

[REDACTED] (CONTRACT NO: MCP/001)

Terms of Business Agreement relating to BVT Surface Fleet Limited and its business

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

and

BVT SURFACE FLEET LIMITED

and

BAE SYSTEMS PLC

and

VT GROUP PLC

Dated

2009

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT and is issued for the information of such persons as need to know its contents in the course of their official duties. Any person finding this document should hand it to a British forces unit or to a police station for its safe return to the Ministry of Defence, D Mod Sy, London SW1A 2HB, with particulars of how and where found. THE UNAUTHORISED RETENTION OR DESTRUCTION OF THE DOCUMENT IS AN OFFENCE UNDER THE OFFICIAL SECRETS ACTS OF 1911-1989. (When released to persons outside Government service, this document is issued on a personal basis and the recipient to whom it is entrusted in confidence, within the provisions of the Official Secrets Acts 1911-1989, is personally responsible for its safe custody and for seeing that its contents are disclosed only to authorised persons).

Contents

Part 1 - Mechanics	2
1 Definitions and interpretation	2
2 Precedence of documentation	28
3 Interface with other documents	28
Part 2 – General Provisions	31
4 Duration	31
5 Conditions Precedent	31
6 Representations, warranties and undertakings	32
Part 3 – Purpose	35
7 Commercial Purpose	35
8 Standard of conduct	36
Part 4 – Exclusivity	37
9 Exclusivity	37
Part 5 – Integration, Transformation and Strategic Rationalisation	40
10 Pre-April 2009 Integration	40
11 Post-April 2009 Integration	40
12 Transformation	41
13 Strategic Rationalisation	47
Part 6 – Savings Targets, Performance Management and Incentive Payments	51
14 Savings Targets	51
15 Performance Review	53
16 Benefit Tracking and Realisation Process	55
17 Key Performance Indicators or KPIs	56
18 Incentive Payments	57
19 Continuous Improvement, Benchmarking and Upper Quartile Performance	59

Part 7 – Key Industrial Capability	60
20 Key Industrial Capability	60
21 The Support KIC	61
22 Facilities	61
23 KIC Trigger Events and KIC Payments	62
24 Miscellaneous	64
25 KIC Adjustments	65
26 Key Worker Qualifications	65
27 Monitoring	65
28 KIC Termination	66
Part 8 – Partnering	67
29 Partnering	67
Part 9 – The Supply Chain Strategy and Use of Sub-Contractors	69
30 The Supply Chain Strategy and use of Sub-Contractors	69
Part 10 – Payment	75
31 Payment provisions	75
Part 11 – Governance, Dispute Resolution and Reporting	77
32 Governance	77
33 Dispute resolution	77
34 Strategic Planning Framework	77
35 Strategic Reviews	79
36 Indexation (RPI_x) discussion	82
37 Reporting	82
38 Open Book Accounting and Records	83
Part 12 – Termination and Compensation	86
39 BVT Default	86
40 MoD Default	89

41	Voluntary termination	90
42	Payment for termination	90
43	Alternative Work after CVF Termination	92
44	Corrupt gifts and payments	94
	Part 13 – Parental Support	96
45	Establishment and undertakings	96
46	Ongoing Shareholder Support for BVT	99
47	Founder Shareholder Guarantees	100
48	VTG Exit	103
49	New Shareholders in BVT to accede to this Part 13	104
	Part 14 – Facilitation of BVT securing work for other customers	105
50	Facilitation of BVT securing work for other customers	105
	Part 15 – Miscellaneous	106
51	Change Procedure	106
52	Change in Control	106
53	Assignment and transfer	107
54	VAT	107
55	Representatives	108
56	Security	109
57	Confidentiality and Freedom of Information	111
58	Public relations and publicity	113
59	Data Protection	113
60	Intellectual Property Rights	114
61	Measures in a Crisis	118
62	Amendments to Contract	120
63	Severability	120
64	Notices	121

65	Entire agreement	122
66	Rights of third parties	123
67	Survival	123
68	Legal relationship between the Parties	124
69	Remedies and waivers	124
70	Number of executed copies	125
71	Further Assurance	125
72	Governing law and jurisdiction	125
	Schedule 1 – Conditions Precedent	126
	Schedule 2 – Dispute Resolution Procedure	127
	Schedule 3 - Exclusivity	130
	Schedule 4 – Key Industrial Capabilities	137
	Schedule 5 – Integration, Transformation and Strategic Rationalisation	140
	Schedule 6 – Reporting	146
	Schedule 7 – Partnering	147
	Schedule 8 – Governance	157
	Schedule 9 – Equality of Information Statement	165
	Schedule 10 – Continuous improvement and benchmarking	168
	Schedule 11 – Performance Management and KPIs	173
	Schedule 12 – List of Commercially Sensitive Information	182
	Schedule 13 – Forms	184
	Schedule 14 – Certificate of Commencement	192

Terms of Business Agreement

Dated

2009

Between

- (1) **The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland** (the MoD);
- (2) **BVT Surface Fleet Limited** (Company No. 06160534) whose registered office is at Daring Building 2-166 Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire PO1 3NJ (**BVT**);
- (3) **BAE Systems plc** (Company No. 01470151) whose registered office is at 6 Carlton Gardens, London SW1Y 5AD (**BAES**); and
- (4) **VT Group plc** (Company No. 01915771) whose registered office is at VT House, Grange Drive, Hedge End, Southampton, Hampshire SO30 2DQ (**VTG**).

Background

- A The Defence Industrial Strategy White Paper of December 2005 sets out the Government's policy for the UK's surface ships Naval Industrial Sector (the **Sector**). It called for the transformation of the Sector, for the maintenance of Sovereign Capability and for consolidation within the Sector as a means to achieve those things.
- B BVT has been established by VTG and BAES to create a surface ship business that consistently delivers the best equipment, services and support to the Royal Navy in the most cost effective and efficient manner that mutually benefits the interests of the UK Armed Forces, and the UK tax payer.
- C The MoD, BAES and VTG recorded their intention to enter into this Contract in the Heads of Terms (as defined below). This Contract replaces and extinguishes the Head of Terms and satisfies any obligation any of the Parties may have had in relation to the Heads of Terms.
- D This Contract contains commitments on the MoD's part. These are given in exchange for BVT's obligations, in particular (1) to achieve Efficiency Savings to meet the Guaranteed Minimum Target and (2) to operate its business generally in a way which is calculated continuously to deliver savings to the MoD. These matters are recorded in the Commercial Purpose provisions which are central to this Contract.
- E BVT has been established to create a world class shipbuilding and naval support business and it is the intention of BVT to make the BVT Business achieve Upper Quartile Performance by transforming and rationalising the Transferred Business in a partnering relationship with the MoD.
- F BAES and VTG are parties to this Contract for the purposes of guaranteeing the performance of BVT's obligations under this Contract and giving certain undertakings in relation to the establishment of BVT and their ongoing conduct.
- G The MoD considers that the sustainment of Sovereign Capability through the provision and maintenance of the Key Industrial Capability and any resulting KIC Payment is a measure necessary for the protection of the essential interests of the United Kingdom's security.
- H The MoD and BVT each intend this Contract and all other arrangements which form part of the MoD's maritime change programme to be consistent with each other.

It is agreed

Part 1 - Mechanics

1 Definitions and interpretation

1.1 Definitions

In this Contract, the following words and expressions shall have the meaning given to them, except expressly provided otherwise:

ACA means the aircraft carrier alliance.

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

Actual Overhead Costs means the recurring costs (excluding any amounts recoverable as overheads in relation to Pre-April 2009 Allowable Integration Costs, Allowable Transformation Costs and/or Allowable Strategic Rationalisation Costs) for the operation of a Shipbuilding Facility as approved by CAAS.

Actual Strategic Rationalisation Costs has the meaning given in Clause 13:9 (*Actual costs of Implementation*).

Actual Transformation Costs has the meaning given in Clause 12.25 (*Actual costs of Implementation*).

Actual Workload means the total direct labour hours undertaken in respect of Work by the BVT Group in the relevant Contract Year (as certified by CAAS).

Additional Vessels means Simple Auxiliaries and Small Craft.

Affected Site has the meaning given in Clause 13.2 (*Options Analysis*).

Affiliate(s) means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and **holding company** and **subsidiary** shall have the meaning given to them in Section 1159 of the Companies Act 2006, but excluding in the case of BVT, any Subsidiaries of BVT not incorporated in the United Kingdom.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Agreed Transformation Costs Categories has the meaning given in Clause 12.23 (*Costs Estimates*).

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

Aircraft Carrier Manufacturing Phase Flow Through Agreement means the aircraft carrier manufacturing phase flow through agreement dated 3 July 2008 between The Secretary of State for Defence and BVT Surface Fleet Limited.

Allies or **Ally** means defence forces and government departments of countries with whom the United Kingdom has a defence treaty.

Allowable Strategic Rationalisation Costs means Actual Strategic Rationalisation Costs allowable in accordance with Clause 13.12 (*Allowable Strategic Rationalisation Costs*).

Allowable Transformation Costs means Actual Transformation Costs allowable in accordance with Clause 12.28 (*Allowable Costs*).

Alternative Work shall mean work of an equivalent profit value to BVT to the Work remaining to be performed by a BVT Group Company under the CVF Contract but which would not be performed by a BVT Group Company as a result of the early termination of the CVF Contract referred to in Clause 43.1 (*MoD Option*).

Alternative Work Payment is the alternative work payment referred to in Clause 43.3.

Alternative Work Loss of Profits Compensation Payment has the meaning given in Clause 43.3(b).

Amphibious Vessels means those vessels to be used for amphibious warfare, such as Landing Platform Helicopter and Landing Platform Dock vessels, which are not Legacy Vessels.

Annual Performance Review means the review undertaken by the JPO in accordance with Clause 15.3.2 (*Annual Performance Review*).

Annual Strategic Rationalisation Costs Certificate has the meaning given in Clause 13.11 (*Annual Strategic Rationalisation Costs Certificate*).

Annual Transformation Costs Certificate has the meaning given in Clause 12.27 (*Annual Transformation Costs Certificate*).

Anticipated Pre-April 2009 Integration Efficiency Savings has the meaning given in Clause 10.3.

Appendix means the completed DEFFORM 111 appended to this Contract in Schedule 13 (*Forms*).

Approval Notice means a notice of approval issued by a Governance Body in respect of a Transformation Benefit Proposal pursuant to Clause 12.13 (*Approval Process*) or 12.14.

Approved Sub-Contractor means a sub-contractor which provides for the purpose of maintaining a Key Industrial Capability either (i) Key Post Workers and/or (ii) a Facility, in each case to enable BVT to comply with its obligations under Part 7 (*Key Industrial Capability*) and in any such case (a) with the prior written approval of the MoD and (b) upon whom obligations to maintain the Key Post Workers and/or the Facility set out in Part 7 (*Key Industrial Capability*) have been imposed.

Approved Transformation Benefit Proposal means a Transformation Benefit Proposal in respect of which an Approval Notice has been issued.

Assumed Man-hours Capability means the assumed man-hour capability in each calendar month for each Key Post as set out in Parts 1 and 2 of Schedule 4 (*Key Industrial Capability*).

Assumed Overhead means the lower of the Shipbuilding Overhead KIC Cap or the Actual Overhead Costs in relation to a Shipbuilding Facility pro rated for the relevant months.

Auditors means any firm of chartered accountants of internationally recognised standing.

Available Key Workers means the number of workers (measured by reference to hours) in the relevant calendar month calculated in respect of each Key Post using the following formula:

Available Key Workers for relevant Key Post (measured in hours) = $A - B$

Where:

A = Assumed Man-hours Capability of the relevant Key Post in the relevant calendar month

B = the Man-hours Demand of the relevant Key Post in the relevant calendar month.

Babcock Marine means Babcock Marine, a division of Babcock International Group PLC.

BAES' Equitable Proportion means the aggregate number of ordinary shares held by BAES and its Affiliates in the issued share capital of BVT expressed as a percentage of the entire issued ordinary share capital of BVT at the relevant time.

BAES Group Company means any company within the BAES Group.

BAES Group means BAES and its Affiliates from time to time.

Banked Efficiency Savings has the meaning given to it in Clause 10.1 (*Banked Efficiency Savings*).

Baseline is the agreed cost levels against which the Delivered Efficiency Savings can be clearly demonstrated.

Benchmark Consultant means any consultant jointly appointed in accordance with Schedule 10 (*Continuous Improvement and Benchmarking*) to carry out any Benchmarking Exercise pursuant to this Contract.

Benchmarking Exercise has the meaning given to it in paragraph 2 of Schedule 10 (*Continuous Improvement and Benchmarking*).

Bill Paying Branch shall be determined by reference to box 11 of the Appendix.

Breach of Security has the meaning given to it in Clause 56.7.

Build Phase means the Stages in relation to any Designated Naval Vessels.

Business Day means any day excluding:

- (a) Saturdays, Sundays and public and statutory holidays in the jurisdiction of each Party; and/or
- (b) privilege days notified in writing by the MoD's Representative to BVT's Representative at least 10 Business Days in advance,

in each case, commencing at midnight and ending at the end of 23.00 hours and 59 minutes.

Business Enterprise Model or BEM means the "ToBA Enterprise Planning Model" as populated with data from time to time and including the software (version 1.06 and all subsequent versions where the software is upgraded or modified in accordance with Clause 60.1), and all documentation relating to the software (including, without limitation, the operating manuals) which enables the tracking, assessing and analysis of Transformation Benefits Proposals and the Efficiency Savings that flow from them.

Business Status Report means the business status report submitted by BVT to the JPO quarterly which provides an update on the progress of Approved Transformation Benefit Proposals.

BVT Business (or the **business of BVT**) means the business carried out from time to time by the BVT Group.

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

BVT Cost Base means the total cost base of BVT operations within the United Kingdom including in relation to both Project Contracts and any other contracts.

BVT Default means any of the events identified in Clause 39.1 (*BVT Default*).

BVT Exclusive Stages means any Stage in relation to a relevant Designated Naval Vessel identified in Schedule 3 (*Exclusivity*) in respect of which BVT has an exclusive right to act subject to Clauses 9.1.7 and 9.1.9.

BVT Group Company means any company within the BVT Group.

BVT Group means BVT and the BVT Subsidiaries.

BVT Overhead Baseline has the meaning given to it in Clause 14.1.5 (*BVT Overhead Baseline*).

BVT's Representative means the person or persons appointed pursuant to Clause 55.3 (*BVT's Representative*).

BVT's Senior Management Team means the BVT posts described at Clause 45.3.2 (*Conduct and management of BVT*).

BVT Subsidiary means:

- (a) BVT Surface Fleet Portsmouth Limited (Company No 04298873) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;
- (b) BVT Surface Fleet Integrated Support Limited (Company No 02132891) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;
- (c) BVT Surface Fleet Support Limited (Company No 03246760) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;
- (d) BVT Surface Fleet Maritime Limited (Company No 04164801) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;

- (e) BVT Surface Fleet International Limited (Company No 04380304) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;
- (f) BVT Surface Fleet (Projects) Limited (Company No 06145816) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;
- (g) BVT Surface Fleet Intermediate Holdings Limited (Company No 04373908) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;
- (h) BVT Surface Fleet Property Services Limited (Company No 04295809) whose registered office address is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ;
- (i) BVT Surface Fleet (Overseas) Limited (Company No 06930355) whose registered office is Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire, PO1 3NJ; and
- (j) any other Subsidiary of BVT from time to time, that undertakes BVT's surface ship business in the United Kingdom.

BVT's 10-year Business Plan means the business plan prepared and implemented by BVT from time to time in relation to the whole of the business of the BVT Group in respect of the Financial Year in question and the following 9 years.

CAAS means the MoD's Cost Assurance & Analysis Service.

Capital Investment Plan means the plan to be delivered pursuant to Clause 35.4(b).

Category Supply Chain Strategies has the meaning given to it in Clause 30.5.1 (*Project Supply Chain Strategies and Category Supply Chain Strategies*).

Certificate of Commencement means the certificate in the form as set out in Schedule 14 (*Certificate of Commencement*) issued in accordance with Clause 5.3 (*Certificate of Commencement*) by the MoD's Representative.

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

Change in Control has the meaning given to it in Clause 52.2 (*Change in Control*).

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

Class Management means:

- (a) activities associated with development and maintenance of an integrated support programme for the class and individual vessels;
- (b) project management and co-ordinations of equipment delivery and maintenance activities to meet availability targets;
- (c) planning and coordination of fleet-time and upkeep maintenance; and
- (d) prioritisation and management of class resources to meet agreed outputs.

Class Output Manager or **COM** means the party contracted to lead the delivery of agreed levels of output including, if appropriate, ship availability. The COM shall be responsible for performing

Class Management and Design Management, and shall manage the integrated delivery of Class Management, Design Management and Equipment Management on behalf of the MoD.

Commencement Date has the meaning given to it in Clause 5.1 (*Provisions immediately effective*).

Commercial Purpose has the meaning given to it in Clause 7.2 (*Commercial purpose*).

Commercially Sensitive Information means the information set out in Schedule 12 (*List of Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to BVT or its business which BVT has indicated to the MoD that, if disclosed by the MoD, would cause BVT significant commercial disadvantage or material financial loss.

Comparable Businesses has the meaning given in paragraph 6.1.3(a) of Schedule 10 (*Continuous Improvement and Benchmarking*).

Compensated Gross Tonnage Productivity Measurement or **CGT** means a measure of efficiency to be agreed to measure the underlying performance of different naval shipyards taking into account the size, complexity and volumes of the relevant naval vessels.

Complex Auxiliaries means any Joint Sea Based Logistics (**JSBL**) vessels or Joint Casualty Treatment Ships (**JCTS**) as defined in Schedule 3 (*Exclusivity*).

Comprehensive Benchmarking Review has the meaning given to it in Schedule 10 (*Continuous Improvement and Benchmarking*).

Conditions Precedent means the conditions referred to in Schedule 1 (*Conditions Precedent*).

Confidential Information means the MoD Confidential Information and/or the BVT Confidential Information.

Consultation Event means the occurrence after the Commencement Date of:

- (a) a nuclear incident resulting in contamination at any of Portsmouth, Scotstoun or Govan shipyards unless the source or cause of the incident is as a result of the acts of or breaches by BVT, the Shareholders, a BVT Affiliate or BVT's sub-contractors of any tier;
- (b) an act of terrorism which results in substantial damage or destruction of buildings at any of Portsmouth, Scotstoun or Govan shipyards; or
- (c) transition to war other than as provided for in this Contract and/or any Project Contracts,

which directly results in a suspension of or which materially and adversely affects either:

- (i) the implementation of approved actions under an Approved Transformation Benefit Proposal; or
- (ii) performance of BVT's obligations under Part 7 (*Key Industrial Capability*).

Contract means this Contract (including its Schedules and Annexes).

Contract Payments means those payments listed in Clause 31.1 (*Payment of fixed sums not included in overheads*), together with any other payment stated to be payable to BVT pursuant to this Contract.

Contract Period means the term of this Contract commencing on the Commencement Date and ending on the expiry or earlier termination of this Contract according to its terms.

Contract Year means each period of 12 months falling within the Contract Period commencing on 1 April 2009 or as agreed by the MoD and BVT from time to time.

Control has the meaning given to it in Clause 52.2 (*Change in Control*).

Cost Deferral means actions, decisions or proposals by BVT in relation to expenditure which is planned and inevitable, which have the effect of deferring that activity and so temporarily avoiding the cost of that activity.

Cumulative Guaranteed Minimum Savings Yearly Target means the cumulative yearly target as set out in Part 3 of Schedule 5 (*Integration, Transformation and Strategic Rationalisation*) or as adjusted in accordance with Clause 12.16 (*Guaranteed Minimum Target has no MoD Dependencies*).

CVF means the "Vessels" defined in the Aircraft Carrier Manufacturing Phase Alliance Agreement.

CVF Block has the meaning given to "Block" in the CVF Contract.

CVF Contract means the Aircraft Carrier Manufacturing Phase Alliance Agreement, the Aircraft Carrier Manufacturing Phase Flow Through Agreement and all related sub-contracts thereto dated and entered into between the MoD and BVT.

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

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

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

DDs/FFs means destroyers and frigates.

Deep Maintenance means major invasive engineering tasks.

Deferred Strategic Rationalisation Costs has the meaning given in Clause 13.18 (*Consequences of non agreement of Strategic Rationalisation Strategy*).

Delivered Efficiency Savings means: (i) the Banked Efficiency Savings, (ii) Delivered Pre-April 2009 Integration Efficiency Savings, and (iii) Efficiency Savings that are generated pursuant to an Approved Transformation Benefit Proposal that are certified by CAAS pursuant to Clause 14 (*Savings Targets*) and in accordance with the benefits tracking and realisation process set out in Schedule 11 (*Performance Management and KPIs*) as having been delivered.

Delivered Pre-April 2009 Integration Efficiency Savings has the meaning given in Clause 10.3 (*Efficiency Savings resulting from Integration Steps taken pre-April 2009*).

Design Management means the conduct of activities necessary to satisfy any delegated design authority allocated to the COM. This may include tasks such as the conduct of systems and warship level design tasks in relation to maintaining current capability and introduction of new capability; maintenance and provision of design data and technical advice to the support programme.

Designated Naval Vessel means a naval vessel which falls within a Future Naval Programme and in respect of which BVT is identified in Schedule 3 (*Exclusivity*) as being Lead Contractor

and (unless specified otherwise in Schedule 3 (*Exclusivity*)), Class Output Manager, subject to Clause 9.1.7 (*MoD Approval Process*) and Clause 9.1.9 (*Process following negative assessment*).

Developed Materials has the meaning given in Clause 60.4.1.

Direct Losses means Losses that are not Indirect Losses.

Dispute has the meaning given to it in paragraph 1.1 of Schedule 2 (*Dispute Resolution Procedure*).

Dispute Resolution Procedure means the procedure for the resolution of disputes set out in Schedule 2 (*Dispute Resolution Procedure*).

Dockyard Contract means the WSMI Contract and any other contracts entered into from time to time for the provision of services at HM Naval Bases between any BVT Group Company and the MoD.

Drop Dead Date has the meaning given to it in Clause 5.2 (*Obligations to satisfy CPs*).

EC Treaty means the European Community Treaty (the Treaty of Rome).

Efficiency Savings means cost savings delivered to the MoD as a result of efficiency measures implemented by BVT (as measured against the Baseline) but which do not arise from:

- (a) Cost Deferral;
- (b) reduction in Outputs; or
- (c) Ineligible Savings.

Eligible Roll Over Savings are Delivered Efficiency Savings which commence in one 5 Year Efficiency Savings Period and continue for a maximum of 5 Contract Years and consequently finishing in the following Five Year Efficiency Savings Period.

Employee means any person who is an employee, staff, director or officer of any BVT Group Company or a Sub-Contractor or who occupies the position of a director or officer of any BVT Group Company or a Sub-Contractor, by whatever title given, involved with performing obligations under this Contract.

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

Equality of Information Statement means the statement as set out in Schedule 9 (*Equality of Information Statement*).

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

Equitable Proportion means the aggregate number of ordinary shares held by a Shareholder and its Affiliates in the issued share capital of BVT expressed as a percentage of the entire issued ordinary share capital of BVT at the relevant time.

Establishment Date means 1 July 2008 (being the date on which VTG became a Shareholder thus establishing BVT as a joint venture between BAES and VTG).

Estimated Strategic Rationalisation Costs means BVT's agreed estimated costs of Strategic Rationalisation as set out in the Original Strategic Rationalisation Costs Estimate or any Revised Strategic Rationalisation Costs Estimate.

Estimated Transformation Costs means BVT's agreed estimated costs of implementing an Approved Transformation Benefit Proposal as set out in an Original Transformation Costs Estimate or any Revised Transformation Costs Estimate.

Exclusion Notice has the meaning given in the CVF Contract.

Exclusivity Period means the period starting on the Commencement Date and ending on the earlier of the date of termination of this Contract and (to the extent applicable) the date on which the MoD exercises its rights under Clause 39.4 (*Partial Termination*)

Existing Contracts means all contracts relating to the Transferred Business entered into between any Founder Group Company and the MoD prior to the Establishment Date.

EY means Ernst & Young LLP (EY).

Facility means a shipyard or shipyards of sufficient capacity to provide the Surface Ship Capability.

Final Strategic Rationalisation Costs Certificate has the meaning given in Clause 13.13 (*Final Costs Certificate*).

Final Transformation Costs Certificate has the meaning given in Clause 12.29 (*Final Costs Certificate*).

Financial Year means in relation to a company, the meaning given to it in Section 390 of the Companies Act 2006.

First Five Year Efficiency Savings Period means the 5-year period commencing on 1 April 2009.

Five Year Efficiency Savings Period means any of the First, Second or Third Five Year Efficiency Savings Periods.

Fleet Time Engineering means the conduct of programmed and un-programmed maintenance activities whilst a ship is in fleet-time.

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

Founder Group Company means a company within the BAES Group or the VT Group.

Founder Shareholders means BAES and VTG.

Future Naval Programmes means MoD programmes for the procurement of those new vessels which are Designated Naval Vessels, which are contracted for after the date of this Contract (but including CVF and Type 45 Destroyers) and in respect of which BVT is designated in Schedule 3 (*Exclusivity*) as Lead Contractor and (unless specified otherwise in Schedule 3 (*Exclusivity*)) as Class Output Manager and which for the avoidance of doubt does not include:

- (a) the procurement, construction, role of Class Output Manager or Maintenance of Additional Vessels; or
- (b) the Maintenance or role of Class Output Manager of any Legacy Vessels.

Future Surface Combatant means the Future Surface Combatant programme.

GAAP means generally accepted accounting principles in the United Kingdom, including, to the extent applicable, IFRS.

GFX means Government Furnished Equipment (**GFE**), Government Furnished Information (**GFI**) and Government Furnished Facilities (**GFF**).

Governance Body(or Bodies) means the POG, the Steering Group and the JPO.

Government Profit Formula has the meaning given to this term in the Yellow Book.

Guaranteed Minimum Target has the meaning given in Clause 14.1.1 (*Establishment of Targets*).

Heads of Terms means the Heads of Terms dated 24 July 2007 between (1) The Secretary of State for Defence of the United Kingdom of Great Britain and Northern Ireland (2) VT Group plc and (3) BAE Systems plc, and the related letter dated 11 January 2008 from the MoD to Mr. Paul Lester (VT Group plc) and Mr. Ian King (BAE Systems plc) and all subsequent and/or related agreements and correspondence in relation to this Contract and/or the transaction contemplated by those documents.

IFRS means international accounting standards within the meaning of the IAS Regulation 1606/2002.

Incentive Payment means the relevant amount identified in Part 4 of Schedule 11 (*Performance Management and KPIs*) payable in accordance with Clause 18 (*Incentive Payments*).

Indirect Losses has the meaning given in Clause 1.2.11 (*Indemnities*).

Information has the meaning given to it in Clause 6.1.1(h).

Ineligible Savings are MoD cost savings which either (i) result in the reduction in Royal Navy and/or industrial or civil service head count in an area affected by the implementation of Efficiency Savings but where as a result of redeployment of such personnel posts for other areas there is no permanent reduction in Royal Navy and/or industrial or civil service manpower or (ii) where BVT is unable to demonstrate any efficiency improvements within either the BVT's Business or the MoD's business.

Initial Gate Approval means that part of the MoD Approval Process where the MoD seeks approval to undertake an assessment of options against a set of criteria including performance, cost and time.

Initial Term has the meaning given to it in Clause 4.1 (*Initial Term*).

Integration is the process starting from 1 January 2007 under which steps have been and will continue to be taken by BVT in accordance with the Pre-April 2009 Integration Plan, the Transformation Plan and any Approved Transformation Benefit Proposal to consolidate the staff and facilities of the Transferred Business to establish the BVT Business as an efficient stand-alone business under the overall management of the directors of BVT.

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

Intermediate Savings Target has the meaning given in Clause 14.1.1 (*Establishment of Targets*).

Investment Approvals Board means the senior approvals body within the MoD.

JPO means the Joint Project Office, a Governance Body whose composition and function is set out in Schedule 8 (*Governance*) as constituted pursuant to Clause 32 (*Governance*).

Key Assumptions has the meaning given in Clause 14.1.6.

Key Event means an event classified as a "Key Event" in the Transformation Plan.

Key Industrial Capability means the provision and maintenance of Facility(ies) and Key Post Workers in the Shipbuilding Sector and Support Sector contributing to the sustainment of Sovereign Capability and the maintenance of the Surface Ship Capability.

Key Milestone means the milestones specified in Section B of Part 3 of Schedule 11 (*Performance Management and KPIs*).

Key Pass has the meaning given in Clause 18.9 (*Calculation of Incentive Payments*).

Key Performance Indicators or KPIs means the categories of performance criteria specified in Part 2 of Schedule 11 (*Performance Management and KPIs*).

Key Post means a skills set/trade (such as steelwork, professional engineers and "blue collar" engineering) identified in Part 1 and Part 2 of Schedule 4 (*Key Industrial Capability*).

Key Post Worker means an employee of either BVT or a BVT Subsidiary or an Approved Sub-Contractor who is employed in a Key Post.

Key Sub-Plans means the Supply Chain Strategy, the Capital Investment Plan, the Shipbuilding Improvement Plan, the Labour Management Plan and the Strategic Rationalisation Plan as amended or replaced from time to time in accordance with the terms of this Contract.

Key Supplier Management Process means the process used by the MoD and supported by industry which assesses the health and performance of the relationship between the MoD and a contract counterparty on an annual basis.

KIC Adjustment means a reduction or increase in the number of Key Posts and size and/or capability of a Facility as a result of the implementation of proposals arising from (i) a KIC Benchmarking Exercise or (ii) an Approved Transformation Benefit Proposal or (iii) a Strategic Review, in each case as approved by the JPO.

KIC Available Key Worker Trigger Event means that there are Available Key Workers in any Key Post and any one of the following circumstances has arisen:

- (a) the number of Available Key Workers is more than 0.1% but fewer than 10% of the Assumed Man-hours Capability for any Key Post for a period of 3 consecutive months; or
- (b) at any time the number of Available Key Workers is equal to or exceeds 10% or more of the Assumed Man-hours Capability for any Key Post,

in the case of (a) and (b):

- (i) in relation to the Shipbuilding KIC, in the Shipbuilding Sector; and/or
- (ii) in relation to the Support KIC, in the Support Sector.

KIC Benchmark Consultant has the meaning given in paragraph 6.4.1 of Schedule 10 (*Continuous improvement and benchmarking*).

KIC Benchmarking Exercise has the meaning given to it in paragraph 3(c) of Schedule 10 (*Continuous improvement and benchmarking*).

KIC Model means the "KIC Model" as populated with data from time to time and including the software (version 1.1 (and all subsequent versions where the software is upgraded or modified in accordance with Clause 60.2)), and which is used to assess the impact on KICs resulting from potential shifts in workload.

KIC Notice has the meaning given in Clause 23.1 (*KIC Notice*).

KIC Overhead Payment has meaning given to it in Clause 23.11.

KIC Overhead Trigger Event means:

- (a) the Recoverable Overheads are less than 95% of the Assumed Overheads (pro rated for that month) for 3 consecutive months; and
- (b) where a KIC Available Key Worker Trigger Event has occurred and is continuing during the same period.

KIC Payment means a payment made by the MoD to BVT in respect of the provision and maintenance of Key Industrial Capabilities and calculated in accordance with Clause 23.9 (*Calculation of KIC Charges*) and Clause 23.11 of this Contract.

KIC Payment Notice has the meaning given to it in Clause 23.4 (*Payment Notice*).

KIC Trigger Event means a KIC Overhead Trigger Event and/or a KIC Available Key Worker Trigger Event.

Labour Management Plan means the labour management plan that is developed pursuant to Clause 35.4(b).

Lead Contractor means the whole ship lead contractor and systems integrator, responsible for the leadership and management of the overall contract to integrate design, procurement, build, test and trials and deliver a fully integrated vessel in accordance with the MoD's requirements on Future Naval Programmes.

The Lead Contractor responsibilities shall include, but not be limited to:

- (a) overall project and risk management including provision of all project controls and financial reporting;
- (b) placement and management of all subcontracts (excluding GFX) associated with the design (other than Stage 0), build and integration of the vessel;
- (c) management and administration of the integration of all GFX;
- (d) management and co-ordination of all system engineering and design activity to deliver the vessel;
- (e) overall system integration responsibility at a whole ship level including integration of combat systems, mission systems and power systems into the vessel, other than in respect of the CVF Contract where the responsibility shall be as determined in accordance with the arrangements under the CVF contractual arrangements;
- (f) definition and completion of acceptance activity at whole ship level; and
- (g) design authority or delegated design authority.

For the avoidance of doubt where BVT is Lead Contractor but a third party is contracting for Stages 3/4/5 BVT's responsibilities as Lead Contractor in the case of (b) and (c) above shall be agreed on a case by case basis and are not in the exclusive remit of BVT.

Legacy Vessels means any surface vessels which are categorised as Invincible Class carriers, Type 22 Frigates, Type 23 Frigates, Type 42 Destroyers, HMS Ocean, HMS Albion, HMS Bulwark, any MCMs or Minor Vessels in service or contracted for as of the date of this Contract or any Royal Fleet Auxiliary vessels.

Legislation means in relation to the United Kingdom:

- (a) any Act of Parliament; or
- (b) any subordinate legislation within the meaning of Section 21 of the Interpretation Act 1978; or
- (c) any exercise of the Royal Prerogative; or
- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,

in each case in the United Kingdom.

Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands.

Main Gate Approval means that part of the MoD Approval Process where the MoD seeks approval to proceed with a preferred option and commitment to full programme funding.

Maintenance means Fleet Time Engineering, Upkeep and Deep Maintenance.

Major Projects has the meaning given to it in Clause 30.5 (*Project Supply Chain Strategies and Category Supply Chain Strategies*).

Man-hours Demand means the number of productive man-hours per calendar month required for each Key Post for BVT to carry out its workload for that Key Post (whether in relation to MoD business or otherwise) as shown in the Monthly Sales and Operational Planning Report (reconciled to the relevant Project Contract).

MCM means Mine Counter Measure vessels.

Minor Vessels means warships or naval vessels (such as HMS Endurance or River Class patrol vessels), any hydrographical vessels or patrol vessels which are smaller than DD/FFs but which are not designated as MCM vessels or Small Craft.

MoD Actual Charging Rates means rates agreed by the MoD having been submitted by BVT to CAAS, audited and verified by CAAS in accordance with the Yellow Book.

MoD Approval Process means the internal MoD approval and scrutiny process enabling the Investment Approvals Board to endorse procurement and investment decisions through Initial Gate Approval and Main Gate Approval, in accordance with the latest published MoD guidance (made available via the Acquisition Operating Framework (www.aof.mod.uk)), as may change from time to time.

MoD Confidential Information means all Developed Materials, Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the MoD, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being

confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

MoD Cost Base means operational costs of the MoD relating to the relevant elements of the MoD surface ship requirements.

MoD Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are supplied to BVT by or on behalf of the MoD; or
- (b) any Personal Data for which the MoD is the Data Controller.

MoD Dependencies mean any costs or liabilities to be incurred, risks to be assumed or actions to be carried out on the part of the MoD as set out in any Approved Transformation Benefit Proposal.

MoD's Representative is the person or persons appointed pursuant to Clause 55.1 (*MoD's Representative*).

MoD Termination Notice has the meaning given to it in Clause 40.2 (*Termination for MoD Default*).

MoD Transferring Employees means staff employed or engaged by the MoD whose contract of employment or engagement is transferred to BVT or any BVT Subsidiary under TUPE pursuant to implementation of an Approved Transformation Benefit Proposal.

Monthly Management Reports means the monthly management reports delivered by BVT to the MoD in accordance with Clause 15.2 (*BVT Reporting Obligations*).

Monthly Sales and Operational Plan Report means the monthly sales and operational plan reviewed and provided by BVT to the MoD pursuant to Clause 23.1 (*KIC Notice*).

Multi-Party Contract has the meaning given to it in Clause 3.1.1 (*Multi-Party Contracts*).

Naval Vessel means a Designated Naval Vessel and/or Additional Vessels.

Non-Disclosable Information means information relating to the profit margin of BVT, or information which BVT considers, in its reasonable opinion (and having consulted the MoD Representative on a confidential basis), that if disclosed could result in significant commercial disadvantage, financial loss of a material nature or a materially adverse impact on the share price of a Principal Shareholder.

Order means a contract awarded by the MoD to BVT for any Designated Naval Vessel and/or any Work.

Original Estimated Strategic Rationalisation Costs has the meaning given in Clause 13.6(b) (*Strategic Rationalisation Plan to include cost estimates*).

Original Estimated Transformation Costs has the meaning given in Clause 12.23 (*Cost estimates*).

Original Strategic Rationalisation Costs Estimate has the meaning given in Clause 13.6(b) (*Strategic Rationalisation Plan etc*).

Original Transformation Costs Estimate has the meaning given in Clause 12.23 (*Cost estimates*).

Other Savings has the meaning given in Clause 14.1.8 (*Other Savings*).

Outputs means the outputs contracted to be delivered to the MoD under the Project Contracts and the Dockyard Contracts.

Overarching Supply Chain Strategy means the master supply chain strategy to be developed and implemented by BVT pursuant to Clauses 30.2 (*Overarching Supply Chain Strategies*) and 30.3 (*Contents of the Overarching Supply Chain Strategies*).

Parties means the parties to this Contract.

Partnering Principles means the principles which the MoD and BVT shall seek to comply with in their dealings with each other set out in section 5 of the Strategic Partnering Accord in Schedule 7 (*Partnering*).

Payment Approval means completion by the MoD's Representative, including signature where required, of the appropriate parts of the Relevant Form, sufficient for submission as a claim for payment.

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

POG means the Programme Owners Group, a Governance Body whose composition and function is set out in Schedule 8 (*Governance*) as constituted pursuant to Clause 32 (*Governance*).

[REDACTED]

Pre-April 2009 Integration Plan means the plan in relation to Integration steps to be implemented by BVT prior to 1 April 2009 as referenced in the Equality of Information Statement.

Principal Shareholder means a Shareholder which either:

- (a) owns more than 30% of the voting rights in BVT; or
- (b) has the right to appoint or remove a third or more of the directors of BVT;
- (c) is a member and controls alone, pursuant to any agreement with other Shareholders, at least 30% of voting rights in BVT; or
- (d) has a legal or equitable interest in 30% or more of the shares in BVT.

Prohibited Act means those acts listed in Clause 44.1 (*Corrupt Gifts and payments*).

Project Contract means any contract between BVT or any BVT Subsidiary and the MoD, including any Dockyard Contract and the CVF Contract.

Project Supply Chain Strategies has the meaning given to it in Clause 30.5.1 (*Project Supply Chain Strategies and Category Supply Chain Strategies*).

Projected Savings Level means the Projected Savings Levels as set out in Part 4 of Schedule 11 (*Performance Management and KPIs*).

Quarter Date has the meaning given to it in Clause 15.2.3 (*Business Status Report*).

Quarterly Reports means the reports submitted quarterly by the JPO to the Steering Group pursuant to Clause 15.3.1 (*Quarterly Report*).

Recoverable Overheads means the actual shipbuilding overheads recoverable for the relevant month pursuant to any Project Contract relating to shipbuilding or export shipbuilding contract excluding any amounts recoverable as overheads in relation to any Pre-April 2009 Allowable Integration Costs, Allowable Transformation Costs and/or Allowable Strategic Rationalisation Costs.

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the MoD and **Regulatory Body** shall be construed accordingly.

Rejection Notice means a notice of rejection issued by a Governance Body in respect of a Transformation Benefit Proposal pursuant to Clause 12.13 (*Approval process*) or 12.14.

Relationship Manager means the relationship manager, whose responsibilities are set out in Annex A to Schedule 7 (*Partnering*).

Relationship Management Plan means a document in a form to be agreed in accordance with the principles in Clause 29 (*Partnering*) and Part 2 of Schedule 7 (*Partnering*) which describes the specific initiatives which the MoD and BVT have agreed from time to time that each of them will undertake continuously to improve the relationship between them in order to achieve the Commercial Purpose.

Relevant BAES Group Contract means an Existing Contract to which a BAES Group Company is a party or a contract of a type referred to in Clause 45.1.1(b) (*BAES Undertakings*).

Relevant BAES Group Third Party Contract has the meaning given in Clause 45.1.1(c) (*BAES Undertakings*).

Relevant Day means the day which is 30 days after the later of:

- (a) the day upon which a valid request for Payment Approval is received by the MoD in accordance with Clause 31.2 (*BVT submission of Relevant Form and the MoD response*); and
- (b) the date of completion or performance of the part of this Contract to which the request for Payment Approval relates,

the 30 days referred to in this definition shall be exclusive of the number of days that elapse from the date BVT receives a Relevant Form showing Payment Approval to the date the Bill Paying Branch receives a valid, properly completed claim for payment.)

Relevant Form shall mean the form prescribed in the completed DEFFORM 522A, attached to this Contract in Schedule 13 (*Forms*), for the purpose of seeking Payment Approval. A copy, such as a photocopy or fax, of a Relevant Form showing Payment Approval is not acceptable.

Relevant Trade means the skill or trade that a Key Post Worker is trained for and employed to carry out by either BVT or a BVT Subsidiary or an Approved Sub-Contractor (as the case may be).

Relevant VT Group Contract means an Existing Contract to which a VT Group Company is a party or a contract of a type referred to in Clause 45.1.2(b).

Relevant VT Group Third Party Contract has the meaning given in Clause 45.1.2 (*VTG Undertakings*).

Request for Information shall have the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations, as relevant (where the meaning set out for the term "request" shall apply).

Retirement Benefits Scheme has the meaning given in Section 611 of the Income and Corporation Taxes Act 1988.

Revised Strategic Rationalisation Costs Estimate has the meaning given in Clause 13.8 (*Revision of cost estimates*).

Revised Transformation Costs Estimate has the meaning given in Clause 12.24 (*Cost estimates*)

RPI_x means the index published monthly by the Office for National Statistics in table RP05 (All Items Retail Prices Index ("RPI") excluding Mortgage Interest Payments (RPI_x)) or failing such publication such other index or adjustments to the index as the MoD and BVT may agree pursuant to a Strategic Review, provided, however, that agreement and implementation, of a revised index shall be an output of the Strategic Review in 2014.

Savings Target has the meaning given in Clause 14.1.1 (*Establishment of targets*).

Second Five Year Efficiency Savings Period means the 5-year period commencing on 1 April 2014.

Secret Matter means any matter connected with this Contract or the performance of this Contract which is designated in writing by the MoD as **Top Secret**, **Secret** or **Confidential**, and shall include any information concerning the content of such matter and anything which contains or may reveal that matter.

Sector has the meaning given in Recital A.

Security Aspects Letter means the security aspects letter to be provided by the MoD's Representative pursuant to Clause 56.2 on the date of this Contract.

Security Policy Framework means the HMG Security Policy Framework v 2.0 as such framework is amended or updated from time to time.

Senior Civil Servant means an employee of the Government at Senior Civil Service at pay band 2 or above or such equivalent grade in any system of grading that may from time to time replace the current grading system.

Shareholders means the person(s) from time to time holding share capital in BVT, being at the date of this Contract:

- (a) BAES;
- (b) VTG,

and **Shareholder** means any of them or any permitted successor in title.

Shipbuilding Facility means a Facility which is utilised for the construction of Naval Vessels.

Shipbuilding Improvement Plan means the shipbuilding improvement plan to be delivered pursuant to paragraph 6.1.5 of Schedule 10 (*Continuous Improvement and Benchmarking*).

Shipbuilding KIC means the provision of the Key Industrial Capability for the Shipbuilding Sector.

Shipbuilding Overhead KIC Cap has the meaning given to it in Clause 23.13 (*KIC Payment Cap*).

Shipbuilding Sector has the meaning given to it in Clause 20.2 (*Shipbuilding – Key Posts*).

Simple Auxiliaries means solid support fleet tankers and fleet tankers.

Small Craft means small vessels which are less than 40 metres in length.

Sovereign Capability means, in relation to this Contract, the ability to maintain an appropriate degree of access to industrial skills, capabilities and technology (including intellectual property and know-how) within the United Kingdom, and not subject to third party constraints (domestic or international, contractual or otherwise) to design, build, service and undertake maintenance of, complex warships, which is achieved by, amongst other things:

- (a) access to the intellectual property and know-how associated with the design of key systems and sub-systems;
- (b) access to the science, technical and engineering skills and know-how required to design, develop, support, maintain and upgrade key systems and sub-systems;
- (c) an assured security of supply of items or components which are critical to key equipment;
- (d) access to the facility and infrastructure.

Stage means any of Stages 1 to 6.

Stage 0 (Concept Design) means defining the overall concept of the ship and the capability delivered by the complete platform. The focus in this stage is to objectively demonstrate that an appropriate balance of affordability and capability expressed across the Defence Lines of Development (**DL**OD) is achievable. At Stage 0 a broad range of capabilities are considered and discrete studies are also undertaken to address areas that impact (sensitivity) on the overall configuration of the solution. The main thrust of the work is concentrated on key requirements, solutions and policies that have a direct or indirect effect on vessel size, and a consequential impact on capability, price, risk and schedule. Design trade-off analysis by means of incremental enhancements to a baseline design solution aimed at understanding the balance, coherence and affordability of the requirements are undertaken.

