interest whatsoever, other than the Vessels and blocks, arising from any cause whatsoever insofar as such loss or damage is not covered by Clause 18;
- (2) any attempted or actual raising, removal or destruction of any fixed or movable object or property or other thing, including the wreck of a Vessel or block or other Insured Property, or any neglect or failure to raise, remove, or destroy the same;
- (3) loss of life, personal injury, illness or payments made for life salvage;
- (4) Liability for any bodily and/or personal injury to or illness or death of any person or loss of, damage to, or loss of use of property directly or indirectly caused by or arising out of seepage into or onto and/or pollution and/or contamination of air, land, water, and/or any other property and/or any person irrespective of the cause of the seepage and/or pollution and/or contamination, and whenever occurring.

The words "loss of, damage to, or loss of use of property" as used in this Clause 21 a. include, but are not limited to:

- a) The cost of evaluating and/or monitoring and/or controlling and/or removing and/or nullifying and/or cleaning-up seeping and/or polluting and/or contaminating substances and materials;
- b) Loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the Assured; and
- c) Removal of, loss of, or damage to sub-surface oil, gas, or any other substance or material.

This Clause 21 a. shall not apply as respects liability for an occurrence causing discharge, dispersal, release or escape unless the Assured establishes that all of the following conditions have been met:

- i) the occurrence not being part of a continuous situation commenced during the term of this Policy;
- ii) the occurrence was accidental and was neither expected nor intended by the Assured;
- iii) the occurrence was identified as commencing at a specific point in time and became known to the Assured within 168 hours thereafter and reported to the Authority within 30 days of such knowledge;

- iv) the occurrence did not result from the Assured's intentional and reckless violation of any local or national governmental statute, rule or regulation.
- b. The Authority agrees to indemnify the Assured for any of the following arising from an accident or occurrence during the period of this Policy:
- (1) the additional cost of fuel, insurance, wages, provisions and port charges reasonably incurred solely for the purpose of landing from a Vessel sick or injured persons or stowaways, refugees, or persons saved at sea;
  - (2) additional expenses brought about by the outbreak of infectious disease on board a Vessel or ashore;
  - (3) fines imposed on a Vessel or block or other Insured Property, on the Assured, or on any Master, Officer, crew member or agent of a Vessel or block or other Insured Property who is reimbursed by the Assured, for any act or neglect or breach of any statute or regulation relating to the operation of that Vessel or block or other Insured Property, provided that the Authority shall not be liable to indemnify the Assured for any fines which result from any act, neglect, failure or default of the Assured their agents or servants other than Master, Officer or crew member;
  - (4) the expenses of the removal of the wreck of a Vessel or block or other Insured Property from any place owned, leased or occupied by the Assured;
  - (5) legal costs incurred by the Assured, or which the Assured may be compelled to pay, in avoiding, minimising or contesting liability with the prior written consent of the Authority.

#### EXCLUSIONS

- c. Notwithstanding the provisions of sub-Clauses 22(a) and 22(b) below, this Clause does not cover any liability, cost or expense arising in respect of:
- (1) any direct or indirect payment of the Assured under workmen's compensation or employers' liability acts and any other statutory or common law, general maritime law or other liability whatsoever in respect of accidents to or illness of workmen or any other persons employed in any capacity whatsoever by the Assured or others in, on or about or in connection with the Vessels or their cargo, materials, repairs or blocks;
  - (2) liability assumed by the Assured under agreement expressed or implied in respect of death or illness of or injury to any person employed under a contract of service or apprenticeship by the other party to such agreement;
  - (3) punitive or exemplary damages, however described;
  - (4) cash, negotiable instruments, precious metals or stones, valuables or objects of a rare or precious nature, belonging to persons on board the Vessel, or non-essential personal effects of any Master, Officer or crew member;

(5) fuel, insurance, wages, stores, provisions and port charges arising from delay to the Vessel while awaiting a substitute for any Master, Officer or crew member;

(6) fines or penalties arising from overloading or illegal fishing.

d. The indemnity provided by this Clause shall be in addition to the indemnity provided by the other terms and conditions of this Policy.

e. Where the Assured or the Authority may or could have limited their liability, the indemnity under this Clause 21 in respect of such liability shall not exceed the Sum Insured.

f. In no case shall the Authority's liability under this Clause 21 in respect of each separate accident or occurrence or series of accidents or occurrences arising out of the same cause or same event (in each case without any intervening cause or event), exceed the Sum Insured.

PROVIDED ALWAYS THAT:

g. The Assured shall not admit liability for or settle any claim for which he may be covered under this Clause 21 without the prior written consent of the Authority.

22. PERSONNEL ON TRIALS

a. It is understood and agreed that all persons (whether Master, Deck or other Officers, Crew or otherwise howsoever, and whether employed by the Assured or the owners or the Ministry of Defence or the Purchasers or the Sub-Contractors or the Suppliers or otherwise howsoever), who are or may be on board a Vessel or block or other Insured Property during trials or other voyages, are or may be required to sign Builders' Articles; and it is further understood and agreed that all such persons are or may be deemed to be the servants of the Assured during such trials.

b. Notwithstanding anything to the contrary contained herein and whether or not the Vessels or blocks or other Insured Property are registered in the Owners' or Purchasers' name before proceeding on trials or other voyages, it is further agreed that if the Assured shall become liable to pay and shall pay any sum or sums in respect of any liability, claim, demand, damages or expenses arising from or occasioned by the loss of life or personal injury, disease or illness (at common law or under any statutory provision or provisions) of any person or persons on board the Vessels or blocks or other Insured Property or who have signed Builders' Articles for trials or other voyages (other than workmen as defined under the Workmen's Compensation Act 1925 in the permanent employment of the Assured) the Authority will pay the Assured such sum or sums so paid, or which may be required to indemnify the Assured for such loss, provided always that his liability under this Clause in respect of any one accident or series of accidents arising out of the same cause or same event (in each case without any intervening cause or event), shall not exceed the Sum Insured, and in cases in which, with the prior consent in writing of the Authority, the liability of the Assured has been contested or proceedings

have been taken to limit liability, he will also pay the costs which the Assured shall thereby incur or be compelled to pay.

23. STRIKES AND MALICIOUS DAMAGE

This Policy also covers loss of or damage to or destruction of the subject matter hereby insured caused by:

- a. strikers, locked-out workmen or persons taking part in labour disturbances, riots or civil commotions;
- b. any terrorist or any person acting maliciously or from a political, ideological, religious motive (including cyber risks).

24. AMMUNITION

This Policy shall not be prejudiced by reason of ammunition, torpedoes and missiles being on board the Vessels whilst in charge of the Assured and/or whilst being repaired by them and/or upon which they are engaged on work and/or on the premises or shops of or occupied by the Assured. The Authority agrees to cover the Assured against loss or liability for loss of or damage to third party property and/or loss of life or personal injury to persons (other than those in the employ of the Assured) arising from any casualty due to such presence of ammunition, torpedoes and missiles.

25. TOWAGE LIABILITIES

It is further agreed that if the Assured shall become liable to pay and shall pay any sum or sums in respect of any responsibility, liability, claim, demand, damages and/or expenses, or shall incur any other loss, arising from, occasioned by or by virtue of a towage contract and/or transport contract and/or any other contract whatsoever for loss and/or damage sustained by the tug or tugs and/or any other vessel or vessels and/or property including any vessel or vessels and/or property belonging to third parties the Authority will pay the Assured such sum or sums so paid, or which may be required to indemnify the Assured for such loss, provided always that the liability under this Clause, in respect of any one accident or series of accidents arising out of the same cause or same event (in each case without any intervening cause or event), shall be limited to the Sum Insured. But when the liability of the Assured has been contested or proceedings taken to limit liability, with the consent in writing of the Authority, the Authority will also pay the costs which the Assured shall thereby incur or be compelled to pay.

26. NOTICE OF LOSS

In the event of an accident or occurrence whereby loss, damage or liability may result in a claim under this Policy the Assured shall report the circumstances of the accident or occurrence to the Authority in writing as soon as reasonably practicable after the occurrence of the event.

THE FOLLOWING CLAUSES SHALL BE PARAMOUNT AND SHALL OVERRIDE ANYTHING CONTAINED IN THIS POLICY INCONSISTENT THEREWITH:

27. LIABILITIES/EXCLUSIONS

a. The cover under this Policy shall in no case extend or be deemed to extend to include any claim arising directly or indirectly under Workmen's Compensation or Employers' Liability Acts and any other Statutory or Common Law Liability in respect of loss of life or personal injury to or illness of:

- (1) any person in the permanent employment of the Assured;
- (2) any other person employed in any capacity whatsoever by any of the Assured or Sub-Contractors in on or about or in connection with the Vessels or blocks or other Insured Property hereby insured or their cargo, materials or repairs where such claim or liability is properly the liability of the Employer of such other person.

b. The Authority shall not be under any liability to indemnify an Assured against any claim in respect of that Assured's liability arising from:

- (1) any guarantee clause within the Terms and Conditions of the Manufacturing Flow Through Contract and IP MFTC Sub-Contracts;
- (2) any warranty or condition by virtue of which the Authority may be entitled to claim against the Assured as provided in Schedule 14;
- (3) any failure to maintain the build programme of the Vessels or meet the contracted date for delivery of the Vessels;
- (4) any failure to achieve any of the performance characteristics required of the Vessels;
- (5) any financial guarantees in the terms of that Assured's contracts and any claim in respect of or arising out of financial default or insolvency.

28. WAIVERS/RECOVERY

It is a condition of this Policy that the Assured shall not waive rights of recovery against sub-contractors (other than those subcontractors which are within the definition of Assured), carriers or any other party, and that any recovery rights against such parties are duly exercised within the applicable time limitations.

The Authority reserves the right to reduce any claim to the extent that any recovery has been prejudiced by failure to comply with this Clause.

29. NAMED CONTRACTOR

Without prior agreement of the Authority, the Policy shall not extend to give protection to any party other than the Assured named in this Policy.