Activities within Stage 0 include, but may not be limited to:

- (a) elicitation and elaboration of justified user requirements and outline system requirements and solutions that drive overall hull configuration and system cost;
- (b) assessment of the candidate hull, platform, propulsion and combat system options;
- (c) identification of candidate technology and an assessment of technology readiness levels;
- (d) determination of system boundary (MODAF views) and Information Exchange Requirements (**IERs**);
- (e) preparation of System Integration Strategies;
- (f) preparation of the Outline Safety Case;
- (g) preparation of management plans including safety and system security;
- (h) preparation of the Support Solution Envelope;
- (i) initial estimates of the Unit Establishment List (formerly complement);

- (j) parametric 3-point estimates for Non-Recurring Expenditure (**NRE**), Unit Production Costs (**UPC**) and Whole Life Costs (**WLC**);
- (k) indicative costs for major equipments and allocation of cost budgets;
- (l) outline 3-point estimate of programme timescales and risk register through to PASE;
- (m) preparation of the General Arrangement (**GA**) at compartment level; and
- (n) establishment of whole ship policies.

Stage 1 (System Design) means the stage in which the focus moves from overall ship concept development and outlining whole ship geometry and characteristics, to system level optimisation and the detailed definition of system architecture and schematics. Stage 1 represents the start point for concurrent system development, with system coherence being managed through the GA, service budgets and interface specifications, Whole Ship policies, plans and standards, and the evolution of Platform System and Combat System architectures. The outputs from Stage 1 are a Whole Ship Specification and initial Platform System and Combat System Specifications which shall be maintained and updated throughout the remaining stages.

Activities within Stage 1 include, but may not be limited to:

- (a) completion of the User Requirements Document (**URD**) and System Requirements Document (**SRD**);
- (b) preparation of the Whole Ship Specification and initial Platform System and Combat System Specifications and associated acceptance criteria;
- (c) analysis, verification and trade-off of whole ship/system performance characteristics in support of System Design activities;
- (d) completion of the system schematics (platform, propulsion and combat system);
- (e) development and procurement of the Combat System Network architecture;
- (f) development of the Information Exchange Model and Specifications based on the IERs from the concept phase;
- (g) completion of initial Through Life Capability Management plans;
- (h) completion of initial Support Solution specification;
- (i) generation of key physical data (weights, electrical loads, space, etc);
- (j) system Security Assessment;
- (k) sub-systems and equipment cost – benefit trade-offs;
- (l) primitive 3D arrangements of all structure, equipments and routed sub-systems;
- (m) submittal of arrangements for class approval;
- (n) production engineering and build sequencing;
- (o) whole Ship System Engineering Management Plan (**SEMP**) and Platform System and Combat System Equipment Design Development Plans (**DDPs**);
- (p) selection and procurement of long-lead equipment and systems;

- (q) finalisation of the set of principal dimensions and hull form;
- (r) development of Whole Ship, and Platform System and Combat System integration strategies, tools and facilities;
- (s) supportability, Maintainability, Facility, Packaging, Handling, Storage and Transport (**PHS&T**), Logistic Support Analysis Plan (**LSAP**) and Training Plans;
- (t) finalisation of the GA, including location of major equipments and upper deck layout;
- (u) initial Test & Commissioning plan established;
- (v) finalisation of the Unit Establishment List (formerly complement);
- (w) deterministic 3-point estimates for Non-Recurring Expenditure (**NRE**), Unit Production Costs (**UPC**) and Whole Life Costs (**WLC**);
- (x) finalisation of costs for major equipments;
- (y) 3-point estimate of D&M programme timescales and risk register through to PASE established; and
- (z) perform safety management tasks in accordance with safety management plan e.g. system/subsystem Haz IDs.

Stage 2 (Detail Design and Spatial Integration) means the transition from design by system into detailed engineering by ship area / compartment and equipment/functional system. The primitive 3D model developed during Stage 1 is refined and developed to form a complete definition of the ship. Similarly the Platform and Combat System Specifications are matured to reflect the equipments solutions developed by the MoD IPTs as GFX or the Original Equipment Manufacturers under subcontract to BVT. Data sources include the results of the functional design work carried out during Stage 1, data (particularly geometries, functional and interface definitions) provided by equipment manufacturers, and engineering standards.

In addition to the development of the 3D geometry, an initial Manufacturing Bill of Material (BoM) is produced. This data is used for production planning, purchasing and material management purposes.

Activities within Stage 2 include, but may not be limited to:

- (a) spatial arrangement of whole ship to a level of definition that would enable manufacture of all non bought out items;
- (b) detailed Whole Ship, and Platform System and Combat Systems integration planning and definition;
- (c) management of technical parameters and all system interfaces;
- (d) development of a complete product and system models;
- (e) initiate equipment acceptance testing;
- (f) continued development of the detailed ship safety case;
- (g) preliminary Integration testing;
- (h) bills of Materials;
- (i) build Specifications;

- (j) test Plans;
- (k) ILS data – parts list, original equipment manufacturers documentation, system handbooks etc;
- (l) manufacturing schedules; and
- (m) development of the support solution.

Stage 3/4/5 (Manufacturing Outputs and Production) means the translation of the Stage 2 design into detailed production, procurement and integration drawings and associated specifications, and build. For complex warships it would also be expected to have completed Combat System (CS) equipment development and the commissioning of any CS integration facilities.

Stage 3/4/5 Outputs include, but may not be limited to:

- (a) manufacturing drawings (all manufacturing information drawing, schedules, material lists etc);
- (b) delivery of all bought out equipment;
- (c) fabrication of ship structure;
- (d) launch;
- (e) outfitting;
- (f) pre-Production Safety Case report published;
- (g) installation and Setting-to-Work of equipment;
- (h) development of the support solution; and
- (i) completion of Whole Ship, and Platform System and Combat System integration at Integration facility.

Stage 6 (Integration and Trials) means system integration for the whole ship including but not limited to combat systems, mission systems and power and propulsion systems. This stage also includes the necessary platform and combat system trials, and final test and acceptance of the ship systems prior to hand over to the MoD.

Activities within Stage 6 include, but may not be limited to:

- (a) harbour Trials;
- (b) sea Trials;
- (c) completion of all acceptance events;
- (d) verification of the ship safety case;
- (e) whole ship integration and testing;
- (f) all systems development and proving using land-based test facilities;
- (g) ships crew training;
- (h) completion of ILS package; and

- (i) handover ceremony.

In the event that the MoD transitions operational control of vessels prior to completion of Stage 6, in effect creating a gap between vessel handover and the implementation of a full support contract, the following ongoing ship and systems design responsibilities will be included in this stage to ensure transition to full support arrangements:

- (a) providing Engineering and Design Authority support to the Royal Navy/the MoD whilst they bring the ship into effective operational service;
- (b) ongoing maintenance and verification of the ship safety case;
- (c) ongoing Weapon/Combat Systems development and integration;
- (d) analysis of actual ship performance/availability against the design intent;
- (e) maintain the Engineering and Support Information together with underlying design rationale/calculations; and
- (f) perform re-engineering services for updates and upgrades and ensure that the integrity of the overall ship/systems design and associated support systems is maintained (to ensure commonality across vessels in batches).

Steering Group or SG means the Governance Body whose composition and function is set out in Schedule 8 (*Governance*) as constituted pursuant to Clause 32 (*Governance*).

Strategic Partnering Accord means the document of that name set out in Schedule 7 (*Partnering*) which the MoD and BVT have agreed, subject to Clause 29 (*Partnering*).

Strategic Planning Objective has the meaning ascribed to it in Clause 34.1.2 (*Strategic Planning Objectives*).

Strategic Rationalisation has the meaning given in Clause 13.1 (*Strategic Rationalisation – Definition*).

Strategic Rationalisation Costs Cut-off Date has the meaning given in Clause 13.6(b).

Strategic Rationalisation Plan means the plan to be developed and agreed pursuant to Clause 13.3 (and as amended from time to time by agreement between BVT and the MoD).

Strategic Rationalisation Strategy means the strategy to be developed and agreed pursuant to Clause 13.3 (and as amended from time to time by agreement between BVT and the MoD).

Strategic Review means any review to be carried out by the MoD and BVT jointly pursuant to Clause 35 (*Strategic Reviews*).

Strategic Review Date(s) are the dates specified in Clause 35.1 (*General*).

Stretch Savings Target has the meaning given in Clause 14.1 (*Savings Targets*).

Sub-Contract means any contract or agreement between any BVT Group Company and any Sub-Contractor.

Sub-Contractor means:

- (a) for the purposes of Part 9 (*Supply Chain Strategy and Use of Sub-Contractors*), a sub-contractor of a BVT Group Company with a sub-contract with a value in excess of £2,000,000 (Indexed); or

- (b) for all other purposes under this Contract, a first tier sub-contractor to BVT or to a BVT Subsidiary.

Subsidiary means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.

Supply Chain Principles means the supply chain principles set out in Clause 30.6 (*Supply Chain principles*).

Supply Chain Strategy means the strategy implemented by BVT for the management of its supply chain, and shall include the Overarching Supply Chain Strategy, the Supply Chain Strategy Plan, the Project Supply Chain Strategies and the Category Supply Chain Strategies.

Supply Chain Management Plan means any supply chain management plan prepared by BVT as part of the Overarching Supply Chain Strategy.

Support KIC means the provision of Key Industrial Capability for the Support Sector.

Support Sector has the meaning given to it in Clause 21.2 (*Support – Key Posts*).

Surface Ship Capability has the meaning given to it in Clause 20.1.2 (*Surface Ship Capability*).

Surface Ship Support Alliance or **SSSA** means the alliance which is the subject of an accord entered into between the MoD, Babcock Marine and BVT dated 19 December 2008 associated with the delivery of surface ship support.

Target Yearly Efficiency Savings means the amounts listed in the table set out at Part 2 of Schedule 11 (*Performance Management and KPIs*) required to be generated to deliver the relevant Projected Savings Levels by the end of the Initial Term.

Termination Charge means any compensation payable by the MoD on an early termination of this Contract under Clauses 40 (*MoD Default*) or 41 (*Voluntary Termination*).

Termination Date means any date of early termination of this Contract in accordance with Clause 39 (*BVT Default*), 40 (*MoD Default*) or 41 (*Voluntary Termination*).

Termination Notice has the meaning given to it in Clause 39 (*BVT Default*).

Third Five Year Efficiency Savings Period means the 5-year period commencing on 1 April 2019.

Threshold Level has the meaning given to it in Clause 30.5.1 (*Project Supply Chain Strategies and Category Supply Chain Strategies*).

Through Life Capability Management means considering a whole life "Concept, Assessment, Design, Manufacture, In-Service, Disposal" (**CADMID**) approach in developing strategies for ship build and ship support to maximise cost-effectiveness.

Total Cost of Services means the aggregate total cost to the MoD over time and from time to time of the goods and services supplied by BVT Group Companies to the MoD pursuant to every contract between the parties, including the Dockyard Contracts, the Project Contracts and this Contract as certified from time to time by CAAS.

Transfer Day means the day on which the contract of employment of any MoD Transferring Employee transfers to a BVT Group Company pursuant to implementation of an Approved Transformation Benefit Proposal.

Transferred Business means the surface ship business carried on by the BAES Group, the VT Group and Fleet Support Limited prior to the Establishment Date and agreed between

those parties to be carried on after the Establishment Date by a BVT Group Company by way of transfer of the relevant business into the BVT Group or by way of assignment or novation of contracts to a BVT Group Company.

Transformation has the meaning given in Clause 12.1 (*Transformation Definition*).

Transformation Benefit Proposal has the meaning given in Clause 12.5 (*Making proposals*).

Transformation Events means the milestones relating to "Transformation Events" set out in the Transformation Plan.

Transformation Plan means the 5 year plan as set out in Part 1 of Schedule 5 (*Integration, Transformation and Strategic Rationalisation*) as amended on a rolling basis in accordance with Clause 12.4 (*JPO review of plan*).

Trend Rate means the indicative charging rates for labour and overheads used to inform the pricing of future contracts as audited by CAAS.

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Upkeep means the use of any or all resources required to assure or restore a vessel to a specified material condition or level of performance when the vessel is not in service.

Upper Quartile Performance means the successful development of BVT and BVT Subsidiaries such that its and their performance can be ranked by a Benchmark Consultant as being in the upper quartile of companies worldwide engaged (as at the date of the relevant Benchmarking Exercise) in each of the businesses of:

- (a) design;
- (b) build;
- (c) combat systems integration; and
- (d) through-life support,

in respect of naval surface warships of up to 5,000 tonnes and deep displacement having regard to business efficiency in those categories and/or such other criteria consistent with this Contract as the Benchmark Consultant shall propose to be used in the Benchmarking Exercise and may be approved by the Steering Group.

Use means load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, back-up, transmission or display).

Value Added Tax means any value added tax.

Value for Money means the optimum combination between whole life cost and quality to meet the MoD requirements which may not necessarily mean the selection by the MoD of the lowest cost nor the highest performance regardless of the consequences. For the avoidance of doubt it is a relative concept which involves the comparison of potential and actual outcomes of alternative procurement options, taking into account the need to sustain Sovereign Capability.

VT Group means VTG and its Affiliates from time to time.

VT Group Company means any company within the VT Group.

VTG's Equitable Proportion means the aggregate number of ordinary shares held by VTG and its Affiliates in the issued share capital of BVT expressed as a percentage of the entire issued ordinary share capital of BVT at the relevant time.

Work means the undertaking of any design or any work of construction, maintenance, support, engineering, re-fitting, overhaul, servicing or any other work of any kind in relation to any Naval Vessel, any weapons system or other system or sub-system, any dockyard or any premises of any kind.

Workload Shortfall means where a Monthly Sales and Operation Plan Review has shown that the prospective Man-hours Demand is less than the Assumed Man-hours Capability for that same period.

Works Item means a sub-system, package of work, services, components or raw materials.

WSMI Contract means the partnering agreement no. WSAP4a9000 dated 6 May 2003 between the Secretary of State for Defence (acting through the Naval Base Commander Portsmouth) and Fleet Support Limited (subsequently renamed BVT Surface Fleet Limited) for the provision of services at HM Naval Base Portsmouth, together with all amendments, supplements and variations thereto as at the date of this Contract.

Yearly Efficiency Savings has the meaning given to it in Clause 18.1 (*Savings calculations*).

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

1.2 Interpretation

In this Contract the following interpretations apply unless otherwise stated.

- 1.2.1 **Headings:** Headings are for ease of reference only and are to be ignored when interpreting this Contract.
- 1.2.2 **This Contract:** References to this Contract are references to this Contract including all Schedules and Annexes, as varied, novated, supplemented or replaced from time to time.
- 1.2.3 **Clause, paragraph, Annex, Schedule or recital:** References to any Clause, paragraph, Annex, Schedule or recital are to those contained in this Contract. All the Schedules and Annexes are integral parts of this Contract.
- 1.2.4 **This Clause:** The expressions **this Clause**, **this Schedule** or **this Annex** unless followed by the number of a specific part of the Clause, Schedule or Annex, refers to the whole clause, schedule or annex in which it occurs.
- 1.2.5 **Successors in title and transferees:** Reference to any person, including a Party, includes that person's lawful successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Contract).
- 1.2.6 **BVT obligations:** Unless expressly provided otherwise, all obligations of BVT in this Contract shall, in addition, be obligations on BVT's part to procure that each relevant BVT Subsidiary performs those obligations to the extent that they relate to:
- (a) a Project Contract to which that BVT Subsidiary is a party; or
 - (b) the parts of BVT Business undertaken by, or in any other way connected with, that BVT Subsidiary,
- as if the BVT Subsidiary were a party to this Contract with the same obligations as BVT.
- 1.2.7 **Gender:** Reference to any gender includes the other.
- 1.2.8 **Related words:** Where this Contract defines a word or expression, related words and expressions have a consistent meaning.

- 1.2.9 **Legislation:** References to legislation or the term "Legislation" include statutes, by-laws, regulations, rules, subordinate or delegated legislation and orders. Any reference to legislation or the term "Legislation" is to that legislation at the date of this Contract but where the reference relates to an obligation arising or to be performed after the date of this Contract, it refers to any replacement, restatement or variation of that legislation from time to time.
- 1.2.10 **Accounting terms:** Accounting terms shall be construed so as to be consistent with generally accepted accounting principles.
- 1.2.11 **Indemnities** (save in relation to the indemnity given in Clause 61.8 (*MoD Indemnity on Measures in a Crisis*) provided for in this Contract are indemnities which hold the indemnified party harmless against all Direct Losses but shall not include loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of revenue, loss of contract, loss of goodwill or any Claim for consequential loss or for indirect loss of any nature (**Indirect Losses**).
- 1.2.12 **Dates:** Reference to a date is to the day commencing on such date.
- 1.2.13 **Expressions not to limit construction:** The words "other" and "otherwise" shall not be construed *ejusdem generis* with any foregoing words where a wider construction is possible. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words.
- 1.2.14 **MoD reasonableness:** Any reference in this Contract to the MoD being required to act "reasonably" or not to act "unreasonably" (or any similar or analogous expression or phrase) shall be construed as if the test of reasonableness was an objective test of the reasonableness (or otherwise) of the MoD, and the test shall take into account such questions which might properly be expected to form part of the judgement of the MoD.
- 1.2.15 **Indexed:** Unless expressly specified otherwise, references to amounts expressed to be ("**indexed**") are references to such amounts multiplied by:

$\frac{\text{Index}_1}{\text{Index}_2}$

where Index_1 is the value of RPI_x most recently published prior to the relevant calculation date. Index_2 is the value of RPI_x published in November 2008 for the month of October 2008.

- 1.2.16 A document **in agreed form** is a document which is agreed in writing by or on behalf of the MoD and BVT.
- 1.2.17 Neither the Partnering Principles, nor any other provision of this Contract, shall:
- (a) relieve or be deemed to relieve a Party from any obligation or liability unless expressly provided; or
 - (b) create or be deemed to create any requirement on either Party to obtain the consent or approval of the other Party to the carrying out of any act or exercise of any right unless (and only to the extent) expressly provided.
- 1.2.18 **Governance Body Approval:** Any reference to any matter requiring approval or decision by any Governance Body shall be construed as a reference to the matter in question being determined by that Governance Body or any Governance Body senior to it.
- 1.2.19 **Month:** Any reference to a month is to a calendar month.
- 1.2.20 **Third Parties:** Any reference to "third parties" or a "third party" shall be construed as a reference to any person who is not a Party provided that Affiliates of BVT or the Shareholders and their Affiliates shall not be construed as third parties.

- 1.2.21 **Person:** Any reference to a "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency, instrumentality, unincorporated body of persons or association.
- 1.2.22 **BVT indemnities:** Where MoD indemnifies BVT in this Contract, the MoD indemnifies BVT in respect of its own losses and as agent and/or trustee for BVT Subsidiaries in respect of Direct Losses (and in the case of the indemnity at clause 61.8 (*MoD Indemnities on measures in a crisis*) also all Indirect Losses) suffered by such BVT Subsidiaries.

2 Precedence of documentation

Order of precedence

- 2.1 If there is any inconsistency between the provisions of the body of this Contract and the Schedules the conflict shall be resolved according to the following descending order of priority:
- 2.1.1 the body of this Contract;
- 2.1.2 the Schedules.

3 Interface with other documents

3.1 Interface with Project Contracts and Multi-Party Contracts

Multi-Party Contracts

- 3.1.1 Subject to Clause 3.1.2, nothing in this Contract shall have the effect of amending the CVF Contract or any other multi-party agreement to which the MoD and any BVT Group Company are parties together with Third Parties (a **Multi-Party Contract**).
- 3.1.2 Subject to the terms of any Multi-Party Contract:
- (a) MoD may at its discretion choose to propose a change to a Multi-Party Contract to make such Multi-Party Contract more consistent with the Commercial Purpose and in this event BVT shall, to the extent that is reasonable, (and shall procure that any relevant BVT Group Company shall to the same extent) support and not frustrate the proposed change; and
- (b) BVT may propose a change to a Multi-Party Contract to make such Multi-Party Contract more consistent with the Commercial Purpose. MoD shall give reasonable consideration to any such proposal without any obligation to agree it.

Project Contracts to continue

- 3.1.3 It is the general intention of BVT and the MoD that the Project Contracts, shall continue to operate according to their terms, as amended from time to time, and in particular that the scope of work and pricing arrangements in those Project Contracts will continue to apply.
- 3.1.4 Notwithstanding Clause 3.1.3, BVT and the MoD consider it to be of paramount importance that the arrangements contemplated by this Contract are fully implemented and are not frustrated by the operation of individual Project Contracts. In order to achieve this objective, BVT and the MoD have agreed the following provisions of this Clause 3.1.

Amendment obligations

- 3.1.5 Notwithstanding Clause 3.1.3 to the extent that at any time any inconsistency between this Contract and any Project Contract (other than a Multi-Party Contract) comes to light, MoD and BVT shall, and BVT shall procure that each relevant BVT Subsidiary shall agree to the specific

wording and detail of the necessary amendment (in accordance with the relevant change or amendment procedure in the relevant Project Contract) to ensure that Project Contract, to the extent necessary, gives effect to the following arrangements in this Contract:

- (a) in respect of:
 - (i) Integration, Transformation and Strategic Rationalisation, including in relation to the implementation of Approved Transformation Benefit Proposals, Allowable Transformation Costs and the recovery of Allowable Strategic Rationalisation Costs;
 - (ii) MoD's and BVT's respective obligations in Clause 8 (*Standard of Conduct*);
 - (iii) BVT's obligations in relation to the provision and maintenance of Key Industrial Capability in Part 7 (*Key Industrial Capability*);
 - (iv) Partnering, pursuant to Part 8 (*Partnering*);
 - (v) achievement of the Strategic Planning Objective;
 - (vi) Part 9 (*the Supply Chain Strategy and Use of Sub-Contractors*) in relation to the Supply Chain Strategy and use of subcontractors;
 - (vii) Clause 31.5 (*set-off*);
 - (viii) Clause 31.7 (*no double recovery*);
 - (ix) Clauses 37 (*Reporting*) and 38 (*Open Book Accounting and Records*);
 - (x) the conduct and implementation of the outcome of each Strategic Review;
- (b) so that to the extent that any dispute submitted for formal dispute resolution pursuant to that Project Contract relates to any matter which might reasonably be expected to have a material impact on any of the matters referred to in Clause 3.1.5(a) above, the person or body charged with determining the dispute shall be obliged to do so in the manner best calculated to give effect to the relevant provisions of this Contract;
- (c) so that all joint decisions to be made under that Project Contract from time to time, whether in relation to amendments to the relevant Project Contract or otherwise, which relate to:
 - (i) the making or funding by the MoD of investments of a value of £2,000,000 (two million pounds) (Indexed) or more;
 - (ii) the implementation of any rationalisation by the BVT Group or the agreement or payment by the MoD of any redundancy costs or any rationalisation costs;
 - (iii) any matter which might properly be the subject of a Transformation Benefit Proposal; and
 - (iv) any matter which might reasonably be expected to affect BVT's ability to discharge its obligation in Clause 20 (*Key Industrial Capability*) in relation to Key Industrial Capability,shall be reserved to be made in the first instance by the JPO with the right of escalation under the terms of this Contract through the Governance Bodies up to the POG;
- (d) so that where a Project Contract contains a regime similar to Clause 51 (*Change Procedure*) for changes to be made:

- (i) changes shall only be effected to the extent that they are consistent with any national, regional or specific guidance issued from time to time by the JPO and endorsed by the Steering Group (or by the POG if the matter is escalated for resolution); and
 - (ii) changes which might reasonably be expected to have a material effect of any of the matters referred to in Clause 3.1.5(a) above may only be effected if approved by the Steering Group (or by the POG if the matter is escalated).
- 3.1.6 Where pursuant to this Contract any fixed amount is agreed to be payable which might otherwise be the subject of agreement or determination in a Project Contract, the agreement of the agreed fixed amount shall prevail over that Project Contract.
- 3.1.7 When making decisions under this Contract, each Governance Body shall seek and take into account representations from the relevant representatives of BVT and the MoD in relation to individual Project Contracts that will be affected by the decision.
- 3.1.8 If either the MoD or BVT considers that the operation of any Project Contract (other than a Multi-Party Contract) is frustrating the achievement of the Commercial Purpose, it may notify the other and in such circumstances BVT and the MoD shall negotiate in good faith with a view to amending that Project Contract in the manner best calculated to further achievement of the Commercial Purpose.

Part 2 – General Provisions

4 Duration

Initial Term

- 4.1 Subject to Part 12 (*Termination and compensation*), the initial term of this Contract shall be 15 years (the **Initial Term**) from the date of execution of this Contract.

Continuation after Initial Term

- 4.2 Subject to Part 12 (*Termination and compensation*), this Contract shall continue beyond the Initial Term unless and until terminated by either the MoD or BVT on 5 years' notice provided that neither the MoD nor BVT may serve a termination notice earlier than the tenth anniversary of date of execution of this Contract.

5 Conditions Precedent

Provisions immediately effective

- 5.1 Clauses 1 (*Definitions and Interpretation*), 2 (*Precedence of documentation*), 3 (*Interface with other documents*), 5 (*Conditions Precedent*), 6 (*Representations, warranties and undertakings*), 33 (*Dispute resolution*), 39.1.2, 44 (*Corrupt gifts and payments*), Part 13 (*Parental Support*), Clauses 52 (*Change in Control*), 57 (*Confidentiality and Freedom of Information*), 58 (*Public relations and publicity*), 59 (*Data Protection*), 64 (*Notices*), 69 (*Remedies and waivers*), 71 (*Further Assurance*) and 72 (*Governing law and jurisdiction*) of this Contract shall commence on the date of this Contract. The rest of this Contract shall commence on the date that the Certificate of Commencement is issued (the **Commencement Date**).

Obligation to satisfy CPs

- 5.2 BVT and each Shareholder shall procure that the Conditions Precedent as set out in Schedule 1 (*Conditions Precedent*) for which it is responsible are satisfied to the MoD's satisfaction as soon as reasonably practicable after the date of execution of this Contract and in any event by the date falling six months after the date of execution of this Contract (the **Drop Dead Date**).

Certificate of Commencement

- 5.3 On the satisfaction to MoD's satisfaction or waiver by the MoD of all the Conditions Precedent, the MoD's Representative shall issue to BVT the Certificate of Commencement whereupon this Contract shall become unconditional and those parts of it not effective pursuant to Clause 5.1 (*Provisions immediately effective*) shall then become effective.

Termination if CPs not satisfied

- 5.4 If all of the Conditions Precedent are not satisfied by the Drop Dead Date, this Contract shall terminate from such date and each Party shall bear its own costs and any Losses arising from or connected with this Contract.

6 Representations, warranties and undertakings

6.1 BVT Warranties

6.1.1 BVT, and in the case of the representations and warranties in Clauses 6.1.1(a) - (g) (inclusive) and 6.1.1(j) - (l) (inclusive) only each Shareholder (for itself only), represents and warrants to the MoD that on the date of this Contract (save as specified herein):

Corporate

- (a) BVT and each Shareholder is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (b) BVT and each Shareholder has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;

Execution and performance of Contract

- (c) all action necessary on the part of BVT and each Shareholder to authorise the execution of and the performance of its obligations under this Contract has been taken;

BVT shareholdings

- (d) the Shareholders are together the legal and beneficial owner of BVT and the share capital as at the date of this Contract is allocated as follows:
 - (i) BAES: 55%;
 - (ii) VTG: 45%

BVT Subsidiaries

- (e) as at the date of this Contract:
 - (i) the details of each BVT Subsidiary set out in the definition is correct;
 - (ii) each BVT Subsidiary set out in the definition is a wholly owned subsidiary of BVT;
 - (iii) BVT has no other Subsidiaries incorporated in the United Kingdom other than the BVT Subsidiaries set out in sub-paragraphs (a)-(i) in the definition of BVT Subsidiary;

Lawful obligations

- (f) the obligations expressed to be assumed by BVT and each Shareholder under this Contract are legal, valid, binding and enforceable to the extent permitted by English law;
- (g) the execution, delivery and performance by BVT and each Shareholder of this Contract:
 - (i) does not constitute a default under any document which is binding upon BVT and each Shareholder;
 - (ii) does not conflict with the memorandum and articles of association of BVT and each Shareholder; or

- (iii) does not conflict with any judicial order applicable to BVT and each Shareholder;

Information

- (h) all information contained in the Equality of Information Statement (**Information**) supplied by or on behalf of BVT to the MoD in connection with this Contract was, to the best of that Party's knowledge and belief, complete, true and accurate in all material respects at the date it was supplied and was not misleading in any material respect and the opinions, projections and forecasts in such Information, and the assumptions on which they were based, have been arrived at after due and careful consideration and enquiry and genuinely represent the views of BVT. MoD acknowledges that BVT is an immature business and such representation or warranty does not extend to MoD Data which may be contained in the Information;

Accounts

- (i) the latest Accounts of BVT required to be delivered under Clause 37 will be prepared and audited in accordance with GAAP and the Companies Act 2006 and shall give a true and fair view of, in accordance with Companies Act 2006, its financial position as at the date they were prepared and for the period then ended.

No threats to business

- (j) no claim is presently being assessed (as far as BVT or the relevant Shareholder is aware) and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of BVT and each Shareholder (having made all due enquiry), pending or threatened against it or any of its assets which might have a material adverse effect on the ability of BVT and each Shareholder to perform its obligations under this Contract which have not been notified to the MoD prior to the Commencement Date;

No insolvency

- (k) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of BVT and each Shareholder, having made all due enquiry, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

No Prohibited Acts

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

BVT's 10-year Business Plan

- (m) each copy of BVT's 10-year Business Plan to be provided by BVT to MoD under this Contract shall be a complete, true and accurate version of the business plan of BVT as at its date, (save that it is agreed that the Non-Disclosable Information may be withheld). Each edition of BVT's 10-year Business Plan shall on the date of its issue be in all relevant material respects consistent with this Contract;

No IP infringements

- (n) as far as BVT is aware (having made due enquiry) there is no nor has there been any infringement or alleged infringement of any third party's Intellectual Property Rights in connection with this Contract,

and the MoD relies upon such warranties and representations.

Warranties cumulative

6.1.2 All warranties, representations, undertakings and other obligations made, given or undertaken by BVT and each Shareholder in this Contract are cumulative and none shall be given a limited construction by reference to any other.

6.2 Repetition

The representations and warranties set out in Clause 6.1.1(i) (*Accounts*) and (m) (*BVT's 10 Year Business Plan*) shall each survive the execution of this Contract and shall be deemed to be repeated by BVT on the date of the issue of, respectively, the recent Accounts (in the case of Clause 6.1.1(i) (*Accounts*)) or the 10 Year Business Plan (in the case of Clause 6.1.1(i)(m) (*BVT's 10 Year Business Plan*)).

Part 3 – Purpose

7 Commercial Purpose

7.1 General

The MoD and BVT shall (and BVT shall procure that each BVT Subsidiary shall) take the steps contemplated by this Contract and such other steps within their spheres of competence as shall be reasonably necessary or expedient to secure the achievement of the Commercial Purpose.

7.2 Commercial Purpose

The Commercial Purpose is that:

- (a) this Contract is performed;
- (b) the Project Contracts are managed;
- (c) the Dockyard Contracts are managed; and
- (d) BVT and each BVT Subsidiary operates across the full extent of its dealings with the MoD,

so as to secure that:

- (i) BVT shall maintain Surface Ship Capability and Key Industrial Capability in accordance with Part 7 (*Key Industrial Capability*), and MoD discharges its commitments in respect of Key Industrial Capability in Part 7 (*Key Industrial Capability*);
- (ii) the Guaranteed Minimum Target is delivered to the MoD in accordance with Part 5 (*Integration, Transformation and Strategic Rationalisation*);
- (iii) the BVT Business is transformed to achieve Upper Quartile Performance (or such other level of performance as may be agreed between the MoD and BVT) by December 2015 (measured in accordance with Clause 19 (*Continuous Improvement, Benchmarking and Upper Quartile Performance*)), subject to, where requisite to achieve this, both the MoD and BVT implementing the recommendations (or other agreed actions) arising from the Strategic Review in 2010-11 carried out in accordance with Part 11 (*Governance, Dispute Resolution and Reporting*);
- (iv)
 - (aa) the BVT Business is operated;
 - (bb) the MoD operates;
 - (cc) BVT and the MoD operate jointly;

as efficiently and economically as is reasonably possible so as to minimise the Total Cost of Services to the MoD, recognising that transformation activities will evolve over the Contract Period;

- (v) the MoD is fully and proactively informed and advised at all times by BVT of BVT's best opinion of the measures and strategic choices the MoD might take so as to minimise the Total Cost of Services;

- (vi) the MoD is fully informed and advised of the practical and cost implications of any strategic scenarios or options which it notifies BVT that it is considering from time to time; and
- (vii) BVT is afforded the degree of exclusivity on future Work provided for in accordance with Part 4 (*Exclusivity*) and Schedule 3 (*Exclusivity*).

7.3 MoD Remedy

The Parties acknowledge that any dispute arising from this Clause 7 shall not give rise to any right to terminate this Contract under Clause 39.1.4 (*material breach*) (unless in relation to a matter which is also a BVT Default pursuant to another provision of this Contract) until any dispute resolution procedure invoked as provided for at Schedule 2 (*Dispute Resolution Procedure*) has been fully exhausted and then only in the event of breach of this Clause 7 which is a material breach of this Contract.

8 Standard of conduct

8.1 General

In carrying out its obligations under this Contract, each of BVT and the MoD shall act with due efficiency and economy and in a timely manner, including in all respects with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

- (a) shipbuilder, defence maritime engineering contractor, systems integrator and ship support contractor having the functions which BVT has (in the case of BVT); and
- (b) defence procurement agency and national ministry of defence having the functions which the MoD has (in the case of the MoD).

8.2 Consistency of approach

In particular, in taking steps to achieve the Commercial Purpose both BVT and the MoD shall use all reasonable endeavours to ensure that: all parts of their organisations; and in the case of BVT only, the organisation of each BVT Subsidiary; and every person acting on its behalf or under its authority or control (including its sub-contractors), shall establish and maintain consistency in their assessments of and dealings with subjects for their consideration and their application of, and compliance with, all Project Contracts, Dockyard Contracts and this Contract.

Part 4 – Exclusivity

9 Exclusivity

9.1 Lead Contractor

Appointment

- 9.1.1 The MoD hereby grants to BVT the exclusive right to act as the Lead Contractor and Class Output Manager, subject to Clauses 9.1.7 (*MoD Approval Process*) and 9.1.9 (*Process following negative assessment*) and (if applicable) Clause 39.4 (*Partial Termination*), for Future Naval Programmes during the Exclusivity Period on the basis specified in Schedule 3 (*Exclusivity*).

No workload commitment

- 9.1.2 Notwithstanding the provisions of Clause 9.1.1 (*Appointment*), BVT acknowledges that the MoD is under no obligation under this Contract or otherwise at any time during the Contract Period to procure or Order any Future Naval Programme or Designated Naval Vessels or Additional Vessels and may cancel an invitation to tender issued to BVT under Clause 9.1.3 (*MoD Invitation to BVT*) at any time. However in the event that the MoD does decide to procure or Order Future Naval Programmes or Designated Naval Vessels or Additional Vessels (including where such vessels have already been subject to a cancelled procurement) the provisions of this Clause 9 and Schedule 3 (*Exclusivity*) shall apply.

MoD invitation to BVT

- 9.1.3 Where during the Exclusivity Period the MoD decides to procure one or more Designated Naval Vessels within a Future Naval Programme, it shall invite BVT in writing and only BVT to tender to provide such Designated Naval Vessels in the role of Lead Contractor and/or Class Output Manager on the basis described in Schedule 3 (*Exclusivity*), subject always to Clauses 9.1.7 (*MoD Approval Process*) and 9.1.9 (*Process following negative assessment*) below. BVT and the MoD will agree in good faith a reasonable period to develop a programme for the tender and shall identify the stages and key dates in the procurement process at which Value for Money is to be measured, including a date when it is anticipated that the final Value for Money test will be undertaken by the MoD.
- 9.1.4 BVT and the MoD shall thereafter comply in all material respects with Part 8 (*Partnering*) and in progressing the development and delivery of any new work in accordance with the MoD Approval Process.

Sharing of concerns

- 9.1.5 The MoD shall ensure that where BVT has been invited to tender without competition in relation to Future Naval Programmes or Designated Naval Vessels within a Future Naval Programme the relevant MoD project teams will share with BVT and the Steering Group any concerns identified by them that the prices and solution being developed by BVT as presented to the MoD prior to submission of the formal tender response are unlikely to represent Value for Money and shall offer reasonable assistance to BVT to enable it to address any concerns.

Submission of tender

- 9.1.6 At the dates agreed between BVT and the MoD in Clause 9.1.3 (*MoD Invitation to BVT*) BVT shall be entitled to submit its tender proposals for Designated Naval Vessel(s) which shall be sufficiently detailed so as to enable the MoD to conduct any Value for Money test.

MoD Approval Process

- 9.1.7 The award of any Order or contract for the provision of any Future Naval Programme or Designated Naval Vessels pursuant to this Part 4 shall always be subject at all times to the MoD Approval Process confirming that the tender proposal submitted by BVT for the provision of the relevant Future Naval Programme or Designated Naval Vessels (whether in relation to the role of Lead Contractor or any BVT Exclusive Stages or the role of Class Output Manager) represents Value for Money. For the avoidance of doubt this is the only ground upon which the MoD may reject a tender proposal for a Future Naval Programme or for a Designated Naval Vessel provided that the MoD reserves the right to cancel the tender process for a Designated Naval Vessel or Future Naval Programme at any time without liability to any party.

Value for money assessment

- 9.1.8 In assessing whether a proposal represents Value for Money the MoD shall:
- (a) take into consideration:
 - (i) the likely cost to the MoD of procuring the Works from a competent third party with appropriate domain experience;
 - (ii) the ability to meet the MoD's full range of capability requirements (including systems integration and support);
 - (iii) the anticipated volume of workload and any relevant restrictions or constraints that BVT has with regard to infrastructure and technology in meeting the MoD's requirements; and
 - (iv) the MoD's need to sustain Sovereign Capability;
 - (b) exclude from the assessment any element of the price for the relevant Designated Naval Vessel which has been included by BVT (with the agreement of the MoD) as being in satisfaction of a sum which is properly due and payable pursuant to this Contract (for example any Actual Strategic Rationalisation Costs which BVT and the MoD have agreed will be included in any future overhead charge).

Process following negative assessment

- 9.1.9 In the event that BVT is unable to demonstrate to the MoD's satisfaction (acting reasonably) that the tender proposal submitted by BVT for all or some of the role of Lead Contractor, any role in relation to the BVT Exclusive Stages or the role of Class Output Manager in respect of any Future Naval Programme or Designated Naval Vessels delivers a solution offering Value for Money in accordance with the MoD Approval Process, the MoD shall be entitled to request tenders from competent third parties with appropriate domain experience for the role of Lead Contractor, any role in relation to the BVT Exclusive Stages or the role of Class Output Manager (as the case may be) of such Future Naval Programme or Designated Naval Vessel and any resultant contract shall be awarded based on criteria determined by the MoD at its sole discretion provided that the tender process for such contract has been conducted by the MoD in a fair and transparent manner consistent with the good procurement practice. The MoD shall not unreasonably exclude BVT from competing in this further tender process involving third parties.

Cancellation

- 9.1.10 In the event that a tender proposal is rejected even though it represents Value for Money (for example if it is decided by the MoD that the relevant Designated Naval Vessel or Future Naval Programme is unaffordable) this shall be treated as a cancellation for the purposes of Clause 9.1.2 (*No workload commitment*) and BVT shall retain exclusivity in respect of such Future Naval Programme or Designated Naval Vessel.

Awards to third parties

- 9.1.11 In the event that any contract or Order for works and services for the Designated Naval Vessels in respect of which BVT has exclusivity rights are awarded to a third party:
- (a) BVT shall be under no obligation to provide further support to such third party in the discharge of such contract other than as agreed between BVT and the MoD or other than where already contracted for a Stage; and
 - (b) BVT shall retain its rights and remedies under this Contract and the submission of a further tender or proposal by BVT pursuant to Clause 9.1.7 (*MoD Approval Process*) shall not constitute a waiver by BVT of its rights in the event that a dispute arises or has arisen as to whether BVT's initial tender submitted pursuant to Clause 9.1.7 (*MoD Approval Process*) represents Value for Money, provided however that BVT agrees that it shall not disrupt or otherwise hinder or seek an injunction or order for specific performance to stop such further tender process being conducted by the MoD; and
 - (c) the MoD shall, where a KIC Trigger Event occurs, become liable to pay the KIC Payments to BVT in accordance with Part 7 (*Key Industrial Capability*).

9.2 Miscellaneous

- 9.2.1 Where BVT receives confirmation that its tender proposal does represent Value for Money BVT and the MoD shall within a reasonable period to be agreed carry out further works to develop appropriate terms to implement the work on the terms of the tender.
- 9.2.2 Subject to Clause 9.2.1 and the obtaining of final approvals required by the MoD and BVT and agreement being reached on the contractual terms, the MoD and BVT (or a BVT Subsidiary) shall enter into a valid and legally binding contract for the Designated Naval Vessel(s).

Contents of Relevant Contracts

- 9.2.3 It is acknowledged by BVT that a contract awarded for Work on a Designated Naval Vessel or Future Naval Programme (as the case maybe) will specify the responsibilities of BVT and in circumstances where BVT's responsibility for any Stage is at variance with Clause 9.3 and Schedule 3 (*Exclusivity*) the terms of the relevant contract shall take precedence over the provisions of Clause 9.3.

9.3 Schedule 3 (Exclusivity)

Schedule 3 (*Exclusivity*) shall apply subject always to this Clause 9 (*Exclusivity*). Both the MoD and BVT shall comply with it.

Part 5 – Integration, Transformation and Strategic Rationalisation

This Part 5 describes the continuing process through which BVT is incentivised in relation to Integration, Transformation and Strategic Rationalisation. Arrangements for Transformation Benefit Proposals describe the way in which Delivered Efficiency Savings will be generated and will be continuously monitored through a rolling 5-Year Transformation Plan.

10 Pre-April 2009 Integration

Banked Efficiency Savings

- 10.1 BVT and the MoD have agreed that BVT shall be deemed to have already generated £33,100,000 (thirty three million, one hundred thousand pounds) in aggregate of savings to the MoD, (net of costs recoverable from the MoD), as a result of Integration activities carried out by BVT between 1 January 2007 and 31 March 2009 (**Banked Efficiency Savings**). Consequently, it is acknowledged that in agreeing the Target Yearly Efficiency Savings, these figures have been reduced on a pro-rata basis to reflect the Banked Efficiency Savings.

Pre-April 2009 Allowable Integration Costs

- 10.2 Pre-April 2009 Allowable Integration Costs have been incurred by BVT and shall be recoverable in accordance with Clause 10.5 (*Method of recovery of the Pre-April 2009 Allowable Integration Costs*).

Efficiency Savings resulting from Integration steps taken Pre-April 2009

- 10.3 It is anticipated (as set out in the Pre-April 2009 Integration Plan) that implementation of Integration during this period will generate recurring net savings to the MoD (after recovery by BVT of the Pre-April 2009 Allowable Integration Costs), (**Anticipated Pre-April 2009 Integration Efficiency Savings**). Delivery of the Anticipated Pre-April 2009 Integration Efficiency Savings shall be tracked in accordance with Clause 14 (*Savings Targets*) and the benefits tracking and realisation process set out in Part 5 of Schedule 11 (*Performance Management and KPIs*) and, to the extent that such Anticipated Pre-April 2009 Integration Efficiency Savings are certified by CAAS in accordance with such process as having been delivered to the MoD, such Efficiency Savings (**Delivered Pre-April 2009 Integration Efficiency Savings**) will count as Delivered Efficiency Savings.

Limitations on recovery of Integration Costs

- 10.4 No costs incurred by any BVT Group Company in connection with Integration steps undertaken Pre-April 2009 shall be recoverable save for the Pre-April 2009 Allowable Integration Costs.

Method of recovery of the Pre-April 2009 Allowable Integration Costs

- 10.5 The Pre-April 2009 Allowable Integration Costs shall be recovered from the MoD through the inclusion of such costs in overheads under the Project Contracts in accordance with the Yellow Book or, if otherwise proposed by the MoD and agreed with BVT, by a separate payment or payments direct to BVT.

11 Post-April 2009 Integration

In relation to the allowability and recovery of costs to be incurred by BVT in connection with Integration activities to be undertaken post April 2009, such costs shall be allowable and recoverable only to the extent they are included within an Approved Transformation Benefit Proposal and form part of Allowable Transformation Costs.

12 Transformation

Transformation Definition

12.1 **Transformation** is the continuing process through which:

- (a) BVT shall transform the BVT Business; and
- (b) the MoD and BVT jointly transform in accordance with Approved Transformation Benefit Proposals,

in accordance with this Contract and the Transformation Plan to achieve the Commercial Purpose.

Transformation Plan

Establishment of plan

12.2 BVT and the MoD will maintain through the Steering Group and the JPO a rolling 5-year Transformation Plan setting out Key Events timetabled to occur during that 5-year period which are intended to result in or contribute to the achievement of Efficiency Savings.

12.3 A copy of the Transformation Plan for the period ending 30 June 2014 is attached in Part 1 of Schedule 5 (*Integration, Transformation and Strategic Rationalisation*).

JPO review of plan

12.4 The Transformation Plan shall be reviewed by the JPO at each Annual Performance Review. An updated Transformation Plan for the period ending on the fifth anniversary of the end of the Contract Year which is the subject of the Annual Performance Review shall be determined by the JPO to reflect new Approved Transformation Benefit Proposals and associated Key Events as developed from time to time.

Transformation Benefit Proposals

Making proposals

12.5 BVT and the MoD shall each be entitled at any time during the Contract Period to submit proposals and the JPO shall be entitled to produce its own proposals in accordance with the process set out in the remaining sub-clauses of this Clause 12 setting out initiatives which the proposer believes will generate Efficiency Savings (a **Transformation Benefit Proposal**).