30. NON-CONTRIBUTION



This Policy excludes claims covered under the Required Insurances and it is understood and agreed that this Policy shall be in excess of and shall not contribute with the Required Insurances, either as double insurance or otherwise. Nothing in this Clause shall be construed to make this Policy subject to the terms, conditions and limitations of such other indemnity, insurance or policy, nor to extend this Policy to cover claims which would not be recoverable hereunder in the absence of this Clause.

31. FRUSTRATION/DELAY

The Authority shall be under no obligation to indemnify the Assured against any costs or expense in respect of delay or dislocation to the build programme of the Vessels however caused.

32. QUEEN'S ENEMIES RISKS

For the purpose of this Policy the insured risks shall be deemed to include loss or damage resulting from warlike operations by the Queen's enemies and the Assured shall not be liable for any loss or damage so resulting.

**Schedule 15**

**Step-In and Step-Out Notices**

**STEP-IN NOTICE**

To: *[Insert name and address of IP]*

*[insert date]*

Attention: *[Insert name of relevant contact at IP]*

**NOTICE TO STEP-IN**

- 1 This Step-In Notice is issued pursuant to clause 24.5(a)(iii) of the Manufacturing Phase Alliance Agreement dated 2008 (the MAA). Terms defined in the MAA shall bear the same meanings herein.
- 2 The Authority is exercising these step-in rights as a result of *[insert name of IP]* failing to comply with a Rectification Programme within the periods set out therein and *[insert name of IP]* continuing to fail to comply with the Rectification Programme at the date of this notice.
- 3 The Authority therefore appoints *[insert details of the step-in contractor]* (the “Step-In Contractor”) pursuant to clause 24.5(a)(ii)(A) to take the following actions, being those actions needed to reasonably remedy the matters set out in the Rectification Programme together with all things reasonably ancillary thereto: *[insert details of actions to be taken by the Step-In Contractor]*.
- 4 From *[insert date]* the Authority will exercise its step-in rights under clause 24.5(a) of the MAA.
- 5 The Authority estimates that the step-in rights will be exercised for *[insert likely duration for which step-in rights are to be exercised]* Business Days.
- 6 *[Insert name of IP]* shall make available the following facilities, equipment and resources to the Step-In Contractor, being facilities, equipment and resources that are either currently being used or are scheduled to be used for the Project: *[insert details of facilities, equipment and resources that are to be made available.]*

7 [The terms on which the Step-In Contractor is contacted are [*insert details of terms approved by the Alliance Management Board/Authority*]. ***[Note: delete if the Step-In Contractor is an Industrial Participant]***]

Yours faithfully

.....

for and on behalf of The Secretary of State for Defence

**STEP-OUT NOTICE**

To: *[Insert name and address of IP]*

*[insert date]*

Attention: *[Insert name of relevant contact at IP]*

**NOTICE TO STEP-OUT**

- 1 This notice is issued pursuant to clause 24.5(e)(i) of the Manufacturing Phase Alliance Agreement dated 2008 (the MAA). Terms defined in the MAA shall bear the same meanings herein.
  
- 2 As the AMB have determined that the breach of contract giving rise to the issuing of a Step-In Notice has been rectified or otherwise remedied in accordance with the Rectification Programme or otherwise, the Authority hereby notifies *[insert name of IP]* that with immediate effect the arrangements it has in place with the Step-In Contractor are terminated.

Yours faithfully

.....  
for and on behalf of The Secretary of State for Defence

**Schedule 16**  
**Change Procedure**

**1 Application of the Change Procedure**

1.1 For the purposes of alterations of or variations to any document subject to configuration management pursuant to the Configuration Management Plan (other than the Key Project Agreements) there shall be three types of Change:

- (a) Major Change;
- (b) Minor Change; and
- (c) Configuration Management Change.

1.2 Alterations of or variations to any Key Project Agreement shall be agreed in writing pursuant to Clause 26.2 (Variations and Change Procedure) by the Manufacturing Alliance Participants without following the process set out in this Schedule 16.

**2 Major Change**

2.1 “**Major Change**” means a change which:

- (a) changes the Performance Requirements;
- (b) reduces the likelihood of the Vessels, Vessel Parts, Compartments or Ship Deliverables passing the relevant Acceptance Events;
- (c) changes the Initial Target Cost or Final Target Cost;
- (d) extends the Vessel Acceptance Date for CVF 01 or CVF 02 beyond their respective Contract Acceptance Dates;
- (e) adversely affects the Safety Case;
- (f) moves the performance of the build of the Blocks or Units or their assembly into the Vessels outside the United Kingdom;
- (g) changes Section 1.2 (Standards and Applicability) of the Ship Specification;

- (h) changes the GFA Tool Set (unless the change to the GFA Tool Set is a Minor Change);
- (i) changes the Statement of Work (unless the change to the Statement of Work is a Minor Change); or
- (j) adversely affects the future through-life supportability of the Vessels.

### **3 Minor Change**

3.1 “**Minor Change**” means a change which changes:

- (i) the Statement of Work where the change has a value of not more than twenty five million pounds (£25,000,000) per event; or
- (ii) the GFA Tool Set by developing the definition of the GFA set out in the GFA Tool Set but without changing the GFA set out in the GFA Tool Set which is to be provided by the Authority.

### **4 Configuration Management Change**

4.1 “**Configuration Management Change**” means any alterations of or variations to any document subject to configuration management pursuant to the Configuration Management Plan (other than the Key Project Agreements) other than a Major Change or Minor Change.

### **5 Major Change and Minor Change Proposals**

5.1 Any Manufacturing Alliance Participant may make a proposal for a Major Change or a Minor Change at any time using an ECR.

5.2 The Authority, when proposing a Change, shall specify whether or not the proposed Change is a Mandatory Change.

5.3 If the Change proposed by the Manufacturing Alliance Participant is a Major Change, it shall be submitted to the Alliance Management Board and considered in accordance with Paragraph 6 below.

5.4 If the Change proposed by the Manufacturing Alliance Participant is a Minor Change,

it shall be submitted to CVF Programme Director and considered in accordance with Paragraph 7 below.

**6 Analysis of proposals for Major Changes**

6.1 The Alliance Management Board may request further information on any aspect of the ECR for a Major Change from the relevant Manufacturing Alliance Participant(s) proposing the Major Change.

6.2 The Alliance Management Board shall, as soon as reasonably practicable, fully consider the ECR for a Major Change and shall either:

(a) if the proposed Major Change is a Mandatory Change, give directions as to the implementation of such Mandatory Change; or

(b) if the proposed Major Change is not a Mandatory Change, determine on a Best for Project basis, that:

(i) the implications and costs of the Major Change are such that it should not be carried out; or

(ii) subject to Paragraph 6.3 below, the Major Change is approved and should be implemented and give directions as to the implementation of such Major Change.

6.3 If the Industrial Participants' Members on the Alliance Management Board approve a Major Change and agree that it should be implemented in accordance with Paragraph 6.2(b)(ii) above, then the Authority's Member on the Alliance Management Board may:

(a) agree to approve such Major Change as being "Best for Project"; or

(b) not approve such Major Change if and to the extent the Authority is entitled to do so pursuant to Clause 6.6 (Restricted Matters) in which case the Major Change shall not be carried out.

## 7 Minor Change Proposals

- 7.1 Any Manufacturing Alliance Participant may make a proposal for a Minor Change to the CVF Programme Director at any time using an ECR.
- 7.2 The CVF Programme Director shall make an initial assessment of the impact of such Minor Change by reviewing the information set out in the ECR.
- 7.3 If the CVF Programme Director determines that due to the implications and costs of the change set out in the ECR it is, in fact, a Major Change then the CVF Programme Director shall refer consideration of the Major Change to the Alliance Management Board in accordance with Paragraph 6 above.
- 7.4 The CVF Programme Director may request further information on any aspect of the Minor Change proposal from the relevant Manufacturing Alliance Participant(s).
- 7.5 The CVF Programme Director shall, as soon as reasonably practicable, fully consider any proposal for a Minor Change and shall either:
- (a) note that the proposed Change is a Mandatory Change and give directions as to the implementation of such Mandatory Change; or
  - (b) if the proposed Change is not a Mandatory Change determine on a Best for Project basis that:
    - (i) the implications and costs of the Minor Change are such that it should not be carried out; or
    - (ii) the Minor Change should be implemented.
- 7.6 If Paragraph 7.5(b)(i) above applies, no Minor Change shall take place. The proposing Manufacturing Alliance Participant(s) may refer its proposal to the Alliance Management Board for consideration.
- 7.7 If a Minor Change is to be implemented in accordance with Paragraph 7.5(b)(ii) above, then the CVF Programme Director shall notify the Alliance Management Board in writing that the Minor Change has been approved.



## **8 Mandatory Change**

8.1 The Authority shall have the right at any time to make a Mandatory Change by giving written notice to the Industrial Participants. All Mandatory Changes shall be documented in accordance with this Schedule 16.

8.2 There shall be an Equitable Adjustment in relation to any and all Mandatory Changes.

## **9 Change in Law**

9.1 To the extent that any Change is proposed by any of the Manufacturing Alliance Participants to implement:

- (a) any change in Legislation;
- (b) any change in any Guidance; or
- (c) any change in any applicable judgment of a relevant court of law which changes a binding precedent,

then, notwithstanding that it has any of the effects specified in Clause 6.6 (Restricted Matters), the Manufacturing Alliance Participants shall as soon as reasonably practicable either approve such Change or agree on a Best for Project basis an alternative means by which the relevant change in Legislation, Guidance or applicable judgment, can be complied with.

9.2 To the extent that any Change proposed by any of the Manufacturing Alliance Participants to implement any Change in Law is agreed pursuant to Paragraph 9.1 above, then there shall be an Equitable Adjustment agreed as part of such Change.

## **10 Changes to Alliance Strategy Documents**

10.1 Any change to an Alliance Strategy Document may be proposed directly to the Alliance Management Board by any Manufacturing Alliance Participant or the CVF Programme Director and the Alliance Management Board shall review and approve or reject any such proposal.

## **11 Changes to Material Contracts**

- 11.1 Any change to a Material Contract may be proposed directly to the Alliance Management Board by any Manufacturing Alliance Participant or the CVF Programme Director and the Alliance Management Board shall review and approve or reject any such proposal.