12.6 All Transformation Benefit Proposals shall contain the information required by Clauses 12.7 (*Contents of proposal*) and 12.8.

Contents of proposal

12.7 Transformation Benefit Proposals must provide an outline of the proposed savings initiative supported by a 3-point estimate of the estimated Efficiency Savings (worse case/most likely/best case) and any associated Estimated Transformation Costs.

12.8 Each Transformation Benefit Proposal shall contain the following information together with such other additional information as the proposer considers appropriate to be included:

- (a) title;
- (b) proposer;
- (c) overview;

- (d) objectives;
- (e) cost base addressed by initiative and a proposal for the Baseline to be used in calculating resulting Efficiency Savings;
- (f) implementation timetable (with proposed Key Events), process and actions;
- (g) Estimated Transformation Costs with any proposed fixed costs alternatives;
- (h) estimated Efficiency Savings;
- (i) any other benefits (non financial);
- (j) linkage/alignment to other initiatives;
- (k) assumptions;
- (l) proposed MoD Dependencies and other dependencies (including owners and dates);
- (m) stakeholders (and necessary actions);
- (n) contractual issues (linkage to existing contracts/projects) and any required changes thereto;
- (o) risks;
- (p) impact on third parties; and
- (q) recommendation/summary.

12.9 All Transformation Benefit Proposals to be submitted by BVT or the MoD shall be submitted in such form (if any) as the JPO shall specify from time to time and shall be endorsed by a senior manager of BVT (where BVT is the proposer) or the MoD's Representative or any other MoD representative on the Steering Group (where the MoD is the proposer) prior to submission to the JPO.

JPO review of proposal

12.10 Upon receipt of a Transformation Benefit Proposal from BVT or the MoD, or in connection with the development of its own Transformation Benefit Proposal, the JPO shall conduct an initial review to determine the feasibility of the proposals. As part of this review, the JPO will (but without limitation to such other review steps that it considers appropriate):

- (a) identify and consult with relevant MoD and BVT stakeholders and subject matter experts;
- (b) identify key issues and/or decisions that BVT and/or the MoD need to make; and
- (c) identify and evaluate risks and dependencies (including MoD Dependencies) associated with the proposal.

12.11 The JPO will also consult with, and use the support of, CAAS and other functions within the MoD and BVT to determine the actual likely level of Efficiency Savings to be generated from the Transformation Benefit Proposal.

12.12 Where required the entity who proposed the Transformation Benefit Proposal under Clause 12.5 shall work with the JPO to clarify and/or amend the Transformation Benefit Proposal to the JPO's satisfaction.

Approval process

- 12.13 Having received the Transformation Benefit Proposal the JPO shall issue either an Approval Notice or a Rejection Notice.
- 12.14 If the JPO cannot agree or has insufficient authority to agree on the issue of an Approval Notice or Rejection Notice, the Transformation Benefit Proposal shall be referred to the Steering Group for approval or rejection and if the Steering Group cannot agree or has insufficient authority to agree an Approval Notice or Rejection Notice, the Transformation Benefit Proposal shall be referred to the POG, whose chair shall issue an Approval Notice or Rejection Notice.

Reasons for rejection

- 12.15 The reasons that any Governance Body may give for refusing to issue an Approval Notice or for issuing a Rejection Notice may include (but without limitation):
- (a) it not being satisfied that any cost savings resulting from the proposed efficiency measures identified in the Transformation Benefit Proposal will:
 - (i) constitute Efficiency Savings that are not already Efficiency Savings to be delivered pursuant to a pre-existing Approved Transformation Benefit Proposal; or
 - (ii) exceed the costs to the MoD of the implementation of the Transformation Benefit Proposal;
 - (b) the Transformation Benefit Proposal contains unacceptable MoD Dependencies; or
 - (c) it being concerned that the efficiency measure proposed may prejudice the achievement of the Commercial Purpose or the ability of BVT to:
 - (i) maintain its Key Industrial Capability pursuant to Part 7 (*Key Industrial Capability*); or
 - (ii) carry out any of its other obligations under this Contract or any Project Contract or Dockyard Contract; or
 - (d) it not being satisfied that BVT's Estimated Transformation Costs are sufficiently reliable; or
 - (e) it being concerned that implementation of the Transformation Benefit Proposal will otherwise result in unacceptable consequences to the MoD.

Guaranteed Minimum Target has no MoD Dependencies

- 12.16 BVT acknowledges that the MoD has entered into this Contract on the understanding that BVT shall be able to generate the Guaranteed Minimum Target without any MoD Dependencies (other than Pre-April 2009 Allowable Integration Costs and Allowable Transformation Costs included in the Approved Transformation Benefits Proposals resulting from the benefits business cases entitled: "Pre-April 2009 Integration business case", "Post-April 2009 business case" and "Total Package Services business case").
- 12.17A In the event there is a material change to the following programmes and/or related assumptions (which are included in BVT's 10 year Business Plan):
- (i) the Future Surface Combatant programme in respect of C1 vessels (being the programme as set out in the BVT 10 Year Business Plan as at the date of this Contract) with the in service date for the first class of Ship being 2019;

- (ii) the Queen Elizabeth Class aircraft carrier programme (CVF), (and the design, build and integration of the programme being completed in accordance with "Option D+");
- (iii) in relation to the Type 45 Destroyer programme, the 6 Ship Contract is completed in accordance with the programme as at the date of this Contract;
- (iv) the WSMi contract (and any extension beyond 2013); and
- (v) the "core support load" as referenced in the "Illustrative Engineering Load Support (January 2009 – March 2014)" document dated 16 February 2009 is maintained,

then BVT and the MoD shall negotiate in good faith a fair and reasonable adjustment to the Cumulative Guaranteed Minimum Savings Yearly Targets as soon as reasonably practicable.

- 12.17 Where any representative of BVT on a Governance Body refuses to agree to the issue of an Approval Notice, he shall set out his reasons in writing to the MoD's Representative together with confirmation of what changes would be required to the Transformation Benefit Proposal to secure his approval to the same.

Revision of rejected proposals

- 12.18 Upon the issue of a Rejection Notice, the proposer of the rejected Transformation Benefit Proposal shall be entitled to revise the rejected Transformation Benefit Proposal to resolve or alleviate the objections of the Governance Body who issued the Rejection Notice and re-submit the same for consideration afresh as a Transformation Benefit Proposal for the purposes of this Clause.

Use of BEM

- 12.19 Any Governance Body shall be entitled to use the BEM to assess any Transformation Benefit Proposal but the Governance Body shall be entitled to approve or reject a Transformation Benefit Proposal pursuant to Clause 12.13 (*Approval Process*) or 12.14 whether or not the BEM demonstrates that the proposed efficiency measure will produce Efficiency Savings.

Delegated Authorities

- 12.20 Where Estimated Transformation Costs or fixed cost alternatives are included within a Transformation Benefit Proposal the relevant Governance Body members shall act at all times within their respective delegated authority levels for financial/contractual commitments.

Implementation of approved proposals

- 12.21 Once an Approval Notice has been issued in accordance with Clause 12.13 (*Approval Process*) or 12.14 in respect of a Transformation Benefit Proposal, that Transformation Benefit Proposal shall become an Approved Transformation Benefit Proposal and each of BVT and the MoD shall carry out all actions set out in the Approved Transformation Benefit Proposal to implement the same.

Record of proposals

- 12.22 The JPO shall maintain a record of Transformation Benefit Proposals rejected and approved pursuant to the process in this Clause 12 and this shall be a standing agenda item for all Steering Group meetings.

Transformation Costs

Cost estimates

- 12.23 Where any part of the costs to be incurred by BVT in implementation of an Approved Transformation Benefit Proposal are not fixed, the Approved Transformation Benefit Proposal

shall set out an agreed estimate of such costs (**Original Estimated Transformation Costs**) by reference to cost categories to be agreed (**Agreed Transformation Cost Categories**) (an **Original Transformation Costs Estimate**). As soon as BVT becomes aware of any material increase in the Original Estimated Transformation Costs it will notify the MoD's Representative immediately.

- 12.24 Where an Approved Transformation Benefit Proposal contains an Original Transformation Costs Estimate BVT shall be entitled from time to time to give the MoD for the agreement of the MoD's Representative a revised estimate revising the Original Estimated Transformation Costs (a **Revised Transformation Costs Estimate**).

Actual costs of implementation

- 12.25 The MoD and BVT acknowledge that, in relation to any Approved Transformation Benefit Proposal, the actual costs incurred by BVT in implementation of the proposal (**Actual Transformation Costs**) may be higher or lower than the Estimated Transformation Costs but BVT shall use all reasonable endeavours to mitigate the incurring of Actual Transformation Costs.

Disclosure and scrutiny of costs

- 12.26 All Actual Transformation Costs shall be fully disclosed to the MoD by BVT in accordance with the open book provisions in Clause 38 (*Open Book Accounting*) and shall be fully auditable by CAAS in accordance with the Yellow Book.

Annual Transformation cost certificate

- 12.27 Within 6 months of the end of each Contract Year, BVT shall send to the MoD's Representative for audit by CAAS an annual cost certificate signed by the finance director of BVT detailing the Actual Transformation Costs incurred by BVT during the Contract Year just ended (an **Annual Transformation Costs Certificate**) broken down by each Approved Transformation Benefit Proposal.

Allowable Transformation Costs

Allowable costs

- 12.28 Subject to Clauses 12.30 (*Limitations on recovery of Transformation Costs*) and 12.31 (*Method of recovery of Allowable Transformation Costs*), Actual Transformation Costs set out in any Annual Transformation Costs Certificate shall be allowable to the extent that, as certified by CAAS:
- (a) the costs were previously the subject of the Original Transformation Costs Estimate or a Revised Transformation Costs Estimate;
 - (b) the costs do not exceed any cap agreed in relation to such costs;
 - (c) the costs fall within the Agreed Transformation Costs Categories;
 - (d) the costs were properly incurred in implementation of the Approved Transformation Benefit Proposal;
 - (e) the costs have been mitigated by BVT using all reasonable endeavours; and
 - (f) the costs have not separately been recovered directly or indirectly from the MoD.

Final cost certificate

- 12.29 Within 6 months of the end of the Contract Period, BVT shall send to MoD's Representative for audit by CAAS a final cost certificate signed by the finance director of BVT detailing the Actual

Transformation Costs incurred by BVT during the Contract Period (the **Final Transformation Costs Certificate**).

Limitations on recovery of Transformation Costs

- 12.30 No costs incurred by any BVT Group Company in connection with Transformation shall be recoverable save for Allowable Transformation Costs.

Method of recovery of Allowable Transformation Costs

- 12.31 Allowable Transformation Costs shall be recovered from the MoD through the inclusion of such costs in overheads under the Project Contracts in accordance with the Yellow Book or, if otherwise proposed by the MoD and agreed with BVT, by a separate payment or payments direct to BVT by way of an amendment to this Contract.

TUPE

Indemnities in relation to staff employed by the MoD whose contracts of employment transfer to BVT under TUPE pursuant to implementation of an Approved Transformation Benefit Proposal

- 12.32 The MoD shall indemnify and keep indemnified BVT (for itself and as agent and/or trustee on behalf of BVT Subsidiaries where relevant) against any claim or claims:
- (a) by any MoD Transferring Employees, made against BVT at any time arising out of or in connection with any acts or omissions (or alleged acts or omissions) of the MoD which occurred on or prior to the Transfer Day including claims for breach of contract, loss of office, unfair dismissal, redundancy, unlawful discrimination, loss of earnings or otherwise (and all costs and expenses thereof); or
 - (b) by any MoD Transferring Employee or any trade union or other body or person representing any Employee made against BVT as a result of the MoD's failure (or alleged failure) to comply with its obligations under Regulations 13 and 14 of TUPE (other than as a result of BVT's failure to comply with its obligation under Regulations 13(4) of TUPE); or
 - (c) by any MoD Transferring Employee that there has been a breach of the Equal Pay Act 1970, the Equal Pay Directive and/or Article 141 of the EC Treaty by BVT in respect of any MoD Transferring Employee where the breach is a continuation of a breach committed by the MoD prior to the Transfer Day in respect of such MoD Transferring Employee,

and BVT and the BVT Subsidiaries shall use all reasonable endeavours to mitigate the MoD's liability in respect of this indemnity.

- 12.33 Subject to Clause 12.32 BVT shall indemnify and keep indemnified the MoD against any claim or claims:
- (a) by any MoD Transferring Employee made against the MoD at any time arising out of or in connection with any acts or omissions (or alleged acts or omissions) of BVT or any BVT Subsidiary on or after the Transfer Day including claims for breach of contract, loss of office, unfair dismissal, redundancy, unlawful discrimination, loss of earnings or otherwise (and all costs and expenses thereof) save to the extent that such claims are payable as a result of any act or omission of the MoD;
 - (b) by any MoD Transferring Employee or any trade union or other body or person representing any MoD Transferring Employee made against the MoD as a result of the failure (or alleged failure) by any BVT Group Company to comply with its obligations under Regulation 13(4) of TUPE save to the extent that such claims are payable as a result of any act or omission of the MoD; or

- (c) by any MoD Transferring Employee or any trade union or other body or person representing any Employee made against the MoD by virtue of any substantial change made or proposed by a BVT Group Company in the working conditions of any of the MoD Transferring Employees which is to the material detriment to any of the MoD Transferring Employees,

and the MoD shall use all reasonable endeavours to mitigate BVT and BVT Subsidiaries' liability in respect of this indemnity.

- 12.34 Notwithstanding Clauses 12.32 and 12.33 both the MoD and BVT will consult regarding any employment and pensions issues which arise from any Transformation Benefit Proposal and shall follow any published MoD process in force at the time and in accordance with Legislation.

13 Strategic Rationalisation

Strategic Rationalisation Definition

- 13.1 **Strategic Rationalisation** means pursuant to the Strategic Rationalisation Strategy the agreed reduction in BVT's industrial capacity to be completed within two years of the date on which the last CVF Block leaves a BVT shipyard for final assembly elsewhere to match BVT's then anticipated flow of Work from the MoD.

Options Analysis

- 13.2 BVT shall conduct an options analysis in 2010 (or earlier as agreed) and, in consultation with the MoD, shall produce a report containing the information and in the format set out at Part 2 of Schedule 5 (*Integration, Transformation and Strategic Rationalisation*). The report shall propose properly considered options for Strategic Rationalisation of a Shipbuilding Facility at one or more of Scotstoun, Govan and Portsmouth (an **Affected Site**) to be implemented before or after the date on which the last CVF Block leaves a BVT shipyard for final assembly elsewhere.
- 13.3 The report resulting from this options analysis shall be jointly reviewed by BVT and the MoD who shall each use all reasonable endeavours to identify and agree a rationalisation strategy from the options or as otherwise agreed to be taken forward (the **Strategic Rationalisation Strategy**).

Strategic Rationalisation Plan

Draft plan

- 13.4 Where a Strategic Rationalisation Strategy is agreed pursuant to Clause 13.3, BVT shall provide for agreement with the MoD as part of the Strategic Review to be held in 2011, or earlier if agreed, a draft rationalisation plan together with detailed site specific plans for implementation of the rationalisation.

Negotiation

- 13.5 MoD and BVT shall each use all reasonable endeavours to agree a rationalisation plan. The rationalisation plan, the site-specific implementation plans and the other required appendices to the rationalisation plan shall, once in agreed form, together constitute the **Strategic Rationalisation Plan** for the purposes of this Contract and each of BVT and the MoD shall carry out all actions set out in the Strategic Rationalisation Plan to implement the same.

Strategic Rationalisation Costs

Strategic Rationalisation Plan to include costs estimates

- 13.6 The Strategic Rationalisation Plan shall include:

- (a) the Agreed Strategic Rationalisation Costs Categories; and
- (b) where any part of the costs to be incurred by BVT in implementation of the Strategic Rationalisation Plan is not fixed, the Strategic Rationalisation Plan shall set out an agreed estimate of such costs (**Original Estimated Strategic Rationalisation Costs**) by reference to Agreed Strategic Rationalisation Cost Categories, calculated on the basis that implementation shall be completed by the second anniversary of the date on which the last CVF Block leaves a BVT shipyard for final assembly elsewhere (the **Strategic Rationalisation Costs Cut-off Date**) or otherwise in accordance with the timetable set out in that Strategic Rationalisation Plan (an **Original Strategic Rationalisation Costs Estimate**),

save that, for the avoidance of doubt, the MoD shall not be liable for any costs incurred by any BVT Group Company in relation to Strategic Rationalisation undertaken after the 15th anniversary of the Commencement Date other than Allowable Strategic Rationalisation Costs.

Agreement of cost caps

- 13.7 BVT and the MoD may agree caps in relation to all or part of the Estimated Strategic Rationalisation Costs or fixed amounts in relation to any element of the costs to be incurred by BVT in implementation of the Strategic Rationalisation Plan.

Revision of cost estimates

- 13.8 Where the Strategic Rationalisation Plan contains an Original Strategic Rationalisation Costs Estimate BVT shall be entitled from time to time to give the MoD for the agreement of the MoD's Representative a revised estimate revising the Original Estimated Strategic Rationalisation Costs calculated on the same basis as set out in Clause 13.6(b) (a **Revised Strategic Rationalisation Costs Estimate**).

Actual costs of implementation

- 13.9 MoD and BVT acknowledge that the actual costs incurred by BVT in implementation of the Strategic Rationalisation Plan (**Actual Strategic Rationalisation Costs**) may be higher or lower than the Estimated Strategic Rationalisation Costs but BVT shall use its all reasonable endeavours to mitigate the incurring of Actual Strategic Rationalisation Costs.

Disclosure and scrutiny of costs

- 13.10 All Actual Strategic Rationalisation Costs shall be fully disclosed to the MoD by BVT in accordance with the open-book provisions in Clause 38 and Schedule 6 (*Reporting*) and shall be fully auditable by CAAS in accordance with the Yellow Book.

Annual Strategic Rationalisation Costs Certificate

- 13.11 Within 6 months of the end of the Contract Year in which implementation of the Strategic Rationalisation Plan starts and each subsequent Contract Year up to the Contract Year in which the Strategic Rationalisation Costs Cut-off Date falls (or, if later, the Contract Year in which Strategic Rationalisation is completed following a deferral pursuant to Clause 13.17 or such other date as is specified in the Strategic Rationalisation Plan, BVT shall send to MoD's Representative for audit by CAAS an annual cost certificate signed by the finance director of BVT detailing the Actual Strategic Rationalisation Costs incurred by BVT during the Contract Year just ended (an **Annual Strategic Rationalisation Costs Certificate**).

Allowable Strategic Rationalisation Costs

Allowable costs

- 13.12 Subject to Clauses 13.14 (*Limitations on recovery of Allowable Strategic Costs*) and 13.15, Actual Strategic Rationalisation Costs set out in any Annual Strategic Rationalisation Costs Certificate shall be allowable to the extent that, as certified by CAAS:
- (a) the costs were previously the subject of the Original Strategic Rationalisation Costs Estimate or a Revised Strategic Rationalisation Costs Estimate;
 - (b) the costs do not exceed any cap agreed with the MoD in relation to such costs;
 - (c) the costs fall within the Agreed Strategic Rationalisation Cost Categories;
 - (d) save as provided in Clause 13.18 (*Consequences of non-agreement of Strategic Rationalisation Strategy*), the costs have been incurred prior to the Strategic Rationalisation Costs Cut-off Date or, if later, by the dates set out in the Strategic Rationalisation Plan;
 - (e) the costs were properly incurred in implementation of the Strategic Rationalisation Plan;
 - (f) the costs are net of sales proceeds receivable by any BVT Group Company from the sale of any assets in connection with the Strategic Rationalisation;
 - (g) the costs have been mitigated by BVT using all reasonable endeavours;
 - (h) the costs have not separately been recovered directly or indirectly from the MoD; and
 - (i) the costs do not include any element of profit.

Final cost certificate

- 13.13 Within 6 months of the end of the Contract Period, BVT shall send to MoD's Representative for audit by CAAS a final cost certificate signed by the finance director of BVT detailing the Actual Strategic Rationalisation Costs incurred by BVT during the Contract Period (the **Final Strategic Rationalisation Costs Certificate**) which may be combined with the Final Transformation Costs Certificate if agreed.

Limitations on recovery of Strategic Rationalisation Costs

- 13.14 No costs incurred by any BVT Group Company in connection with Strategic Rationalisation shall be recoverable save for Allowable Strategic Rationalisation Costs.
- 13.15 BVT shall not be entitled to recover under the Strategic Rationalisation Plan any Allowable Transformation Costs.

Method of recovery of Allowable Strategic Rationalisation Costs

- 13.16 Allowable Strategic Rationalisation Costs shall be recovered from the MoD through the inclusion of such costs in overheads under the relevant Project Contracts in accordance with the Yellow Book or, if otherwise proposed by the MoD and agreed with BVT, by a separate payment or payments direct to BVT pursuant to an agreed scheme of payment by way of an amendment to this Contract save that to the extent that Allowable Strategic Rationalisation Costs are not recoverable through overheads they shall constitute a debt recoverable within 3 years of becoming Allowable Strategic Rationalisation Costs.
- 13.17 In the event that the MoD agrees to pay Allowable Strategic Rationalisation Costs by direct payments under Clause 13.16 (*Method of recovery of Allowable Strategic Rationalisation*

Costs) and fails to make such payments in accordance with Clause 31 (*Payment*), such failure will have the consequences set out in Clause 40 (*MoD Default*).

Consequences of non-agreement of Strategic Rationalisation Strategy

- 13.18 If the MoD decides, at its discretion, not to choose one of the rationalisation options identified in the options analysis at Clause 13.2 (*Options Analysis*), or does not otherwise agree a Strategic Rationalisation Strategy proposed by BVT to be implemented by BVT at any Affected Site, the costs of maintaining the Affected Site and associated facilities and staff shall continue to be recoverable within a reasonable period from the MoD in such manner as shall be agreed between BVT and the MoD which is consistent with normal public accounting practice.

Deferral of Strategic Rationalisation after the Strategic Rationalisation Costs Cut-off Date

- 13.19 BVT may elect in the Strategic Rationalisation Plan, or at any time thereafter by way of an agreed amendment to that Strategic Rationalisation Plan, to defer elements of the implementation of Strategic Rationalisation at an Affected Site until after the Strategic Rationalisation Costs Cut-off Date to enable third party work secured by BVT to be completed at the Affected Site to match capacity with the MoD's then anticipated requirements for Work.
- 13.20 Where BVT incurs costs in accordance with the Strategic Rationalisation Plan after the Strategic Rationalisation Costs Cut-off Date at the Affected Site after completion of the third party work referred to in Clause 13.19 (**Deferred Strategic Rationalisation Costs**) the provisions of Clauses 13.8 to 13.15 shall apply in relation to recoverability of those costs as Allowable Strategic Rationalisation Costs from the MoD at that time, provided that the MoD's liability to BVT in respect of such Deferred Strategic Rationalisation Costs shall not in any event exceed the fixed costs agreed in the Strategic Rationalisation Plan or estimates contained in the Original Strategic Rationalisation Costs Estimate or any Revised Strategic Rationalisation Costs Estimate for the costs of Strategic Rationalisation at that Affected Site which have become Deferred Strategic Rationalisation Costs.

Part 6 – Savings Targets, Performance Management and Incentive Payments

14 Savings Targets

14.1 Savings Targets

Establishment of targets

- 14.1.1 Whilst there is no limit on the level of Efficiency Savings that BVT and/or the MoD and/or the JPO is entitled to propose over the Contract Period, the MoD and BVT have agreed that BVT's Guaranteed Minimum Target, Intermediate Savings Target and Stretch Savings Target for the generation of Efficiency Savings against the Baseline by the fifteenth anniversary of the date of this Contract (together the **Savings Targets**) are:

Guaranteed Minimum Target:	£350,000,000 (three hundred and fifty million pounds) (Indexed)
Intermediate Savings Target:	£650,000,000 (six hundred and fifty million pounds) (Indexed)
Stretch Savings Target:	£900,000,000 (nine hundred million pounds) (Indexed)

BVT obligations

- 14.1.2 BVT shall generate the Guaranteed Minimum Target before the end of the Initial Term. Delivered Efficiency Savings only shall count towards Savings Targets. Delivered Efficiency Savings shall be counted after deduction of Pre-April 2009 Allowable Integration Costs and Allowable Transformation Costs for the relevant Contract Year (but for the avoidance of doubt any Allowable Strategic Rationalisation Costs shall not be deducted from Delivered Efficiency Savings).
- 14.1.3 BVT shall use all reasonable endeavours to deliver to the MoD Delivered Efficiency Savings at the Intermediate Savings Target and Stretch Savings Target by the end of the Contract Period.
- 14.1.4 It is agreed that Efficiency Savings may be generated from both the BVT Cost Base and the MoD Cost Base and that, in order to achieve the Intermediate Savings Target and Stretch Savings Target, savings will need to be made through joint transformation.

BVT Overhead Baseline

- 14.1.5 The BVT Overhead Baseline (which is one of the Baselines to be utilised for the calculations in Clause 18.1 (*Savings Calculations*)) shall comply with the form containing budgeted data set out in Part 1 of Schedule 11 (*Performance Management and KPIs*). As soon as reasonably practicable after the Commencement Date, BVT and the MoD shall update this budgeted data for actual costs certified by CAAS. This updated actual costs data shall be the BVT Cost Base in relation to overheads for 2008/2009 adjusted by:
- (a) deducting any Pre-April 2009 Allowable Integration Costs which are included in the 2008/2009 costs data; and
 - (b) adding Anticipated Pre-April 2009 Integration Efficiency Savings,
- and following such adjustments this shall then constitute the **BVT Overhead Baseline**.
- 14.1.6 The BVT Overhead Baseline referred to in Clause 14.1.5 above shall be stored in the BEM. The JPO: (i) may adjust the BVT Overhead Baseline quarterly; and (ii) will adjust the BVT Overhead Baseline at the beginning of each of the Second Five Year Efficiency Savings

Period and Third Five Year Efficiency Savings Periods (in the case of (ii) only in accordance with Clause 18.6),

in each case, where the MoD and BVT (acting through the JPO) agree that the BVT Overhead Baseline may be adjusted to take into account the following factors:

- (a) Actual Workload;
- (b) changes to BVT's projected workload as set out in BVT's 10 Year Business Plan;
- (c) any final agreement between the MoD and BAES on pensions; and
- (d) other agreed adjustments (such as one-off costs) to the BVT Cost Base from time to time,

(the **Key Assumptions**).

Recommendations after review

- 14.1.7 If the JPO review finds that there have been changes in the Key Assumptions, the JPO shall recommend to the Steering Group that the BVT Overhead Baseline is adjusted in accordance with Clause 14.1.6. The BEM shall be used as a tool to inform discussions between the MoD, BVT and CAAS in relation to the adjustment of the BVT Overhead Baseline but shall not be conclusive.
- 14.1.8 If the Steering Group has endorsed an adjustment to the BVT Overhead Baseline (and if CAAS) has audited such adjustment) the BVT Overhead Baseline shall be amended accordingly (and the BEM shall be revised to reflect such adjustment) and such adjusted BVT Overhead Baseline shall become the BVT Overhead Baseline for the purposes of this Contract for the remainder of the Contract Period.

Baseline for Other Savings

- 14.1.9 The Baseline with respect to other Delivered Efficiency Savings (other than in relation to the BVT Overhead Baseline) (**Other Savings**) will be measured and agreed on a case by case basis. The principles for the methodology against which the Baseline for Other Savings will be calculated are as follows:
 - (a) auditable by CAAS;
 - (b) agreed by both the MoD and BVT;
 - (c) capable of being a fair reflection of Efficiency Savings actually made;
 - (d) trackable in accordance with Clause 16 (*Benefit Tracking and Realisation Process*);
 - (e) for direct labour, a complete direct labour baseline shall include the following elements: labour rate, productive hours and output (including a timeline) measures
 - (f) for direct materials, a complete direct materials baseline will include material costs, material volume, output and waste measures; and
 - (g) other principles to be agreed from time to time by the MoD and BVT (acting through the JPO).

Without prejudice to these principles, BVT and the MoD acknowledge that any Baseline may include defined and robust assumptions.

14.1.10 It is acknowledged by the MoD and BVT that for the purposes of calculating Delivered Efficiency Savings, where possible reference will be made to operational metrics as at 1 January 2007.

14.2 Miscellaneous

Adjustment of Trend Rates

14.2.1 Immediately a Transformation Benefit Proposal becomes an Approved Transformation Benefit Proposal, the MoD shall take into account Efficiency Savings when setting the Trend Rates.

BAES HQ charges

14.2.2 BVT and the MoD acknowledge that the actual HQ charge for BVT (the HQ Charge) shall continue to be agreed annually between the appropriate MoD authority and BAES head office.

14.2.3 The MoD and BVT agree that, if the HQ Charge increases above the amount allocated to it within the BVT Overhead Baseline for 2008/2009, the BVT Overhead Baseline for 2008/2009 shall not be amended to reflect such increase.

14.2.4 Notwithstanding this Clause 14.2, BVT's obligation to achieve the Guaranteed Minimum Target shall remain. However, BVT and the MoD shall agree appropriate adjustment to the relevant Cumulative Guaranteed Minimum Savings Yearly Targets to take into account any increase in the HQ charge to the extent that it varies above the amount contained within the BVT Overhead Baseline for 2008/2009.

14.2.5 Following the sale by VTG of its shareholding in BVT pursuant to Clause 48 (*VTG Exit*), BAES shall use its reasonable endeavours to ensure that the HQ Charge paid to it by BVT are set at an appropriate level to reflect the volume of work going through the business, subject always to any relevant indexation.

14.3 Cumulative Guaranteed Minimum Savings Yearly Targets and Termination

14.3.1 Until such time as BVT has delivered £350 million (three hundred and fifty million pounds) (Indexed) in aggregate of Delivered Efficiency Savings, the failure by BVT to achieve during any period of 2 consecutive years the Cumulative Guaranteed Minimum Savings Yearly Target as set out in Part 3 of Schedule 5 (*Integration, Transformation and Strategic Rationalisation*) shall be a BVT Default which shall entitle MoD to terminate this Contract. The MoD acknowledges that the Banked Efficiency Savings shall count towards the achievement of the first Cumulative Guaranteed Minimum Savings Yearly Target.

14.3.2 Without prejudice to Clause 18.4 the recurring benefit of Delivered Efficiency Savings, shall be counted for the entirety of the Initial Term (rather than for a maximum of five years) when assessing whether the Cumulative Guaranteed Minimum Savings Yearly Targets have been met by BVT.

15 Performance Review

15.1 General

The performance of BVT under this Contract will be monitored by the JPO. The JPO will provide reports to the Steering Group on a quarterly and annual basis as described below in Clause 15.3 (*JPO Reporting Obligations*).

15.2 BVT Reporting Obligations

Monthly Management Reports

- 15.2.1 BVT shall, as soon as available (and in any event within 12 Business Days after the end of each calendar month), and commencing in September 2009, deliver to the JPO a monthly management report (the **Monthly Management Report**) which will provide, inter alia, the following information:
- (a) in respect of direct labour and overhead costs, details of the actual costs incurred by BVT in the relevant month and in the relevant year to date as against the budgeted costs for direct labour and overhead costs (by reference to the relevant BVT 10-year Business Plan); and
 - (b) the full year forecast for direct labour and overhead costs as against the budgeted full year forecast; and
 - (c) workload figures, labour hours and head count; and
 - (d) any information required to be provided pursuant to Clause 27 (*Monitoring*).

BVT Quarterly Reports

- 15.2.2 BVT shall, as soon as available (and in any event within 20 days after each Quarter Date), and commencing on 1 October 2009 for the first report (for the period April 2009 until end of September 2009) and quarterly thereafter, deliver to the JPO a quarterly report aggregating the information provided in the Monthly Management Reports in the previous 3 months updated to reflect actuals for that period.

Business Status Reports

- 15.2.3 No later than 31 March, 30 June, 30 September and 31 December (each a **Quarter Date**) in any calendar year BVT shall deliver to the JPO the Business Status Report on each Approved Transformation Benefit Proposal.

15.3 JPO Reporting Obligations

The JPO shall submit to the Steering Group the following reports:

15.3.1 Quarterly Report

Subject to Clause 15.2.2 (*BVT Quarterly Reports*), as soon as practicable following the relevant Quarter Date, a Quarterly Report which shall set out the following information in respect of the preceding 3-month period:

- (a) financial information (and reconciliation thereof) based on information in the relevant Monthly Management Reports;
- (b) progress on Approved Transformation Benefit Proposals;
- (c) Delivered Efficiency Savings, year-to-date and year-to-go;
- (d) details on Transformation Benefit Proposals submitted in that period;
- (e) any decisions required to be made by the Steering Group;
- (f) a summary of all Business Status Reports; and
- (g) other issues such as key milestone achievements, partnering status, Benchmarking Exercise results and actions, performance reporting and key risks.

15.3.2 Annual Performance Review

- (a) Within 90 Business Days following the end of the then current Contract Year, the Annual Performance Review (with the first Annual Performance Review to be delivered on 30 June 2010 for the period 1 April 2009 until 31 March 2010) which shall set out the following information (which shall be in addition to any information contained in the Quarterly Reports):
 - (i) performance against the Cumulative Guaranteed Minimum Savings Yearly Targets;
 - (ii) the performance of BVT and the MoD against the Key Performance Indicators, Key Milestones and, in the case of the MoD, MoD Dependencies;
 - (iii) Yearly Efficiency Savings and Cumulative Yearly Efficiency Savings in that Contract Year;
 - (iv) the performance of BVT and the MoD in relation to the Relationship Management Plan;
 - (v) the calculation of the proposed Incentive Payment in accordance with Clause 18 (*Incentive Payments*) and Part 4 of Schedule 11 (*Performance Management and KPIs*);
 - (vi) a review of the current Transformation Plan and in particular the Key Milestones for the following Contract Year; and
 - (vii) actual and projected KIC Payments and potential and existing Workload Shortfalls.
- (b) Through the Annual Performance Review the JPO shall determine:
 - (i) the amount of the Incentive Payment in accordance with Clause 18 (*Incentive Payments*) and Part 4 of Schedule 11 (*Performance Management and KPIs*);
 - (ii) the Key Milestones which are to support the KPIs in the following Contract Year; and
 - (iii) any recommendations to adjust the Baseline.
- (c) The JPO shall present its findings in relation to an Annual Performance Review to the Steering Group and the Steering Group shall endorse, if satisfied:
 - (i) the amount of the Incentive Payment;
 - (ii) the Key Milestones which are to support the KPIs in the following Contract Year; and
 - (iii) the recommended adjustments to the Baseline.

16 Benefit Tracking and Realisation Process

16.1 The objectives of benefits tracking and the realisation process are as follows:

- (a) to have an auditable methodology for the JPO to determine the level of Delivered Efficiency Savings to ensure that the MoD has received such Delivered Efficiency Savings and to assist the JPO in determining the level of the Incentive Payment (if any) payable to BVT pursuant to Clause 18 (*Incentive Payments*);

- (b) to obtain relevant data to enable the JPO to report to the Steering Group and the MoD the quantum of Delivered Efficiency Savings.
- 16.2 In assessing the amount of Delivered Efficiency Savings in any Contract Year, the JPO shall first measure the total reduction made in the BVT Cost Base, by measuring against the relevant Baseline in accordance with Clause 14 (*Savings Targets*). Once such savings have been measured, the JPO shall deduct Efficiency Savings which do not reduce the MoD Cost Base (because either they relate to export contracts or where the benefit of the savings accrues 100% to BVT). Any Allowable Transformation Costs which have become payable in the relevant Contract Year will also be deducted from such Efficiency Savings. Delivered Efficiency Savings will then be measured using the provisions of this Part 6 and the principles in Part 5 of Schedule 11 (*Performance Management and KPIs*). The calculation of Delivered Efficiency Savings under this Contract shall not be reduced to reflect any gainshare arrangements under Project Contracts.
- 16.3 The BEM shall be utilised by BVT and the MoD to maintain the Baseline against which Efficiency Savings will be tracked and the delivery of Delivered Efficiency Savings will be measured (in respect of BVT overheads). The principles and methodology used to track Delivered Efficiency Savings and Efficiency Savings are as set out in Part 5 of Schedule 11 (*Performance Management and KPIs*).
- 16.4 If and to the extent that Part 5 of Schedule 11 (*Performance Management and KPIs*) needs to be amended to reflect the objectives set out in Clause 16.1 the JPO shall be entitled to implement any required changes to the methodology set out in that Schedule.
- 16.5 Within 4 months of being established, the JPO shall develop and put in place detailed processes for benefits tracking and realisation in accordance with the principles set out at Part 5 of Schedule 11 (*Performance Management and KPIs*).

17 Key Performance Indicators or KPIs

- 17.1 The Key Performance Indicators are used by the JPO to enable the JPO to monitor specified activities which are expected to result in improved performance by BVT. Schedule 11 (*Performance Management and KPIs*) sets out the Key Performance Indicators and Key Milestones which are to be satisfied by BVT during the Contract Period.

KPIs

- 17.2 The Key Performance Indicators to be measured by the JPO are:
 - (a) benefits delivery;
 - (b) transformation events;
 - (c) partnering and relationship management;
 - (d) continuous improvement;
 - (e) reporting – rates data and business information.

Weighting

- 17.3 Each Key Performance Indicator is weighted as set out in Part 4 of Schedule 11 (*Performance Management and KPIs*) and will be supported by a number of Key Milestones to be determined by the JPO at each Annual Performance Review.

KPIs for Year 1

- 17.4 The Key Milestones for the first Contract Year are set out in Section B of Part 3 of Schedule 11 (*Performance Management and KPIs*).

KPIs for Following Years

- 17.5 The Key Milestones (save in relation to the first Contract Year) are to be determined by the JPO at each Annual Performance Review (on the basis of the high level descriptions detailed in Section A of Part 3 of Schedule 11 (*Performance Management and KPIs*)). The Transformation Plan will set out a number of Key Milestones to be achieved over the relevant 5-year period and following each Annual Performance Review the JPO will select (following the endorsement of the Steering Group) those Key Milestones to be satisfied over the next Contract Year for which an Incentive Payment will be payable if achieved.

Performance Measurement

- 17.6 Performance by BVT in any Contract Year against the Key Performance Indicators shall be assessed and measured by the Steering Group (based on the recommendations of the JPO) as part of the Annual Performance Review and the level of the Incentive Payment for that Contract Year will be determined by and subject to the provisions of Clause 18 (*Incentive Payments*). The measurement and assessment of the Key Performance Indicators shall be by reference to satisfaction (or not as the case may be) of the Key Milestones. As a result of such assessment the JPO will determine whether the performance by BVT in the Contract Year against each Key Performance Indicator shall be categorised as a "Pass" or "Fail".

18 Incentive Payments

Savings calculations

- 18.1 At the end of each Contract Year as part of the Annual Performance Review the JPO shall calculate the aggregate of all Delivered Efficiency Savings (as certified by CAAS) arising in the relevant Contract Year (the **Yearly Efficiency Savings**) measured against the agreed relevant Baseline.

Eligible Rollover Savings

- 18.2 At the start of each of the Second Five Year Efficiency Savings Period and the Third Five Year Efficiency Savings Period the JPO shall calculate the aggregate of those Delivered Efficiency Savings derived in the Five Year Efficiency Savings Period preceding the relevant Five Year Efficiency Savings Period that are Eligible Roll Over Savings. Eligible Roll Over Savings shall be apportioned to each Contract Year in the Five Year Efficiency Savings Period just commencing and shall form part of the calculation of Delivered Efficiency Savings in the relevant Contract Years. Eligible Roll Over Savings will be apportioned evenly unless otherwise agreed between BVT and the MoD.
- 18.3 The JPO will then compare the relevant Yearly Efficiency Savings (including apportioned Eligible Roll Over Savings) against the corresponding Target Yearly Efficiency Savings for the same Contract Year. This comparison will enable the JPO to ascertain the level of the Incentive Payment (if any) payable to BVT for the relevant Contract Year in accordance with Clause 18.10.
- 18.4 It is acknowledged that to the extent a Delivered Efficiency Saving will result in a recurring benefit to the MoD this saving will count towards the Target Yearly Efficiency Savings for future years (but not exceeding a period of 5 years from the commencement of the relevant saving). In the event this period extends beyond the end of a Five Year Efficiency Savings Period the relevant amount that falls in the following Five Year Efficiency Savings Period will be categorised as Eligible Roll Over Savings for the purpose of this Clause 18.

- 18.5 The table in Part 2 of Schedule 11 (*Performance Management and KPIs*) sets out Target Yearly Efficiency Savings necessary to achieve Incentive Payments over the Contract Period.
- 18.6 The BVT Overhead Baseline for measuring Delivered Efficiency Savings will be reset at the start of each 5 Year Efficiency Savings Period to the agreed actual overhead costs for the preceding Financial Year.
- 18.7 If the Yearly Efficiency Savings fall in between two Target Yearly Efficiency Savings, BVT shall be deemed to be on track to meet the lower Projected Savings Level. If BVT has made excess Yearly Efficiency Savings at the previous Annual Performance Review, such excess Yearly Efficiency Savings above the Projected Savings Level shall be added to the Yearly Efficiency Savings for the current Contract Year to determine which Projected Savings Level has been achieved in the current Contract Year.

MoD obligation to pay Incentive Payments

- 18.8 The MoD shall pay Incentive Payments on the basis set out in this Clause 18 (*Incentive Payments*).

Calculation of Incentive Payment

- 18.9 In order for BVT to receive an Incentive Payment for any Contract Year the JPO must be satisfied that BVT has achieved a "Pass" for the Key Performance Indicator relating to "Benefits Delivery" (the **Key Pass**).
- 18.10 Provided that the Key Pass has been achieved in the relevant Contract Year BVT shall be entitled to an Incentive Payment which is calculated on the basis that the JPO shall determine which Projected Savings Level BVT is on track to meet, using the Yearly Efficiency Savings calculated by the JPO pursuant to this Clause 18 and the table in Part 2 of Schedule 11 (*Performance Management and KPIs*). The JPO shall then use the table in Part 4 of Schedule 11 (*Performance Management and KPIs*) to calculate the Incentive Payment due to BVT (depending on which Projected Savings Level applies) and:

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

Steering Group endorsement

- 18.11 The JPO shall determine and notify the Steering Group of the Incentive Payment for the relevant Contract Year. The Steering Group shall, if satisfied, endorse the Incentive Payment notified by the JPO.

Cap on Annual Incentive Payments

- 18.12 The MoD and BVT agree that under no circumstances shall any Incentive Payment during the Contract Term exceed [REDACTED] (Indexed) in any Contract Year.

Claim for payment

- 18.13 Following endorsement by the Steering Group of the amount of Incentive Payment for the relevant Contract Year which BVT is entitled to, BVT shall submit a claim for payment in accordance with Clause 31 (*Payment*).

KIC and Strategic Rationalisation

18.14 In any Contract Year no Incentive Payments shall be payable to BVT where the MoD makes or is required to make [REDACTED] (Indexed), for that Contract Year.

18.15 At any time after the Strategic Rationalisation Costs Cut-off Date, no Incentive Payments shall be payable to BVT in a Contract Year where:

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

19 Continuous Improvement, Benchmarking and Upper Quartile Performance

19.1 BVT shall throughout the Contract Period put in place business and cultural processes, including the Benchmarking Exercises, to enable BVT to establish and agree with the MoD performance improvements.

19.2 Without prejudice to Clause 19.1, BVT shall comply with the provisions of Schedule 10 (*Continuous Improvement and Benchmarking*).

19.3 MoD and BVT acknowledge that one of the elements of the Commercial Purpose is that the BVT Business is transformed to achieve Upper Quartile Performance in accordance with Clause 7.2(iii). The MoD and BVT shall appoint Benchmark Consultants in accordance with Schedule 10 (*Continuous Improvement and Benchmarking*) to recommend how the BVT Business can achieve Upper Quartile Performance.

Part 7 – Key Industrial Capability

20 Key Industrial Capability

20.1 Underlying obligation

20.1.1 Subject to the MoD complying with its material obligations under this Part 7 (*Key Industrial Capability*), BVT undertakes from the date of this Contract to contribute to the sustainment of Sovereign Capability and to satisfy the Surface Ship Capability through the provision and maintenance of the Key Industrial Capability.

Surface Ship Capability

20.1.2 The Surface Ship Capability is the ability for BVT to:

- (a) design, build and integrate (including complex systems integration) a complex warship of up to 5,000 tonnes deep displacement at an interval of 1 shipbuild every 12 months and a design interval of every 6 years; and
- (b) support the MoD naval vessels to meet operational requirements and in this regard BVT must be capable of:
 - (i) class output management and related technical services;
 - (ii) performing defect repair and maintenance tasks;
 - (iii) fitting urgent operational requirement (**UOR**) capability enhancements;
 - (iv) survey and deep maintenance tasks;
 - (v) providing maritime system defects diagnosis;
 - (vi) commissioning and testing;
 - (vii) meeting surge demands;
 - (viii) fleet-time and upkeep engineering;
 - (ix) maintenance of naval and dockyard facilities.

Acknowledgement regarding Key Posts

20.1.3 It is acknowledged by the MoD and BVT that Assumed Man-hours Capability for each Key Post set out in Part 1 and Part 2 of Schedule 4 (*Key Industrial Capabilities*) have been jointly formulated, and these numbers are an estimate of the minimum core personnel and skilled labour but do not reflect the actual size of the workforce which may, as envisaged at the date of this Contract, be needed to meet the Surface Ship Capability. In addition the Assumed Man-hours Capability is not linked to or based on any particular Assumed Workload for BVT for either shipbuild or support during the Contract Period.