## **12 Assistance with Changes**

- 12.1 The Manufacturing Alliance Participants shall promptly comply with any reasonable request from the Alliance Management Board or the CVF Programme Director for assistance in connection with the consideration of any Change.

## **13 Configuration Management**

- 13.1 Configuration Management Changes shall be made in accordance with the Configuration Management Plan.

## **14 Formalities**

- 14.1 All Major Changes and Minor Changes shall be recorded in writing on an ECR. Notwithstanding that this Agreement has been executed as a deed, all alterations to or variations of any Key Project Agreement (including by way of Mandatory Change) and any ECR shall be executed under hand by all parties to the contracts amended by the relevant Change.
- 14.2 All alterations to or variations of any Key Project Agreement and any ECR shall be enforceable in all respects as if executed as a deed.
- 14.3 All Equitable Adjustments and any reduction to or deduction from the Project Target Cost agreed to be made under any of the Key Project Agreements shall be documented in accordance with this Schedule 16.
- 14.4 All Configuration Management Changes shall be documented in accordance with the Configuration Management Plan.
- 14.5 The parties shall take all steps which may be required to implement any alterations to or variations of any Key Project Agreement or any Change made in accordance with

this Schedule 16.

**15 Changes to Section 1.29 (Acceptance) of the Ship Specification**

- 15.1 There shall be no Changes to Section 1.29 (Acceptance) of the Ship Specification prior to the resolution made in relation to such Section set out in Paragraph 5 of the First AMB Minutes being implemented.

## Schedule 17

### Dispute Resolution Procedure

#### **1 Alliance Management Board**

- 1.1 Subject to Paragraph 8 below, each Manufacturing Alliance Participant shall refer any disputes or claim arising out of or in connection with this Agreement or any of the other Key Project Agreements (other than a failure to agree under Clause 23.2 (Force Majeure)) (“**Dispute**”) to the Alliance Management Board by giving notice in writing to the Alliance Management Board and all other Manufacturing Alliance Participants.
- 1.2 Subject to Paragraph 16 of Schedule 3 (Open Book), within 5 Business Days of any Manufacturing Alliance Participant referring a Dispute to the Alliance Management Board and giving notice to the other Manufacturing Alliance Participants, each Manufacturing Alliance Participant shall make written submissions to the Alliance Management Board or notify the Alliance Management Board that it does not wish to make any submissions.
- 1.3 Within 10 Business Days of the referral of a Dispute to the Alliance Management Board pursuant to Paragraph 1.1 above the Members of the Alliance Management Board shall hold a meeting in accordance with Part 1 of Schedule 2 (Alliance Management).
- 1.4 At the meeting of the Alliance Management Board the Manufacturing Alliance Participants are entitled to make further submissions to the Alliance Management Board (including oral submissions) and shall provide, or procure that others provide, the Alliance Management Board with such assistance and documents as the Alliance Management Board reasonably requires for the purpose of making its determination.
- 1.5 Subject to Paragraph 1.6(c), within 25 Business Days of the meeting of the Alliance Management Board held pursuant to Paragraph 1.4 above, the Alliance Management Board shall give its decision by resolution in writing to each Manufacturing Alliance Participant.
- 1.6 The Alliance Management Board may at any time within the time period set out in

Paragraph 1.5 above:

- (a) seek advice and/or guidance from the Dispute Resolution Panel or any third party in connection with any Dispute; and/or
- (b) refer a Dispute to the Dispute Resolution Panel or to expert determination to be resolved in accordance with Paragraphs 2 (Dispute Resolution Panel) or 4 (Expert Determination) below, as applicable; and/or
- (c) resolve to extend the time period set out in Paragraph 1.5 by up to 10 Business Days,

and shall notify the Manufacturing Alliance Participants accordingly.

1.7 If the Alliance Management Board is unable to resolve a Dispute any Member may refer the Dispute to the Dispute Resolution Panel for the Dispute Resolution Panel to determine in accordance with Paragraph 2 (Dispute Resolution Panel) below.

1.8 If a Dispute is referred to the Dispute Resolution Panel and is not resolved in accordance with Paragraph 2 (Dispute Resolution Panel) below the Alliance Management Board shall, within 5 Business Days of the date the Dispute Resolution Panel referred or should have referred the Dispute back to the Alliance Management Board pursuant to Paragraph 2.7 (Dispute Resolution Panel) below, either:

- (a) resolve the Dispute;
- (b) refer the Dispute to mediation in accordance with Paragraph 3 (Mediation) below;
- (c) refer the Dispute to expert determination in accordance with Paragraph 4 (Expert Determination); or
- (d) refer the Dispute to arbitration in accordance with Paragraph 5 (Arbitration) below.

1.9 If, save where the Alliance Management Board has already referred the Dispute to arbitration, either:

- (a) the Alliance Management Board fails to:

- (i) resolve the Dispute; or
- (ii) refer the Dispute to mediation; or
- (iii) refer the Dispute to expert determination,

in accordance with Paragraph 1.8; or

(b) the Alliance Management Board has referred the Dispute to mediation and either:

- (i) the mediation is terminated pursuant to Paragraph 3.6 (Mediation) below; or
- (ii) any Manufacturing Alliance Participant withdraws from the mediation,

the Alliance Management Board shall within 2 Business Days, or in default any Member may, refer the Dispute to arbitration in accordance with Paragraph 5 (Arbitration) below.

1.10 All resolutions of the Alliance Management Board passed in accordance with Schedule 2 (Alliance Management) shall (in the absence of manifest error or fraud) be final and binding on the Manufacturing Alliance Participants.

1.11 The Alliance Management Board shall act as expert and not as arbitrator.

1.12 If the Dispute affects an Excluded Participant then for the purposes of this Schedule 17, the Alliance Management Board and the Dispute Resolution Panel shall include such person as an Excluded Participant may propose. Such person shall not be required to form a quorum of either the Alliance Management Board or the Dispute Resolution Panel.

## **2 Dispute Resolution Panel**

2.1 Subject to Paragraph 16 of Schedule 3 (Open Book), within 5 Business Days of referral of a Dispute to the Dispute Resolution Panel pursuant to Paragraphs 1.6 or 1.7 above each Manufacturing Alliance Participant shall make written submissions to the Dispute Resolution Panel or notify the Alliance Management Board that it does not wish to make any submissions.

2.2 Within 15 Business Days of referral of a Dispute to the Dispute Resolution Panel, the Members of the Dispute Resolution Panel shall hold a meeting in accordance with the following procedures:

- (a) The members of the Dispute Resolution Panel may regulate their proceedings as they see fit save as set out below.
- (b) The member appointed by the Authority shall be the Chairman.
- (c) Any member may call a meeting of the Dispute Resolution Panel and/or submit items and any documents for the agenda of any meeting.
- (d) No matter shall be decided at any meeting unless a quorum is present. A quorum shall not be present unless all members of the Dispute Resolution Panel are in attendance. If a quorum is not present at any such meeting, then any member of the Dispute Resolution Panel may call a further meeting, on not less than 5 Business Days' notice, pursuant to the procedures established pursuant to this Paragraph 2.2 and at such meeting the members present shall form a quorum notwithstanding that there may be less than all the members present.
- (e) A meeting of the Dispute Resolution Panel may consist of a conference between its members who are not all in one place, but each of which is able directly or by telephonic or video communication to speak to each of the others, and to be heard by each of the others simultaneously. A member taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and/or be counted in the quorum accordingly. At the discretion of the Chairman, such a meeting shall be deemed to take place where the largest group of members are assembled or where the Chairman is located.
- (f) Each member shall have one vote of equal weight.
- (g) All matters arising at any meeting of the Dispute Resolution Panel shall be determined unanimously and only by resolution and no such resolution shall be effective unless approved in writing and signed by all the members. In the event that the Dispute Resolution Panel fails to pass a resolution pursuant to

this Paragraph 2.2(g), the Dispute Resolution Panel shall refer the same back to the Alliance Management Board in accordance with the provisions of this Schedule 17.

(h) The Dispute Resolution Panel shall notify the Alliance Management Board of any decision or recommendation of the Dispute Resolution Panel in writing.

(i) Notices

Each member shall be entitled to receive notice of meetings of the Dispute Resolution Panel at his usual address (postal, facsimile or electronic transmission) or as otherwise notified to the Dispute Resolution Panel.

(j) Minutes

The Dispute Resolution Panel shall produce, or procure the production of, minutes of the Dispute Resolution Panel and shall distribute such minutes to the members.

2.3 At the meeting of the Dispute Resolution Panel the Manufacturing Alliance Participants and the Members of the Alliance Management Board are entitled to make further submissions to the Dispute Resolution Panel (including oral submissions) and shall provide, or procure that others provide, the Dispute Resolution Panel with such assistance and documents as the Dispute Resolution Panel reasonably requires for the purpose of making its determination.

2.4 Within 25 Business Days of the submissions having been made pursuant to Paragraph 2.3 the Dispute Resolution Panel shall give its decision by resolution in writing to each Manufacturing Alliance Participant and the Alliance Management Board.

2.5 All resolutions of the Dispute Resolution Panel shall (in the absence of manifest error or fraud) be final and binding on the Manufacturing Alliance Participants.

2.6 The Dispute Resolution Panel shall act as expert and not as arbitrator.

2.7 If the Dispute Resolution Panel has failed to resolve the Dispute pursuant to Paragraph 2.4, it shall within 2 Business Days, or in default any Member may, refer the Dispute back to the Alliance Management Board to resolve in accordance with Paragraph 1.8



above.