Key Worker location and employment

20.1.4 All Key Post Workers must be:

- (a) located in the United Kingdom; and
- (b) employed by BVT or a BVT Subsidiary or by an Approved Sub-Contractor.

20.2 The Shipbuilding KIC

Shipbuilding - Key Posts

BVT will be deemed to satisfy the Surface Ship Capability in relation to the Shipbuilding KIC by maintaining the Assumed Man-hours Capability for each Key Post in the following sectors for shipbuilding (the **Shipbuilding Sector**):

- (a) production;
- (b) direct support staff; and
- (c) design/engineering.

21 The Support KIC

General

- 21.1 The MoD and BVT agree and acknowledge that the sustainment and need to satisfy the Surface Ship Capability and Sovereign Capability extend to the provision of Maintenance.

Support - Key Posts

- 21.2 BVT will be deemed to satisfy the Surface Ship Capability in relation to the Support KIC by maintaining the Assumed Man-hours Capability for each Key Post in the following sectors for support (the **Support Sector**):

- (a) initial support;
- (b) blue collar engineering;
- (c) white collar engineering;
- (d) supply chain and warehousing; and
- (e) facilities and warehousing.

Acknowledgement

- 21.3 It is acknowledged that the Support KIC will be subject to further in-depth review at the Strategic Review in 2011 which may result in a KIC Adjustment in relation to the Support Sector provided that the Support KIC Cap and Support KIC shall not be varied unless both BVT and the MoD agree otherwise pursuant to a Change in accordance with Clause 51 (*Change Procedure*).

22 Facilities

BVT obligation

- 22.1 BVT shall maintain its own Facility, or have unfettered access to a Facility owned and operated by an Approved Sub-Contractor, in both cases within the United Kingdom which are maintained sufficiently to enable it to satisfy the Surface Ship Capability and which comply with Legislation.

Acknowledgement regarding overheads for shipbuilding

- 22.2 The Shipbuilding Overhead KIC Cap has been agreed between BVT and the MoD on the basis that, in order to satisfy the Surface Ship Capability, in relation to shipbuilding BVT is

required to maintain a single Shipbuilding Facility (or equivalent) in the United Kingdom. In the event that BVT continues to operate or have access to more than one Shipbuilding Facility (or equivalent) in the United Kingdom, and a KIC Overhead Trigger Event has occurred, then any additional overhead charges in excess of the Shipbuilding Overhead KIC Cap shall solely be for the account of BVT.

Facilities

- 22.3 BVT shall not surrender and BVT shall procure that no BVT Subsidiary shall surrender the lease to any Facility which is from time to time necessary for it to discharge its obligation in Clause 22.1 without the prior written approval of the MoD (in the MoD's absolute discretion), unless and to the extent that such transaction is in favour of an Approved Sub-Contractor.

23 KIC Trigger Events and KIC Payments

KIC Notice

- 23.1 BVT shall notify the MoD in writing (a **KIC Notice**) as soon as reasonably practicable where a Monthly Sales and Operational Plan Review identifies that there is a prospective Workload Shortfall in the following 3 Months and the occurrence of a KIC Trigger Event is likely. BVT shall submit copies of the relevant Monthly Sales and Operational Plan Review to the MoD, provided, however, that BVT may satisfy its obligation to submit copies of such reports by doing so through the JPO.

Mitigation of MoD's liability before notice

- 23.2 BVT shall at all times prior to serving a KIC Notice proactively take all reasonable steps to minimise, mitigate and/or reduce the MoD's liability to make KIC Payments.

Mitigation after receipt of KIC notice

- 23.3 Following receipt of the KIC Notice, BVT and the MoD shall consult as soon as reasonably practicable in accordance with Clause 29 (*Partnering*) and the Partnering Principles to identify mitigation measures against the occurrence of the Workload Shortfall. BVT shall proactively take all reasonable steps to minimise, mitigate and/or reduce the MoD's liability to make KIC Payments by pursuing the following options:

- 23.3.1 BVT pursuing export opportunities or any other related opportunities to utilise Key Post Workers provided that any contracts with third parties are competed and won on an arm's-length and "full-cost" basis (with no cross subsidy from the MoD) and, where any BVT Group Company is awarded any export or related shipbuilding contracts and there is a Workload Shortfall at such time, BVT shall use all reasonable endeavours, subject to any local sourcing restrictions, to utilise any Available Key Workers to work on such contracts to the extent that there is a requirement for the Relevant Trade;
- 23.3.2 without prejudice to Clause 9 (*Exclusivity*), the possibility of the MoD bringing forward contracts for construction of Naval Vessels and/or Work provided it is acknowledged that the MoD is not required under this Contract at any time to procure or order any Naval Vessels or Work from BVT;
- 23.3.3 following the Strategic Review in 2011, if agreed (and provided it does not conflict with any existing contractual arrangements) between BVT and the MoD, a Through Life Capability Management option for Naval Vessels;
- 23.3.4 BVT and the MoD liaising with members of SSSA or any other relevant entity to second employees (on terms to be agreed) to a relevant entity to assist with MoD-related or other contracts provided that, where a Key Post Worker is utilised by a third party, BVT shall be entitled to retain any profit element agreed with such third party associated with the use of such a Key Post Worker;

23.3.5 (at the MoD's discretion) seconding employees of BVT Group Companies to work on MoD-funded contracts (which are not with third parties) on terms to be agreed; or

23.3.6 undertaking such other means of mitigation as agreed by the MoD and BVT.

Payment Notice

23.4 To the extent that an actual Workload Shortfall cannot be mitigated against, and BVT has confirmed to the MoD in writing (with supporting information) that a KIC Trigger Event has occurred, BVT shall be entitled to serve a payment notice (a **KIC Payment Notice**) in accordance with Clause 31 (*Payment Provisions*) on the MoD.

Payment

23.5 A KIC Payment shall be made as follows (at the discretion of the MoD):

- (a) in cash in accordance with Clause 31 (*Payment Provisions*); or
- (b) through the mechanics of an existing Project Contract.

23.6 KIC Payments shall commence on the date of the occurrence of the relevant KIC Trigger Event and shall be paid monthly in arrears.

23.7 The MoD shall following the occurrence of a KIC Trigger Event, continue to make KIC Payments until such time:

- (a) as the number of Available Key Workers is zero in the Shipbuilding Sectors and/or the Support Sectors (as the case may be); or
- (b) in the case of the KIC Overhead Payment, the Recoverable Overheads are 95% or more of the Assumed Overheads.

23.8 Where sub-paragraph (a) of the definition of KIC Available Key Worker Trigger Event applies and/or where there has been a KIC Overhead Trigger Event, BVT shall be entitled to retrospectively claim payment from the MoD for the 3-month period referred to in the relevant definition once the KIC Trigger Event has occurred.

Calculation of KIC Charges

23.9 Subject to the caps in Clause 23.13 (*KIC Payment Cap*), the MoD shall calculate the KIC Payment in relation to Available Key Workers by adding together the number of Available Key Workers for each Key Post. An hourly rate shall then be credited for each hour, such rate calculated on the basis of rates agreed between BVT and the MoD during its annual negotiations in relation to the rates agreed by CAAS. For the avoidance of doubt such hourly rates shall have no profit element or overhead recovery element attached to them.

23.10 When determining the Assumed Man-hour Capability for the following Contract Year as referred to in Schedule 4 (*Key Industrial Capabilities*) and there is no agreement between the MoD and BVT prior to the KIC Benchmarking Exercise in respect of the High KIC and Low KIC (as identified in such tables) the median number shall be used when determining the Assumed Man-hour Capability.

23.11 Subject to the Shipbuilding Overhead KIC Cap in Clause 23.13.3, to the extent a KIC Overhead Trigger Event has occurred, the MoD shall calculate that part of the KIC Payment relating to overheads (the **KIC Overhead Payment**) as follows:

23.11.1 the KIC Overhead Payment shall be equal to the Assumed Overheads less any Recoverable Overheads in the relevant month;

23.11.2 BVT shall procure that (and MoD acknowledges that) any recovery in that period of overheads from export contracts (whether commercial or military) in that period shall be no more or no less than the amounts recoverable under the pricing schedule in the relevant export contract(s).

23.12 If in any Contract Year there has been a KIC Overhead Trigger Event, BVT and the MoD shall carry out a reconciliation at the end of the relevant Contract Year to compare the Assumed Overheads against the Recoverable Overheads in that Contract Year, which shall involve the input of and be certified by CAAS. If at the end of the Contract Year the Recoverable Overheads are higher than the Assumed Overheads for that relevant Contract Year, BVT shall reimburse any KIC Overhead Payment to the MoD within 30 Business Days of agreement between the MoD and BVT. Interest shall be payable in accordance with Clause 31.4 (*Interest*).

[REDACTED]

24 Miscellaneous

MoD use of Available Key Workers

24.1 Where the MoD is required to make KIC Payments then it shall be entitled to utilise the skills of any Available Key Workers for projects appropriate for the Relevant Trade of the Available Key Worker and through secondment to any organisations which the MoD so requests. Such utilisation shall be subject at all times to any lawful, reasonable or justified restriction that may arise from relevant trade unions, the affected individual, the relevant employer, or from any security requests. The MoD shall be liable for any costs reasonably and properly incurred (and agreed in advance with the MoD) associated with such utilisation in excess of the KIC Payments made to BVT in respect of such Available Key Worker. The payment of such costs shall be on terms to be agreed.

No MoD liability for agreed BVT delay

24.2 If there are Available Key Workers where the Workload Shortfall arises as a result of a delay arising from a material breach under a Project Contract by a BVT Group Company then the MoD shall not be required to pay the KIC Payment.

No KIC Charge during Workload Shortfall

- 24.3 Where there is a Workload Shortfall no KIC Payment shall be made in relation to any Assumed Man-hour Capability for Key Posts which are unfilled or otherwise unavailable.

Strategic Review

- 24.4 The Shipbuilding KIC Cap, the Support KIC Cap and the Shipbuilding Overhead KIC Cap shall each be subject to Strategic Review in 2011 and at each Strategic Review thereafter subject to any KIC Adjustment made pursuant to Clause 51 (*Change Procedure*).

No double recovery

- 24.5 For the avoidance of doubt the intention of this Contract is that in no circumstances should BVT be entitled to benefit from any double recovery of any cost or amount which the MoD is liable to pay under any contract in respect of the same matter and any KIC Payment.

25 KIC Adjustments

The MoD and BVT agree that they shall jointly appoint a KIC Benchmark Consultant to review, inter alia, the number of Key Posts for the Shipbuilding Sector in accordance with the process set out in Schedule 10 (*Continuous Improvement and Benchmarking*).

26 Key Worker Qualifications

- 26.1 BVT shall ensure that:

- (a) each Key Post Worker is suitably qualified in the Relevant Trade in accordance with the criteria set out in a database of qualifications for Key Post Workers maintained by BVT and;
- (b) the qualifications criteria referred to in (a) above shall be such as is required:
 - (i) for BVT and any BVT Subsidiary or an Approved Sub-Contractor to perform their obligations under the Project Contracts and Dockyard Contracts; and
 - (ii) for each Key Post Worker, at all times, to have the appropriate skills and training necessary to undertake this role.

MoD audit right

- 26.2 MoD shall have the right to audit BVT's database of qualifications for Key Post Workers and the processes for ensuring that such database is up to date and that it is of a standard to ensure that each Key Post Worker at all times has the appropriate skills necessary to satisfy the Key Industrial Capability.

27 Monitoring

- 27.1 Without prejudice to BVT's right to receive a KIC Payment pursuant to Clause 23 (*KIC Trigger Events and KIC Payments*) above, BVT shall in each Monthly Management Report notify the MoD:

- (a) if it believes that a KIC Payment shall become due in the following 24 months;
- (b) if a KIC Payment has become due in the relevant month; or

- (c) if during the relevant month the obligation of the MoD to make KIC Payments has ceased.

27.2 The MoD and BVT acknowledge that BVT's obligations under Clause 27.1 can be discharged by its acting through the JPO.

28 KIC Termination

28.1 Subject to Clause 28.2, in the event that BVT fails to maintain the agreed number of Key Post Workers (and associated Assumed Man-hours Capability) in accordance with Schedule 4 (*Key Industrial Capabilities*) (a **KPW Shortfall**) then:

- (a) if the KPW Shortfall is 20% or more within a Relevant Trade (the **Remedial Threshold**) and such shortfall continues at or below the Remedial Threshold for 6 months, BVT shall implement a remedial programme (the **Remedial Programme**) in consultation with, and approved by, the MoD with the aim of recruiting to fill and/or mitigating against the shortfall; or
- (b) if either (i) the KPW Shortfall is more than 50% within a Relevant Trade (the **Termination Threshold**) and the KPW Shortfall is at or below the Termination Threshold for up to 12 months or (ii) where BVT fails either to put forward a Remedial Programme or such Remedial Programme fails to remedy the KPW Shortfall within the agreed period, this shall constitute a BVT Default pursuant to Clause 39.1.6.

28.2 If there is a KPW Shortfall of 50% or more in a Relevant Trade and a Workload Shortfall is projected to exist for a period in excess of 12 months, then:

- (a) both BVT and the MoD shall meet and discuss whether there should be a temporary or permanent reduction in the number of Key Posts (and the associated Assumed Man-hour Capability) as specified in Schedule 4 (*Key Industrial Capabilities*) in accordance with Clause 51 (*Change procedure*); and
- (b) whilst such discussions are continuing, and provided both BVT and the MoD shall attempt to agree any reduction in a reasonable period of time (both the MoD and BVT acting in good faith), the MoD's rights to terminate this Contract pursuant to this Clause 28.2 shall be suspended whilst discussions are ongoing.

28.3 Once any KIC Adjustment has been effected any KPW Shortfall shall be measured against any such revised level of Key Post Workers (and associated Assumed Man-hours Capability) for the purpose of any breach of Clause 28.1 for the agreed period of such reduction.

Part 8 – Partnering

29 Partnering

Partnering obligation

29.1 In seeking to achieve the Commercial Purpose in accordance with Clause 7 (*Commercial Purpose*) (without limitation), the MoD and BVT shall each:

- (a) comply with Clause 29.2; and
- (b) seek to act at all times in accordance with the Partnering Principles.

Specific partnering obligations

29.2 The MoD and BVT shall each additionally:

- (a) collaborate with the other to the maximum extent possible;
- (b) establish within its organisation internal arrangements, including as to the deployment, leadership, training and development of personnel, sufficient at all times to ensure that:
 - (i) the relationship contemplated by this Contract functions fully and efficiently in the manner best calculated to achieve the Commercial Purpose; and
 - (ii) all its personnel engaged in relation to the management of the relationship between the MoD and BVT understand and act in accordance with this Contract, in particular the requirements of this Clause 29 (*Partnering*);
- (c) establish within 3 months of the Commencement Date a Relationship Management Plan and thereafter implement, continuously monitor and improve over time the effectiveness of the Relationship Management Plan;
- (d) continuously seek to improve the efficiency of the relationship between them, which shall be measured using an appropriate relationship management tool to be agreed and adopted by the JPO; and
- (e) in particular, cooperate to demonstrate how, and the extent to which, each and all aspects of the relationship between the MoD and BVT, and each Project Contract between them, delivers value for money to the MoD.

Strategic Partnering Accord

29.3 Schedule 7 (*Partnering*) sets out the Strategic Partnering Accord between the MoD and BVT.

29.4 The Strategic Partnering Accord:

- (a) contains at section 5 (*the Partnering Principles*) in relation to which Clause 29.1(b) of this Contract applies;
- (b) is intended to be a working level summary of some of the rights and obligations in this Contract, produced for the purpose of informing the personnel of the MoD and BVT about how this Contract obliges the MoD and BVT to work together to deliver the Commercial Purpose;
- (c) as such, is not itself legally binding (though Clause 29.1(b) of this Contract is), does not amend, limit or override this Contract and shall at all times be read and construed

as subject to this Contract, and in the case of any inconsistency, shall be amended to be consistent with this Contract;

- (d) shall not be admissible as evidence of the intentions of the MoD and BVT when entering into this Contract;
- (e) may not be amended unless to the extent that:
 - (i) it remains consistent in its entirety with this Contract; and
 - (ii) all amendments are approved by the JPO; and
- (f) shall not be capable of being produced as evidence that the MoD or BVT has waived or accepted performance which is inconsistent with this Contract.

29.5 Neither the MoD nor BVT may rely on the terms of the Strategic Partnering Accord to excuse non-compliance with this Contract and compliance with the Strategic Partnering Accord shall not reduce or limit any obligation of the MoD or BVT under this Contract nor permit altered or reduced performance or non-performance thereof.

Part 9 – The Supply Chain Strategy and Use of Sub-Contractors

30 The Supply Chain Strategy and use of Sub-Contractors

30.1 Objective

BVT undertakes to the MoD that it shall implement its Overarching Supply Chain Strategy in accordance with the following objectives:

- (a) the maintenance of healthy and robust competition in the supply chain of the BVT Group for both Shipbuilding and Support Sectors as it relates to MoD business;
- (b) to seek supply chain solutions that represent value for money (as may be defined in the relevant Project Supply Chain Strategy or Category Supply Chain Strategy from time to time) as appropriate for the relevant Works Item;
- (c) to seek supply chain solutions that comply with the requirements of the relevant Project Supply Chain Strategy or Category Supply Chain Strategy (and any associated tender documentation) and seek to provide continuing improvement in efficiencies based on through-life costs and quality;
- (d) to seek supply chain solutions that best serve the joint interests of BVT and the MoD (as a customer of BVT) in accordance with the Commercial Purpose; and
- (e) to ensure that the MoD is sufficiently informed of the development and continued implementation of BVT's Overarching Supply Chain Strategy.

30.2 The Overarching Supply Chain Strategy

By 30 January 2010, BVT shall submit to the MoD Representative an Overarching Supply Chain Strategy in agreed form (provided the MoD's Representative shall not unreasonably withhold or delay its approval), together with such supporting information as the MoD's Representative reasonably requests. If BVT updates the Overarching Supply Chain Strategy from time to time it shall:

- (a) consult the MoD in good faith prior to the implementation of the revised Overarching Supply Chain Strategy;
- (b) comply with the Supply Chain Principles; and
- (c) take into account any reasonable representations by the MoD.

30.3 Contents of the Overarching Supply Chain Strategy

The Overarching Supply Chain Strategy shall, without limitation:

- (a) set out how the BVT Group will manage its supply chain for both shipbuilding and support in a manner to enable it to comply with its obligations under this Contract, the Dockyard Contracts and the Project Contracts;
- (b) describe the manner in which the BVT supply chain function within the BVT Business will develop over the Contract Period;
- (c) comply with the Supply Chain Principles; and
- (d) identify the dates by when it is anticipated the Project Supply Chain Strategies and the Category Supply Chain Strategies (as identified in Clause 30.5 below) are to be prepared.

30.4 Supply Chain Management Plans

BVT shall, upon the written request of MoD, deliver to the MoD any Supply Chain Management Plan in existence at the particular time of request.

30.5 Project Supply Chain Strategies and Category Supply Chain Strategies

30.5.1 Throughout the Contract Period BVT shall develop at times to be agreed (and thereafter implement) Project Supply Chain Strategies and Category Supply Chain Strategies for Works Items in excess of £2,000,000 (two million pounds) (Indexed) or for any long-term contracts in excess of 5 years (together the **Threshold Level**) in which it shall set out the BVT Group's approach to procuring equipment, vessels, services and materials for Future Naval Programmes and support (as the case may be) which may include the following specific supply chain areas (**Project Supply Chain Strategies** (in the case of (a) below), or **Category Supply Chain Strategies** (in the case of (b) to (e) below)):

- (a) major projects (such as the programmes for the construction of Naval Vessels) (**Major Projects**);
- (b) equipment categories/classes (Category A, such as combat systems);
- (c) material categories/classes (Category B, such as HVAC systems);
- (d) direct materials/services (Category C/D or steel);
- (e) indirect materials/services (such as catering/security); and
- (f) in the case of either Project Supply Chain Strategies or Category Supply Chain Strategies, as applicable, such other areas as BVT and MoD (acting reasonably) may agree from time to time in relation to any other supply chain areas over £2,000,000 (two million pounds) (Indexed).

30.5.2 BVT shall determine the contents of each Project Supply Chain Strategy or Category Supply Chain Strategy which shall include:

- (a) an overall assessment of the specific market to which it applies;
- (b) a list of all items with an estimated cost to BVT in excess of £2,000,000 (two million pounds) (Indexed) to be procured on that particular Future Naval Programme or Maintenance function within the following 5-year period for non-project-related items. In relation to each item identified therein, BVT shall provide details of:
 - (i) an estimated range of costs;
 - (ii) potential sources of supply;
 - (iii) available procurement routes; and
 - (iv) proposed procurement routes (including where BVT or an Affiliate of BVT proposes to undertake to provide such items).

30.5.3 BVT shall deliver to the MoD copies of all substantially finalised drafts of the Project Supply Chain Strategies and Category Supply Chain Strategies for review and comment and BVT shall ensure that the MoD is granted access to relevant supply chain staff when reviewing such strategies, provided that, in the case of Major Projects, the MoD shall be invited to review and discuss the relevant strategy at such appropriate time as is to be agreed between the MoD and BVT and BVT undertakes to take account, when finalising the Project Supply Chain Strategies and Category Supply Chain Strategies (or any amendments thereto), of any reasonable representations made by MoD. BVT shall deliver to the MoD copies of the finalised Project Supply Chain Strategies and Category Supply Chain Strategies.

30.6 The Supply Chain Principles

BVT shall use all reasonable endeavours to comply with the following principles when implementing the Overarching Supply Chain Strategy, the Project Supply Chain Strategies and the Category Supply Chain Strategies and managing its supply chain:

- (a) to strive for the highest professional standards in the award of contracts, usually by means of competition, so as to maximise efficiency;
- (b) to make available sufficient time and information for suppliers to respond to the bidding process appropriate for the work, and to define and publicise amongst the supplier community contact points for the handling of enquiries and complaints;
- (c) to preserve genuine competition and avoid discrimination;
- (d) to provide opportunities on an even-handed basis for suppliers (whether BVT itself, BVT Subsidiaries or external suppliers) to participate in competitions, but, in the interests of both customer and suppliers, limiting numbers to ensure optimum economy, whilst honouring (and testing, where appropriate) preferred supplier status and strategic alliances;
- (e) to make available to the MoD the criteria for the evaluation of bids, to evaluate bids objectively and to notify the outcome promptly to competing suppliers and to avoid improper business practices;
- (f) to use sensible risk-sharing arrangements whilst using incentivisation techniques to encourage innovation and improve performance;
- (g) to consult with the MoD and, where applicable, use the Government Profit Formula and any applicable costing and pricing conventions when agreeing prices for non-competitive sub-contracts;
- (h) to strive for the highest professional standards in the management of contracts;
- (i) to pay promptly for work done in accordance with the relevant contractual terms;
- (j) to assess supplier performance in an objective and open manner and apply those assessments coherently in the process of supplier selection and tender evaluation; and
- (k) to comply with relevant good procurement process.

30.7 Competitive Procurement

30.7.1 It is acknowledged by BVT that the MoD favours competition as the preferred means of supplier selection for its defence requirements and it wishes to see the greatest application of competition by BVT for supply chain activities. Accordingly BVT shall use all reasonable endeavours to carry out and be responsible for the placing of Sub-Contracts on a competitive basis with such contracts awarded to tenderers who comply with the tender requirements except where otherwise identified in Clause 30.8 (*Sole Source or BVT Supply*). It is acknowledged, however, by the MoD that BVT may also secure demonstrable value for money for both MoD and BVT from the supply chain by establishing longer-term strategic relationships with suppliers.

30.7.2 BVT shall ensure that prior to the award of any Sub-Contract for a Works Item to be procured on a competitive basis in excess of the Threshold Level it shall:

- (a) invite the MoD to comment on, and provide input for, proposed tender requirements, selection criteria and tender evaluation requirements;

- (b) provide the MoD with a copy of the final tender requirements issued to bidders (including ITT's) including proposed contract terms (including any compensation terms), selection criteria and tender evaluation processes;
- (c) invite the MoD's Representative to any bidders conference and any debriefing sessions for unsuccessful bidders;
- (d) at the MoD's request, ensure that all potential bidders are informed at the earliest time of the inclusion of prospective bidders which are Affiliates of BVT or of any Shareholder; and
- (e) ensure that, where competitors include any Affiliates of BVT or of any Shareholder as well as other companies, no bias in favour of Affiliates of BVT or any Shareholder will be given.

30.8 Sole Source or BVT Supply

30.8.1 In circumstances where BVT intends to procure a Works Item expected to cost in excess of £2,000,000 (two million pounds) (Indexed) either:

- (a) from a sole source supplier; or
- (b) from either itself or from an Affiliate of BVT or from any Shareholder,

then BVT shall confirm this proposed solution to the MoD's Representative in writing detailing the reasons for the decision as well as providing such supporting information as the MoD Representative may reasonably require to demonstrate that any such decisions have been made by BVT on the basis that the contract award demonstrates value for money.

30.8.2 In circumstances where BVT proposes to procure a Works Item on a sole source basis in excess of £2,000,000 (two million pounds) (Indexed), the MoD reserves the right, where it has reasonable grounds to believe that a value for money solution would be achieved through a competitive tender process, to require BVT to open up the tender to competition unless BVT can demonstrate to the reasonable satisfaction of the MoD that the prices for the sole source contract work are fair and reasonable and offer a value for money solution and/or a competition would be impractical.

30.8.3 MoD direction

- (a) In relation to any procurement of a Works Item (other than that relating to export works) in excess of £2,000,000 (two million pounds) (Indexed), the MoD shall be entitled to instruct BVT to:
 - (i) utilise an alternative source of supply to that proposed by a relevant BVT Group Company; and/or
 - (ii) utilise an alternative procurement route to that proposed by a relevant BVT Group Company; and/or
 - (iii) alter (by increasing or decreasing) the number of proposed tenderers to that proposed by a relevant BVT Group Company;
 - (iv) amend its tender selection criteria,

provided always that the MoD shall give to BVT reasons for such decision.
- (b) The MoD shall at all times be entitled to instruct a BVT Group Company either:
 - (i) to utilise an alternative source of supply to that proposed by a relevant BVT Group Company; or

- (ii) to reject a sub-contractor nominated by a relevant BVT Group Company,

on the grounds of, in both cases, national security or, in the case of (b)(i) only, national sovereignty.

30.8.4 Where the MoD nominates or rejects a sub-contractor or gives any directions as contemplated in Clause 30.8.3 (*MoD Direction*), the MoD and BVT shall consult and agree, as a consequence of such MoD action, an appropriate risk profile detailing the additional risk and cost that will be allocated to the MoD under the relevant Project Contract (which may include but will not be limited to technical, pricing and programme risk) being fair and proportionate in the context of the Works Item to be procured provided that, where appropriate, BVT, or the relevant BVT Group Company, shall endeavour to 'pass down' appropriate risks to the relevant Sub-Contractor rather than transfer all risk to the MoD. If the MoD and BVT do not agree on the appropriate risk profile (as referred to in this Clause) in respect of such MoD direction, the matter shall be resolved under Schedule 2 (*Dispute Resolution Procedure*).

30.8.5 To the extent that BVT suffers a Claim resulting from such MoD direction given under Clause 30.8.3 the MoD shall indemnify BVT in respect of any liabilities it has incurred provided that BVT, and shall procure that any BVT Subsidiary, shall use all reasonable endeavours to mitigate against all such costs, expenses, loss and damages arising from and associated with such Claim.

30.9 Audit

The MoD has the right to procure an audit of any tender award for Works Items valued in excess of the £2,000,000 (two million pounds) (Indexed) in respect of MoD related work where it has reasonable grounds to believe either that an award for a contract has been made to a tenderer which has not complied with the tender requirements or that the successful tender does not, in the reasonable opinion of the MoD, represent best value for money. BVT shall comply and shall procure that each BVT Subsidiary shall comply with all requests for information and access to records from the MoD associated with such audit and the MoD shall, upon completion of such audit, share the results with BVT and the JPO.

30.10 Miscellaneous

30.10.1 The MoD's Representative shall be entitled from time to time to notify BVT in writing whether and in what manner the MoD wishes to be associated with the tendering process and pricing of any Sub-Contracts for Works Items in excess of £2,000,000 (two million pounds) (Indexed). In the event that the MoD's Representative notifies BVT of its intention in this respect BVT shall afford, the MoD with full access to individuals and records and involvement in the tender process.

30.10.2 When the MoD's Representative notifies BVT of its intention under Clause 30.10.1 it will recognise the constraints on the relevant programme and will act in a manner consistent with the tender process and timescales.

30.11 Conflict of Interest

30.11.1 Where the MoD has reasonable grounds to believe that:

- (a) the selection of a tenderer for the supply of a Works Item may be biased towards a particular tenderer; or
- (b) a conflict of interest may exist in the award of such tender,

the MoD may need to take positive steps to avoid the possibility of bias or conflict of interest, and the MoD may introduce, at its discretion, and BVT shall accept the introduction, into the tender process of specific procedures for the conduct of competitions by any BVT Group Company, provided always that the extent of these procedures and of the MoD's overseeing

and involvement in them will be reasonable and proportionate to the real risk of bias or conflict of interest.

30.11.2 If a supplier who may wish to tender has reasonable grounds for believing its commercial interests may be jeopardised by the possibility of bias or conflict of interest in the conduct of the competition by any BVT Group Company, and it notifies BVT or a BVT Subsidiary of this concern, then BVT shall promptly advise the MoD Representative of such notification and BVT and the MoD Representative shall agree appropriate steps (if any) that are necessary to avoid any bias or conflict of interest arising (which may involve the MoD taking a reasonable and proportionate active role in the bid evaluation process).

30.12 Open-Book Accounting

BVT shall, if requested by the MoD, use all reasonable endeavours to procure that Sub-Contracts contain open-book arrangements appropriate to that Sub-Contract.

30.13 Information on Sub-Contractors and suppliers

From time to time, during the Contract Period, in respect of Works Items over the Threshold Level, the MoD may request that BVT as soon as practicable (and in any event within 60 Business Days of such request) provides it with the following information (in which case BVT shall provide the requested information within the specified period):

- (a) details of any Sub-Contract including price and incentive arrangements;
- (b) details of payments made to a BVT Group Company by any Sub-Contractor and/or supplier; and
- (c) a list of all works that any Sub-Contractors or supplier will undertake.

30.14 Joint Supply Chain

30.14.1 BVT and the MoD will establish a 'Joint Supply Chain Group' to jointly, openly and constructively review their shared business interest, to the extent appropriate, across the surface shipbuild and support supply base with the intention of seeking solutions that best achieve Value for Money and contribute to the Commercial Purpose.

30.14.2 It is agreed by the MoD that benefits that may be derived from joint supply chain activities will contribute to the achievement of the Guaranteed Savings Target, Intermediate Savings Target and Stretch Savings Target.

30.15 Industry Supply Chain

BVT shall participate in any relevant consultation group (as agreed with BVT from time to time) involving the MoD and other industrial parties, the purpose of which is to review the shared activities in the surface shipbuilding and support supply base. In addition, BVT shall negotiate in good faith with the MoD and such industrial parties with a view to the entry into a 15-year agreement in relation to the SSSA.

30.16 Primary obligation

For the avoidance of doubt, BVT is responsible for the performance and management of its Sub-Contractors subject to any agreed MoD Dependencies and risks identified to be retained or assumed by the MoD in Clause 30.8.4.

Part 10 – Payment

31 Payment provisions

31.1 Payment of fixed sums not included in overheads

The MoD shall pay BVT:

- (a) any Incentive Payment as calculated in accordance with Clause 18 (*Incentive Payments*);
- (b) any KIC Payment, if required and as calculated in accordance with Part 7 (*Key Industrial Capability*);
- (c) any Pre-April 2009 Allowable Integration Costs Allowable Transformation Costs, or Allowable Strategic Rationalisation Costs which are agreed under Clause 10.5 (*Method of recovery of the Pre-April 2009 Allowable Integration Costs*), 12.3.1 (*Method of recovery of Allowable Transformation Costs*) or 13.16 (*Method of recovery of Allowable Strategic Rationalisation Costs*) to be paid to BVT pursuant to an agreed scheme of payment;
- (d) any Termination Charge as calculated in accordance with Clause 42 (*Payment for Termination*);
- (e) any Alternative Work Payment as calculated in accordance with Clause 43 (*Alternative Work after CVF Termination*).

(together the **Contract Payments**).

31.2 BVT submission of Relevant Form and the MoD response

Submission of Relevant Form

31.2.1 In order to obtain payment of any Contract Payment which the MoD decides to pay under this Contract and that properly becomes due to be paid by the MoD to BVT pursuant to this Contract BVT shall submit the Relevant Form to the MoD Representative set out in the table in the completed DEFFORM 522A, (as attached at Part 3 of Schedule 13 (*Forms*)). BVT shall complete and dispatch the Relevant Form in accordance with any instructions shown on the Relevant Form.

The MoD response

31.2.2 Upon receipt of the Relevant Form, the MoD shall without delay either:

- (a) complete and return the Relevant Form, showing Payment Approval, to BVT within 30 days; or
- (b) subject to Clause 31.6 notify BVT in writing, giving reasons why it considers Payment Approval may be withheld.

Payment no acknowledgement of performance

31.2.3 Notwithstanding any statement to the contrary on the Relevant Form, Payment Approval shall not be construed as acceptance by the MoD of the performance of BVT's obligations nor as a waiver of its rights and remedies either under this Contract or otherwise.

31.3 Payment by Bill Paying Branch

Claims for payment

31.3.1 Following Payment Approval, BVT shall submit all claims for payment to the Bill Paying Branch, using a properly completed DAB Form 10 (as appended to this Contract in Schedule 14 (*Forms*)) and attaching a KIC Payment Notice where so advised on the completed DEFFORM 522A, enclosing all Relevant Forms showing Payment Approval.

Payment

31.3.2 All valid, properly completed claims for payment submitted to the Bill Paying Branch in accordance with this Clause shall be paid by the MoD on or before the Relevant Day.

31.4 Interest

Where and to the extent that the debt would otherwise be a "qualifying debt" under the Late Payment of Commercial Debts (Interest) Act 1998 (the **Act**):

- (a) the interest provided for by this Clause is a contractual remedy and is not statutory interest. Therefore, to the extent permissible by law, the provisions of the Act relating to statutory interest shall not apply to this Contract;
- (b) from the day after the Relevant Day and thereafter until payment is made, simple interest at a rate calculated in accordance with Clause 31.4(c) may be claimed by BVT on the value of all valid claims for payment (or unpaid parts thereof);
- (c) without prejudice to Clause 31.4(a), the rate of interest referred to in Clause 31.4(b) shall be the prevailing rate of statutory interest (as defined in the Act) on the Relevant Day; and
- (d) no interest shall be payable for any period of delay attributable to the conduct of BVT.

31.5 Set-off

BVT shall not be entitled to retain or set-off any amount due to the MoD by it, but the MoD may retain or set-off any amount owed to it by BVT under this Contract which has fallen due and payable against any amount due to BVT under any contract entered into between BVT and the MoD.

31.6 Disputed payments

If the payment or deduction of any amount referred to in Clause 31.5 (*Set-off*) above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with Clause 33 (*Dispute resolution*).

31.7 No double recovery

Under no circumstances shall BVT be entitled to recover more than once in respect of the same cost item through the application of this Contract and/or any Project Contract. For the avoidance of doubt, Incentive Payments have been calculated taking into account gainshare arrangements in Project Contracts.

Part 11 – Governance, Dispute Resolution and Reporting

32 Governance

The provisions of Schedule 8 (*Governance*) shall apply. Schedule 8 (*Governance*):

- (a) establishes the Programme Owners Group (the **POG**), the Steering Group and the Joint Project Office (**JPO**), which shall discharge the functions given to them in this Contract; and
- (b) otherwise provides for how the Parties shall, through the POG, the Steering Group and the JPO, transact formal business and make decisions in relation to this Contract.

33 Dispute resolution

Any Dispute shall be referred for resolution in accordance with the Dispute Resolution Procedure set out in Schedule 2 (*Dispute Resolution Procedure*).

34 Strategic Planning Framework

34.1 Strategic planning

General

34.1.1 BVT and the MoD shall undertake joint strategic planning in accordance with the provisions of this Clause 34. In addition, each of the MoD and BVT shall be entitled to conduct its own strategic planning and this Clause 34 shall not preclude any other exchange of information between the MoD and BVT.

Strategic Planning Objective

34.1.2 The Strategic Planning Objective is that:

- (a) subject to Legislation and the MoD's discretion to apply its procurement strategy and competition strategy from time to time, BVT should be sufficiently informed as to the MoD's maritime strategic plans so as to be able to plan the future of its business, deliver Transformation and achieve the Commercial Purpose with a reasonable degree of assurance;
- (b) subject to Legislation and BVT's right to withhold Non-Disclosable Information, the MoD should be sufficiently informed as to BVT Business so as to be able to implement its strategic plans, deliver Transformation and achieve the Commercial Purpose with a reasonable degree of assurance including in respect of the cost and other strategic implications of those strategic plans;
- (c) the MoD and BVT each use all reasonable endeavours to ensure that, subject to this Clause 34 and Clause 38 (*Open Book Accounting Procedures*), information sharing is as open and transparent as possible.

MoD to provide information

- 34.1.3 The MoD shall seek to achieve the Strategic Planning Objective generally and specifically by:
- (a) generally informing BVT as to its maritime strategic plans;
 - (b) providing the following information at the following times to BVT in advance of the last quarterly Steering Group meeting of each Contract Year, or at such other time as may be agreed, a general overview of MoD's then current expectations as to substance, process and timing concerning:
 - (i) Future Naval Programmes which may be either awarded to BVT or competed with third parties in accordance with Part 4 (*Exclusivity*), including, in each case, details of the likely time at which such award may take place and the then current outline programme;
 - (ii) the potential renewal, extension or replacement or other potential strategic decisions which fall to be made in relation to each Dockyard Contract;
 - (iii) the MoD's view of the status of each existing Project Contract, including any proposals the MoD is considering for the rescheduling or substantial amendment of any existing Project Contract; and
 - (iv) its medium- to long-term expectations as to workflow,
- provided that although the MoD shall endeavour to provide such information in a manner which shall not preclude BVT from competing for such works the MoD shall assume no liability (legal or otherwise) in the event that BVT is so precluded.

34.1.4 The MoD shall be entitled from time to time to withhold from the information supplied pursuant to this Clause 34 such information as it sees fit, including on grounds of its competition policy, its procurement policy, the fact that information is MoD Confidential Information and national security.

34.1.5 Without any obligation or liability (legal or otherwise) on the MoD's part, the MoD confirms that it is not intended that the provision by it to BVT of information in accordance with this Clause 34 should have the effect of precluding BVT from competing for Work which MoD procures competitively.

BVT to provide information

- 34.1.6 BVT shall seek to achieve the Strategic Planning Objective generally and specifically by:
- (a) subject to Clause 37.2.2, providing to the MoD in advance of the last quarterly Steering Group meeting of each Contract Year a complete copy of BVT's 10-year Business Plan (excluding Non-Disclosable Information) and, from time to time, a complete copy of every amendment to or replacement of BVT's 10-year Business Plan (excluding Non-Disclosable Information) forthwith on the same being adopted; and
 - (b) complying with its obligations in Clause 35 (*Strategic Reviews*).

Strategic discussion

34.1.7 The Steering Group shall meet in the last quarter of each Contract Year and discuss any information supplied by the MoD and BVT pursuant to this Clause 34. The discussion shall consider how best the Strategic Planning Objective may be achieved, in light of the information exchanged.

34.1.8 The Steering Group may require MoD or BVT to amplify or explain in greater detail all or any of the information supplied pursuant to this Clause 34 and the MoD and BVT shall, from time

to time to the greatest extent which is consistent with Legislation with a view to achieving the Strategic Planning Objective.

34.1.9 The MoD's Representative may require BVT to:

- (a) analyse and comment and advise the MoD on any relevant matter (whether or not contained in information supplied by the MoD or BVT) which at any time the MoD considers to merit further analysis;
- (b) in particular, advise the MoD of the cost and other implications of any potential decision which the MoD is considering,

provided, however, that for larger tasks the MoD and BVT shall agree how the ensuing costs shall be paid,

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

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

34.1.10 BVT's analysis and advice shall, as appropriate and if required by the MoD, be supported by detailed outputs of the BEM and/or the KIC Model together with a commentary by BVT on the output of the BEM and/or the KIC Model, in particular as to the extent to which runs of the model will accurately predict the cost to be borne by MoD of any scenario, if MoD decides to implement that scenario.

34.2 Scenario modelling

34.2.1 The MoD shall be entitled to Use for its own purposes the BEM and/or the KIC Model in accordance with Clauses 60.1 and 60.2.

34.2.2 The MoD may require BVT to assist and advise the MoD in relation to any scenario in relation which MoD proposes to run the BEM and/or the KIC Model and assist in relation to all related runs of the BEM and/or the KIC Model.

34.3 Common tools

The MoD and BVT will work together towards the common aspiration of using common tools, joint workflow and joint cost models in order to achieve the Strategic Planning Objective detailed in Clause 35.2, which shall be a Key Event set out in the Transformation Plan.

35 Strategic Reviews

35.1 General

The MoD and BVT shall conduct a Strategic Review:

- (a) in 2011;
- (b) in 2014 and every 5 years thereafter;
- (c) or otherwise at such time as required by the Steering Group provided that such Strategic Review occurs not less than 2 years after the previous Strategic Review.

35.2 Objectives of Strategic Reviews

Each Strategic Review shall be conducted in the manner as determined by the Steering Group and which may include:

- (a) identifying the most suitable way of continuing to deliver the maritime transformation for the period up to the next Strategic Review;
- (b) considering the extent to which this Contract is achieving the Commercial Purpose and joint consideration, in the context of those matters;
- (c) considering the overall health of the relationship between the MoD and BVT;
- (d) a detailed examination of all strategies, policies, processes and relationships involved in achieving the outcomes specified in this Contract for the period up to the next Strategic Review;
- (e) consideration of the outputs from the Comprehensive Benchmarking Reviews (as defined in Schedule 10 (*Continuous Improvement and Benchmarking*)) commissioned in accordance with Schedule 10 (*Continuous Improvement and Benchmarking*);
- (f) review, endorsement and implementation of the then current Transformation Plan (including the Key Sub-Plans and agreement of the Transformation Plan for the next 5-year period of this Contract);
- (g) review, endorsement and implementation of individual Transformation Benefit Proposals initiatives including the level of Delivered Efficiency Savings;
- (h) review, endorsement and implementation of the aggregate level of Delivered Efficiency Savings against the Guaranteed Minimum Target, the Intermediate Savings Target and the Stretch Savings Target; and
- (i) review, endorsement and implementation of the Key Milestones for the next 5-year period of this Contract.

35.3 How a Strategic Review may be triggered

The Steering Group shall have responsibility for initiating each Strategic Review and ensuring that the JPO provides a suitably detailed and comprehensive report and for taking forward and implementing any recommendations.

35.4 Strategic Review outputs

- (a) The outputs for each Strategic Review shall include:
 - (i) a high level review of this Contract, its management, operation and the overall health of the relationship between the MoD and BVT, and the extent to which it is achieving the Commercial Purpose;
 - (ii) the steps needed to improve strategic links between this Contract, current Transformation Benefit Proposals, the MoD and BVT business plans and the naval customer;
 - (iii) confirmation that the principles underpinning this Contract remain aligned with maritime industrial principles;
 - (iv) suggestions for improvement and better delivery across the surface ship domain;
 - (v) agreement or otherwise of Key Milestones; and

- (vi) a validation and verification of the BEM (to be carried out by an independent expert mutually agreed between BVT and the MoD).
- (b) The outputs for the Strategic Review in 2011 shall be:
- (i) direction and implementation of the Shipbuilding Improvement Plan, created on receipt of the Comprehensive Benchmarking Review report from the Benchmark Consultant in accordance with Schedule 10 (*Continuous Improvement and Benchmarking*);
 - (ii) agreement of a Strategic Rationalisation Strategy and Strategic Rationalisation Plan in accordance with Clause 13 (*Strategic Rationalisation*);
 - (iii) agreement on any KIC Adjustment necessary for the Support KIC pursuant to Clause 21.3 (*Acknowledgement*);
 - (iv) agreement on the number of Key Posts within the Shipbuild Sector, following the Benchmarking Exercise carried out in accordance with Clause 25 (*KIC Adjustments*);
 - (v) an indication of the MoD's procurement strategy for WSMI Contract;
 - (vi) development of the Capital Investment Plan; and
 - (vii) development of the Labour Management Plan.
- (c) The outputs for the Strategic Review in each of 2014 and 2019 shall be:
- (i) confirmation that this Contract remains the most suitable way of achieving the Strategic Planning Objective, the Commercial Purpose and this Contract's contribution to maritime transformation;
 - (ii) a summary of the overall health of the relationship between BVT and the MoD;
 - (iii) a common understanding of the strategic plans of each of BVT and the MoD;
 - (iv) a consideration of the outputs from the Comprehensive Benchmarking Reviews commissioned in accordance with Clause 19 (*Continuous Improvement, Benchmarking and Upper Quartile Performance*) and Schedule 10 (*Continuous Improvement and Benchmarking*);
 - (v) a common assessment of the progress of each Transformation Proposal and the overall level of benefit delivered under this Contract;
 - (vi) for the 2014 Strategic Review only, the setting of year-on-year targets for efficiency improvements for the 2015, 2016, 2017, 2018 and 2019 Contract Years;
 - (vii) for the 2019 Strategic Review only, the setting of year-on-year targets for efficiency improvements for the 2020, 2021, 2022, 2023 and 2024 Contract Years;
 - (viii) for the 2019 Strategic Review only, consideration of any decision by MoD or BVT to terminate the Contract pursuant to Clause 4.2 (*Continuation after Initial Term*);
 - (ix) agreement and implementation of a revised Index; and
 - (x) and any actions BVT and the MoD deem necessary to address any shortfalls, discrepancies or concerns in the above outputs.