### **3 Mediation**

- 3.1 If the Alliance Management Board refers any Dispute to mediation then the Manufacturing Alliance Participants shall refer the Dispute to mediation in accordance with this Paragraph 3.
- 3.2 Any Manufacturing Alliance Participant may nominate a mediator pursuant to Paragraph 3.1 above. If the Manufacturing Alliance Participants fail to agree on the appointment of the mediator within 10 Business Days of nomination of a mediator by any Manufacturing Alliance Participant, the Manufacturing Alliance Participants shall apply to the Centre for Effective Dispute Resolution (CEDR) to nominate the mediator.
- 3.3 Each of the Manufacturing Alliance Participants shall ensure that it is represented in the mediation by an individual with authority to settle the Dispute and to sign any settlement agreement that may be agreed.
- 3.4 The Mediator shall, in consultation with the Manufacturing Alliance Participants, determine the timetable and procedure for the mediation. The mediation shall follow the rules of CEDR or such other rules as the Manufacturing Alliance Participants may agree.
- 3.5 If a Dispute is settled through mediation, the terms of the settlement shall be recorded in writing in a legally binding form signed by a duly authorised representative of each of the Manufacturing Alliance Participants.
- 3.6 If, within 20 Business Days of the mediator being appointed, the mediation has not resulted in the settlement of the Dispute being reached, then the mediation procedure shall, unless otherwise agreed, be terminated.
- 3.7 Any Manufacturing Alliance Participant may withdraw from the mediation at any time and the mediation shall be terminated. In such event, the Alliance Management Board shall, pursuant to Paragraph 1.9 above, refer the Dispute to arbitration in accordance with Paragraph 5 (Arbitration).

- 3.8 No one appointed to act as a mediator shall be called to give evidence in any subsequent proceedings between the Manufacturing Alliance Participants, nor shall any mediator be entitled to act as an adviser to any Manufacturing Alliance Participant in any subsequent proceedings whether as counsel, solicitor, independent expert or arbitrator.
- 3.9 The charges of the mediator shall be shared equally between the Manufacturing Alliance Participants who are parties to the Dispute. The Manufacturing Alliance Participants shall bear their own costs including legal costs (if any).

#### **4 Expert Determination**

- 4.1 If the Alliance Management Board or Dispute Resolution Panel refer any Dispute to expert determination then the Manufacturing Alliance Participants shall resolve the Dispute by reference to expert determination, in accordance with this Paragraph 4.
- 4.2 Any Manufacturing Alliance Participant may nominate an expert pursuant to Paragraph 4.1 above. If the Manufacturing Alliance Participants fail to agree on the appointment of an expert within 10 Business Days of nomination of an expert by a Manufacturing Alliance Participant, the Manufacturing Alliance Participants shall, depending upon the nature of the Dispute, apply to the professional body governing the profession best placed to determine the Dispute to nominate the expert. If the Manufacturing Alliance Participants fail to agree on such a professional body within 12 Business Days of nomination of an expert by a Manufacturing Alliance Participant, the Manufacturing Alliance Participants shall apply to the Law Society of England and Wales to nominate the expert.
- 4.3 The expert shall act as an expert and not as an arbitrator.
- 4.4 Within 5 Business Days of appointment of the expert (or such other timetable agreed in writing between the Manufacturing Alliance Participants) pursuant to Paragraph 4.2 above each Manufacturing Alliance Participant shall make written submissions to the expert.
- 4.5 Within 40 Business Days of appointment of the expert (or such other timetable agreed in writing between the Manufacturing Alliance Participants) pursuant to Paragraph 4.2 above the expert shall give his decision in writing to each Manufacturing Alliance

Participant.

- 4.6 The written decision by the expert shall (in the absence of manifest error) be final and binding upon the Manufacturing Alliance Participants.
- 4.7 The charges of the expert shall be shared equally between the Manufacturing Alliance Participants who are parties to the Dispute. The Manufacturing Alliance Participants shall each bear their own costs including legal costs (if any).

## **5 Arbitration**

- 5.1 If the Alliance Management Board refers a Dispute to arbitration, the Alliance Management Board shall refer such Dispute to arbitration in accordance with the provisions of this Paragraph 5 (Arbitration).
- 5.2 Any Dispute referred to arbitration pursuant to Paragraph 5.1 shall be resolved in accordance with the Arbitration Act 1996 (the “**Act**”) and such arbitration shall be conducted under the rules of the London Court of International Arbitration (LCIA) (the “**LCIA Rules**”). A written decision by the arbitrator shall (in the absence of manifest error) be final and binding upon the Manufacturing Alliance Participants.
- 5.3 The number of arbitrators shall be three (3). Such arbitration shall take place in London. The language to be used in the arbitral proceedings shall be English.
- 5.4 The parties agree that the time limits for submission of written statements and documents under Article 15 of the LCIA Rules shall not apply. Instead the parties shall, within 10 Business Days of receipt of written notification from the Registrar of the formation of the Arbitral Tribunal, jointly write to the Arbitral Tribunal inviting the Arbitral Tribunal to make directions for the conduct of the arbitration and, if necessary and appropriate, to convene a hearing, whether in person or by telephone, for that purpose.
- 5.5 Where there is any conflict between the provisions of the Act and/or the LCIA Rules and/or the provisions of this Agreement, the following order of precedence shall apply:
- (a) this Agreement;

(b) the LCIA Rules: and

(c) the Act.

5.6 The charges of the arbitrator shall be paid as directed by the arbitrator. The Manufacturing Alliance Participants shall each bear their own legal costs (if any).