36 Indexation (RPI_x) discussion

In the event that there is a material deviation between increases in the level of the RPI_(x) and inflationary pressures on BVT over the same period, then either BVT or the MoD may request that future indexation provisions in this Contract are reviewed by the Steering Group.

37 Reporting

37.1 BVT financial information

37.1.1 **Accounts:** BVT shall, as soon as the same become available (and in any event within 10 calendar months after the end of each of its Financial Years), deliver to the MoD its Accounts for each such Financial Year which shall have been audited by the Auditors.

37.1.2 **Interim accounts:** If and to the extent BVT determines in the future to prepare unaudited interim accounts (on the same basis as the Accounts), BVT shall, as soon as the same become available (and in any event within a time period to be agreed with the MoD's Representative after the end of the first half year of each of its Financial Years), deliver to the MoD its unaudited interim accounts for each such half year.

37.1.3 **Standards:** BVT shall ensure that all Accounts to be delivered by it under this Contract shall be prepared and audited in accordance with GAAP and the Companies Act 2006 and give a true and fair view of its financial position as at the date to which they were prepared and for the period then ended.

37.1.4 **Annual reconciliation:** BVT shall, within 6 months after the end of each Financial Year, and working with CAAS, provide the MoD with a statement for the preceding Financial Year of the actual BVT Cost Base and charging rates under the Project Contracts. This statement shall be verified using the normal CAAS review process.

37.2 Contract Information

37.2.1 BVT shall inform the MoD immediately if there is any material adverse change during the term of this Contract in its financial condition which might reasonably be expected to adversely affect its ability to perform its obligations under this Contract since the date to which the relevant accounts referred to in Clause 37.1 were prepared, provided that BVT shall not be required to inform the MoD of any such changes if this would be in breach of any rules of any relevant stock exchange or governmental or regulatory authority having the force of law.

37.2.2 BVT shall, as soon as the same becomes available (but in any event within 3 months of the date of completion of the first sale after the Commencement Date by VTG of some or all of its shares in BVT pursuant to Clause 48 (*VTG Exit*) and thereafter in the last month of each Contract Year), deliver to the MoD the BVT 10-Year Business Plan, which shall:

- (a) be redacted to remove Non-Disclosable Information; and
- (b) include:
 - (i) total cost base (both labour, overheads and direct materials);
 - (ii) labour hours;
 - (iii) forward workload by major programme; and
 - (iii) an analysis of the data across BVT sites.

37.2.3 BVT shall, no later than 30 September 2009, deliver to MoD an interim business plan (with Non-Disclosable Information redacted) covering at least:

- (a) BVT's 10-year view of costs, total labour hours and head count; and
- (b) BVT's strategic assumptions concerning its forward order book, KIC Payment levels and Transformation Benefit Proposals.

38 Open Book Accounting and Records

38.1 Open Book Accounting

38.1.1 BVT shall on an open book basis:

- (a) undertake to maintain, on a current and accurate basis, books of account and other records to allow the MoD and CAAS to audit:
 - (i) the Monthly Management Reports;
 - (ii) the BVT 10-Year Business Plan;
 - (iii) any supply chain matters in accordance with Part 9 (*The Supply Chain Strategy and Use of Sub-Contractors*);
 - (iv) the monitoring of KIC Payments;
 - (v) benefits tracking and delivery; and
 - (vi) all other matters which are the subject of this Contract; and
- (b) upon request furnish such financial and other information in connection with this Contract as may be reasonably required by the MoD in order to demonstrate that the actual costs incurred by a BVT Group Company have been incurred in accordance with this Contract.

38.1.2 BVT shall provide such further information as may reasonably be required by the MoD in order to permit the MoD to:

- (a) comply fully with its obligation under this Contract; and
- (b) undertake any review or check that BVT's compliance with its obligations is in accordance with this Contract.

38.1.3 The information to be made available to the MoD and/or CAAS pursuant to Clause 38.1.2 shall include (but shall exclude Non-Disclosable Information):

- (a) costing data and supporting information to support the agreement of labour and overhead rates in accordance with the relevant QMAC arrangements. The MoD shall be entitled to use, but not disclose to third parties, such information to verify the labour and overhead rates used by BVT 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 or services provided by BVT under any Project Contract or Dockyard Contract; and
- (b) information from Project Contracts and Dockyard Contracts that the MoD may reasonably request including but not limited to engineering, technical, design, financial, contractual, risk and programme information (subject at all times to the MoD, in the first instance, relying upon its rights under those Projects Contracts and Dockyard Contracts to access such information); and
- (c) copies of BVT's 10-year Business Plan which shall include information on:

- (i) cost base (both labour and overheads);
- (ii) labour hours;
- (iii) forward workload by major programme; and
- (iv) an analysis of the data across BVT sites.

38.1.4 When requested by the MoD, acting reasonably and providing reasonable notice, BVT shall, provide a summary of any of the costs referred to in Clause 38.1.3 in such form and detail as the MoD may reasonably require to enable the MoD to monitor the performance by BVT of its obligations under this Contract.

Inspection

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

Non-Disclosable Information

38.1.6 In discharging its obligations under this Clause 38, without prejudice to Clause 38.3 (*Access for National Audit Office*), BVT shall be entitled to withhold Non-Disclosable Information. Where BVT intends to withhold such information it shall explain the rationale for such decision to the MoD.

MoD Information

38.1.7 In accordance with Clause 14.1.4 the MoD acknowledges that the Efficiency Savings may be generated through Transformation Benefit Proposals that include a consideration of the MoD Cost Base and that such proposals will be required in order to achieve the Intermediate Savings Target and Stretch Savings Target. The JPO will use all reasonable endeavours to disclose relevant MoD costs subject always to the restrictions in Clause 34.1.4.

38.2 Standards

Compliance with the above shall require BVT to keep books of accounts in accordance with best accountancy practice with respect to this Contract showing in detail:

- (a) administrative overheads;
- (b) capital and revenue expenditure;
- (c) payments made to Sub-Contractors.

BVT shall have the books of account evidencing the items listed in Clauses 38.2(a) to 38.2(c) above available for inspection by or on behalf of the MoD upon reasonable notice.

38.3 Access for National Audit Office

BVT shall permit records referred to in this Clause to be examined and copied by the Comptroller and Auditor General and his representatives.

38.4 Period for which records are kept

The records referred to in this Clause shall be retained for a period of at least 6 years after BVT's obligations under this Contract have come to an end.

38.5 Other relevant obligations

All information referred to this Clause is subject to the obligations set out in Clause 56 (*Security*), Clause 57 (*Confidentiality and Freedom of Information Act*), Clause 58 (*Public relations and publicity*).

Part 12 – Termination and Compensation

39 BVT Default

39.1 Definition

Each and any of the following shall be BVT Defaults:

Insolvency

39.1.1 if any of the following occurs:

- (a) a court makes an order that BVT or any Principal Shareholder be wound up; or
- (b) a trustee, trustee in bankruptcy, liquidator, provisional liquidator, supervisor, receiver, administrator, administrative receiver or encumbrancer or person with similar powers takes possession of or is appointed over (other than for the purposes of a bona fide internal solvent reorganisation or amalgamation previously consented to by the MoD), or any distress, execution or other process is levied or enforced (and is not discharged within 5 Business Days) upon the whole or any part of the assets of BVT or any Principal Shareholder; or
- (c) a meeting of creditors or any class of shareholders of BVT or any Principal Shareholder passes a resolution for the winding-up, bankruptcy or dissolution of BVT or any Principal Shareholder (other than for the purposes of a solvent reconstruction or amalgamation previously consented to by the MoD); or
- (d)
 - (i) BVT or any Principal Shareholder (or their respective directors) resolve that an administration order should be made in respect of it or that an administrator should be appointed to it; or
 - (ii) any application is made, or notice served or filed, for the making of an administration order in respect of BVT or any Principal Shareholder or the appointment of an administrator to BVT or any Principal Shareholder and where (and only where) such an application is made solely by one or more creditors of BVT, or any Principal Shareholder and that application is not withdrawn or dismissed within 14 Business Days; or
 - (iii) any other material steps are taken by BVT or any Principal Shareholder (or their respective directors) for the making of an administration order in respect of it or the appointment of an administrator over it; or
- (e) a petition is presented or other steps are taken for the purpose of the winding-up of BVT or any Principal Shareholder (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the MoD) and such petition is not, or such other steps are not, discharged or withdrawn within 14 Business Days; or
- (f) any meeting of creditors or shareholders of BVT or any Principal Shareholder proposes any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986 or scheme of arrangement under the Companies Act 1986) or any arrangement or composition is proposed or entered into by or in relation to BVT or any Principal Shareholder; or

Ceasing to carry on business

- (g) BVT or any Principal Shareholder ceases to carry on business (unless it relates to an intra group reorganisation of BVT on a solvent basis), or admits in writing its inability to pay or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (without in respect of Section 123(i)(e) of the Insolvency Act 1986 the need to prove any fact or matter to the satisfaction of the court) or suspends or threatens to suspend payment with respect to all or any class of its debts or becomes insolvent or bankrupt; or

Shareholder events

- (h) BVT or any Principal Shareholder suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident or BVT or any Principal Shareholder takes steps in any jurisdiction for protection from its creditors or for any moratorium or stay of any creditor action;

Corrupt Gifts and Payments

- 39.1.2 A breach by BVT of the terms of Clause 44 (*Corrupt gifts and payments*);

Security

- 39.1.3 Where the MoD is entitled to terminate this Contract pursuant to Clause 56.7 following a Breach of Security;

Material breach

- 39.1.4 A material breach of this Contract;

Failure to deliver Projected Benefits Target

- 39.1.5 Where the MoD is entitled to terminate the Contract pursuant to Clause 14.3 (*Cumulative Guaranteed Minimum Savings Yearly Target and Termination*);

KIC failure

- 39.1.6 Where the MoD is entitled to terminate this Contract pursuant to Clause 28 (*KIC Termination*) or where BVT is in material breach of Clause 22 (*Facilities*);

Change in Control

- 39.1.7 Where the MoD is entitled to terminate this Contract pursuant to Clause 52.7 (*Change in Control*);

39.2 Notice of BVT Default

BVT shall notify the MoD of the occurrence and details of any BVT Default and of any event which would with the passage of time or otherwise constitute or give rise to a BVT Default, in either case immediately upon BVT becoming aware of the occurrence concerned.

39.3 Termination of this Contract

Termination Notice

- 39.3.1 The occurrence of a BVT Default shall represent MoD's sole and exclusive right to terminate this Contract for breach by BVT if BVT Default has occurred and, where the MoD wishes to terminate this Contract, the MoD must serve a termination notice (**Termination Notice**) on BVT within 40 Business Days of becoming aware of a BVT Default other than in the case of

Clause 39.1.5 (*Failure to deliver Projected Benefits Targets*) in which case the period shall be 270 Business Days.

Contents and effect of Termination Notice

39.3.2 The Termination Notice shall specify:

- (a) the type and nature of the BVT Default that has occurred, giving reasonable details;
- (b) that in the case of any BVT Default pursuant to Clauses 39.1.1 (*Insolvency*), 39.1.2 (*Corrupt gifts and payments*), or 39.1.7 (*Change in control*), this Contract will terminate on the day falling 40 Business Days after the date BVT received the Termination Notice and such Termination Notice shall have that effect unless BVT has referred the matter to Dispute Resolution Procedure;
- (c) that in the case of any BVT Default pursuant to Clause 39.1.3 (*Security*), 39.1.4 (*Material breach*), 39.1.5 (*Failure to deliver Projected Benefits Target*) or 39.1.6 (*KIC failure*), BVT puts forward an acceptable rectification programme or rectifies the BVT Default within 40 Business Days after the date BVT receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the BVT Default in accordance with such programme).

Deemed revocation of Termination Notice

39.3.3 If, in the case of Clause 39.3.2(c), BVT either rectifies the BVT Default within the time specified in the Termination Notice or implements the rectification programme (if applicable) in accordance with its terms, the Termination Notice will be deemed to be revoked and this Contract will continue.

Termination if no remedy

39.3.4 If, in the case of any BVT Default pursuant to Clauses 39.1.3 (*Security*), 39.1.4 (*Material breach*), 39.1.5 (*Failure to deliver Projected Benefits Target*) or 39.1.6 (*KIC failure*) no acceptable rectification programme has been put forward or implemented pursuant to Clause 39.3.2(c) and/or BVT fails to rectify the BVT Default within the time period specified in the Termination Notice the MoD may give a further notice stating that this Contract will terminate on the date falling 30 days after the receipt of such notice and this Contract will terminate on the date falling 30 days after the date of such notice unless BVT has referred the matter to the Dispute Resolution Procedure.

39.4 Partial Termination

In the case of any BVT Default pursuant to Clauses 39.1.4 (*Material breach*), 39.1.5 (*Failure to deliver Projected Benefits Target*), 39.1.6 (*KIC failure*) and 39.1.7 (*Change in control*), the MoD at its sole discretion may (and without prejudice to any of its other rights or remedies and to any rights of action which shall accrue or shall already have accrued to the MoD) as an alternative to the termination of this Contract in its entirety elect to terminate any or all of the provisions of Part 4 (*Exclusivity*) only and consequently the benefits accruing to BVT under that Part 4 (*Exclusivity*) of this Contract. In such case BVT acknowledges that it would immediately cease to have the exclusive right to act as Lead Contractor and/or Class Output Manager or have any exclusivity for BVT Exclusive Stages for Future Naval Programmes and Designated Naval Vessels and the obligations imposed on BVT and the MoD under Part 4 (*Exclusivity*) (where terminated) would cease to be legally binding on the MoD.

39.5 MoD's rights cumulative

The rights of the MoD under this Clause 39 are in addition and without prejudice to any other right the MoD may have to Claim the amount of any loss or damage suffered by the MoD on account of the acts or omissions of BVT, whether pursuant to any guarantee given in accordance with the requirements of this Contract or otherwise.

40 MoD Default

Definition

40.1 The following events shall constitute a MoD Default:

- (a) the award of one or more contract(s) by the MoD to one or more third parties, or the commencement of a competition by the MoD, in each case in breach of Clause 9 (*Exclusivity*);
- (b) a failure by the MoD to pay Allowable Strategic Rationalisation Costs in excess of [REDACTED] (Indexed) that are due and payable by the MoD pursuant to an agreed scheme for payment under this Contract,

provided in the case of (b) above that all the following conditions are satisfied:

- (c) the sum in question:
 - (i) is not in dispute;
 - (ii) it has not been properly set off or claimed to be set off under Clause 31.5 (*Set-off*); and
 - (iii) the MoD is not otherwise entitled to withhold it.

Termination for MoD Default

40.2 If a MoD Default has occurred and BVT wishes to terminate this Contract, it must serve a Termination Notice (**MoD Termination Notice**) on the MoD within 40 Business Days of becoming aware of the MoD Default. The Termination Notice must specify the MoD Default which has occurred entitling BVT to terminate.

Effective date of termination

40.3 This Contract shall terminate on the day falling:

- (a) 180 Business Days from the date the MoD receives a MoD Termination Notice in accordance with Clause 40.2 (*Termination for MoD Default*) regarding a MoD Default under Clause 40.1(b), unless the MoD rectifies the MoD Default within that 180 Business Days of receipt of the Termination Notice or the MoD has referred the matter to the Dispute Resolution Procedure; or
- (b) 40 Business Days from the date on which the MoD receives an MoD Termination Notice in accordance with Clause 40.2 (*Termination for MoD Default*) in relation to an MoD Default under Clause 40.1(a), unless the MoD has referred the matter to the Dispute Resolution Procedure.

Once only right

40.4 BVT may give notice to the MoD terminating this Contract only in accordance with the provisions of this Clause 40.

Compensation

40.5 Compensation for termination for MoD Default shall be calculated in accordance with Clause 42 (*Payment for Termination*).

Cumulative rights, subject to sole remedy clause

- 40.6 BVT's rights under this Clause 40 are in addition and without prejudice to any other rights that BVT may have on account of the acts or omissions of the MoD but this Clause 40.6 is subject always and in all respects to Clause 42.5 (*Sole remedy*).

41 Voluntary termination

Termination right

- 41.1 The MoD may terminate this Contract voluntarily at its discretion at any time by serving a Termination Notice on BVT stating that:

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

Compensation

- 41.2 Compensation for termination by the MoD pursuant to this Clause 41 (*Voluntary Termination*) shall be calculated in accordance with Clause 42 (*Payment for Termination*).

42 Payment for termination

Compensation

- 42.1 Upon termination of this Contract in accordance with Clause 40 (*MoD Default*) or Clause 41 (*Voluntary Termination*), the Termination Charge payable by the MoD to BVT (or BAES as provided for in Clause 42.6 (*Payment of Termination Charge*)) on its behalf and that of the Shareholders and their respective Affiliates shall be calculated as follows:

$$(A \times B) + (C \times B) + (D \times B) + E + F = \text{Termination Charge}$$

Where:

A = £25,333,333 (twenty five million, three hundred and thirty three thousand, three hundred and thirty three pounds) being BAE's unremunerated investment in BVT;

B = each complete Contract Year of the Initial Term remaining at the date upon which this Contract terminates;

[REDACTED]

[REDACTED]

E = any unrecovered reasonable Allowable Strategic Rationalisation Costs properly and actually incurred by BVT which arise as a direct result of such termination; and

F = Allowable Transformation Costs properly and actually incurred by BVT or which have been committed to,

which in the case of "E" and "F" cannot be avoided or mitigated and for which the MoD would have been liable had this Contract not been so terminated.

Limitations

42.2 For the avoidance of doubt:

42.2.1 the Termination Charge shall not be payable by the MoD to BVT (or any Shareholder or BVT Subsidiary) where the MoD terminates this Contract pursuant to its rights under Clause 39 (*BVT Default*) or Clause 4.2 (*Continuation after Initial Term*);

42.2.2 "D" (in Clause 42.1 (*Compensation*)) shall not be payable if a replacement contract of a similar scope and value to the WSMI Contract is in force and effect.

42.3 **Liquidated Sums**

The parties agree that the sums set out under limbs "A", "C" and "D" of Clause 42.1 (*Compensation*) are liquidated sums and are a genuine and reasonable pre-estimate of BVT's losses (and BAES's losses in the case of A) on termination of this Contract based upon a calculation of the potential work that the parties consider that BVT might have undertaken had the Contract not been terminated.

42.4 **Claw-back**

(a) If the MoD has made any payment to BVT for loss of profit under limbs C and/or D of Clause 42.1 (*Compensation*) (a **Termination Loss of Profits Compensation Payment**) and any BVT Group Company is, subsequent to the Termination Date, awarded or secures any Work from the MoD which uses the Facilities and staff which would otherwise have been used or employed in the performance of Project Contracts let pursuant to Clause 9 (*Exclusivity*) had this Contract not been terminated (**Replacement Work**) then the MoD shall be entitled to a refund of such amount of the Termination Loss of Profits Compensation Payment as is fair and reasonable having regard to the profit generated from the Replacement Work.

(b) Any refund due under Clause 42.4(a):

(i) shall not exceed an amount equal to 50% of the Termination Loss of Profits Compensation Payment; and

(ii) shall be paid by BVT to the MoD through adjustments to the profit element only of amounts payable under shipbuilding Project Contracts entered into after the date of termination of this Contract (other than any for the design and construction of the Future Surface Combatant).

Interest

42.4.2 Clause 31.4 (*Interest*) shall apply to interest in respect of a Termination Charge.

Sole remedy

42.5 Any payment of compensation pursuant to this Clause 42 (*Payment for Termination*) shall be in full additional satisfaction of any Claim which can be made against the MoD by BVT, the Shareholders and each BVT Affiliate in relation to the termination of this Contract. The compensation payable under this Clause 42 (*Payment for Termination*) shall be the sole remedy against the MoD in respect of termination of this Contract. No Termination Charge shall be payable to BVT where this Contract is terminated pursuant to Clause 39 (*BVT Default*) or Clause 44 (*Corrupt gifts and payments*). BVT shall indemnify the MoD against all liability for Loss which may arise out of or in consequence of a Claim by a Shareholder or a BVT Affiliate in breach of this Clause 42.5.

Payment of Termination Charge

- 42.6 Any Termination Charges payable under this Clause 42 shall be paid by the MoD in instalments on dates to be agreed by the MoD and BVT at the time provided that all amounts of the relevant Termination Charge shall be fully paid by the date falling 36 months after the date of the Termination Notice. The MoD shall pay that element of the compensation calculated as (A x B) directly to BAES and the remaining compensation to BVT.

42.7 Consultation Events

On the occurrence of a Consultation Event:

- (a) BVT shall notify the MoD as soon as practicable. The notification shall include details (including likely duration and effect on BVT's ability to perform its obligations) of the Consultation Event;
- (b) BVT shall be relieved from performance of its obligations in Part 7 (*Key Industrial Capability*) and to achieve the Cumulative Guaranteed Minimum Savings Yearly Targets, in each case to the extent and for the duration that it is prevented, hindered or delayed from doing so by the Consultation Event and is unable to mitigate this;
- (c) as soon as practicable following such notification the MoD and BVT shall consult with each other in good faith to agree how best to achieve the Commercial Purpose in light of the Consultative Event; and
- (d) BVT shall use all reasonable endeavours to continue to perform its obligations under this Contract.

43 Alternative Work after CVF Termination

MoD option

- 43.1 If the CVF Contract is (1) terminated prior to expiry (in its entirety) or (2) BVT is served with an Exclusion Notice (as defined in the CVF Contract) in each case for reasons other than the Material Default (as defined in the CVF Contract) of one or more parties (other than the MoD) to the CVF Contract, the MoD shall have the option, in its discretion, to:
- (a) award to BVT Alternative Work within 12 months of the termination of the CVF Contract to cover the same period as that remaining under the CVF Contract but for its termination; or
 - (b) on expiry of the 12-month period referred to in Clause 43.1(a), pay to BVT compensation in lieu of Alternative Work and calculated in accordance with Clause 43.3 (*Calculation*); or
 - (c) implement any agreement reached pursuant to Clause 43.2 (*Negotiations*).

Negotiations

- 43.2 During the 12-month period referred to in Clause 43.1(a), the MoD and BVT shall negotiate in good faith with a view to agreeing an alternative package of measures (which might include both the award of Work and payment of amounts to BVT) in lieu of awarding Alternative Work. If no agreement is reached within that period, the MoD shall exercise the option in Clause 43.1(a) or Clause 43.1(b).

Calculation

- 43.3 The amount of compensation to be calculated pursuant to Clause 43.1(b) shall be the sum of the aggregate of:
- (a) the amount of Allowable Strategic Rationalisation Costs pursuant to Clause 13 (*Strategic Rationalisation*) actually, reasonably and properly incurred by BVT as a result of the MoD opting not to award Alternative Work; and
 - (b) the amount of profit that BVT might reasonably have expected to make pursuant to the Alternative Work had it been awarded in accordance with the Government Profit Formula and approved by CAAS (the **Alternative Work Loss of Profits Compensation Payment**),

together (the **Alternative Work Payment**),

in each case, as a direct consequence of the MoD opting not to award to BVT the Alternative Work, LESS the aggregate of the amount of compensation for loss of profit which, taking into account all relevant circumstances, any BVT Group Company (and any transferee), recovers or is entitled to recover, whether by action or otherwise, from the MoD or any other person pursuant to the CVF Contract or otherwise in connection with that termination of the CVF Contract or BVT's exclusion from it. The amount of compensation calculated under this Clause 43 shall not include any amount in relation to support (including Maintenance) work for CVF.

Sole remedy

- 43.4 Clause 43 (*Alternative Work after CVF Termination*) contains any BVT Group Company's (and any transferee) sole entitlement, and the sole entitlement of each Shareholder and their respective Affiliates, to compensation or any other legal or equitable remedy in relation to MoD's decision under Clause 43.1 (*MoD option*) (to pay compensation or implement an agreement under Clause 43.2 (*Negotiations*) other than the award of Alternative Work) in any manner whatsoever (including by reason of breach by the MoD). It shall be in full and final settlement of all Claims of any kind (including in relation to the MoD's negligence) which BVT and each Shareholder and their respective Affiliates may have in respect of that decision and BVT and each Shareholder, on their own behalf and that of all its Affiliates, waives all other such Claims and rights to remedies and BVT shall indemnify the MoD in respect of all such matters. For the avoidance of doubt BVT's rights in respect of any termination of the CVF Contract are dealt within the CVF Contract and are not affected by this Clause 43 (*Alternative Work after CVF Termination*).
- 43.5 The MoD and BVT shall, each acting reasonably, agree payment arrangements in respect of sums payable pursuant to this Clause 43 (*Alternative Work after CVF Termination*) either within 30 Business Days of the MoD exercising its option in Clause 43.1 (*MoD option*) or as part of an agreement made under Clause 43.2 (*Negotiations*).

Genuine Estimate

- 43.6 The Alternative Work Loss of Profits Compensation Payment is a genuine and reasonable estimate of BVT's Losses as a result of a MoD decision not to provide BVT with Alternative Work.

Claw-back

- 43.7 If the MoD has made any payment to BVT of the Alternative Work Loss of Profits Compensation Payment and any BVT Group Company is awarded or secures any Work from the MoD within 3 years of such payment and uses the Facilities and staff which would otherwise have been used or employed in the performance of the Alternative Work substitute then the MoD shall be entitled to a refund of such amount of the Alternative Work Loss of

Profits Compensation Payment as is fair and reasonable having regard to the profit generated from the Alternative Work substitute.

43.8 Any refund or refunds due under Clause 43.7 (*Clawback*) shall:

- (a) be no more in aggregate than 50% of the Alternative Work Loss of Profits Compensation Payment; and
- (b) be made through reductions in the profits payable under shipbuilding Project Contracts entered into after the date of this Contract, other than any for the design and construction of Future Surface Combatant.

44 Corrupt gifts and payments

44.1 BVT shall not do, and warrants that in entering this Contract it has not done, any of the following:

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

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

44.1.2 enter into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by BVT or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the MoD;

44.1.3 commit any offence:

- (a) under the Prevention of Corruption Acts 1889-1916;
- (b) under Legislation creating offences in respect of fraudulent acts; or
- (c) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or

44.1.4 defraud or attempt to defraud or conspire to defraud the Crown,

(the circumstances identified in Clauses 44.1.1 to 44.1.4 above being **Prohibited Acts**).

44.2 If BVT, any BVT Subsidiary or any Sub-Contractor (which for the purpose of this Clause 44 only is restricted to Sub-Contractors entering into Sub-Contracts after the date of execution of this Contract) (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the MoD shall be entitled to act in accordance with Clauses 44.2.1 to 44.2.4 to below:

44.2.1 if a Prohibited Act is committed by BVT, any BVT Subsidiary or by an employee not acting independently of BVT or of any BVT Subsidiary, then this shall be treated as a BVT Default for the purposes of Clause 39.1.2 (*Corrupt gifts and payments*) and the MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 39.3 (*Termination of this Contract*);

44.2.2 if the Prohibited Act is committed by an employee of BVT or of any BVT Subsidiary acting independently of BVT or of any BVT Subsidiary, then this shall be treated as a BVT Default for

the purposes of Clause 39.1.2 (*Corrupt gifts and payments*) and the MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 39.3 (*Termination of this Contract*), unless within 30 Business Days of receipt of a Termination Notice under Clause 39.3 (*Termination of this Contract*) BVT or the BVT Subsidiary terminates the employee's employment;

- 44.2.3 if the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then this shall be treated as a BVT Default for the purposes of Clause 39.1.2 (*Corrupt gifts and payments*) and the MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 39.3 (*Termination of this Contract*), unless within 40 Business Days of receipt of a Termination Notice under Clause 39.3 (*Termination of this Contract*) BVT terminates the relevant Sub-Contract;
- 44.2.4 if the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then this shall be treated as a BVT Default for the purposes of Clause 39.1.2 (*Corrupt gifts and payments*) and the MoD shall be entitled to terminate this Contract in its entirety in accordance with Clause 39.3 (*Termination Notice*), unless within 40 Business Days of receipt of a Termination Notice under Clause 39.3 (*Termination of this Contract*) the Sub-Contractor terminates the employee's employment.
- 44.3 Any Termination Notice served under Clause 39 (*BVT Default*) in relation to breach of this Clause 44 shall specify:
 - 44.3.1 the nature of the Prohibited Act;
 - 44.3.2 the identity of the party whom the MoD believes has committed the Prohibited Act; and
 - 44.3.3 the date on which this Contract shall terminate, in accordance with the applicable provision of this Clause.
- 44.4 For the avoidance of doubt, upon a termination of this Contract in accordance with Clause 39 (*BVT Default*) for breach of this Clause 44, no Termination Charge shall be payable to BVT or to the Shareholders.
- 44.5 In exercising its rights or remedies under this Clause 44 and Clause 39.1.2 (*Corrupt gifts and payments*), the MoD shall:
 - 44.5.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the Prohibited Act;
 - 44.5.2 give all due consideration, where appropriate, to action other than termination of this Contract, including (without being limited to):
 - (a) requiring BVT to procure the termination of a Sub-Contract where the Prohibited Act is that of a Sub-Contractor or anyone acting on its or their behalf;
 - (b) requiring BVT to procure the dismissal of an employee (whether its own or that of a Sub-Contractor or anyone acting on its behalf) where the Prohibited Act is that of such employee.
- 44.6 Recovery action taken against any person in Her Majesty's service shall be without prejudice to any recovery action taken against BVT pursuant to this Clause.

Part 13 – Parental Support

45 Establishment and undertakings

45.1 Completion of establishment of BVT

45.1.1 BAES Undertakings

BAES undertakes to the MoD and BVT that:

- (a) if any BAES Group Company other than a BVT Group Company is party to an Existing Contract as at the date of this Contract (a **Relevant BAES Group Contract**), BAES shall at the MoD's request procure that the relevant BAES Group Company shall enter into a deed of novation under which BVT shall be substituted as the contracting party to the Existing Contract in place of the relevant BAES Group Company;
- (b) until any Relevant BAES Group Contract is novated, BAES shall procure that the relevant BAES Group Company shall hold it in trust for BVT absolutely and indefinitely and shall account to BVT promptly for any sums arising thereunder and either:
 - (i) BVT shall (if such sub-contracting is permissible and lawful under the Relevant BAES Group Contract), as the relevant BAES Group Company's sub-contractor, perform all the obligations of the relevant BAES Group Company under the Relevant BAES Group Contract to be discharged after the date of this Contract; or
 - (ii) the relevant BAES Group Company (if such sub-contracting as is referred to in Clause 45.1.1(b)(i) is not permissible and lawful under the Relevant BAES Group Contract) shall continue to perform and discharge that contract and exercise rights in respect thereof as BVT may direct or approve and not otherwise (provided any such direction is lawful and does not constitute a breach of the contract concerned) and BVT shall pay to the relevant BAES Group Company, on or prior to the same becoming due, any costs, liabilities and expenses arising as a result of such performance and discharge and shall provide all reasonable facilities and assistance available to it to the relevant BAES Group Company free of charge for such purpose;
- (c) if any contract entered into prior to the Establishment Date between any BAES Group Company and a party other than the MoD is identified which relates to the Transferred Business, BAES shall procure that a copy of the same is supplied to BVT and if BVT considers that it is necessary for BVT to have the benefit of the contract (the **Relevant BAES Group Third Party Contract**), to enable it to carry on the Transferred Business in succession to the relevant BAES Group Company in the same manner in which it was being carried on prior to the Establishment Date, BAES shall at BVT's request procure that the relevant BAES Group Company shall assign the benefit of the same to BVT or enter into a deed of novation in a form acceptable to BVT under which BVT shall be substituted as the contracting party to the Relevant BAES Group Third Party Contract in place of the relevant BAES Group Company;
- (d) until any Relevant BAES Group Third Party Contract is novated, BAES shall procure that the relevant BAES Group Company shall hold it in trust for BVT absolutely and indefinitely and shall account to BVT promptly for any sums arising thereunder and either:
 - (i) BVT shall (if such sub-contracting is permissible and lawful under the Relevant BAES Group Third Party Contract), as the relevant BAES Group Company's sub-contractor, perform all the obligations of the relevant BAES Group Company under the Relevant BAES Group Third Party Contract to be discharged after the date of this Contract; or

- (ii) the relevant BAES Group Company (if such sub-contracting as is referred to in Clause 45.1.1(d)(i) is not permissible and lawful under the Relevant BAES Group Company Third Party Contract) shall continue to perform and discharge that contract and exercise rights in respect thereof as BVT may direct or approve and not otherwise (provided any such direction is lawful and does not constitute a breach of the contract concerned) and BVT shall pay to the relevant BAES Group Company, on or prior to the same becoming due, any costs, liabilities and expenses arising as a result of such performance and discharge and shall provide all reasonable facilities and assistance available to it to the relevant BAES Group Company free of charge for such purpose.

45.1.2 VTG Undertakings

VTG undertakes to the MoD and BVT that:

- (a) if any VT Group Company other than a BVT Group Company is party to an Existing Contract as at the date of this Contract (a **Relevant VT Group Contract**), VTG shall at the MoD's request procure that the relevant VT Group Company will enter into a deed of novation under which BVT shall be substituted as the contracting party to the Existing Contract in place of the relevant VT Group Company;
- (b) until any Relevant VT Group Contract is novated, VTG shall procure that the relevant VT Group Company shall hold it in trust for BVT absolutely and indefinitely and shall account to BVT promptly for any sums arising thereunder and either:
 - (i) BVT shall (if such sub-contracting is permissible and lawful under the Relevant VT Group Contract), as the relevant VT Group Company's sub-contractor, perform all the obligations of the relevant VT Group Company under the Relevant VT Group Contract to be discharged after the date of this Contract; or
 - (ii) the relevant VT Group Company (if such sub-contracting as is referred to in Clause 45.1.2(b)(i) is not permissible and lawful under the Relevant VT Group Contract) shall continue to perform and discharge that contract and exercise rights in respect thereof as BVT may direct or approve and not otherwise (provided any such direction is lawful and does not constitute a breach of the contract concerned) and BVT shall pay to the relevant VT Group Company, on or prior to the same becoming due, any costs, liabilities and expenses arising as a result of such performance and discharge and shall provide all reasonable facilities and assistance available to it to the relevant VT Group Company free of charge for such purpose;
- (c) if any contract entered into prior to the Establishment Date between any VT Group Company and a party other than the MoD is identified which relates to the Transferred Business, VTG shall procure that a copy of the same is supplied to BVT and if BVT considers that it is necessary for BVT to have the benefit of the contract (the **Relevant VT Group Third Party Contract**), to enable it to carry on the Transferred Business in succession to the relevant VT Group Company in the same manner in which it was being carried on prior to the Establishment Date, VTG shall at BVT's request procure that the relevant VT Group Company will assign the benefit of the same to BVT or enter into a deed of novation in a form acceptable to BVT under which BVT shall be substituted as the contracting party to the Relevant VT Group Third Party Contract in place of the relevant VT Group Company;
- (d) until any Relevant VT Group Third Party Contract is novated, VTG shall procure that the relevant VT Group Company shall hold it in trust for BVT absolutely and indefinitely and shall account to BVT promptly for any sums arising thereunder and either:
 - (i) BVT shall (if such sub-contracting is permissible and lawful under the Relevant VT Group Third Party Contract), as the relevant VT Group Company's sub-contractor,

perform all the obligations of the relevant VT Group Company under the Relevant VT Group Third Party Contract to be discharged after the date of this Contract; or

- (ii) the relevant VT Group Company (if such sub-contracting as is referred to in Clause 45.1.2(d)(i) is not permissible and lawful under the Relevant VT Group Third Party Contract) shall continue to perform and discharge that contract and exercise rights in respect thereof as BVT may direct or approve and not otherwise (provided any such direction is lawful and does not constitute a breach of the contract concerned) and BVT shall pay to the relevant VT Group Company, on or prior to the same becoming due, any costs, liabilities and expenses arising as a result of such performance and discharge and shall provide all reasonable facilities and assistance available to it to the relevant VT Group Company free of charge for such purpose.

45.2 BVT Undertakings

BVT undertakes to the MoD and the Founder Shareholders that:

- (a) it shall if required by the MoD enter into any deed of novation required by the MoD to be entered into by any Founder Group Company pursuant to Clause 45.1.1 (*BAES Undertaking*) or 45.1.2 (*VTG Undertakings*);
- (b) it shall comply with its undertakings in Clauses 45.1.1 (*BAES Undertaking*) and 45.1.2 (*VTG Undertakings*).

45.3 Conduct and management of BVT

45.3.1 BVT agrees with the MoD and the Founder Shareholders undertake to the MoD to use all of their powers as shareholders to procure that (other than with the prior written consent of the MoD):

- (a) the registered office of BVT shall remain in the United Kingdom;
- (b) BVT shall remain domiciled in the United Kingdom for tax purposes;
- (c) BVT shall not issue any shares other than to the then existing holders of shares in the capital of BVT.

45.3.2 BVT shall consult with the MoD prior to the appointment or replacement from time to time of the Individuals to the following senior management positions:

- (a) Chief Executive;
- (b) Commercial Director;
- (c) Finance Director;
- (d) Strategy and Planning Director;
- (e) Operations Group Director;
- (f) Engineering Director,

or such personnel with similar titles who carry out the same roles, and prior to any proposed restructuring or reorganisation of the BVT Group which may affect BVT's performance of its obligations in this Contract.

46 Ongoing Shareholder Support for BVT

46.1 BAES Undertakings

46.1.1 BAES undertakes to the MoD that for so long as it or any of its Affiliates is a shareholder in BVT, it shall (save as otherwise agreed in writing by the MoD):

- (a) provide BAES's Equitable Proportion of such support (financial or otherwise) that BVT may require from time to time to establish and maintain itself as a self-sufficient business capable of meeting its obligations from time to time under this Contract to the MoD as they fall due;
- (b) use BVT as the sole provider within the BAES Group for the design and build of surface ships or the provision of in-service support of surface ships at whole ship level for the MoD; and
- (c) not take any steps or allow any steps to be taken for the solvent winding-up of BVT;

46.1.2 The MoD agrees that to the extent it obtains recovery from BAES for breach of the undertaking given by BAES at Clause 46.1.1(a) it shall not be entitled to also recover under the deed of undertaking dated 27 January 1994 provided to the MoD by British Aerospace plc in respect of the same matter giving rise to the breach.

46.1.3 BAES agrees that neither it nor any other BAES Group Company has any right (whether actual or contingent, present or future) to make a claim against the MoD in relation to any matter (including in relation to any oral or written statement, representation or undertaking made by the MoD) relating to the establishment of the BVT joint venture or the actual or proposed acquisition on whatever terms by BAES of all of VTG's shares in BVT (other than in respect of a breach of a formal written Project Contract which has a MoD contract number allocated to it as at the date of this Contact) or any dispute between BAES and VTG in relation to the same and BAES irrevocably and unconditionally undertakes not to bring (and shall procure that no BAES Group Company shall bring) any such claim against the MoD in respect thereof and will indemnify the MoD for any costs or losses resulting from the breach of such undertaking, **provided, however**, that nothing in this provision prejudices BAES's rights of action in relation to any improper exercise of the MoD's discretion under Clause 48 (*VTG Exit*).

46.2 VTG Undertakings

46.2.1 VTG undertakes to the MoD that for so long as it or any of its Affiliates is a shareholder in BVT, it shall (save as otherwise agreed in writing by the MoD):

- (a) provide VTG's Equitable Proportion of such support (financial or otherwise) that BVT may require from time to time to establish and maintain itself as a self-sufficient business capable of meeting its obligations from time to time under this Contract to the MoD as they fall due;
- (b) use BVT as the sole provider within the VT Group for the design and build of surface ships or the provision of in-service support of surface ships at whole ship level for the MoD; and
- (c) not take any steps or allow any steps to be taken for the solvent winding-up of BVT.

46.2.2 VTG agrees that neither it nor any other VT Group Company has any right (whether actual or contingent, present or future) to make a claim against the MoD in relation to any matter (including in relation to any oral or written statement, representation or undertaking made by the MoD) relating to the establishment of the BVT joint venture or the actual or proposed acquisition on whatever terms by BAES of all of VTG's shares in BVT (other than in respect of a breach of a formal written Project Contract which has a MoD contract number allocated to it as at the date of this Contact) or any dispute between BAES and VTG in relation to the same and VTG irrevocably and unconditionally undertakes not to bring (and shall procure that no VT Group Company shall bring) any such claim against the MoD in respect thereof and will indemnify the MoD for any costs

or losses resulting from the breach of such undertaking, **provided, however**, that nothing in this provision prejudices VTG's rights of action in relation to any improper exercise of the MoD's discretion under Clause 48 (*VTG Exit*).

47 Founder Shareholder Guarantees

47.1 BAES Guarantee

47.1.1 BAES hereby irrevocably and unconditionally:

- (a) guarantees to the MoD as a continuing guarantee the payment when due by BVT of all sums due, owing or outstanding from BVT to the MoD under or arising from this Contract; and
- (b) guarantees to the MoD as a continuing guarantee the due and punctual performance by BVT of its obligations under this Contract; and
- (c) agrees, as a separate and independent obligation, as if it were the principal debtor and not merely a surety, to indemnify the MoD against all losses, damage, costs and/or expenses which the MoD may suffer through or arising from any failure by BVT to perform any of the guaranteed obligations to pay or perform specified in Clause 47.1.1(a) and 47.1.1(b) if any such guaranteed obligation to pay or perform is or becomes unenforceable, invalid or illegal, provided always that the amount of the losses, damage, costs and/or expenses under this indemnity shall be equal to the amount that the MoD would otherwise have been entitled to recover under the guarantees given in Clauses 47.1.1(a) and 47.1.1(b) in the absence of such unenforceability, invalidity or illegality.

47.1.2 BAES's liability under this Clause 47 shall not in any event be greater than the liability of BVT under this Contract, and shall be limited to BAES's Equitable Proportion (calculated as at the date of the issue of the relevant demand against BAES under this clause 47.1) of such liability.

47.1.3 The MoD shall be obliged before enforcing its rights under this Clause 47 to provide BAES with evidence that, after the date on which an amount has fallen due and payable by BVT pursuant to the terms of this Contract, the MoD has served a formal written demand for payment from BVT and BVT has failed to pay such amount within 5 Business Days.

47.1.4 The MoD shall be obliged before enforcing its rights under Clause 47.1.1(a) or 47.1.1(b) to provide BAES with evidence that the MoD has submitted a demand to VTG (for so long as VTG is a Shareholder) pursuant to Clause 47.2.5 on or about the same date as submitting a demand to BAES pursuant to this Clause 47.1.

47.1.5 No demand in respect of any breach of obligation of BVT shall be made under Clauses 47.1.1(a) and 47.1.1(b) unless the MoD first notifies BAES of any breach together with, if applicable, a demand for payment, and BAES, in the case of a claim under Clause 47.1.1(b), shall within 10 Business Days of service of MoD's notice, perform or procure the performance by BVT of the relevant obligations in accordance with the terms of this Contract.

47.1.6 All sums payable by BAES pursuant to Clauses 47.1.1(a) and 47.1.1(c) shall be paid immediately on demand by BAES and all sums payable by BAES shall be paid in full without any deduction, withholding, counterclaim or set-off. If BAES is compelled by law to make any deduction or withholding from any such sums or if any payment hereunder shall be or become subject to any tax, duty, levy or impost of any nature (whether before or after the same has been paid to the MoD) BAES shall immediately pay to the MoD such additional amount or amounts as shall result in payment to and retention by the MoD of the full amount which would have been received and retained by the MoD but for such deduction or withholding or the imposition of such tax, duty, levy or impost.

47.1.7 The obligations of BAES under this Clause 47.1 will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 47.1 (whether or not known to it or the MoD) including:

- (a) any time, waiver or consent granted to, or composition with, BVT or any other person;
- (b) the release of BVT or any other person under the terms of any composition or arrangement with any creditor of any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or any neglect to perfect, take up or enforce, any rights against, or security over assets of BVT or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members, name or status of BVT or any other person;
- (e) any amendment, replacement, variation, novation, assignment or the avoidance or termination of this Contract;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under this Contract; or
- (g) any insolvency, liquidation, administration or similar procedure.

47.1.8 Any release, settlement or discharge between the MoD and BAES shall be conditional upon no security or payment made or given to the MoD being avoided, reduced, set aside or rendered unenforceable by virtue of any provision or enactment now or hereafter in force relating to bankruptcy, insolvency or liquidation and if any such security or payment shall be avoided, reduced, set aside or rendered unenforceable the MoD shall be entitled to recover the full amount or value of any such security or payment from BAES and otherwise to enforce this Clause as if such release, settlement or discharge had not taken place.

47.1.9 Subject to Clauses 47.1.3 and 47.1.4, the MoD shall not be obliged before exercising any of its rights under this Clause 47.1 to take any action against, or make any demand from, BVT, VTG or any other person.

47.1.10 BAES agrees to be bound (but only to the extent BVT is bound) by all court judgements, adjudication or arbitration awards relating to this Contract and the resolution of any Dispute between BVT and the MoD in accordance with the Dispute Resolution Procedure.

47.2 VTG Guarantee

47.2.1 VTG hereby irrevocably and unconditionally:

- (a) guarantees to the MoD as a continuing guarantee the payment when due by BVT of all sums due, owing or outstanding from BVT to the MoD under or arising from this Contract; and
- (b) guarantees to the MoD as a continuing guarantee the due and punctual performance by BVT of its obligations under this Contract; and
- (c) agrees, as a separate and independent obligation, as if it were the principal debtor and not merely a surety, to indemnify the MoD against all losses, damage, costs and/or expenses which the MoD may suffer through or arising from any failure by BVT to perform any of its said guaranteed obligations specified in Clause 47.2.1(a) and 47.2.1(b) if any such guaranteed obligation to pay or perform is or becomes unenforceable, invalid or illegal, provided always that the amount of the losses, damage, costs and/or expenses under this indemnity shall be equal to the amount that the MoD would otherwise have been entitled to

recover under the guarantees given in clauses 47.2.1(a) and 47.2.1(b) in the absence of such unenforceability, invalidity or illegality.

- 47.2.2 VTG's liability under this Clause 47 shall not in any event be greater than BVT's liability under this Contract and shall be limited to VTG's Equitable Proportion (calculated as at the date of the issue of the relevant demand against VTG under this clause 47.2) of such liability.
- 47.2.3 The MoD shall be obliged before enforcing its rights under Clause 47.2.1(a) to provide VTG with evidence that, after the date on which an amount has fallen due and payable by BVT pursuant to the terms of this Contract, the MoD has served a formal written demand for payment from BVT and BVT has failed to pay such amount within 5 Business Days.
- 47.2.4 The MoD shall be obliged before enforcing its rights under Clause 47.2.1(a) or 47.2.1(b) to provide VTG with evidence that the MoD has submitted a demand to BAES pursuant to Clause 47.1.5 on or about the same date as submitting a demand to VTG pursuant to this Clause 47.2.
- 47.2.5 No demand in respect of any breach of obligation of BVT shall be made under Clauses 47.2.1(a) and 47.2.1(b) unless the MoD first notifies VTG of any breach together with, if applicable, a demand for payment, and VTG, in the case of a claim under Clause 47.2.1(b), shall within 10 Business Days of service of MoD's notice, perform or procure the performance by BVT of the relevant obligations in accordance with the terms of this Contract.
- 47.2.6 All sums payable by VTG pursuant to Clauses 47.2.1(a) and 47.2.1(b) shall be paid immediately on demand by VTG and all sums payable by VTG shall be paid in full without any deduction, withholding, counterclaim or set-off. If VTG is compelled by law to make any deduction or withholding from any such sums or if any payment hereunder shall be or become subject to any tax, duty, levy or impost of any nature (whether before or after the same has been paid to the MoD) VTG shall immediately pay to the MoD such additional amount or amounts as shall result in payment to and retention by the MoD of the full amount which would have been received and retained by the MoD but for such deduction or withholding or the imposition of such tax, duty, levy or impost.
- 47.2.7 The obligations of VTG under this Clause 47.2 will not be affected by any act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Clause 47 (whether or not known to it or the MoD) including;
- (a) any time, waiver or consent granted to, or composition with, BVT or any other person;
 - (b) the release of BVT or any other person under the terms of any composition or arrangement with any creditor of any person;
 - (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of BVT or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members, name or status of BVT or any other person;
 - (e) any amendment, replacement, variation, novation, assignment or the avoidance or termination of this Contract;
 - (f) any unenforceability, illegality or invalidity of any obligation of any person under this Contract; or
 - (g) any insolvency, liquidation, administration or similar procedure.
- 47.2.8 Any release, settlement or discharge between the MoD and VTG shall be conditional upon no security or payment made or given to the MoD being avoided, reduced, set aside or rendered

unenforceable by virtue of any provision or enactment now or hereafter in force relating to bankruptcy, insolvency or liquidation and if any such security or payment shall be avoided, reduced, set aside or rendered unenforceable the MoD shall be entitled to recover the full amount or value of any such security or payment from VTG and otherwise to enforce this Clause as if such release, settlement or discharge had not taken place.

47.2.9 Subject to Clauses 47.2.3 and 47.2.4, the MoD shall not be obliged before exercising any of its rights under this Clause 47.2 to take any action against, or make any demand from, BVT, BAES or any other person.

47.2.10 VTG agrees to be bound (but only to the extent BVT is bound) by all court judgments, adjudication or arbitration awards relating to this Contract and the resolution of any Dispute between BVT and the MoD in accordance with the Dispute Resolution Procedure.

48 VTG Exit

48.1 MoD Consent Required

BAES and VTG both acknowledge and agree that any transfer of shares in BVT by VTG whether as a result of any put or call option arrangement in place between BAES and VTG or otherwise shall require the prior written consent of the MoD. Any transfer of shares in BVT pursuant to this Clause 48 (*VTG Exit*) shall not be a Change in Control pursuant to Clause 52 (*Change in Control*).

48.2 VTG Exit after Three Years

Notwithstanding Clause 48.1 (*MoD Consent Required*), VTG may at any time after the third anniversary of the Establishment Date transfer all of its shares in BVT to BAES provided that:

- (a) VTG and BAES shall be able to confirm to the satisfaction of the MoD that VTG's exit will not prejudice the ability of BVT to achieve objectives and milestones set out in the then current version of the Transformation Plan in accordance with the requirements and timetables set out in such plan;
- (b) any change to BVT's Senior Management Team resulting from BVT's exit is acceptable to the MoD; and
- (c) VTG's exit will not result in the withdrawal of any resources or facilities previously provided by any VT Group Company to BVT which will not be replaced to the satisfaction of BVT (to be confirmed in writing by BVT to the MoD) by resources or facilities to be provided by the BAES Group.

48.3 VTG Exit within Three Years

Notwithstanding Clause 48.1 (*MoD Consent Required*), VTG may at any time within the period starting on the date of this Contract and ending on the third anniversary of the date of this Contract transfer all or any substantial proportion of its shares in BVT to BAES provided that:

- (a) VTG and BAES shall be able to confirm to the satisfaction of the MoD that VTG's exit will not prejudice the ability of BVT to achieve objectives and milestones set out in the then current version of the Transformation Plan in accordance with the requirements and timetables set out in such plan;
- (b) where the then current version of the Transformation Plan contains a milestone that has not been satisfied by the date required in the plan, BVT and the MoD shall agree a revision to the plan to address that issue;
- (c) any change to BVT's Senior Management Team immediately resulting from VTG's exit is acceptable to the MoD; and

- (d) VTG's exit will not result in the withdrawal of any resources or facilities previously provided by any VT Group Company to BVT which will not be replaced to the satisfaction of BVT (to be confirmed in writing by BVT to the MoD) by resources or facilities to be provided by the BAES Group.

48.4 If VTG ceases to have any Equitable Proportion as a result of an exit under this Clause 48, its liabilities to the MoD under this Contract shall cease from the date on which it ceases to have any Equitable Proportion, without prejudice to (i) any liability under any demand issued under Clause 47.2 prior to its exit, (ii) any antecedent liability; and (iii) any liability under Clauses 45.1.2, 46.2.2, 49.2, 57 (*Confidentiality and Freedom of Information*) and 58 (*Public relations and publicity*).

49 New Shareholders in BVT to accede to this Part 13

49.1 BAES shall procure that any permitted transferee of its shares in BVT shall as a condition to such transfer enter into a deed of accession with the MoD in a form acceptable to the MoD under which the transferee agrees to be bound to the provisions of Clauses 45.3 (*Conduct and management of BVT*), 46.1 (*BAES Undertakings*) and 47.1 (*BAES Guarantee*) to the extent of its Equitable Proportion of shares in BVT from time to time as if reference to BAES in such Clauses was to that transferee and pending the entry of such a deed BAES shall be deemed for the purposes of Clauses 45.3 (*Conduct and management of BVT*), 46.1 (*BAES Undertakings*) and 47.1 (*BAES Guarantee*) to remain the holder of the shares which are the subject of the transfer.

49.2 VTG shall procure that any permitted transferee of its shares in BVT (other than BAES pursuant to Clause 48) shall as a condition to such transfer enter into a deed of accession with the MoD in a form acceptable to the MoD under which the transferee agrees to be bound to the provisions of Clauses 45.3 (*Conduct and management of BVT*), 46.2 (*VTG Undertakings*) and 47.2 (*VTG Guarantee*) to the extent of its Equitable Proportion of shares in BVT from time to time as if reference to BVT in such Clauses was to that transferee and pending the entry of such a deed VTG shall be deemed for the purposes of Clauses 45.3 (*Conduct and management of BVT*), 46.2 (*VTG Undertakings*) and 47.2 (*VTG Guarantee*) to remain the holder of the shares which are the subject of the transfer.

49.3 BVT shall make it a condition to any allotment of shares in BVT that the allottee enter into a deed of accession with the MoD in a form acceptable to the MoD under which the allottee agrees to be bound to the provisions of Clauses 45.3 (*Conduct and management of BVT*), 46.1 (*VTG Undertakings*) and 47.1 (*BAES Guarantee*) to the extent of its Equitable Proportion of Shares in BVT from time to time as if reference to BAES in such Clauses was to that allottee.

Part 14 – Facilitation of BVT securing work for other customers

50 Facilitation of BVT securing work for other customers

50.1 Acknowledgement

The MoD and BVT acknowledge that BVT successfully securing work from customers other than the MoD may benefit both the MoD and BVT, including by:

- (a) reducing non-recurring costs;
- (b) spreading BVT's overheads, including as a result of longer production runs;
- (c) mitigating MoD liability to make KIC Payments pursuant to Clause 23 (*KIC Trigger Events and KIC Payments*).

50.2 MoD to consider facilitation

The MoD shall consider from time to time the extent to which it might facilitate BVT's endeavours to secure work from other customers.

50.3 No obligation

The MoD shall have no obligation whatsoever pursuant to this Contract to take or refrain from taking any action to facilitate BVT's endeavours to secure work from other customers.

50.4 No liability

50.4.1 The MoD shall have no liability of any kind whatsoever and howsoever arising (including in relation to negligence) should it:

- (a) take or refrain from taking any action to facilitate BVT's endeavours to secure work from other customers; or
- (b) should it choose not to do so.

50.4.2 Without prejudice to any obligation of MoD to pay such costs, all costs properly incurred by BVT in the pursuit of export contracts shall to the extent that they already are continue to be attributable overhead costs, recoverable from MoD in accordance with the Yellow Book. In the event that BVT is successful in securing export work the benefits from the increased volume of work shall also be reflected in the appropriate reductions in overheads and liabilities for KIC Payments and for the avoidance of doubt, to the extent that the MoD would have been liable for the overhead costs and to the extent that such overhead costs could not otherwise be removed through rationalisation by BVT, the benefits resulting from such export work shall contribute to Efficiency Savings subject to the export work being the subject of an Approved Transformation Benefit Proposals.

Part 15 – Miscellaneous

51 Change Procedure

- 51.1 Changes to this Contract (a **Change**) may be proposed by the MoD or BVT (the **Proposer**) notifying the other (the **Recipient**) of a proposed Change in accordance with Clauses 51.2 or 51.3 below.
- 51.2 The Proposer may propose a Change by serving a notice (a **Notice of Change**) on the Recipient.
- 51.3 The Notice of Change must:
- (a) set out the Change in sufficient detail to enable the Recipient to evaluate it in full;
 - (b) specify the Proposer's reasons for proposing the Change; and
 - (c) indicate if there are any dates by which a decision is critical.
- 51.4 The JPO shall prepare a written evaluation of the proposed Change (an **Evaluation Report**) dealing with the following matters:
- (a) whether the implementation of the Change by BVT would contravene any Legislation or would not be feasible or would otherwise prevent, impede or inhibit BVT from performing its obligations under this Contract;
 - (b) the proposed timetable for the implementation of the Change;
 - (c) an estimate of the costs, BVT Losses (which shall include loss of profit if relevant) or savings of implementing the Change and the effect of the Change on this Contract;
 - (d) any amendment required to this Contract as a result of the Change.
- 51.5 A Change to this Contract pursuant to any Notice of Change shall become valid upon the Recipient's written acceptance of the Change.
- 51.6 Any Notice of Change that requires an amendment to this Contract shall become valid only upon the Recipient's written acceptance of the Change (and where the Proposer is MoD, BVT shall deliver to it a signed DEFFORM 10B) have been issued and the separate written agreement of the duly authorised representatives of the Parties having been obtained in accordance with Clause 62.
- 51.7 The Proposer shall be entitled, at any time prior to the signing of the written acceptance by the Recipient of the Change to withdraw the Notice of Change served by it.
- 51.8 The JPO will agree a configuration control process which will be put in place in respect of documents produced pursuant to this Contract.

52 Change in Control

- 52.1 BVT and the Shareholders shall inform the MoD in writing, as soon as practicable, but in any event not less than 30 Business Days in advance, of any proposed change in control (as defined in Clause 52.2 below) of BVT or a BVT Subsidiary. Neither BVT nor any Shareholder shall be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of BVT, the relevant BVT Subsidiary or Shareholder in the UK or other jurisdictions where the relevant entity may be subject to legal sanction arising from issue of such advice.

- 52.2 For the purposes of this Clause 52.2 '**control**' means the power of a person to secure that the affairs of BVT or a BVT Subsidiary are conducted in accordance with the wishes of that person:
- (a) by means of holding of shares, or the possession of voting powers in, or in relation to, BVT or a BVT Subsidiary, or
 - (b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating BVT or a BVT Subsidiary,

and a **Change in Control** occurs if a Person who controls BVT or a BVT Subsidiary ceases to do so or if another person acquires control of BVT or a BVT Subsidiary (other than as a result of any transfer of shares in BVT by VTG to BAES pursuant to Clause 48 (*VTG Exit*)).

- 52.3 The notification referred to in Clause 52.1 shall be submitted to the MoD Representative and to:

Mergers and Acquisition Group
Directorate of Supplier Relations
Yew 1 #1154
Ministry of Defence
Abbey Wood
Bristol BS34 8JH

- 52.4 Advice by BVT or by the Shareholders of any Change in Control shall not prejudice the existing rights of the MoD or BVT under this Contract nor create or imply any rights of either BVT or the MoD additional to the MoD's right to receive that information.
- 52.5 For the purposes of this Clause 52, it remains the essence of this Contract that the construction and support (including Class Output Management) of Designated Naval Vessels and the provision of Key Industrial Capabilities are delivered onshore within the United Kingdom.
- 52.6 Where the MoD considers that the proposed Change in Control of BVT or the BVT Subsidiary would be contrary to the defence, national security or national interest of the UK, then the Change in Control shall not proceed until agreement with the MoD is established. Furthermore the Parties recognise that agreement is unlikely to be reached where the Change in Control would result in increased cost to the MoD in the future construction and support of Designated Naval Vessels. The MoD shall, without delay, engage with BVT in detailed discussions to enable BVT to understand the MoD's rationale in the event that the MoD does not agree to a proposed Change of Control.
- 52.7 In the event that there is a Change in Control of BVT or a BVT Subsidiary notwithstanding the objection of the MoD on the grounds set out in Clause 52.6 above the MoD shall be entitled to terminate this Contract immediately with neither compensation nor the Termination Charge being payable to BVT, any BVT Affiliate or any Shareholder.

53 Assignment and transfer

- 53.1 This Contract is binding on and shall enure for the benefit of BVT, each of the Shareholders and the MoD and their respective successors and permitted assignees.
- 53.2 No Party to this Contract may transfer, sell, assign, sub-contract, novate, create any encumbrance or otherwise dispose of this Contract or any part thereof, or any benefit, interest or advantage of this Contract or any part thereof without the prior written consent of the other Parties.

54 VAT

- 54.1 Contract Payments exclude any UK output Value Added Tax (VAT).

- 54.2 If BVT is required by law to account for VAT in respect of the supply for which any Contract Payments are due, the MoD shall pay on production of a valid tax invoice to BVT in addition to the Contract Payments a sum equal to the output VAT chargeable on such supply. If there is any doubt about the applicability of the tax, the MoD may require BVT to obtain and pass to the MoD a formal ruling from HM Revenue & Customs (HMRC) that such VAT is chargeable.

55 Representatives

55.1 MoD's Representative

The MoD shall appoint the person designated as "Commercial Officer" whose name, address and telephone number is set out in DEFFORM 111 (as appended at Part 1 of Schedule 13 (*Forms*)) as the MoD's Representative.

55.2 Change in MoD's Representative

- 55.2.1 The MoD may, at any time by notice to BVT change the MoD Representative and MoD shall (as far as practicable, consult with BVT prior to the appointment of any replacement MoD Representative, taking into account of the need for liaising and continuity in respect of this Contract. Any such notice shall specify the date on which such change or substitution shall have effect, which date shall, other than in the case of an emergency, be such as will not cause serious inconvenience to BVT in the execution of its obligations under this Contract.
- 55.2.2 During any period when the MoD's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Contract, the MoD's Representative may delegate his functions to another person by giving BVT's Representative written notice of the identity of such person and the extent of his authority.

55.3 BVT's Representative

- 55.3.1 BVT shall appoint the person whose name, address and telephone number is set out in Clause 64 (*Notices*) as BVT's Representative to act as BVT's Representative generally in connection with this Contract.

55.4 Change in BVT's Representative

- 55.4.1 BVT may, by notice to MoD and with MoD's approval, (such approval not to be unreasonably withheld or delayed) change BVT's Representative or appoint more than one BVT Representative (provided that if more than one BVT Representative is proposed, BVT shall provide written confirmation to the MoD's Representative of the extent of each person's authority). Where BVT wishes to do so it shall by written notice to the MoD propose a substitute for approval, taking into account the need for liaison and continuity in relation to the performance of BVT's obligations under this Contract. If the MoD approves the change to BVT's Representative, Clause 64 (*Notices*) shall be updated accordingly.
- 55.4.2 During any period when BVT's Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Contract, BVT's Representative may, with the MoD Representative's approval delegate his functions to another person by giving the MoD's Representative written notice of the identity of such person and the extent of his authority. The MoD's Representative shall not unreasonably withhold or delay his approval of the delegate under this Clause 55.4.2.

55.5 Notices to Representatives

Subject to Clause 64 (*Notices*) and the DEFFORM 111 appended to this Contract, any notice, information, instructions or public communication given to:

- 55.5.1 BVT's Representative shall be given in writing and shall be deemed to have been given to BVT;
and

55.5.2 the MoD's Representative shall be given in writing and shall be deemed to have been given to the MoD.

56 Security

56.1 The Official Secrets Act

BVT shall:

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

56.2 Security Aspects Letter

On or before the date of this Contract, the MoD shall provide BVT with a Security Aspects Letter which BVT shall sign and return.

56.3 Disclosure of Secret Matters

In addition to its obligations pursuant to Clause 57 (*Confidentiality and Freedom of Information*) BVT shall not, without the prior written consent of the MoD to do otherwise, either before or after the Termination Date or the expiry of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in a Secret Matter being disclosed to or acquired by a person in any of following categories:

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

56.4 Access to Secret Matters

In addition to its obligations pursuant to Clause 57 (*Confidentiality and Freedom of Information*), unless it has the prior written consent of the MoD to do otherwise, BVT shall, both before and after the Termination Date or the date of expiry of this Contract take all reasonable steps to ensure that:

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

The decision of the MoD on the question whether BVT has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 56.4 (*Access to Secret Matters*) shall be final and conclusive.

56.5 Persons with Access to Secret Matters

56.5.1 BVT shall provide to the MoD:

- (a) upon request, such records giving particulars of those Employees who have had at any time access to any Secret Matter;
- (b) upon request, such information as the MoD may require so as to be satisfied that BVT and the Employees are complying with this Clause 56, including the measures taken or proposed by BVT so as to comply with its obligations and to prevent any breach of them;
- (c) full particulars of any failure by BVT or any Employee to comply with this Clause 56 immediately upon such failure becoming apparent.

56.5.2 BVT shall ensure that, for the purpose of checking BVT's compliance with Clause 56.4(b), a representative of the MoD shall be entitled at any time to enter and inspect any of the premises used by BVT connected with this Contract and inspect any document or thing in any such premises, which is being used or made for the purposes of this Contract. Such representative shall be entitled to all such information as he may reasonably require.

56.5.3 Subject to Clause 57 (*Confidentiality and Freedom of Information*) if at any time either before or for two (2) years after the expiry of the Contract Period it comes to the notice of BVT that any unauthorised person is seeking or has sought to obtain information concerning any Secret Matter, BVT shall forthwith inform the MoD of the matter with full particulars thereof.

56.5.4 BVT shall place every person employed by it or a Sub-Contractor who in his opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to BVT to observe the same obligations in relation to that matter as are imposed on BVT by Clauses 56.3 (*Disclosure of Secret Matters*) and 56.5 (*Persons with Access to Secret Matters*). BVT shall, if directed in writing by the MoD's Representative, place every person who is specified in the direction or is one of a class of persons so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use his reasonable endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 56.5 (*Persons with Access to Secret Matters*) observes the said obligations, and BVT shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the MoD with all necessary particulars.

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

Breach of Security

56.7 If the MoD acting reasonably considers:

- (a) that BVT has committed a breach of or failed to comply with any of the foregoing provisions of this Clause 56; or
- (b) that BVT has committed a breach of any obligations in relation to secrecy or security imposed upon him by any other contract with the MoD, or with any department or person acting on behalf of Her Majesty,

(together a **Breach of Security**)

and the MoD decides that such Breach of Security presents a continuing material threat to the national security of the United Kingdom and that no other action taken by BVT (other than as specified in Clause 39.3.2(c)) is sufficient to remedy the breach then, the MoD acting by the decision of a Senior Civil Servant may serve BVT a Termination Notice in accordance with Clause 39 (*BVT Default*).

- 56.8 In exercising its rights or remedies under this Clause for a Breach of Security the MoD shall act in a reasonable and proportionate manner having regard to such matters as the gravity and materiality of, and the identity of the person performing, the Breach of Security.
- 56.9 A decision of the MoD to serve a Termination Notice in respect of Clause 56.7 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the MoD's decision is based other than as specified in Clause 39.3.2 (*Contents and effect of Termination Notice*).

57 Confidentiality and Freedom of Information

- 57.1 Except to the extent set out in this Clause 57, each Party agrees, for itself and its respective directors, officers, employees, servants, sub-contractors and agents (and in the case of BVT each BVT Subsidiary), to keep confidential and not to disclose to any person any of the other's Confidential Information.
- 57.2 Notwithstanding Clause 57.1, and subject to Clause 57.3, the following disclosures of Confidential Information shall be permitted:
- 57.2.1 any disclosure of Confidential Information that is reasonably required by persons engaged in the performance of their obligations under this Contract, including disclosure to professional advisers, Affiliates and Sub-Contractors to the extent necessary in connection with this Contract or in respect of BVT, the proper management of the affairs of BVT Group Companies;
- 57.2.2 any matter which a Party can demonstrate is already in the public domain otherwise than as a result of a breach of this Contract;
- 57.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
- 57.2.4 any disclosure which is required by any law (including any order of a court of competent jurisdiction), any parliamentary obligation or the rules of any relevant stock exchange or governmental or regulatory authority having the force of law;
- 57.2.5 any disclosure of Confidential Information which is already in the possession of the receiving party and is not subject to obligations of confidentiality, prior to its disclosure by the disclosing party;
- 57.2.6 any disclosure by either Party as may be reasonably required:
- (a) to any person in connection with the carrying out of a Strategic Review or any Benchmarking Exercise to be carried out pursuant to this Contract;
 - (b) to any other consultant engaged by a Party in connection with this Contract provided the other party has been consulted in advance and the relevant consultant has, if required, entered into a confidentiality agreement in a form required by the other party (acting reasonably);
 - (c) to any person conducting an Office of Government Commerce gateway review; and
 - (d) by BVT, in respect of the circulation of this Contract to a BVT Subsidiary.
- 57.2.7 any disclosure of BVT Confidential Information by the MoD to any other department, office or agency of HM Government or any Ally;
- 57.2.8 any disclosure by the MoD of any document related to this Contract to which it is a party and which BVT (acting reasonably) has agreed with the MoD contains no BVT Confidential Information; and
- 57.2.9 any disclosure for the purpose of:
- (a) the examination and certification of the MoD's or BVT's accounts; or

- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the MoD has used its resources; and
- 57.2.10 any use or disclosure of Confidential Information that is otherwise expressly permitted under this Contract.
- 57.3 Where disclosure is permitted under Clause 57.2, other than Clauses 57.2.2, 57.2.4, 57.2.5, 57.2.8 and 57.2.9(a), the relevant party shall procure that the recipient of the information shall be subject to substantially the same obligation of confidentiality as that contained in this Clause 57 and will if required sign a Confidentiality Agreement.
- 57.4 For the purposes of the National Audit Act 1983, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of BVT and any Sub-Contractor and may require BVT and any Sub-Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to BVT is not a function exercisable under this Contract.
- 57.5 Clause 57.3 shall not prevent the MoD or any other department, office or agency of HM Government from using or disclosing any information about this Contract as necessary to secure improvements in value for money across HM Government and in any reports as necessary to comply with the objectives of the relevant department, office or agency.
- 57.6 BVT shall procure that no BVT Group Company and no Employee shall make use of any MoD Confidential Information otherwise than for the purpose of this Contract and BVT's performance of its obligations under this Contract, except with the written consent of the MoD.
- 57.7 No Shareholder nor any employee of such Shareholder shall make use of any MoD Confidential Information otherwise than for the purpose of this Contract and BVT's performance of its obligations under this Contract, except with the written consent of the MoD.
- 57.8 BVT acknowledges that the MoD is subject to the requirements of the Freedom of Information Act 2000 (**FOI Act**) and the Environmental Information Regulations and shall assist the MoD's compliance with its FOI Information disclosure requirements pursuant to the same in the manner provided for in Clauses 57.9 to 57.13 (inclusive) below.
- 57.9 Where the MoD receives a Request for Information in relation to FOI Information that BVT is holding on its behalf under this Contract, BVT shall at the MoD's request to the BVT Representative and as soon as is practicable, provide an estimate of the total time for complying with the request to enable the MoD, in compliance with the FOI Act, to assess the extent to which it wishes BVT to provide the MoD with support as set out in this Clause 57.9. BVT shall then:
- 57.9.1 provide the MoD's Representative with a copy of all such FOI Information in the form that the MoD's Representative requires; and
- 57.9.2 provide all necessary assistance as reasonably requested by the MoD's Representative in connection with any such FOI Information, to enable the MoD to respond to a Request for Information within the time for compliance set out in section 10 of the FOI Act or Regulation 5 of the Environmental Information Regulations.
- 57.10 The MoD shall notify the BVT of any FOI request which relates to any Commercially Sensitive Information which it holds.
- 57.11 Following notification under Clauses 57.9 or 57.11, and up until such time as BVT has provided the MoD's Representative with all the FOI Information specified in Clause 57.9.1, BVT may make representations to the MoD's Representative as to whether or not or on what basis FOI Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the MoD shall be responsible for determining at its absolute discretion:

- 57.11.1 whether any Confidential Information and/or any other FOI Information is exempt from disclosure under the FOI Act and the Environmental Information Regulations;
- 57.11.2 whether FOI Information is to be disclosed in response to a Request for Information, and in no event shall BVT respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the MoD's Representative.
- 57.12 BVT acknowledges that any lists provided by them listing or outlining Commercially Sensitive Information, are of indicative value only and that the MoD may nevertheless be obliged to disclose Commercially Sensitive Information in accordance with the requirements of the FOI Act and the Environmental Regulations.
- 57.13 BVT acknowledges that (notwithstanding the provisions of Clauses 57.8 to 57.12) the MoD may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOI Act 2000 (the **Code**), be obliged under the FOI Act, or the Environmental Information Regulations to disclose FOI Information concerning BVT:
- 57.13.1 in certain circumstances without consulting with BVT; or
- 57.13.2 following consultation with BVT and having taken its views into account, provided always that where Clause 57.13.1 applies the MoD's Representative shall, in accordance with the recommendations of the Code, take reasonable steps, where appropriate, to give BVT advanced notice, or failing that, to draw the disclosure to BVT's attention after any such disclosure.
- 57.14 The provisions of this Clause 57 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

58 Public relations and publicity

Neither BVT nor any Principal Shareholder shall by itself, its employees or agents communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract (unless it has consulted and obtained the prior consent of the MoD's Representative).

59 Data Protection

- 59.1 BVT shall (and shall procure that each BVT Group Company shall) in relation to Personal Data it receives from the MoD pursuant to this Contract and the MoD shall in relation to Personal Data it receives from BVT pursuant to this Contract:
- (a) process any Personal Data obtained pursuant to this Contract only to the extent, and in such manner, as is necessary for the carrying out of its obligations under or in connection with this Contract or as is required by Legislation or any Regulatory Body;
 - (b) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (c) take reasonable steps to ensure the reliability of any personnel who have access to any Personal Data;
 - (d) ensure that all employees required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 59.1 (*Data Protection*);

- (e) notify the other (within 5 Business Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the MoD's and any BVT Group Company obligations under the Data Protection Legislation;
 - (iii) provide the other with full cooperation and assistance in relation to any complaint or request made, including by:
 - (aa) providing the other with full details of the complaint or request;
 - (bb) complying with a data access request within the relevant timescales set out in the Data Protection Legislation; and
 - (cc) providing the other with any Personal Data it holds in relation to a Data Subject (within the timescales required by the MoD);
- (f) not process such Personal Data outside the European Economic Area without the prior written consent of the other and, where consents is given, to comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred.

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

60 Intellectual Property Rights

60.1 Licence to use the Business Enterprise Model

- 60.1.1 BVT grants to the MoD a licence to Use the data included in the BEM and the results of any run of the BEM in accordance with Clause 60.4.5 and has secured for the MoD direct rights from EY to Use the BEM software on the terms set out in the letter dated 15 July 2009 from EY to the MoD (the **Release Letter**).
- 60.1.2 BVT warrants that so far as it is aware Use of the BEM in accordance with the Release Letter shall not infringe any third party Intellectual Property Rights.
- 60.1.3 The MoD acknowledges that the data supplied by BVT and included in the BEM constitutes BVT Confidential Information and any disclosure of the same to a third party shall be governed by Clause 57 (*Confidentiality and Freedom of Information*).
- 60.1.4 On entering into this Contract BVT shall supply or procure that EY shall supply the MoD with one copy of the BEM software on a CD-Rom which it may install five times (save that there shall be no limit on the number of times the BEM software may be installed or re-installed on the same or a replacement single computer in the event of a software or hardware failure). BVT shall ensure that EY supplies the copy of the BEM in the same format and form as delivered by EY to BVT.
- 60.1.5 When BVT receives any upgraded or modified version of the BEM software from EY, BVT shall, procure that the MoD shall be provided with copy of the same free of charge together with the same rights to Use the same as the MoD enjoyed in respect of the original BEM software.
- 60.1.6 Nothing in this Contract shall affect the ownership of the Intellectual Property Rights in the BEM nor the ability of BVT within their rights to make upgrades or otherwise modify the BEM to produce a new model where such new model is for use by BVT in relation to its non-MoD business. BVT shall ensure that any such new model is then maintained independently of the BEM under this Contract and that the new model is distinguished.

60.1.7 In the event that the BEM software fails to provide sufficient functionality to enable the JPO to analyse Efficiency Savings in respect of overheads or if additional functionality is required by the MoD, the JPO shall identify the deficiency or new requirement and discuss development and implementation of the required changes to remedy the deficiency or new requirement with EY.

60.2 Licence to Use the KIC Model

60.2.1 BVT grants to the MoD the right to Use the KIC Model on the basis set out in this Clause 60.2.

60.2.2 The MoD shall have in respect of the KIC Model a perpetual, irrevocable, non-exclusive, worldwide and free of charge licence (or sub-licence) to:

- (a) Use the KIC Model in connection with this Contract;
- (b) supply a copy of the KIC Model to and authorise any United Kingdom Government Department (which term includes the UK Armed Forces) to Use the KIC Model in connection with this Contract;
- (c) supply a copy of the KIC Model to and authorise any third party engaged in any regulatory function on behalf of the UK Government to Use the KIC Model in the exercise of its regulatory powers;
- (d) supply a copy of the KIC Model to and authorise any third party engaged by the MoD to Use the KIC Model on behalf of the MoD in connection with this Contract or any other contract entered into between BVT and the MoD or the MoD initiative in which BVT is involved;
- (e) supply with the prior written consent of BVT a copy of the KIC Model to and authorise any other third party to Use the KIC Model for purposes other than those set out in Clauses 60.2.2(c) and (d) provided that BVT shall not unreasonably withhold or delay its consent to the release of the KIC Model for use by such a third party; and
- (f) run unlimited demonstrations for any person of the KIC Model without giving to such person any copy of the KIC Model which would otherwise be in breach of this Clause 60.2.

60.2.3 The MoD acknowledges that the data supplied by BVT and included in the KIC Model constitutes BVT Confidential Information and any disclosure of the same to a third party shall be governed by Clause 57 (*Confidentiality and Freedom of Information*).

60.2.4 On entering into this Contract BVT shall supply the MoD with 5 copies of the KIC Model software on separate CD-ROMs.

60.2.5 BVT warrants that the KIC Model shall have sufficient functionality to enable the MoD to properly and accurately calculate any KIC Payment falling due in a month during the Contract Period in accordance with Part 7 (*Key Industrial Capability*) and in addition, the KIC Model will entitle the forecasting of future potential KIC Payment liabilities based on workload assumptions agreed by the JPO.

60.2.6 In the event of a breach of the warranty set out in Clause 60.2.5 BVT shall itself (or at its cost procure that a software developer shall) expeditiously carry out all necessary modifications and enhancements to the KIC Model so that the KIC Model supplies the functionality warranted in Clause 60.2.5.

60.2.7 If BVT makes any upgrades or otherwise modifies the build standard of the KIC Model it shall notify the MoD and provide without charge to the MoD the upgraded or changed KIC Model.

60.2.8 Nothing in this Contract shall affect the ownership of the Intellectual Property Rights in the KIC Model nor the ability of BVT within its rights to make upgrades or otherwise modify the KIC Model to produce a new model where such new model is for use by BVT in relation to its non-MoD

business. BVT shall ensure that that any such new model is then maintained independently of the KIC Model under this Contract and that the new model is readily distinguished.

60.2.9 BVT warrants that it has the rights to grant the licence provided at Clause 60.2.2 and that, so far as it is aware, Use of the KIC Model in accordance with that licence shall not infringe any third party Intellectual Property Rights.

60.3 Licence to Use any new model developed during the Contract Period

If, at any time during the Contract Period, BVT or a third party developer on BVT's behalf should develop at MoD's cost or otherwise jointly develop with the MoD any software model in addition to or in substitution for the BEM or KIC Model for use in connection with this Contract from time to time (a **New Model**) BVT shall (to the extent title is not vested in the MoD) upon demand grant or procure a licence or sub-licence as appropriate in respect of such New Model in the same form as set out in Clause 60.2, the provisions of which shall apply mutatis mutandis in relation to the New Model as if reference to the KIC Model was to such New Model with the warranty in Clause 60.2.5 as to functionality amended to refer to the use for which the New Model was developed or commissioned.

60.4 Intellectual Property Rights in materials produced or commissioned by the Governance Bodies or provided by BVT

60.4.1 All Intellectual Property Rights in and title to all minutes, reviews, papers, reports, diagrams, designs, charts, databases and other works of authorship and all related drafts and working papers produced by the members of the Governance Bodies (or otherwise commissioned after the Commencement Date at the MoD's cost) by the Governance Bodies (whether individually, collectively or jointly and on whatever media and whether written or prepared before or after the date of this Contract), (together, **Developed Materials**), shall be owned by and vest in the MoD or as otherwise required by the MoD.

60.4.2 BVT hereby assigns (or shall procure that the proprietor (other than any MoD personnel) of the relevant rights assigns) to the MoD with full title guarantee by way of present and future assignment of copyright, database right and any other Intellectual Property Rights in the Developed Materials free from any lien, charge or other encumbrance.

60.4.3 BVT hereby unconditionally and irrevocably waives, or shall ensure that, other than where created by MoD personnel, the owner in any moral rights in the Developed Materials unconditionally and irrevocably waives, all such moral rights as may arise in them.

60.4.4 The MoD hereby grants to BVT, (with the right to sub-licence to any other BVT Group Company) a royalty-free and non-exclusive licence to copy, use and adapt the Developed Materials as necessary for the performance by BVT of its obligations under this Contract.

60.4.5 Where BVT provides or discloses any information or materials in tangible or intangible form to the MoD or any Governance Body, whether at a meeting of a Governance Body or otherwise, in connection with this Contract which do not constitute Developed Materials or MoD Data, BVT hereby grants to the MoD a worldwide, non-exclusive, royalty-free licence (with power to sub-licence) to copy, use and adapt such information and materials and (subject to Clause 57 (*Confidentiality and Freedom of Information*) in the case of BVT Confidential Information) disclose the same in connection with this Contract.

60.4.6 This Clause 60.4 (*Intellectual Property Rights*) is without prejudice to the provisions of Clause 57 (*Confidentiality and Freedom of Information*) in relation to BVT Confidential Information.

60.5 MoD Data

60.5.1 Subject to Clause 60.5.2, the MoD hereby grants to BVT a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the MoD Data.

60.5.2 The licence granted in Clause 60.5.1:

- (a) includes the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with BVT on the same terms as set out in Clause 57 (*Confidentiality and Freedom of Information*); and
- (b) is granted solely to the extent necessary for the purposes of this Contract. BVT shall not, and shall procure that the Sub-Contractors do not, use the MoD Data for any other purpose or for the benefit of any person other than the MoD.

60.5.3 Save for the licence granted in Clause 60.5.1, BVT shall not acquire any right, title or interest in or to the Intellectual Property Rights of the MoD in the MoD Data and where any Affiliate of BVT acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with this allocation of title, BVT shall procure that the relevant BVT Affiliate shall assign in writing such Intellectual Property Rights as it has acquired to the MoD on the request of the MoD (whenever made).

60.5.4 BVT shall not (and shall procure that no Affiliate of BVT shall) delete or remove any proprietary notices contained within or relating to the MoD Data.

60.5.5 BVT shall not (and shall procure that no Affiliate of BVT shall) store, copy, disclose or use the MoD Data except as necessary for the performance by BVT of its obligations under this Contract or as otherwise expressly authorised in writing by the MoD.

60.5.6 BVT shall take responsibility for preserving the integrity of the MoD Data and preventing the corruption or loss of the MoD Data.

60.5.7 BVT shall ensure that any system on which any Affiliate of BVT holds any MoD Data, including back-up data, is a secure system that complies with the MoD's Security Requirements.

60.5.8 If the MoD Data is corrupted, lost or sufficiently degraded as a result of BVT's default so as to be unusable, the MoD may:

- (a) require BVT (at BVT's expense) to restore or procure the restoration of the MoD Data and BVT shall do so as soon as practicable; and/or
- (b) itself restore or procure the restoration of the MoD Data, and shall be repaid by BVT any reasonable expenses incurred in doing.

60.5.9 If at any time BVT suspects or has reason to believe that the MoD Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then BVT shall notify the MoD immediately and inform the MoD of the remedial action BVT proposes to take.

60.6 Intellectual Property Rights in Project Contracts and Dockyard Contracts and new MoD Work

60.6.1 BVT and the MoD agree that the Intellectual Property Rights in respect of Project Contracts and Dockyard Contracts shall continue to be described in and governed by the terms of those contracts and this Clause 60 (*Intellectual Property Rights*) shall not supersede or amend those rights in any way.

60.6.2 BVT and the MoD agree that Intellectual Property Rights for any future Designated Naval Vessels ordered from BVT and any Work contracted by the MoD after the Commencement Date (including in relation to technical or design activity for the development, design, manufacture, in-service support or disposal of any Designated Naval Vessel) shall be agreed on a case-by-case between the MoD and BVT and shall be set out in the agreed contracting arrangements for such Designated Naval Vessels or Work and the provisions of Clause 60.4 (*Intellectual Property Rights etc.*) shall not apply thereto.

61 Measures in a Crisis

61.1 Notice of Events

If, at any time, the MoD believes, in its sole opinion, that there exist circumstances to which Clause 61.2 (*Trigger Events*) applies, it may issue a notice in writing to BVT of such belief.

61.2 Trigger Events

The circumstances referred to in Clause 61.1 are where, in view of:

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

it is necessary, appropriate or desirable for the MoD to take all or any of the measures described in Clauses 61.3 to 61.6.

61.3 Effect of Implementation of Measures in a Crisis

If the MoD has issued the notice contemplated in Clause 61.1 (*Notice of Events*), the MoD may require BVT, within such period as may be specified by the MoD in its sole discretion, to provide such information as the MoD may in its sole discretion require, including, without limitation, information relating to all or any of the following matters:

- 61.3.1 the services under any Project Contract or Dockyard Contract or any obligation of BVT under this Contract currently being carried out by BVT for:
 - (a) the MoD; and
 - (b) any third parties;
- 61.3.2 the services under any Project Contract or Dockyard Contract or any obligation of BVT under this Contract to be carried out by BVT (and due to commence within a period specified by the MoD) for:
 - (a) the MoD; and
 - (b) any third parties;
- 61.3.3 BVT's current deployment of its employees.

61.4 Good faith discussion

Upon providing the MoD with the information requested pursuant to Clause 61.3 (*Effect of Implementation of Measures in a Crisis*), or upon expiry of the period specified by the MoD for the supply of such information, BVT shall, upon being so requested by the MoD, discuss in good faith with the MoD any matters which the MoD, in its sole opinion, may consider relevant or appropriate to any proposals the MoD may have for the reallocation of priorities for, or for the reorganisation of, services under any Project Contract or Dockyard Contracts carried out, or to be carried out, by BVT. These will be in order to deal with the circumstances which gave rise to the issuing of a notice pursuant to Clause 61.1 (*Notice of Event*), including, without limitation, the following matters:

- (a) the revision (including the early completion, suspension or permanent cessation) of the provision of any services under any Project Contract or Dockyard Contract or any obligation of BVT under this Contract for the MoD;
- (b) the early completion, suspension, or permanent cessation of any services under any Project Contract or Dockyard Contract or any obligation of BVT under this Contract by BVT for third parties;
- (c) the immediate implementation of new services under any Project Contract or Dockyard Contract or any obligation of BVT under this Contract; and
- (d) the MoD and BVT shall endeavour, as far as reasonably possible, to reach agreement as a matter of urgency on such matters.

61.5 MoD Overriding Right

Notwithstanding any provision to the contrary in this Contract (but without prejudice to Clause 61.8), and notwithstanding that any of the measures described in Clauses 61.3 (*Effect of Implementation of Measures in a Crisis*) and 61.4 (*Good faith discussion*) may not have been taken, required to be taken, or have been completed, the MoD may, at any time and in its sole discretion, require BVT to use all reasonable endeavours to comply fully with any written instructions issued by the MoD including, without limitation, instructions issued in relation to all or any of the following matters:

- 61.5.1 to accelerate to early completion, to suspend, or to cease permanently any services under any Project Contract or Dockyard Contract or any obligation of BVT under this Contract carried out by BVT for third parties;
- 61.5.2 to remove (permanently or temporarily) the property of third parties from the facilities operated or owned by BVT in connection with any Project Contract or Dockyard Contract or any obligation of BVT under this Contract and to use all reasonable endeavours to procure that any such action is carried out on terms with such parties which result in the least possible loss or damage;
- 61.5.3 to accelerate to early completion, to suspend or to cease permanently any of the services under any Project Contract or Dockyard Contract or any obligation of BVT under this Contract carried out or to be carried out by BVT;
- 61.5.4 to carry out any changes whatsoever to any services required by the MoD without reference to the Change Procedure in Clause 51 (*Change Procedure*);
- 61.5.5 to deploy its employees, its stocks of materials, plant, equipment and other supplies and/or to use, or make available for use by the MoD, or as directed by the MoD, the premises, plant and machinery; and
- 61.5.6 in addition, the MoD may instruct BVT to suspend any Strategic Rationalisation Plan or rationalisation occurring through the implementation of an Approved Transformation Benefit Proposal; and/or
- 61.5.7 to suspend BVT's exclusivity rights relating to Designated Naval Vessels where BVT has insufficient or no capacity to construct Naval Vessels.

61.6 Notice of Cessation

The provisions of Clauses 61.3 to 61.5 shall cease to apply when the MoD issues a written notice to that effect to BVT.

61.7 MoD's Representative

Any action or measures which the MoD may, or is required to, take pursuant to the provision of this Clause may validly be taken by MoD's Representative.

61.8 MoD's Indemnity on Measures in a Crisis

If the MoD instructs BVT pursuant to this Clause 61 (*Measures in a Crisis*) to take any actions not otherwise required under this Contract, to the extent that such work is not covered by express agreement between the MoD and BVT or under a Project Contract or Dockyard Contract:

- 61.8.1 for so long as such instructions prevent BVT from complying with any of its obligations under this Contract, BVT shall be relieved from any action for failure to comply with such obligations;
- 61.8.2 the MoD shall indemnify BVT against any Direct Losses and any Indirect Losses it incurs arising out of the instructions of the MoD for required action pursuant to Clause 61.5 (*MoD overriding right*) and BVT and any BVT Subsidiaries shall use all reasonable endeavours to mitigate against any liabilities of the MoD arising in respect of the indemnities under this Clause 61.8 provided that there shall be no double recovery where BVT or a BVT Subsidiary receives any payment under an indemnity for Direct or Indirect Losses under any existing Project Contract or Dockyard Contract.