## **6 Related Disputes**

6.1 Where a Dispute to be referred to the AMB, the Dispute Resolution Panel, mediation, expert determination or arbitration in accordance with this Schedule 17 raises issues which are substantially the same as or connected with a Dispute under another contract entered into between any of the Manufacturing Alliance Participants relating to the Manufacturing Phase (a “**Related Dispute**”) then the following provisions of this Paragraph 6 shall apply.

6.2 The AMB shall consolidate any Related Disputes and any documents submitted to the AMB for the purpose of resolving any Disputes may be considered by the AMB for the purpose of resolving any other Dispute or any Related Dispute.

6.3 Where a reference to arbitration has already been made in the Related Dispute, the Manufacturing Alliance Participants may refer the Dispute under this Agreement to the arbitrator already appointed in relation to the Related Dispute unless the arbitrator under the Related Dispute has a conflict of interest or is unwilling or unable to act as arbitrator in relation to the Dispute under this Agreement. The arbitrator shall conduct separate arbitrations in respect of the Dispute and the Related Dispute or, if all the parties to the Dispute and the Related Dispute agree or the arbitrator so directs, consolidate the arbitration in respect of the Dispute and the Related Dispute.

6.4 Where the Related Dispute has not been referred to arbitration and notice of arbitration is given under this Agreement, the Manufacturing Alliance Participants may require that the arbitrator appointed under this Agreement shall also be appointed as arbitrator for the Related Dispute, unless the arbitrator has a conflict of interest or is unable or unwilling to act as arbitrator in relation to the Related Dispute or, if all the parties to the Dispute and the Related Dispute agree or the arbitrator so directs, consolidate the arbitration in respect of the Dispute and the Related Dispute.

**7 Equitable Remedies**

7.1 Notwithstanding the provisions of this Schedule 17 or any other provision of any of the Key Project Agreements:

- (a) any one or more of the Manufacturing Alliance Participants may, at any time, seek injunctive relief from any Court of competent jurisdiction; and
- (b) nothing in any Key Project Agreement shall prevent the Authority from applying to a court of competent jurisdiction for an order for specific performance or other equitable remedy in relation to any matter.

**8 Disputes arising after the Manufacturing Period**

8.1 If a Dispute arises (or falls to be determined and/or resolved) after the end of the Manufacturing Period, Paragraphs 1 to 4, 5.1, 6.1 and 6.2 above shall not apply. Instead:

- (a) the Manufacturing Alliance Participants shall refer any such Dispute to arbitration in accordance with Paragraphs 5.2 to 5.6 above; and
- (b) for the purposes of Paragraph 6.3 or 6.4, a Related Dispute shall be any dispute which raises issues which are substantially the same as or connected with a Dispute under another contract entered into by any of the Manufacturing Alliance Participants relating to the Manufacturing Phase.

EXECUTED (BUT NOT DELIVERED UNTIL THE )  
DATE OF THIS AGREEMENT) AS A DEED BY )  
THE AFFIXING OF THE CORPORATE SEAL )  
OF THE SECRETARY OF STATE FOR )  
DEFENCE OF THE UNITED KINGDOM OF )  
GREAT BRITAIN AND NORTHERN IRELAND )  
FOR AND ON BEHALF OF THE CROWN AND )  
IN THE EXERCISE OF ALL AND ANY POWERS )  
ATTACHING TO HIS OFFICE AS SECRETARY )  
OF STATE )

Andrew Oliver Tyler  
Authorised Signatory

.....  
Signatory Full Name

Executed as a Deed by )  
**BABCOCK MARINE (ROSYTH) LIMITED** )  
acting by a director )  
 )  
 )  
(name of director) )

.....

In the presence of:  
Name of witness: [redacted]

Address of witness: [redacted]  
[redacted]  
[redacted]

Occupation of witness: [redacted]

Executed as a Deed by )  
 )  
 [REDACTED] )  
(name of attorney) )  
as attorney for ) .....  
**BAE SYSTEMS MARINE LIMITED** )

In the presence of:  
Name of witness: [REDACTED]

Address of witness: [REDACTED]  
[REDACTED]

Occupation of witness: [REDACTED]

Executed as a Deed by )  
 )  
 [REDACTED] )  
(name of attorney) )  
as attorney for ) .....  
**BAE SYSTEMS INTEGRATED SYSTEM** )  
**TECHNOLOGIES LIMITED** )

In the presence of:  
Name of witness: [REDACTED]

Address of witness: [REDACTED]  
[REDACTED]

Occupation of witness: [REDACTED]

Executed as a Deed by )  
**BVT SURFACE FLEET LIMITED** )  
acting by a director )  
 )  
 )  
 )  
(name of director) )

.....

In the presence of:  
Name of witness: [redacted]

Address of witness: [redacted]  
[redacted]  
[redacted]

Occupation of witness: [redacted]

Executed as a Deed by )  
**THALES NAVAL LIMITED** )  
acting by a director )  
 )  
 )  
(name of director) )

.....

In the presence of: [redacted]  
Name of witness

Address of witness: [redacted]  
[redacted]  
[redacted]

Occupation of witness: [redacted]