62 Amendments to Contract

62.1 Written Agreement

- 62.1.1 Without prejudice to Clause 51 (*Change Procedure*) but subject to Clauses 62.1.2 to 62.1.4 below, this Contract may not be amended except by the written agreement of the duly authorised representatives of the Parties.
- 62.1.2 The consent to any amendment shall be deemed to have been given by BAES where BVT has agreed the amendment other than in the case of amendments to Clauses 6.1.1(a) - 6.1.1(g) (inclusive), 6.1.1(j) - 6.1.1(l) (inclusive), 45.1.1, 45.3.1, 46.1, 47.1, 48, 49.1 and this Clause 62.1.2 where BAES's express written consent is required.
- 62.1.3 The consent to any amendment shall be deemed to have been given by VTG where BVT has agreed the amendment other than in the case of amendments to Clauses 6.1.1(a) - 6.1.1(g) (inclusive), 6.1.1(j) - 6.1.1(l) (inclusive), 45.1.2, 45.3.1, 46.2, 47.2, 48, 49.2 and this Clause 62.1.3 where VTG's express written consent is required.
- 62.1.4 The written consent of BVT shall not be required to amendments to Clauses 46.1.2, 46.1.3, 46.2.2, 47, 48.2, 48.3, 48.4, 49.1 and 49.2.
- 62.1.5 The written agreement of the Parties shall be obtained only by:
 - (a) a serially numbered amendment being issued to the relevant party by the MoD. The amendment shall come into force only when the relevant party has despatched to the MoD on a DEFFORM 10B an unqualified acceptance of the MoD's offer; or
 - (b) the despatch by the MoD of a serially numbered amendment letter as an unqualified acceptance of an offer from the relevant party.
- 62.1.6 The members of the POG will be supplied with copies of all serially numbered amendments to the Contract issued by the MoD pursuant to Clause 62.1.5(a).

62.2 Invalid Amendments

Any purported amendment to this Contract which does not satisfy the terms of this Clause shall be of no effect.

63 Severability

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

- (a) such provision shall (to the extent it is invalid, illegal or unenforceable) be given no effect and shall be deemed not to be included in this Contract but without invalidating any of the remaining provisions of this Contract which shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated; and
- (b) the Parties shall use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.

64 Notices

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

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

64.2 Notices should be delivered by:

- (a) hand or recorded delivery;
- (b) first-class prepaid post (or airmail, in the case of Notices to or from overseas);
- (c) facsimile.

64.3 Notices shall be deemed to have been received:

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

64.4 The addresses of each Party to which all Notices shall be sent are those specified in this Contract, or such other address as any party may by written Notice specify to the others for the purpose of this Clause 64:

(a) **MoD**

MCP BVT ToBA Commercial Deputy Director
McIntosh Building
Abbey Wood
Bristol
BS34 8JH

Attention: [REDACTED]

(b) **BVT**

BVT Surface Fleet Limited
The Old Iron Foundry
Bldg 1/140
Pp 204
HM Naval Base
Portsmouth
PO1 3NB

Attention: [REDACTED]

(c) **BAES**

BAE Systems plc
6 Carlton Gardens
London
SW1Y 5AD

Attention: [REDACTED]

(d) **VTG**

VT Group plc
VT House
Grange Drive
Hedge End
Southampton
SO30 2DQ

Attention: [REDACTED]

64.5 Where any Party requests written confirmation of any communication which does not constitute a Notice such request shall not unreasonably be refused.

65 Entire agreement

65.1 Entire agreement

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

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

65.2 Representations and reliance

65.2.1 Each Party waives all Claims, rights and remedies for all representations:

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

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

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

66 Rights of third parties

66.1 Except as provided in Clause 66.2 and notwithstanding anything to the contrary elsewhere in this Contract, no right is granted to any person who is not a party to this Contract to enforce any term of this Contract in his own right pursuant to the Contracts (Rights of Third Parties) Act 1999 and the Parties to this Contract declare that they have no intention to grant any such right.

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

- (a) the said third party shall be entitled to enforce that term in his own right;
- (b) BVT or the MoD shall inform the said third party as soon as is reasonably practicable of the existence of the relevant right together with any other terms (including the terms of this Contract) relevant to the exercise of that right; and
- (c) the third party's rights shall be subject to any provision in this Contract:
 - (i) that provides for the submission of disputes under this Contract generally or the said rights in particular to arbitration (such as the Dispute Resolution Procedure); and
 - (ii) that stipulates the law and jurisdiction that will govern this Contract.

67 Survival

Save as otherwise expressly provided in this Contract:

- (a) termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the Termination Date; and
- (b) termination of this Contract shall not affect the continuing rights or obligations of the Parties under Clauses 13 (*Strategic Rationalisation*), 56 (*Security*), 31 (*Payment provisions*), 37 (*Reporting*), 60 (*Intellectual Property Rights*), 57 (*Confidentiality and Freedom of Information*), 42 (*Payment for Termination*), 43 (*Alternative Work after CVF Termination*), 46.1.3, 46.2.2, 33 (*Dispute Resolution*), 72 (*Governing Law and Jurisdiction*), 66 (*Rights of Third Parties*), or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

68 Legal relationship between the Parties

68.1 No partnership

The Parties do not intend this Contract to create any partnership between them as a matter of law. Accordingly, nothing in this Contract or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association between the Parties.

68.2 Independent Contractor

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

68.3 No delegation

No provision of this Contract shall be construed as a delegation by the MoD of any of the MoD's statutory authority to BVT, BAES or VTG.

68.4 No Agency

None of BVT, any BVT Affiliate, BAES and VTG shall be or be deemed to be an agent of the MoD and none of BVT, any BVT Affiliate, BAES and VTG shall hold itself out as having authority or power to bind the MoD in any way. BVT, BAES and VTG shall not have the benefit of any immunity of HM Government and, unless otherwise agreed by the MoD, shall apply for and obtain all consents, licences and permissions which BVT, BAES or VTG would otherwise be obliged to obtain under any law on the basis that it does not have the benefit of any immunity of HM Government.

69 Remedies and waivers

69.1 Waiver must be in writing

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

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

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

69.2 Limited exercise is not a waiver

This Clause 69 applies if a Party becomes entitled to exercise any right or remedy under this Contract or by law or regulation. No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:

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

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

69.3 Rights and remedies are cumulative

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

70 Number of executed copies

This Contract shall be executed in quadruplicate by the Parties, each copy of which when executed and delivered shall be an original but together constitute one instrument.

71 Further Assurance

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

72 Governing law and jurisdiction

72.1 English law governs this Contract, its interpretation and any non-contractual obligations arising from or connected with it.

72.2 Subject to the Dispute Resolution Procedure and Clause 72.3, the Parties irrevocably agree, that the English courts are to have jurisdiction to settle any claim or matter arising out of or in connection with this Contract. Accordingly, any suit, action or proceeding arising out of or in connection with this Contract (**Proceedings**) may be brought in those courts.

72.3 Nothing in this Clause shall limit the right of the MoD to take Proceedings against any other Party in any other court of competent jurisdiction, nor shall the taking of Proceedings in any one or more jurisdictions prevent Proceedings being taken in any other jurisdiction, whether concurrently or not.

72.4 Each of BVT, VTG and BAES agrees that a judgment or order of an English court in a dispute falling within Clause 72.2 is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

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

Schedule 1 – Conditions Precedent

The MoD has received from BVT:

- 1 a Certified Copy of the board resolutions of BVT and its extracts from the committee minutes (all in agreed form) of each Shareholder approving, inter alia, the execution, delivery and performance of this Contract, together with any power of attorney issued by BVT or either Shareholder in relation thereto, and associated minutes and resolutions authorising the execution and issue of such power of attorney (all in agreed form);
- 2 Certified Copies of the Memorandum and Articles of Association of BVT and each Shareholder; and
- 3 1 copy of the BEM software and 5 copies of the KIC Model software.

Schedule 2 – Dispute Resolution Procedure

1 Introduction

- 1.1 For the purposes of this Contract a **Dispute** shall mean any Claim, difference or dispute of whatever nature between BVT and the MoD arising under, out of or in connection with this Contract (including without limitation any question regarding its existence, validity, termination or interpretation).
- 1.2 Reference to "parties" in this Schedule 2 (*Disputes*) is to BVT and the MoD.
- 1.3 BVT and the MoD irrevocably agree to use the Dispute Resolution Procedure set out in this Schedule to resolve Disputes provided that nothing in this Contract shall prevent either party applying to the courts for interim relief, subject to the Crown Proceedings Act 1947 in the case of any application by BVT. The aim of the Dispute Resolution Procedure is to enable the resolution of Disputes at the earliest opportunity with the minimum disruption to both parties.
- 1.4 Before notifying a Dispute, the parties, acting in good faith, shall make every effort to resolve any issues promptly in discussions at operational level.
- 1.5 Any timescales referred to in this Schedule may be increased or decreased in respect of any particular Dispute by written agreement of the parties.
- 1.6 The parties shall continue to comply with, observe and perform all of their obligations under this Contract notwithstanding the referral of the Dispute for resolution under the Dispute Resolution Procedure set out in this Schedule.

2 Dispute arising between the Parties

- 2.1 To declare a Dispute either party shall send written notice to the other setting out full particulars of the nature and circumstances of the Dispute.
- 2.2 Within 5 Business Days of a party serving written notice of a Dispute in accordance with paragraph 2.1, each party shall appoint a representative from within its organisation as a "Dispute Owner" and shall give written notice to the other party of the name and contact details of its appointed Dispute Owner.
- 2.3 Each party shall ensure that its appointed Dispute Owner is of an appropriate level and of sufficient authority within its organisation so as to enable him to progress the Dispute.
- 2.4 The Dispute Owners shall be responsible to their respective appointing parties for collating all relevant information relating to the Dispute and for progressing the Dispute through the Dispute Resolution Procedure.

3 Report Procedures

- 3.1 Each party shall require its Dispute Owner to provide a report on the Dispute (a **Dispute Report**) to a nominated representative of the other party (or, if the other party has not nominated a representative, the other party's Dispute Owner) as soon as is reasonably practicable after the commencement of each Stage (as defined below) of the Dispute Resolution Procedure. Each Dispute Report will include:
 - (a) a unique serial number to be provided by the MoD and the date of the report;
 - (b) the name, post, and phone number of each party's Dispute Owner;
 - (c) a synopsis of the Dispute including the findings of any other Stage (as defined below);
 - (d) the output or decision required from the relevant Stage (as defined below);

Schedule 2 – Dispute Resolution Procedure

- (e) any dates by which the output or decision is required; and
 - (f) any recommendation for the resolution of the Dispute which the Dispute Owner considers appropriate.
- 3.2 The parties agree that the Dispute Reports shall be prepared and exchanged on a without prejudice basis.

4 Stages to the Dispute Resolution Procedure

There are three stages to the Dispute Resolution Procedure which will apply to both parties (each for the purposes of this Schedule 2 only a **Stage**). The Dispute Owner is responsible for progressing the Dispute in accordance with the Dispute Resolution Procedure and for managing his appointing party's obligations in respect of the Dispute until it is resolved. If a Dispute is not resolved at a Stage within the relevant time scales for that Stage specified in the Dispute Resolution Procedure (subject to any amendments to the time scales which may be agreed in writing or ordered by the tribunal relevant to that Stage), the Dispute will be escalated, in accordance with the provisions of this Schedule to the next Stage until it is finally resolved. The three possible Stages for Dispute Resolution open to the MoD and BVT are:

- (a) internal review;
- (b) alternative dispute resolution (provided the parties agree); and
- (c) arbitration.

5 Internal Review

- 5.1 Subject to paragraph 5.4, within 10 Business Days of either party serving notice of a Dispute under paragraph 2.1:
- (a) the Dispute may be referred by either party to the Joint Project Office for resolution;
 - (b) if the Dispute has not been resolved within 10 Business Days of referral to the JPO either party may refer the Dispute to the Commercial Director of BVT and DG Ships Commercial Head for resolution;
 - (c) if the Dispute has not been resolved within 20 Business Days of referral to the Commercial Director of BVT and DG Ships Commercial Head either party may refer the Dispute to the Steering Group for resolution;
 - (d) if the Dispute has not been resolved within 20 Business Days of referral to the Steering Group, either party may refer the Dispute to the Programme Owners Group for resolution. The POG shall meet to attempt to resolve the Dispute as soon as reasonably practicable.
- 5.2 Subject to paragraph 5.2.8(c) of Schedule 8 (*Governance*) if the Dispute is not resolved within 10 Business Days of the meeting of the POG, to be convened in accordance with paragraph 5.1(d), to the satisfaction of all of the members of the POG, the parties may agree to refer the Dispute to alternative dispute resolution in accordance with paragraph 6 failing which, either party should be entitled to refer the Dispute to arbitration in accordance with paragraph 7.
- 5.3 The internal review under this clause and anything said, done or produced under or in relation to it shall be treated as without prejudice to the parties' rights and obligations unless the parties agree otherwise in writing.
- 5.4 Where the subject matter of a Dispute has already been considered by each Governance Body pursuant to Schedule 8 (*Governance*), the Dispute shall not be referred back to the JPO for internal review pursuant to this paragraph 5. Within 10 Business Days of the meeting of

Schedule 2 – Dispute Resolution Procedure

the POG pursuant to paragraphs 5.2.8(c) and (d) of Schedule 8 (*Governance*), the parties shall decide whether to refer the Dispute to alternative dispute resolution in accordance with paragraph 6.

6 Alternative Dispute Resolution

- 6.1 The parties may agree under paragraph 5.2 to resolve a Dispute to pursue any method of alternative dispute resolution (which term shall, for the purposes of this Schedule, be interpreted to exclude arbitration).
- 6.2 Where the parties have agreed to use an alternative dispute resolution and the Dispute is not resolved by the use of such procedure, either party shall be entitled to refer the Dispute to arbitration in accordance with paragraph 7.

7 Arbitration

- 7.1 Either party shall initiate arbitration by giving notice to the other party that it intends to commence arbitration in accordance with the terms of this Contract unless otherwise agreed in writing by the parties. In relation to such arbitration:
- (a) the seat of the arbitration shall be in England;
 - (b) the language used in the arbitral proceedings shall be English;
 - (c) the Arbitrators shall be entitled to use one or more experts to assist with the arbitration process. Any such expert(s) shall be appointed by written agreement of the parties provided that if the parties fail to agree within 10 Business Days of the Arbitrators' request the Arbitrators shall be entitled to appoint the expert(s);
 - (d) the provisions of the Arbitration Act 1996 shall apply to the arbitration. It is specifically agreed between the parties that, for the purposes of the arbitration, the Arbitrator shall have the power to make provisional awards as provided for by Section 39 of the Arbitration Act 1996; and
 - (e) the Arbitrators shall make their award in writing and unless the parties agree otherwise shall state the reasons upon which their award is based. The costs of the arbitration shall be borne by the parties in the proportion as may be determined by the Arbitrator taking into account the relative merits of each party's case.
- 7.2 The parties shall give effect forthwith to every decision of the Arbitrators delivered under the Dispute Resolution Procedure unless or until the Dispute is otherwise resolved by agreement.
- 7.3 For the avoidance of doubt, it is agreed between the parties that the arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential or between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made beyond the tribunal, the parties, their legal representatives of any person necessary to the conduct of the proceedings, without the concurrence of all the parties to the arbitration.

Schedule 3 - Exclusivity

Subject always to the provisions of Clause 9 (*Exclusivity*), the MoD shall enter into contracts with BVT to provide the works and services allocated to BVT for Future Naval Programmes, in accordance with the following paragraphs 1 to 9 of this Schedule 3 (*Exclusivity*). For the avoidance of doubt, all references to "*exclusive Lead Contractor, without competition*" or "*on an exclusive basis, without competition*" in this Schedule 3 shall at all times and in all circumstances be qualified by reference to Clauses 9.1.7 (*MoD Approval Process*) and 9.1.9 (*Process following negative amount*) which requires BVT's tenders to represent Value for Money. In relation to the build phase of any Designated Naval Vessels the allocation of responsibility for Stages shall be allocated between the MoD, BVT and any third parties on the basis of the allocation as described below in this Schedule 3 (*Exclusivity*).

1 In respect of CVF (Queen Elizabeth Class aircraft carriers)

- 1.1 Responsibility as Lead Contractor and for Stages 0-6 shall be in accordance with the CVF Contract arrangements.
- 1.2 In exercising its leadership and management role in the Aircraft Carrier Alliance (**ACA**), BVT shall undertake the role of Class Output Manager to develop the CVF support solution in collaboration with the other ACA industrial participants.

2 In respect of CVS (Invincible Class aircraft carriers)

- 2.1 All support (including Maintenance) requirements in respect of CVS shall be provided in accordance with the SSSA.

3 In respect of Amphibious Vessels:

Designated Naval Vessels – Amphibious Vessels

- 3.1 BVT shall be the exclusive Lead Contractor, without competition.
- 3.2 BVT shall participate in Stage 0 (Concept Design) on a non-exclusive basis as part of the Naval Design Partnership. It is expected that BVT will provide a large proportion of the Stage 0 design team resource.
- 3.3 BVT shall provide and lead the engineering team for Stage 1 (System Design) to deliver the required outputs and shall seek to ensure an appropriate level of resource continuity from Stage 0 (Concept Design). During Stage 1 the MoD shall retain design risk and responsibility for making decisions which may materially impact capability and cost.
- 3.4 BVT shall conduct Stage 2 (Detail Design and Spatial Integration) on an exclusive basis, without competition.
- 3.5 The MoD expects to compete Stage 3/4/5 (Manufacturing Outputs and Production). For the avoidance of doubt, contracts for the build of vessels in this paragraph 3, if placed with third parties, shall be placed and managed by BVT as Lead Contractor.
- 3.6 BVT shall conduct Stage 6 (Integration and Trials) on an exclusive basis, without competition.
- 3.7 In respect of any Amphibious Vessels which are Designated Naval Vessels any support (including Maintenance and the role of Class Output Manager) shall be provided in accordance with SSSA.

Schedule 3 – Exclusivity

Legacy Vessels

- 3.8 Any support (including Maintenance) requirements in respect of Amphibious Vessels which are Legacy Vessels shall be provided in accordance with the SSSA.

4 In respect of Destroyers and Frigates (including but not limited to the Future Surface Combatant ('FSC') C1 and C2 variants):

Designated Naval Vessels – Destroyers and Frigates

- 4.1 BVT shall be the exclusive Lead Contractor, without competition.
- 4.2 BVT shall participate in Stage 0 (Concept Design) on a non-exclusive basis as part of the Naval Design Partnership. It is expected that BVT will provide a large proportion of the Stage 0 design team resource.
- 4.3 BVT shall provide and lead the engineering team for Stage 1 (System Design) to deliver the required outputs and shall seek to ensure an appropriate level of continuity from Stage 0 (Concept Design). During Stage 1 MoD shall retain design risk and responsibility for making decisions which may materially impact capability and cost.
- 4.4 BVT shall conduct Stage 2 (Detail Design and Spatial Integration) on an exclusive basis, without competition.
- 4.5 BVT shall conduct Stage 3/4/5 (Manufacturing Outputs and Production) on an exclusive basis, without competition.
- 4.6 BVT shall conduct Stage 6 (Integration and Trials) on an exclusive basis, without competition.
- 4.7 In respect of Destroyers and Frigates (other than Type 45 Destroyers the arrangements in respect of which are set out in paragraph 4.9 below) which are Designated Naval Vessels, BVT shall undertake the role of Class Output Manager on an exclusive basis, without competition. Any support including Maintenance shall be provided in accordance with SSSA.

Legacy Vessels

- 4.8 Any support (including Maintenance) requirements in respect of Destroyers and Frigates which are Legacy Vessels shall be provided in accordance with the SSSA.

Type 45 Support

- 4.9 T45 support will be provided in accordance with the Phase 1 In-Service Contract after which, subject to value for money, BVT shall undertake the role of Class Output Manager. It is the MoD's current intention that Phase 2 in-service support will be carried out in accordance with the SSSA framework.

5 In respect of Mine Countermeasure Vessels (MCM):

Designated Naval Vessels - MCM

- 5.1 BVT shall be the exclusive Lead Contractor, without competition.
- 5.2 BVT shall participate in Stage 0 (Concept Design) on a non-exclusive basis as part of the Naval Design Partnership. It is expected that BVT will provide a large proportion of the Stage 0 design team resource.
- 5.3 BVT shall provide and lead the engineering team for Stage 1 (System Design) to deliver the required outputs and shall seek to ensure an appropriate level of continuity from Stage 0

Schedule 3 – Exclusivity

(concept Design). During Stage 1 MoD shall retain design risk and responsibility for making decisions which may materially impact capability and cost.

- 5.4 BVT shall conduct Stage 2 (Detail Design and Spatial Integration) on an exclusive basis, without competition.
- 5.5 BVT shall conduct Stage 3/4/5 (Manufacturing Outputs and Production) on an exclusive basis, without competition.
- 5.6 BVT shall conduct Stage 6 (Integration and Trials) on an exclusive basis, without competition.
- 5.7 In respect of any MCM's which are Designated Naval Vessels BVT shall undertake the role of Class Output Manager on an exclusive basis, without competition. Any support (including Maintenance) shall be provided in accordance with the SSSA.

Legacy Vessels

- 5.8 Any support (including Maintenance) requirements in respect of MCM's which are Legacy Vessels shall be in accordance with the SSSA.

6 In respect of Minor Vessels (including but not limited to hydro/patrol vessels including the Minecountermeasures Hydrographic Patrol Vessel ('MHPV') class)¹:

Designated Naval Vessels – Minor Vessels

- 6.1 BVT shall be the exclusive Lead Contractor, without competition.
- 6.2 BVT shall participate in Stage 0 (Concept Design) on a non-exclusive basis as part of the Naval Design Partnership. It is expected that BVT will provide a large proportion of the Stage 0 design team resource.
- 6.3 BVT shall provide and lead the engineering team for Stage 1 (System Design) to deliver the required outputs and shall seek to ensure an appropriate level of continuity from Stage 0 (concept Design). During Stage 1 the MoD shall retain design risk and responsibility for making decisions which may materially impact capability and cost.
- 6.4 BVT shall conduct Stage 2 (Detail Design and Spatial Integration) on an exclusive basis, without competition.
- 6.5 BVT shall conduct Stage 3/4/5 (Manufacturing Outputs and Production) on an exclusive basis, without competition.
- 6.6 BVT shall conduct Stage 6 (Integration and Trials) on an exclusive basis, without competition.
- 6.7 In respect of Minor Vessels which are Designated Naval Vessels, BVT shall undertake the role of Class Output Manager on an exclusive basis, without competition. Any support (including Maintenance) shall be provided in accordance with SSSA.

Legacy Vessels

- 6.8 Any support (including Maintenance) requirements in respect of Minor Vessels which are Legacy Vessels shall be provided in accordance with the SSSA and/or existing arrangements.

¹ For the avoidance of doubt MHPV is the current name given to variant C3 of the FSC family of vessels (subject to change – see paragraph 12 below)

Schedule 3 – Exclusivity

7 In respect of Simple Auxiliaries (including but not limited to Solid Support Vessels and Fleet Tankers):

Additional Vessels – Simple Auxiliaries

- 7.1 The MoD expects to compete the Lead Contractor role but BVT shall play a role on terms to be agreed.
- 7.2 BVT shall participate in Stage 0 (Concept Design) on a non-exclusive basis as part of the Naval Design Partnership. It is expected that BVT will provide a large proportion of the Stage 0 design team resource.
- 7.3 The MoD expects to compete Stage 1 (System Design).
- 7.4 The MoD expects to compete Stage 2 (Detail Design and Spatial Integration).
- 7.5 The MoD expects to compete Stage 3/4/5 (Manufacturing Outputs and Production).
- 7.6 The MoD expects to compete Stage 6 (Integration and Trials).
- 7.7 In respect of Simple Auxiliaries which are Additional Vessels the MoD expects to compete arrangements for support (including Maintenance and the role of Class Output Manager).

Legacy Vessels

- 7.8 Any support (including Maintenance) requirements in respect of Additional Vessels which are Legacy Vessels shall be provided via existing contracted arrangements.

8 In respect of Complex Auxiliaries (including but not limited to the Joint Sea Based Logistics ('JSBL') and Joint Casualty Treatment Ship ('JCTS') classes):

Designated Naval Vessels – Complex Auxiliaries

- 8.1 BVT shall be the exclusive Lead Contractor, without competition.
- 8.2 BVT shall participate in Stage 0 (Concept Design) on a non-exclusive basis as part of the Naval Design Partnership. It is expected that BVT will provide a large proportion of the Stage 0 design team resource.
- 8.3 BVT shall provide and lead the engineering team for Stage 1 (System Design) to deliver the required outputs and shall seek to ensure an appropriate level of continuity from Stage 0 (concept Design). During Stage 1 MoD shall retain design risk and responsibility for making decisions which may materially impact capability and cost.
- 8.4 BVT shall conduct Stage 2 (Detail Design and Spatial Integration) on an exclusive basis, without competition.
- 8.5 The MoD expects to compete Stage 3/4/5 (Manufacturing Outputs and Production). For the avoidance of doubt, contracts for the build of vessels in this paragraph 8, if placed with third parties, shall be placed and managed by BVT as Lead Contractor.
- 8.6 BVT shall conduct Stage 6 (Integration and Trials) on an exclusive basis, without competition.
- 8.7 In respect of Complex Auxiliaries which are Designated Naval Vessels the MoD expects to compete arrangements for support (including Maintenance and the role of Class Output Manager).

Schedule 3 – Exclusivity

Legacy Vessels

- 8.8 Any support (including Maintenance) requirements in respect of Complex Auxiliaries which are Legacy Vessels shall be provided through existing contracted arrangements.

9 In respect of Small Craft (<40m):

Additional Vessels – Small Craft

- 9.1 The MoD expects to compete the Lead Contractor role.
- 9.2 The MoD expects to compete Stage 0 (Concept Design).
- 9.3 The MoD expects to compete Stage 1 (System Design).
- 9.4 The MoD expects to compete Stage 2 (Detail Design and Spatial Integration).
- 9.5 The MoD expects to compete Stage 3/4/5 (Manufacturing Outputs and Production).
- 9.6 The MoD expects to compete Stage 6 (Integration and Trials).
- 9.7 In respect of Small Craft which are Additional Naval Vessels the MoD expects to compete arrangements for support (including Maintenance and the role of Class Output Manager).

Legacy Vessels

- 9.8 Any support (including Maintenance) requirements in respect of Small Craft which are Legacy Vessels shall be provided through existing contracted arrangements.

10 Future Support Principles

- 10.1 Without prejudice to Clause 9 (*Exclusivity*) or this Schedule 3 the SSSA will define the overarching surface ship support strategy which, subject to an analysis of value for money, covers all complex warships (legacy and future). The terms of the SSSA will be documented in an overarching alliance agreement.
- 10.2 For all Designated Naval Vessels in respect of which BVT is acting in the role of COM, the MoD acknowledges that it intends to adopt a contracting for availability approach with BVT to the maximum extent possible, subject to Value for Money.
- 10.3 Where BVT acts in the role of COM in accordance with paragraphs 2 to 9 above, it will work collaboratively with Babcock Marine and other appropriate parts of the supply base, as may be agreed with the MoD from time to time, to deliver such support arrangements. Where appropriate, and as agreed between the MoD, BVT and Babcock Marine, the SSSA will be used as the basis for such collaboration, and BVT and the MoD recognise that the current arrangements may evolve as new vessels are brought into service. Where a COM role is part of SSSA it may include other Alliance members such as the MoD and Babcock Marine as may be agreed.
- 10.4 Base porting arrangements shall remain under MoD control, with Fleet Time Engineering being conducted by the base port contractor for each Naval Vessel. Upkeep work shall continue to be allocated to ensure best Value for Money and sustainability across the MoD's surface ship and submarine support programmes.
- 10.5 The role of COM does not necessarily include delivery of Upkeep but will involve generation of upkeep packages.
- 10.6 The location of Upkeep activity will be determined by means to be agreed through the SSSA.

Schedule 3 – Exclusivity

- 10.7 On a case by case basis as agreed with the MoD the COM role may include or be updated to include or BVT may be contracted to provide equipment support commensurate with the policy to contract for vessel availability.
- 10.8 The MoD shall allocate sufficient Deep Maintenance work to BVT during the Contract Period to enable BVT to sustain key skills in:
- (a) weapons engineering;
 - (b) marine engineering;
 - (c) constructive engineering; and
 - (d) test, trials and commissioning,

to a level such that BVT shall at all time during the Contract Period have the necessary skills to undertake a medium sized docking period or reactivation of a complex warship in addition to normal Fleet Time Engineering load.

11 Further Maintenance Principles

The MoD and BVT acknowledge the following:

Support Phase/COM Role

Appointment

- 11.1 In relation to Designated Naval Vessels, the MoD shall appoint BVT in the role of the Class Output Manager, subject to Clauses 9.1.7 (*MoD Approval Process*), 9.1.9 (*Process following negative assessment*) and 39.4 (*Partial Termination*), except as specified in this Schedule 3 (*Exclusivity*).

Support

- 11.2 The MoD shall be entitled (at its discretion) to contract with third parties or BVT for Maintenance of Designated Naval Vessels and Additional Vessels with contracts, unless the MoD decides otherwise, being awarded based on criteria determined by the MoD/SSSA at its sole discretion. This paragraph 11.2 shall be without prejudice to paragraph 10.8 of this Schedule 3 (*Exclusivity*).

Competition

- 11.3 In the case of new build Complex Auxiliaries, new build Amphibious Vessels and Additional Vessels, the MoD is entitled pursuant to this Schedule 3 (*Exclusivity*) to allow third parties and BVT to compete for any work associated with role of Class Output Manager and/or Maintenance and notwithstanding that BVT shall be entitled to compete for this work, the MoD shall not be obliged to appoint BVT other than on the basis of criteria determined by the MoD at its sole discretion.

Support for Legacy Vessels

- 11.4 The provision of support including Maintenance to Legacy Vessels which, if entered into and applicable, are expected to be governed by SSSA.

SSSA termination

- 11.5 In the event that SSSA expires or is otherwise terminated, the provision of Maintenance to the relevant Naval Vessels shall be delivered and allocated in a manner to be determined by the MoD at its sole discretion.

Schedule 3 – Exclusivity

MoD Responsibilities

- 11.6 MoD shall remain responsible for the delivery of all GFX.

12 Class and Vessel Names

The parties acknowledge that the names assigned to vessels and classes of vessel in paragraphs 1 to 9 may be subject to change from time to time during the Contract Period, and that in such circumstances the responsibilities and exclusivity arrangements assigned to BVT in paragraphs 1 to 9 shall remain as currently described, for the renamed vessels and classes of vessel.

Schedule 4 – Key Industrial Capabilities

Part 1 - Shipbuilding KIC

The tables on these pages outlined key posts and assumed manhour capabilities. They have been redacted, but the key posts included those listed below.

Upper KIC Band

Production – Steelwork, Mechanical, Electrical, Outfit Trades

Engineers – Detailed Designer/Draughtsman, Professional Engineers, Technical Managers

Support Staff – Managers/Supervisors

Schedule 4 – Key Industrial Capabilities

Lower KIC Band

Production – Steelwork, Mechanical, Electrical, Outfit Trades
Engineers – Detailed Designer/Draughtsman, Professional Engineers, Technical Managers
Support Staff – Mangers/Supervisors

Schedule 4 – Key Industrial Capabilities

Part 2 – Support KIC

Key Posts	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Initial Support	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
"Blue Collar" Engineering	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
"White Collar" Engineering	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Supply Chain and Warehousing	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Facilities and Maintenance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Overhead	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

Schedule 5 – Integration, Transformation and Rationalisation

Report	Reporting Year	Reporting Period	Reporting Date	Reporting Status	Reporting Period	Reporting Date
Report 1: Integration of Business Units	2010	From September 09	September 09	Yes	From September 09	September 09
Report 2: Transformation of Business Units	2010	From September 09	September 09	Yes	From September 09	September 09
Report 3: Rationalisation of Business Units	2010	From September 09	September 09	No	NA	From April 10
Report 4: Integration of Business Units	2010	From September 09	September 09	Yes	From September 09	September 09
Report 5: Transformation of Business Units	2010	From September 09	September 09	Yes	From September 09	September 09
Report 6: Rationalisation of Business Units	2010	From September 09	September 09	No	NA	NA

Part 2 – Strategic Rationalisation Plan

Format for the Options Appraisal for Development of the Strategic Rationalisation Plan

Overview

The Strategic Rationalisation Plan is a key element of the MoD and BVT's transformation strategy and plans. The MoD and BVT are committed to the development and implementation of the necessary restructuring programme during the life of this Contract to achieve rationalisation. The MoD and BVT acknowledge that the options appraisal shall be used to inform the development of the Strategic Rationalisation strategy. The options appraisal shall contain as a minimum the following information described in this Part 2 of Schedule 5 and BVT shall use reasonable endeavours to ensure it is consistent with the standard defined in JSP 507.

Options Appraisal for Strategic Rationalisation Plan

1 Executive Summary

A brief summary of ship build and ship support capacity that exists within BVT and the opportunities for implementing a rationalisation strategy and the impact and risk in terms of Sovereign Capability and UK export prospects.

2 Current Situation

2.1 Current Ship build and Ship support Capacity

A summary of the current capacity.

2.2 Overview of existing infrastructure

A description of all current infrastructure for ship build and support, how each is linked to the capability needed to protect and preserve sovereign capacity, serve the export market and the extent to which facilities have multiple or flexible use and are re-locatable.

2.3 Utilisation of existing capacity

Overview of the usage of existing capacity and a detailed analysis on how intensively that capacity is operated.

3 Opportunities for Rationalisation

3.1 Opportunities for removal of excess capacity

Identification of opportunities to remove excess capacity and improve the utilisation of other assets.

3.2 Opportunities for removal of ship build and ship support capacity

Identification of more holistic opportunities to remove whole facilities and improve the frequency of use of other ship build and support yards. Identification of any opportunities to rationalise other surplus capacity.

3.3 Summary on opportunities for rationalisation

A summary of the opportunities identified in 3.1 and 3.2 above.

4 Recommended strategy

4.1 Options considered

Identification of the key rationalisation elements being considered.

4.2 Impact on build and support programmes/facilities

Consideration of the impact of rationalisation on ship build and support programmes both committed and uncommitted programmes.

4.3 Implementation of Strategic Rationalisation Plan

Outline of the strategy for rationalisation and the timeframes involved (if implemented) in stages.

4.3.1 Year One

4.3.2 Year Two

4.3.3 Year Three

4.4 Site plans for the strategy

Ship build and ship support plan(s) annotated to show the rationalisation work planned.

4.5 Future development

Consideration of maintenance, modernisation and investment.

4.6 Investment Appraisal

5 Conclusion

A summary of the key aspects of the Strategic Rationalisation Plan and how this affects the future ship build and support capability.

Important: this strategy should be reviewed at least on an annual basis and updated according to any circumstances changing.

6 Monitoring

A summary of the key aspects of the rationalisation plan and how this affects the future development of BVT.

Important: this strategy should be reviewed at least on an annual basis and updated according to any circumstances changing.

7 Appendices

Appendix A: Ship build and support plans

Appendix B: Detailed rationalisation information

Schedule 5 – Integration, Transformation and Rationalisation

Appendix C: Ship build and support plans showing rationalisation

- Details of all current major capital assets
- Details of current labour
- Supply Chain arrangements

Schedule 5 – Integration, Transformation and Rationalisation

Part 3 – Cumulative Guaranteed Minimum Savings Yearly Targets

Years 1 – 5	Cumulative Guaranteed Minimum Savings Targets (£Million)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Cumulative Guaranteed Minimum Savings Target	42.4	55.3	70.4	87.6	104.9
	Year 6	Year 7	Year 8	Year 9	Year 10
Cumulative Guaranteed Minimum Savings Target	126.9	150	175	200	225
	Year 11	Year 12	Year 13	Year 14	Year 15
Cumulative Guaranteed Minimum Savings Target	250	275	300	325	350
<i>Note: (i) Banked Efficiency Savings will count towards the Year 1 target. (ii) All amounts above shall be Indexed.</i>					

Schedule 6 – Reporting

Reports

1. Monthly Management Report in accordance with Clause 15.2.1.
2. BVT Quarterly Report in accordance with Clause 15.2.2.
3. Business Status Report in accordance with Clause 15.2.3.
4. Annual Performance Review in accordance with Clause 15.3.2.
5. Monthly Sales and Operation Plan Report in accordance with Clause 23.1.

Schedule 7 – Partnering

Part 1 - Strategic Partnering Accord



ToBA
Strategic Partnering Accord
(subject to the terms of ToBA)

between

Ministry of Defence

and

BVT Surface Fleet Limited



[•] 2009

RESTRICTED - COMMERCIAL

Strategic Partnering Accord (SPA) between the Secretary of State for Defence of the United Kingdom and Northern Ireland (MoD) and BVT Surface Fleet Limited (BVT).

1 Introduction

- 1.1 The Defence Industrial Strategy White Paper of December 2005 set out the Government's policy for the UK's surface ships Naval Industrial Sector (the **Sector**). It called for the transformation of the Sector, for the maintenance of sovereign capability and for consolidation within the Sector as a means to achieve those things.
- 1.2 BVT has been established by VT Group plc (**VTG**) and BAE Systems plc (**BAES**) to create a surface ship business that consistently delivers the best equipment, services and support to the Royal Navy in the most cost effective and efficient manner that mutually benefits the interests of the UK Armed Forces, the UK taxpayer. It is the intention of BVT to strive to achieve Upper Quartile Performance by transforming and rationalising the Transferred Business in a partnering relationship with the MoD.
- 1.3 The MoD, BAES and VTG recorded their intention to enter into a 15 year Terms of Business Agreement (**ToBA**) in a Heads of Terms dated 24 July 2007 and a letter dated 11 January 2008 (together **Heads of Terms**). The ToBA contract now replaces the Head of Terms.
- 1.4 The ToBA contains joint commitments on the MoD and BVT to seek to transform the way they do business together. It also includes the MoD commitments to provide BVT with exclusivity on defined shipbuild and support programmes and provides for the maintenance of Key Industrial Capability by BVT funded by the MoD. These commitments are given in exchange for BVT's obligations which include a guaranteed minimum level of savings and a programme of continuous improvement.
- 1.5 This Strategic Partnering Accord (**SPA**) is annexed to Schedule 7 (*Partnering*) of the ToBA. It is not itself legally binding. It is a working-level summary of some of ToBA's key rights and obligations. It is intended to be a guide to BVT and MoD personnel of how the ToBA commits the parties to transform the way they work together in order to deliver the ToBA and its Commercial Purpose.
- 1.6 This Strategic Partnering Accord is subject to the ToBA which is the contract which governs the relationship between the MoD and BVT. All personnel should be aware of this and should refer to the ToBA for details of all rights and obligations. These override this SPA.
- 1.7 Unless, stated otherwise, capitalised terms in this Strategic Partnering Accord are as defined in the ToBA.

2 Purpose & Scope

- 2.1 The ToBA, and so this SPA shall apply to all business dealings between BVT and those elements of the MoD involved in the planning, acquisition, delivery and support of capability to the UK's surface fleet. Principally this shall mean BVT (and all BVT Group Companies) and the MoD DE&S Ships organisation (together the **Enterprise**), but the intent of this SPA shall also extend as appropriate to MoD Centre, the Equipment Capability Customer (**COM(F)**), Portsmouth Naval Base command and the relevant stakeholders within BVT's shareholders.
- 2.2 It therefore applies to all existing contracts, all negotiations and all new contracts.
- 2.3 ToBA sets out, and this SPA summarises, the MoD and BVT's joint vision for transformation of the Enterprise and how they will work together in a strategic partnering relationship to deliver that vision and their respective and mutual obligations under the ToBA.

Schedule 7 – Partnering

3 Precedence

- 3.1 In the event of conflict the ToBA shall take precedence over the SPA and this SPA will be amended to be consistent with the ToBA.
- 3.2 The MoD and BVT acknowledge that the content and intent of this SPA and the Partnering Principles it contains may from time to time duplicate, amplify or reinforce broader corporate initiatives entered into by their respective organisations (for example the existing BAE Systems / MoD Partnering Agreement) and agree that this shall not dilute or detract from their joint commitment to the ToBA or SPA.
- 3.3 The MoD and BVT are bound by the ToBA. Acting in accordance with this SPA may not be sufficient to meet the ToBA obligations and will not excuse failure to do so.

4 Joint Vision

- 4.1 The joint vision of the MoD and BVT (the **Vision**) is to transform delivery of shipbuild and support to the Royal Navy (**RN**) on a through-life basis, delivering improved efficiency and effectiveness. The MoD expects this to deliver significantly enhanced Value for Money. BVT expects it to deliver significantly enhanced shareholder value.
- 4.2 In the medium to long term, the MoD and BVT envisage the ToBA delivering a programme of fundamental change to the Enterprise involving:
- (a) operating more closely via through life capability management to plan and support the RN capability across multiple Defence Lines of Development (**DLODs**);
 - (b) making joint, “best for Enterprise” decisions on who is best placed to take responsibility for procurement of equipment, goods and services;
 - (c) reviewing the industrial construct to ensure capacity is aligned to the level of planned UK demand, with the industrial capability to deliver the MoD’s future maritime requirements optimally and efficiently;
 - (d) transforming the Enterprise collectively to provide for the long-term sustainment, at an optimal level, of the Key Industrial Capabilities (**KICs**) required to underpin UK operational sovereignty into the future.
- 4.3 BVT and the MoD are committed to working collaboratively to achieve this Vision. The MoD and BVT recognise that the transformation envisaged will be delivered in phases and to that end, during the first 5 years of the ToBA, the MoD and BVT will expeditiously:
- (a) develop an environment of trust, understanding and transparency required to underpin partnering;
 - (b) embed a culture of collaboration required to make truly transformational change in the substance and tone of our interaction;
 - (c) combine and co-locate where appropriate those MoD and BVT teams that share common objectives, making joint working and capability planning, and the cost and capability trades that will characterise it, a reality;
 - (d) import best practice techniques and tools from other industries and sectors to drive efficiency into everything the Parties undertake together;
 - (e) develop and prove the concepts of Contracting for Availability (**CfA**) and Class Output Management (**COM**), collaborating with industrial partners with a view to delivering step change improvements in the efficiency and effectiveness of support to the legacy RN fleet;

Schedule 7 – Partnering

- (f) optimise the Parties' approach to the joint delivery of the activities contained within Portsmouth Naval Base.
- 4.4 The contractual commitments of the MoD and BVT on partnering are set out in Clause 29 (*Partnering*) of the ToBA.
- 4.5 In the medium-term of the ToBA, the MoD and BVT will capitalise on this solid base of partnering with the aim of:
 - (a) ensuring the successful integration and delivery into Fleet of new capabilities promoting innovation and efficiency in through-life support concepts (potentially, including the necessary infrastructure in Portsmouth Naval Base);
 - (b) ensuring the Future Surface Combatant vessels and other future vessels are (if and when ordered by the MoD) designed, integrated, manufactured and introduced to service in a truly transformative way – “faster, cheaper, better”; and
 - (c) progressively developing the COM in order to enhance operational effectiveness.
- 4.6 Annex 1 of this SPA is the Commercial Purpose of the ToBA. It sets out the core of what the MoD and BVT have agreed to work together to deliver.
- 4.7 Each of the MoD and BVT shall establish arrangements within its own organisation which make it the personal responsibility of the personnel deployed in the management of the ToBA and this SPA and the relationship between the MoD and BVT to discharge their functions in the manner best calculated to achieve the Commercial Purpose and in performance of Clause 29 (*Partnering*) of the ToBA.

5 Partnering Principles

- 5.1 The Partnering Principles are that, subject to the terms of the ToBA the MoD and BVT will seek to implement the following behaviours:
 - (a) **Teamwork** - Openness, honesty, load-sharing and trust are encouraged within teams, so that resources are optimised and, by listening to individuals' contributions and ideas, experiences are shared and an understanding of each other's operating culture becomes good practice and a benefit to the partnering relationship.
 - (b) **Leadership** - Senior managers and Directors are to ensure that their teams understand and work towards meeting team and individual objectives; foster a climate wherein members are motivated to achieve their full potential and understand their contribution to the success of the partnership by the setting of appropriate delegations; encourage cooperation, recognising the benefits of the partnering approach.
 - (c) **Value People** - Establish a culture that recognises and rewards peoples' contribution and supports those wishing to improve; recognise skills, allocating appropriate tasks and confirming understanding of goals; encourage people to seek opportunities for personal development through challenge and training.
 - (d) **Communication** - Establish a communication strategy that delivers the provision of appropriate, accurate and timely information, and fosters confidence towards asking questions and challenges accepted process and practice.
 - (e) **Caring for Staff** - Will ensure that the interests and quality of life of the civilian and service personnel are cared for. The mutual aim is to treat people fairly in the same way as the MoD and BVT would wish to be treated themselves.
 - (f) **Ethics** - All business must be conducted in a principled manner with the highest degree of personal and business integrity and ethical standards. This will apply in

Schedule 7 – Partnering

addition to any code of conduct of the MoD and BVT may require its staff to comply with.

- (g) **Mutual Objectives** - Will strive to align objectives to meet both the agreed mutual objectives whilst recognising those specific to the MoD and BVT (including Value for Money for the MoD and shareholder value for BVT).
- (h) **Working Together** - Believe that more can be achieved through joint working and teamwork and will therefore work in collaboration, encouraging cooperation, openness, honesty and trust amongst their respective teams and stakeholders both internally and externally. The assumption will be made that people are well intentioned.
- (i) **Trusted Co-existence** - Recognise and build trust in the vital contribution each other will make to the enterprise and will drive towards a position whereby any functional overlaps are necessary to meet a genuine, enduring business need. This relationship will itself be generated by conviction of the transcendent requirement of the enterprise, a first-class delivery record to cost, time and quality and by the behaviours of the senior management teams of all members.
- (j) **Mutual respect and understanding** - The parties shall recognise each other's needs, constraints, limitations, capabilities, risks and responsibilities to achieve win-win outcomes. The MoD and BVT also recognise that people are the key to enterprise success and will therefore show them the greatest respect, tolerance and consideration; their contributions will be valued and a culture of continued learning and development will be established.
- (k) **Expert Management** - The MoD and BVT shall be obliged to equip their people with the right skills and professional qualifications ensuring that their respective staffs are well trained, directed and appropriately delegated to maximise the return from partnering. It is a simple matter of the right people with the right skills and behaviour.
- (l) **Regular Review and Improvement** - The MoD and BVT shall ensure that effective processes are established to achieve stakeholder confidence and satisfaction and that the partnering relationship is sustained and enhanced in the most efficient and productive way.
- (m) **Enduring Delivery** – The MoD and BVT shall accept that excellence in engineering lies at the heart of this enterprise and will embed a through-life culture in all planning and decision making, demonstrating benchmarked standards of objective performance and then continuously challenge such standards to seek out the next solution that will ensure the Royal Navy is always equipped to win.
- (n) **Sharing Information** - The MoD and BVT shall commit to the timely sharing of information and provide it in a format that will give the best benefit to both the MoD and BVT, whilst recognising the constraints imposed by national security and commercial confidentiality enabled by trust. Sharing information will be aided by co-location and a shared working environment wherever appropriate.
- (o) **Safety** - The MoD and BVT shall commit to maintaining a sound safety culture and to ensure the joint endeavour is undertaken to the highest standards across the Enterprise.
- (p) **Innovation** - The MoD and BVT shall work together to encourage and enable safe innovation at all levels. The aim of each of the MoD and BVT is to learn from the other's skills and talents, and to foster a climate of rewarding.
- (q) **Risk** – The MoD and BVT shall commit to the effective management and mitigation of risk and acknowledge that the ToBA and so this SPA embodies and represents an effective structure for dealing with risk as well as for sharing rewards. Risks will be

Schedule 7 – Partnering

allocated to the participant best able to eliminate or mitigate them consistent with achieving the Commercial Purpose of the ToBA.

- (r) **Resolving Problems** - The MoD and BVT shall jointly develop and evolve a management process for resolving problems. The process will focus on achieving speedy resolution, at the lowest level with escalation procedures where this cannot be achieved within agreed timescales and the avoidance of litigation. The participants will actively promote a no-blame and no-surprises culture with the aim of learning from mistakes and moving on.
- (s) **Continuous Improvement** - The MoD and BVT will put in place business and cultural processes, including Benchmarking Exercises, to enable them to establish and agree challenging time and performance objectives and then to meet or exceed them, driving continuous improvement. This extends to the management of the relationship itself so as to overcome weaknesses, build strength and pull-through good practice from other places. It also applies to the transformation and Benefits arrangements envisaged by the ToBA.

6 Charter

- 6.1 The MoD and BVT may agree joint "vision" or "mission" statements. These shall:
 - (a) always be consistent with the ToBA;
 - (b) not amend or alter the ToBA or any part of it
 - (c) not bind the MoD or BVT; and
 - (d) be disseminated within the parties' organisations as agreed between them.
- 6.2 The MoD and BVT will capture the intent of this SPA in a joint Charter which shall be widely distributed, both electronically and manually, and made available across their organisations.

7 Delivery and Performance Management

- 7.1 The partnering relationship between the MoD and BVT shall be managed in accordance with the Relationship Management Plan at Part 2 of Schedule 7 (*Partnering*) of the ToBA.
- 7.2 The impact of the partnering relationship contemplated by this SPA shall be measured in accordance with the Performance Management provisions in Part 6 (*Savings Targets, Performance Management and Incentive Payments*) and Schedule 11 (*Performance Management and KPIs*) of the ToBA.

8 Governance

- 8.1 The partnering relationship between the MoD and BVT shall be directed, supervised, monitored and governed in accordance with ToBA by the following management bodies:
 - (a) the Joint Project Office (**JPO**) – a jointly staffed, full-time team responsible for the day-to-day administration and implementation of the ToBA across the Enterprise;
 - (b) the Steering Group (**SG**) – a joint forum chaired by the BVT CEO and MoD DES - Ships to oversee and direct the JPO at Director - 2* level;
 - (c) the Programme Owners Group (**POG**) – a joint forum comprising Board level/3* representation from the MoD and BAES and VTG (for so long as they are Principal Shareholders) to provide external strategic direction to the SG.
- 8.2 The full constitution and Terms of Reference for these bodies is contained at Schedule 8 (*Governance*) of the ToBA.

Schedule 7 – Partnering

9 Confidentiality and Publicity

9.1 All disclosures of information in connection with the SPA shall be governed by the confidentiality and publicity arrangements at Clauses 57 (*Confidentiality and Freedom of Information*) and 58 (*Public Relations and Publicity*) of the ToBA.

10 Legal Effect

10.1 Nothing in this SPA will release the MoD or BVT from its obligations or liabilities that exist under the ToBA or apart from this SPA, nor shall it be used to interpret or construe any legally binding contract or agreement entered into or made between the MoD or BVT.

10.2 All matters arising under or in connection with the SPA shall be managed in accordance with Schedule 8 (*Governance*).

11 No Partnership

This SPA is not intended to and shall not be construed or give rise to the creation or constitution of a partnership as envisaged in the Partnership Act of 1890 or a joint venture or other business organisation or agency arrangement of any kind. Neither the MoD nor BVT shall have the authority to bind the other without the other's separate prior written agreement in accordance with the ToBA.

12 Amendments

12.1 The MoD and BVT may from time to time agree to amend this SPA, subject at all times to such changes being consistent with the ToBA.

12.2 Any amendments to the SPA must be executed jointly and confirmed in writing by both the MoD and BVT in the same way as amendments to the ToBA.

13 Duration

Unless otherwise agreed by the MoD and BVT the SPA will become effective on commencement of the ToBA and terminate on termination or expiry of the ToBA.

14 Signatures

.....

For and on behalf of The Secretary of State for
Defence of the United
Kingdom and Northern Ireland

Dated

.....

For and on behalf of BVT Surface Fleet
Limited

Dated

SPA ANNEX 1

7.2 Commercial Purpose

The Commercial Purpose is that:

- (a) this Contract is performed;
- (a) the Project Contracts are managed;
- (b) the Dockyard Contracts are managed; and
- (c) BVT and each BVT Subsidiary operates across the full extent of its dealings with the MoD,

so as to secure that:

- (i) BVT shall maintain Surface Ship Capability and Key Industrial Capability in accordance with Part 7 (*Key Industrial Capability*), and MoD discharges its commitments in respect of Key Industrial Capability in Part 7 (*Key Industrial Capability*);
- (ii) the Guaranteed Minimum Target is delivered to the MoD in accordance with Part 5 (Integration, Transformation and Strategic Rationalisation);
- (iii) the BVT Business is transformed to achieve Upper Quartile Performance (or such other level of performance as may be agreed between the MoD and BVT) by December 2015 (measured in accordance with Clause 19 (*Continuous Improvement, Benchmarking and Upper Quartile Performance*)), subject to, where requisite to achieve this, both the MoD and BVT implementing the recommendations (or other agreed actions) arising from the Strategic Review in 2010-11 carried out in accordance with Part 11 (*Governance, Dispute Resolution and Reporting*);
- (iv)
 - (aa) the BVT Business is operated;
 - (bb) the MoD operates;
 - (cc) BVT and the MoD operate jointly;as efficiently and economically as is reasonably possible so as to minimise the Total Cost of Services to the MoD, recognising that transformation activities will evolve over the Contract Period;
- (v) the MoD is fully and proactively informed and advised at all times by BVT of BVT's best opinion of the measures and strategic choices the MoD might take so as to minimise the Total Cost of Services;
- (vi) the MoD is fully informed and advised of the practical and cost implications of any strategic scenarios or options which it notifies BVT that it is considering from time to time; and
- (vii) BVT is afforded the degree of exclusivity on future Work provided for in accordance with Part 4 (*Exclusivity*) and Schedule 3 (*Exclusivity*).

Part 2 – Relationship Management Plan

Principles

- 1 The Relationship Management Plan (**RMP**) shall be the means by which the relationship between the MoD and BVT shall be developed, maintained and monitored. A framework to complete the RMP is at Annex A to this Schedule 7 (*Partnering*), and shall be populated and endorsed through the Governance arrangements within this Contract, within 3 months of the Commencement Date.
- 2 A significant amount of the RMP's content will be taken from this Contract and the Strategic Partnering Accord. In broad terms it shall contain, but not be limited to the following:
 - Description of this Contract and the SPA
 - Rationale for Partnering
 - Commercial Purpose and the associated relationship objectives
 - Partnering Principles
 - Governance arrangements in particular the JPO
 - Performance measurement
 - Procedures and practices
 - Relationship measurement and assessment
 - Communications and stakeholder management
 - Development of the relationship
 - Personnel development
 - Implementation plan
- 3 Once agreed the RMP shall be monitored at the Annual Performance Reviews.
- 4 In developing the RMP, the parties will establish strategies to address the interaction between relationships at Project Contract level and the relationship between BVT and the MoD under this Contract. In doing so the parties will seek to ensure:
 - (a) that best practice is exploited;
 - (b) coherency in relationships between the MoD and BVT at all levels;
 - (c) the introduction of appropriate partnering development and collaborative working to enable the delivery of transformation benefits.

Annex A

Relationship Management Plan – Development and Management

- 1 Following formation of the JPO, the Steering Group will nominate a relationship manager (the **Relationship Manager**) for this Contract.
- 2 The Relationship Manager will review the existing data in respect of the relationship in conjunction with the JPO.
- 3 Following a detailed review of the data a timetable will be formulated identifying the route-map to develop the Relationship Management Plan addressing the headings stated in this Schedule.
- 4 The plan will be passed to the Steering Group for endorsement.
- 5 Following endorsement of the plan, it will be executed and the Relationship Management Plan developed.

Schedule 7 – Partnering

- 6 The draft document with the headings populated will be produced within 6 weeks from Steering Group endorsement.
- 7 The draft document will be passed to key stakeholders via the JPO for review and comment.
- 8 The final Relationship Management Plan will be passed to the 1st Steering Group Meeting for approval.
- 9 The Relationship Management Plan will be monitored and managed in accordance with the processes described in the Plan.
- 10 Key dates will be identified and included in the rolling Transformation Plan.
- 11 The Relationship Management Plan will be reviewed on a quarterly basis.
- 12 The Relationship Management Plan will only be amended in accordance with JPO configuration control process.

Schedule 8 – Governance

Part 1 – Governance framework

1 Introduction

1.1 Scope of this Schedule

1.1.1 This Schedule sets out the bodies and procedures by means of which the Parties will exercise governance of this Contract, and provide leadership, direction and accountability to facilitate achievement of the Commercial Purpose.

1.1.2 In particular, this Schedule sets out:

- (a) the general principles and aims of the governance arrangements;
- (b) the framework to support the effective interaction between the MoD and BVT and for the transacting of the formal business of this Contract; and
- (c) the management structures through which governance will be exercised.

2 General Principles and Aims

2.1 Aims

The aim of the governance arrangements is to facilitate the performance of the obligations under this Contract, including the achievement of the Commercial Purpose, including by:

- (a) providing leadership and direction for the performance of this Contract;
- (b) establishing and maintaining an approach under the Project Contracts, Dockyard Contracts and all other maritime agreements, initiatives and arrangements that BVT and BVT Subsidiaries are a party to with the MoD that is consistent with the achievement of the Commercial Purpose;
- (c) providing for effective and timely decision making and dispute resolution;
- (d) maximising the value of the skills, knowledge and experience available with the MoD's and BVT's organisation by appointing suitably skilled, knowledgeable and experienced individuals to the Governance Bodies to be established pursuant to this Schedule; and
- (e) ensuring that the governance arrangements accord with best practice and command the confidence of MoD stakeholders and industry shareholders alike.

2.2 Principles

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

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

2.2.2 Without prejudice to any express requirements in relation to the same set out elsewhere in this Contract BVT and the MoD shall as a general aim and principle establish and maintain a cycle for the delivery of all reports and the timing of the related meetings that enables all members of each of the joint management bodies established by this Schedule (the **Governance Bodies**) to be kept effectively informed to support the successful governance of this Contract.

3 Matters requiring BVT or MoD Approval

- 3.1 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by BVT other than merely by reference of the matter to a Governance Body (a **Matter Requiring BVT Approval**), the BVT CEO or any other member of a Governance Body appointed by BVT (excluding those individuals notified from time to time in writing by BVT's Representative to MoD's Representative), (a **BVT Authorised Officer**) may grant that agreement, consent or approval on behalf of BVT, provided that amendments to this Contract may only be authorised in accordance with the process set out in Clause 62 (*Amendments to Contract*).
- 3.2 Where this Contract expressly provides a requirement for the agreement, consent or approval of or to any matter by MoD other than merely by reference of the matter to a Governance Body, MoD's Representative or any other member of a Governance Body appointed by the MoD (excluding those individuals notified from time to time in writing by MoD's Representative to BVT's Representative) may grant that agreement, consent or approval on behalf of the MoD, provided that amendments to this Contract may only be authorised in accordance with the process set out in Clause 62 (*Amendments to Contract*).

4 Costs

- 4.1 Each Party shall bear all personnel costs relating to their appointed representatives to the Governance Bodies.
- 4.2 Where any party provides any facilities (including use of buildings) for use by the Governance Bodies these shall be provided free of charge (without prejudice to any existing entitlement to overhead charges in respect of facilities made available to the MoD).

5 Management Structures

5.1 Governance

- 5.1.1 Governance of this Contract shall be exercised through the following joint management bodies comprising, in ascending order of authority:
- (a) the Joint Project Office (**JPO**);
 - (b) the Steering Group (**SG**); and
 - (c) the Programme Owners Group (**POG**).

5.2 The Programme Owners Group

5.2.1 Functions of the POG

The principal function of the POG is to be the most senior joint forum for the management of the relationship between the Parties. Accordingly, it will provide the overall, high-level governance of this Contract in terms of determining and providing strategic direction and initiation of action within MoD and the BVT Group to maximise the extent to which the Commercial Purpose is achieved.

5.2.2 The POG has the following specific functions, namely to:

- (a) provide direction, prioritisation and co-ordination of major change programmes of which both BVT and the MoD are members within both BVT and MoD in a manner consistent with the achievement of the Commercial Purpose;
- (b) act as the fourth and final internal point of dispute escalation in accordance with the Dispute Resolution Procedure set out in Schedule 2 (*Dispute Resolution Procedures*) if the Dispute is not settled by the Steering Group; and

Schedule 8 – Governance

- (c) make decisions and discharge such other functions as are otherwise expressly provided for the POG in this Contract, (being, as at the date of this Contract, those set out in Clauses 3.1.5 (*Amendment Obligations*) and 12.14 (*Approval Process*)).

5.2.3 Composition of the POG

The POG shall consist of the following members:

- (a) MoD DGDC (Chair);
- (b) MoD DES – COO;
- (c) BAES Group Managing Director Programmes and Support (but only for so long as BAES is a Principal Shareholder); and
- (d) VTG CEO (but only for so long as VTG is a Principal Shareholder).

5.2.4 In attendance at the POG (in an advisory capacity) shall be:

- (a) MoD DES – D Ships; and
- (b) BVT CEO.

5.2.5 MoD DES – D Ships and BVT CEO shall be entitled to ask any other member of the Steering Group to attend meetings of the POG to report on any matter in relation to this Contract.

5.2.6 Quorum:

To be quorate, a meeting of the POG shall be attended by all its members.

5.2.7 Frequency of meetings:

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

5.2.8 Decision procedures:

- (a) Without prejudice to paragraphs (b) to (e) below, all decisions of the POG will be made by the POG chair, taking into account the advice and recommendations of the members.
- (b) The POG may not require BVT to carry out any matter which is a Matter Requiring BVT Approval unless it is a decision of the POG which is agreed to by all the members of the POG.
- (c) As an agreed variation to the Dispute Resolution Procedure, any decision of the POG Chair in relation to matters that are reserved for approval or resolution by the POG under or pursuant to Clause 3.1.5 (*Amendment Obligations*) or 12.14 (*Approval Process*) the POG Chair shall resolve any Dispute in relation to the matter referred to the POG shall bind BVT or the relevant BVT Subsidiary, whether or not all members of the POG are in favour of the decision (a **MoD Prerogative Matter**).

Schedule 8 – Governance

- (d) Any decision of the POG in respect of a matter (other than a MoD Prerogative Matter) which the Steering Group is unable to agree pursuant to paragraph 5.3.9, and has therefore been referred to the POG as a Dispute for resolution (a **POG Referred Dispute**) may only be made if all the members of the POG are in favour of the decision, and any such decision shall bind BVT and the MoD.
- (e) In addition to any binding decision of the POG under paragraphs 5.2.8(c) and (d), any decision of the POG in respect of any matter which is not a MoD Prerogative Matter or a POG Referred Dispute and in respect of which all members of the POG are in favour shall bind BVT and the MoD.

5.2.9 Minutes

All meetings of the POG shall be formally minuted and copies provided to each Party. The minutes shall include a record of all agreed decisions, actions and issues.

5.3 The Steering Group

Functions of the SG

5.3.1 The principal function of the Steering Group is to oversee and direct the JPO.

5.3.2 The Steering Group has the following specific functions:

- (a) to monitor achievement of the Commercial Purpose;
- (b) ensure that BVT and the MoD deliver the Transformation Plan;
- (c) to ensure that the parties' obligations under this Contract are monitored and managed;
- (d) to look across the BVT/MoD business base and identify opportunities for Transformation;
- (e) to identify and review opportunities and risk at a business level and ensure that appropriate action is taken to mitigate the risk and such action is managed by the part of the organisation that is best suited to manage it;
- (f) to ensure that the JPO office is appropriately complemented and resourced with staff with the relevant skill set;
- (g) to monitor compliance with the Partnering Principles;
- (h) to identify and seek to remove any obstacles to Transformation;
- (i) to give advice to the POG, as may be required generally on the status of this Contract and specifically including:
 - (i) Transformation progress; and
 - (ii) success of Partnering (especially the promotion of behaviours that shall promote cultural change);
- (j) to monitor the Key Industrial Capabilities and work load capacity;
- (k) to initiate a Strategic Review at any time to assess performance of this Contract in accordance with Clause 35 (*Strategic Review*);
- (l) to act as the third point of dispute escalation in accordance with the Dispute Resolution Procedure set out in Schedule 2 (*Dispute Resolution Procedure*) if the Dispute is not settled by BVT's Commercial Director and DG Ships Commercial Head;

Schedule 8 – Governance

- (m) resolve matters that are escalated to it from the JPO for resolution;
- (n) approve the adoption and any future change to the Transformation Plan or the Strategic Rationalisation Plan or any Partnering Principles;
- (o) ensuring that where BVT has been invited to tender without competition in relation to Future Naval Programmes the relevant MoD project teams will share any concerns identified by them that the prices and solution being developed by BVT or a BVT Subsidiary as presented to the MoD prior to submission of the formal tender response will not be likely to represent Value for Money;
- (p) make decisions and discharge such other functions as are otherwise expressly provided for the Steering Group in this Contract (being, as at the date of this Contract, those set out in Clauses 3.1.5 (*Amendment obligations*), 12 (*Transformation*), 14 (*Savings Targets*), 15 (*Performance Review*), 17.5 (*KPIs for following years*), 17.6 (*Performance Measurement*), 18.11 (*Steering Group Endorsement*), 34.1 (*Strategic Planning*), 35 (*Strategic Reviews*), 36 (*Indexation (RPI_x) discussion*), Annex A of Part 2 of Schedule 7 (*Relationship Management Plan, Development and Management*) and paragraph 6 of Schedule 10 (*Comprehensive Benchmarking Reviews*)); and
- (q) to identify where required 1*/senior management sponsors to promote Transformation Benefit Proposals.

5.3.3 The Steering Group will comply with any direction given to it from time to time by the POG.

5.3.4 Composition of the Steering Group

The SG consists of the following executive members:

- (a) MoD DES D Ships;
- (b) BVT CEO;
- (c) MoD DES Ships Head Commercial;
- (d) MoD DES Ships Head Finance;
- (e) MoD DES MCP Team Leader;
- (f) MoD DES Ships Head Transformation;
- (g) BVT Strategy & Planning Director;
- (h) BVT MD Support;
- (i) BVT Commercial Director; and
- (j) BVT Finance Director.

The MoD DES D Ships shall chair the first meeting of the SG to be held after the Commencement Date but thereafter the SG Chair shall alternate between MoD DES D Ships and BVT CEO.

5.3.5 The [REDACTED] shall also attend meetings of the Steering Group in an advisory capacity.

5.3.6 MoD DES – D Ships and BVT CEO shall be entitled to ask any other member of the JPO to attend meetings of the Steering Group to report on any matter in relation to this Contract.

Schedule 8 – Governance

5.3.7 Quorum:

To be quorate a meeting of the Steering Group shall be attended by at least MoD DES D Ships, BVT CEO and one other representative of each of BVT and the MoD.

5.3.8 Frequency of meetings:

- (a) Regular meetings: the Steering Group shall meet quarterly.
- (b) Ad hoc meetings: the Steering Group chair, or any Party, may call a meeting by serving written notice on all members of the Steering Group.
- (c) At least 15 days' notice shall be given for routine meetings. Reduced notice may be given, as is reasonable in all the circumstances.

5.3.9 Decision procedures:

All decisions of the SG will be made jointly by the MoD DES D Ships and BVT CEO in the name of the SG.

Where MoD DES D Ships and BVT CEO are unable to agree on any matter put to the Steering Group, the matter shall be referred to the POG as a Dispute for resolution pursuant to paragraph 5.2.8(d).

5.3.10 Minutes:

All meetings of the Steering Group shall be formally minuted and copies provided to BVT and the MoD. The minutes shall include a record of all agreed decisions, actions and issues.

5.4 Joint Project Office

5.4.1 Functions of the JPO

- (a) The principal function of the JPO is to be responsible for the efficient and effective administration of this Contract and to report to the Steering Group on compliance by each Party of their respective obligations under it.
- (b) The JPO will comply with any direction given to it from time to time by the Steering Group or the POG.
- (c) The JPO has specific functions as set out below in relation to:
 - (i) delivery management;
 - (ii) relationship management; and
 - (iii) providing a secretariat function.

5.4.2 Delivery Management

The JPO has the following responsibilities in relation to Delivery Management:

- (a) monitoring compliance by the MoD and BVT of their respective obligations under this Contract;
- (b) monitoring performance against this Contract to the agreed Transformation Plan including:
 - (i) maintenance of the Transformation Plan and any Strategic Rationalisation Plan;

Schedule 8 – Governance

- (ii) monitoring the achievement by BVT of its undertaking to deliver continuous improvement in the carrying out the BVT Group business in accordance with this Contract;
- (c) overseeing and reporting the realisation and delivery of Efficiency Savings through the operation of the benefits tracking and realisation process set out in Schedule 11 (*Performance Management and KPIs*);
- (d) co-ordinating and providing material for Strategic Reviews in accordance with Clause 35 (*Strategic Reviews*); and
- (e) convening Annual Performance Reviews in accordance with Clause 15.3.2 to assess the performance of this Contract over the previous year.

5.4.3 Relationship Management

The JPO has the following responsibilities in relation to Relationship Management:

- (a) ensuring delivery of the Relationship Management Plan;
- (b) conducting relationship measurement and assessment, including:
 - (i) co-ordination of the annual partnering relationship assessment to assess changes in behaviours and attitudes;
 - (ii) facilitating the routine MoD Director Supplier Relations (DSR) review; and
 - (iii) if required, provision of information from all assessments and reviews to DSR and the MoD Partnering Support Group (PSG); and
- (c) to act as the first point of dispute escalation in accordance with the Dispute Resolution Procedure set out in Schedule 2 (*Dispute Resolution Procedure*).

5.4.4 Secretariat Functions

The JPO shall have the following secretariat functions:

- (a) managing the resource budget agreed by the Steering Group for the costs of operation of the JPO;
- (b) producing monthly/quarterly and annual progress reports to inform the POG and the SG and the wider MoD community of progress under this Contract in accordance with Clause 15 (*Performance Review*);
- (c) constructing and maintaining a central library and database for all documentation generated pursuant to this Contract including all formal and internal documentation; and
- (d) liaising with CAAS in relation to the assessment and certification of Efficiency Savings to be generated through Approved Transformation Benefit Proposals.

5.4.5 Other Functions

Make decisions and discharge such other functions as are otherwise expressly provided for the JPO in this Contract (being, as at the date of this Contract, those set out in Clauses 3.1.5 (*Amendment obligations*), 12 (*Transformation*), 14 (*Savings Targets*), 15 (*Performance Review*), 16 (*Benefit Tracking and Realisation Process*), 17 (*Key Performance Indicators or "KPIs"*), 18 (*Incentive Payments*), 23.1 (*KIC Notice*), 27.2 (*Monitoring*), 29.2(d) (*Specific partnering obligations*), 29.4(e)(ii), 30.9 (*Audit*), 35.3 (*How a Strategic Review may be triggered*), 51.4, 51.8, 60.1.7, 60.2.5, Annex A to Part 2 of Schedule 7 (*Partnering*), paragraph

Schedule 8 – Governance

6 of Schedule 10 (*Continuous improvement and benchmarking*) and paragraph 5 of Schedule 11 (*Benefit Tracking and Realisation*).

5.4.6 Composition of the JPO

As at the Commencement Date, the JPO consists of the following executive members:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]

The MoD and BVT agree to finalise the composition of the JPO as soon as practicable after the Commencement Date. It is agreed that the JPO will be a jointly staffed team, which will be co-located.

The MoD and BVT will ensure interim measures are in place to ensure that the JPO is able to function and perform its duties, pending the finalisation of its composition.

5.4.7 Meetings and Internal Governance

- (a) As a permanent body tasked with management of this Contract the JPO shall regulate its affairs as it sees fit.
- (b) Where any member of the JPO disagrees with any decision or direction given in the name of the JPO by another member of the JPO the matter shall be escalated to the Steering Group as a Dispute for resolution but the decision shall remain valid until reversed or amended by the Steering Group.

Schedule 9 – Equality of Information Statement

Cost Base & Finance

(Contract reference: Part 6 "Savings, Targets, Performance Management and Incentive Payments")

No.	Document Reference	Document Description	File Type
1	CAAS TOBA 0809 Actual Support BAE 070409	07/08 Actuals, 08/09 Actuals and 08/09 Budget for former BAE Support (now a part of Support)	MS Excel
2	CAAS TOBA 0809 Actual Central	08/09 Actuals and Budget for Central (07/08 Actuals not applicable)	MS Excel
3	CAAS TOBA 0809 Actual Clyde 070409 v2	07/08 Actuals, 08/09 Actuals and 08/09 Budget for former Clyde (now Shipbuilding North)	MS Excel
4	CAAS TOBA 0809 Actual FSL 070409	07/08 Actuals, 08/09 Actuals and 08/09 Budget for former FSL (now a part of Support)	MS Excel
5	CAAS TOBA 0809 Actual Support VTNS 070409 v2	07/08 Actuals, 08/09 Actuals and 08/09 Budget for former VTNS (now a part of Support)	MS Excel
6	CAAS TOBA 0809 Portsmouth Ships and International Actual	07/08 Actuals, 08/09 Actuals and 08/09 Budget for former VTS and VTSl (now a part of Shipbuilding South)	MS Excel
7	CAAS TOBA 0809 Portsmouth Property Services Actuals	07/08 Actuals, 08/09 Actuals and 08/09 Budget for former VTPS (now a part of Shipbuilding South)	MS Excel
8	Cost Base Route Map	Graph showing the cost bridges between 07/08 Actual, 08/09 Plan and 09/10 Plan	MS PowerPoint
9	Productive Hours	Productive Hours for Shipbuilding North and Shipbuilding South (Actuals for 07/08 and 08/09 and Budget for 08/09)	MS Excel
10	BVT Materials Analysis (CAAS 120609)	Direct Materials (08/09 Actuals by division)	MS Excel
Savings Efficiencies			
<u>(Contract reference: Part 6 "Savings, Targets, Performance Management and Incentive Payments")</u>			
11	BVT Workstream Business Case v1 0_Business Development VIV 13.10.08	Synergy Business Case for Business Development	MS Excel
12	Communications Synergy Business Case	Synergy business case for Communications team integration.	MS Excel
13	08-10-08 Commercial Business Case v0.4	Synergy business case for Commercial team integration.	MS Excel

Schedule 9 – Form of Equality of Information Statement

No.	Document Reference	Document Description	File Type
14	Quality Assurance Synergy Business Case	Synergy business case for QA team integration.	MS Excel
15	Human Resources Synergy Business Case	Synergy business case for HR team integration (including amendments to the phasing memo with reference to redundancies and severance costs as made in updated versions of other synergy business cases)	MS Excel
16	Supply Chain Business Case 22-09-08	Synergy business Case for Supply Chain team integration.	MS Excel
17	Information Technology Synergy Business Case v0 2	Synergy business Case for IT team integration.	MS Excel
18	TOBA - Post Completion Integration Synergies 261108	MS PowerPoint deck to accompany Synergy benefits.	MS PowerPoint
19	Total Packaged Services – ToBA Business Case Approvals Version 8.0	Business case for TPS including cost estimates, benefit expectations, assumptions and risks	MS Word
20	Support Synergy Business Case	Business case with updates on the phasing memo relating to redundancies and severance	MS Excel
21	Analysis of Support pre-comp Heads saving	Supporting information on headcount reductions to support, including costs, savings and phasing	MS Excel
22	Incentivisation 26 06 09	Schedule showing the target saving and payment profile for 15 years	MS Excel
23	0809 Budget CAS approved vs model 020709	Schedule reconciling the 08/09 budget to the cost base figures used in the BEM	MS Excel
23A	Deloitte Report	Deloitte Final Report – BVT TOBA Baseline & Benefits Review – Final Report dated 31.03.2009	MS Word
Rationalisation and Transformation			
<u>(Contract reference: Part 5 “Integration, Transformation and Strategic Rationalisation”)</u>			
24	Appendix 3 to TP – Rationalisation Plan V3 0	Paper discussing the Rationalisation options	MS Word
Key Industrial Capabilities			
<u>(Contract reference: Part 7 “Key industrial Capabilities”)</u>			
25	BVTToba-Annex A-KICs KURs-V4	Describes KIC calculation for Shipbuild and Support	MS Word
26	KIC Staff and Manhours	KIC Headcounts and annual Productive Hours (for both High and Low KICs)	MS Excel

Schedule 9 – Form of Equality of Information Statement

No.	Document Reference	Document Description	File Type
27	Clyde All up labour rates	Summary of hourly labour rates used for KIC calculations (Production, Engineering and Support staff)	MS Excel
28	Assumptions behind the use of 1450 Hrs pa	Summary of how annual productive man hours are calculated (used for KICs)	MS Excel
29	Shipbuild KIC 210509 Scenario 1	KIC Model (using MoD Scenario 1 as example)	MS Excel
<p>Business Enterprise Model (BEM)</p> <p><u>(Contract reference: Part 1 Mechanics "Business Enterprise Model")</u></p>			
30	ECM Cost Base Data Paper 130209	Introduction to the EY Cost model	MS Word
31	BVT Enterprise Model User Guide v0.02	Outlines scope, functionality and use of the model	MS PowerPoint
32	Model Development v1.02	Ernst and Young Enterprise Plan/Cost Model	MS Excel

Schedule 10 – Continuous improvement and benchmarking

1 Continuous Improvement and Year-on-Year Reduction in Labour Costs and Overheads

- 1.1 BVT shall comply and shall procure that each other BVT Group Company complies with the provisions set out in this Schedule 10 (*Continuous Improvement and benchmarking*) in relation to their respective dealings with the MoD over the Contract Period.
- 1.2 Without prejudice to paragraph 1.1, BVT shall and shall procure that each BVT Subsidiary shall target a year on year continuous improvement in the efficiency of the BVT Business in respect of each of the 2010, 2011, 2012, 2013 and 2014 Financial Years representing a reduction of at least 4% per annum (as expressed as a percentage of the aggregate turnover of the BVT Group from the Project Contracts for the relevant Financial Year) when compared with the preceding Financial Year (being 1 April to 31 March), **provided that** BVT and each BVT Group Company shall be deemed to have satisfied their obligations under this paragraph 1.2, if BVT generates Cumulative Delivered Efficiency Savings of £71,800,000 (seventy one million eight hundred thousand pounds) or such other amount which BVT and the MoD agree under the terms of this Contract, in the 5 year period from the Commencement Date in accordance with the profile in Part 3 of Schedule 5 (*Integration, Transformation and Strategic Rationalisation*).
- 1.3 The setting of year-on-year targets for continued improvement in the efficiency of BVT and each BVT Group Company for the 2015, 2016, 2017, 2018 and 2019 Financial Years shall be considered as part of the Strategic Review to be held in 2014.
- 1.4 The setting of year-on-year targets for continued improvement in the efficiency of BVT and each BVT Group Company for the 2020, 2021, 2022, 2023 and 2024 Financial Years shall be considered as part of the Strategic Review to be held in 2019.

2 Benchmarking

The MoD and BVT shall conduct a series of benchmarking exercises (**Benchmarking Exercises**) during the Contract Period to benchmark the performance of BVT and, where appropriate, the combined performance of BVT and the MoD against agreed comparators. The Benchmarking Exercises shall be conducted by independent benchmarking experts (the **Benchmark Consultants**) appointed jointly by BVT and the MoD.

3 Benchmarking Exercises

The following Benchmarking Exercises will be undertaken by Benchmark Consultants during the Contract Period to focus in the case of (a) and (b) below on the performance of BVT and improving the BVT Business, in the case of (c) on the provision of Key Industrial Capabilities and the number of Key Posts and, in the case of (d) Relationship Benchmarking between BVT and the MoD:

- (a) comprehensive benchmarking reviews (**Comprehensive Benchmarking Reviews or CBRs**);
- (b) annual benchmarking assessments (**Annual Benchmarking Assessments**);
- (c) benchmarking to evaluate Key Industrial Capacity requirements (**KIC Benchmarking Exercise**); and
- (d) relationship benchmarking (**Relationship Benchmarking**).

4 Scope of Benchmarking Exercises

All BVT's activities in support of MoD work in relation to build and support will be benchmarked by the Benchmark Consultant including, without limitation, people, facilities and overheads, processes and interface and relationship matters in relationship to BVT and the MoD.

5 Objectives

The general objectives of the CBR and Annual Benchmarking Assessments are as follows:

- 5.1 in accordance with paragraph 1.2 above to identify and deliver at least 4% year on year improvements in the efficiency of BVT's Business for the first 5 years of this Contract; and
 - 5.2 to assist BVT in achieving Upper Quartile Performance when measured against comparable international naval warship build and support businesses by December 2015.
- 6.1 **Comprehensive Benchmarking Reviews**
- 6.1.1 BVT and the MoD will jointly commission Comprehensive Benchmarking Reviews at such times as are agreed between them to support and provide information for the Strategic Reviews to be held in 2011, 2014 and 2019.
 - 6.1.2 BVT, the MoD and a firm acting as the Benchmark Consultant will establish a team in September 2009 to identify the scope of work and define the measurement system and measures for the first Comprehensive Benchmarking Review to be carried out prior to the Strategic Review to be conducted in 2011 (**2011 Strategic Review**). The Benchmark Consultant shall carry out the first Comprehensive Benchmarking Review once terms of reference for that Benchmark Consultant have been agreed by the MoD's Representative and BVT and endorsed by the Steering Group.
 - 6.1.3 Each Comprehensive Benchmarking Review shall:
 - (a) review and consider the general business performance of BVT by providing comparisons which are objective, qualitative and quantitative (wherever possible), between the BVT surface shipbuilding and support activities carried out in the United Kingdom and comparable international shipbuilders specialising in the design construction, integration, delivery and support of complex naval/military vessels including, without limitation, those located in the United States, France, Spain and Germany (**Comparable Businesses**);
 - (b) in considering performance of BVT, to assess whether there has been any changes in overall productivity using the man-hours per Compensated Gross Tonnage Productivity Measurement (**CGT**) (or such other method to be decided from time to time). Where the CGT method is inconclusive, the performance assessment using the basket of measures approach (see below) will assist in calculating performance in terms of man-hours per CGT;
 - (c) identify and recommend steps BVT and the BVT Group Companies and the MoD might take to ensure BVT satisfies the continuous 4% p.a. improvement in their efficiency (as referred to in paragraph 1.2) and achieves the Upper Quartile Performance, or such other standard the MoD and BVT may agree from time to time, amongst comparable international business. Such steps shall include, without limitation, consideration of and investment in, people, facilities, equipment, tools and processes; and
 - (d) conclude with a comprehensive report (the **CBR Report**) being issued by the Benchmark Consultant to the parties for consideration and action and in the case of the first CBR for the 2011 Strategic Review it will be used to inform an improvement plan for naval surface shipbuilding in the United Kingdom (the **Shipbuilding Improvement Plan**).
 - 6.1.4 Upon receipt of the CBR Report from the Benchmark Consultant, the MoD and BVT shall review and jointly agree, through the offices of the JPO and Steering Group, the efficiency and improvement recommendations of the Benchmark Consultant and any necessary investment. Following mutual agreement of BVT and the MoD on such recommendations, BVT shall prepare implementation proposals by way of a Shipbuilding Improvement Plan which shall be

Schedule 10 – Continuous improvement and benchmarking

delivered to the Steering Group within 3 months of the JPO agreeing the Benchmark Consultant's recommendations.

- 6.1.5 The Shipbuilding Improvement Plan shall, without limitation:
- (a) set out BVT's proposed approach to implementing the agreed recommendations within the BVT Business;
 - (b) recognise changes required and any necessary investment to achieve Upper Quartile Performance (or such other standard the MoD and BVT may agree);
 - (c) describe the steps to achieve Upper Quartile Performance;
 - (d) recognise the MoD requirements and MoD Dependencies and the Assumed Workload; and
 - (e) link to pricing of future programmes (i.e. some initiatives arising from the benchmarking work may impact estimates on future programmes and these shall be jointly agreed, as appropriate).
- 6.1.6 The Shipbuilding Improvement Plan will, once approved by the JPO, be submitted to the Steering Group for its endorsement. Thereafter BVT shall implement the endorsed Shipbuilding Improvement Plan.
- 6.1.7 It is acknowledged by BVT that delivery of the Shipbuilding Improvement Plan by BVT to the JPO shall be a Key Event within the Transformation Plan in the incentivisation arrangements set out in Schedule 11 (*Performance Management and KPIs*).
- 6.2 **Annual Benchmarking Assessments**
- 6.2.1 From 2012 during the interim periods between CBRs the MoD and BVT shall jointly commission Annual Benchmarking Assessments to assist in maintaining momentum on continuous improvement and tracking the implementation of the Shipbuilding Improvement Plan. Both the MoD and BVT acknowledge that benchmarking for the support solution is at the date of this Contract relatively immature and will need to be developed during the Contract Period.
- 6.2.2 The Annual Benchmarking Assessments shall focus on a basket of measures for the short-term assessment of improving performance, making international comparisons where information is available.
- 6.2.3 It is the intention that each individual measure used in the basket will be reported against and the basket of measures will also be used as a fall-back measure in the event that a performance assessment in shipbuilding using man-hours per CGT is inconclusive.
- 6.2.4 BVT, the MoD and the firm acting as the Benchmark Consultant will establish a team at a date to be agreed prior to 2012 to determine the basket of measures of surface shipbuild and support activity to be assessed on a continuous basis in these assessments. The Benchmark Consultant shall carry out the Annual Performance Assessment once the terms of reference for that Benchmark Consultant have been agreed by the JPO and endorsed by the Steering Group.
- 6.2.5 Reports will be produced annually by the Benchmark Consultant for consideration and action by the JPO and will include metrics to measure improvements against assessments in previous years.

Schedule 10 – Continuous improvement and benchmarking

6.3 **Benchmark Consultants**

- 6.3.1 The Comprehensive Benchmarking Reviews and Annual Benchmarking Assessments will be undertaken by a Benchmark Consultant which shall be jointly funded on terms to be agreed. Both BVT and the MoD shall agree the appointment of any Benchmark Consultant.
- 6.3.2 Each Benchmark Consultant shall be jointly tasked and directed by the MoD and BVT who shall jointly agree terms of reference, scopes of work and reporting timescales. The Benchmark Consultants shall be managed through the JPO who shall also be the first recipient of reports and presentations arising from Benchmarking Exercises.

6.4 **KIC Benchmarking**

- 6.4.1 BVT and the MoD shall appoint an independent consultant (the **KIC Benchmark Consultant**) to review, and recommend to the JPO, the number of Key Posts in Relevant Trades within each band for the purpose of the Shipbuilding KIC for the remainder of the Contract Term. The KIC Benchmarking Exercise will be carried out prior to the 2011 Strategic Review with the intention that the recommendations can be considered as a part of the 2011 Strategic Review.
- 6.4.2 Neither BVT nor the MoD shall be obliged to accept the recommendations of the KIC Benchmark Consultant but if, and to the extent, any recommendations (either in totality or in part) are agreed by both the MoD and BVT (and subsequently endorsed by the Steering Group, this Contract shall be amended to reflect the agreed recommendations.
- 6.4.3 The KIC Benchmark Consultant shall be jointly funded by the MoD and BVT on terms to be agreed. Both BVT and the MoD shall agree the identity and terms of reference of the KIC Benchmark Consultant.
- 6.4.4 The KIC Benchmark Consultant shall be managed through the JPO which shall receive and review the reports and prepare and agree recommendations for endorsement by the Steering Group.

6.5 **Relationship Benchmarking**

- 6.5.1 In accordance with Clause 29 (*Partnering*) and the Strategic Partnering Accord in Part 1 of Schedule 7 (*Partnering*) BVT and the MoD shall jointly appoint, and agree the terms of reference for, a Benchmark Consultant to assist in the development of Relationship Benchmarking between the MoD and BVT (the **Relationship Benchmarking Consultant**).
- 6.5.2 The role of the Relationship Benchmark Consultant will be to carry out the following:
- (a) the development of the Relationship Management Plan;
 - (b) the development of a plan for "partnering best practice"; and
 - (c) the completion of the annual partnering diagnostic exercises.
- 6.5.3 BVT and the MoD will in parallel continue to use the Key Supplier Management Process to assess their relationship and will ensure at all times that the Relationship Benchmarking Consultant's work is complementary to that process, consulting with the MoD as appropriate.

6.6 **Future requirements**

In accordance with the aim of continuous improvement and the Strategic Partnering Accord in Part 1 of Schedule 7 (*Partnering*), either BVT or the MoD shall be entitled to propose additional benchmarking or performance improvement initiatives at any time during the Contract Period. The parties acknowledge that, once agreed, such Benchmarking Exercises may be commissioned in advance of specific benefits being identified.

Schedule 10 – Continuous improvement and benchmarking

7 Information

- 7.1 Both the MoD and BVT agree that, subject to Clauses 35 (*Strategic Reviews*) 38 (*Open Book Accounting and Records*) and 57 (*Confidentiality and Freedom of Information*), they shall each disclose to the Benchmark Consultants all information that the Benchmark Consultants may reasonably require in order to conduct a full and open assessments of the performance of BVT and the MoD in accordance with this Schedule 10 (*Continuous improvement and Benchmarking*) having regard at all times to confidentiality and secret matters and provided that any Benchmark Consultant appointed may be required to enter into a confidentiality agreement with the MoD and BVT, as applicable.
- 7.2 The disclosure at paragraph 7.1 above shall include relevant existing benchmarking material the parties may hold, subject to any confidentiality and intellectual property restrictions that may apply to such information.

Schedule 11 – Performance Management and KPIs

Part 1 – BVT Overhead Baseline



The table redacted here outlined a projected overhead baseline and included projected costs from:

Tier 1 - Direct Labour, Indirect Labour, Depreciation, Selling Costs, Site Costs, IT Services, Indirect materials, Personnel & Training, Travel, Professions charges, Third Party Charges, Other Charges.

Tier 2 – G & A - Labour, Depreciation, Selling Costs, Site Costs, IT Services, Indirect Materials, Personnel & Training, Travel, Professions charges, Third Party Charges, Recharge from/to Central, Other Charges.

Tier 2 – Sales & Marketing – Labour, Depreciation, Selling Costs, Site Costs, IT Services, Indirect Materials, Personnel & Training, Travel, Professions charges, Third Party Charges, Other Charges.

PV R & D Expenditure

P&T Expenditure

Part 2 - Target Yearly Efficiency Savings

Target Yearly Efficiency Savings for Years 1-5 (Year 1 = 1 April 2009 to 31 March 2010)

Years 1 – 5	£m (Target Yearly Efficiency Savings Against 1st 5 Year Baseline)				
	Year 1	Year 2	Year 3	Year 4	Year 5
£395m Profile	11.1	15.4	17.9	20.5	20.5
£495m Profile	12.0	16.5	20.0	23.0	23.0
£595m Profile	12.5	17.0	23.0	26.0	28.0
£650m Profile	13.1	17.4	25.9	30.5	33.5
£795m Profile	14.0	18.4	28.0	35.0	37.0
£900m Profile	15.1	19.4	30.9	38.5	41.5

Target Yearly Efficiency Savings for Years 6-10

Years 6 – 10	£m (Target Yearly Efficiency Savings Against 2nd 5 Year Baseline)				
	Year 6	Year 7	Year 8	Year 9	Year 10
£395m Profile	8.3	8.3	8.3	8.3	8.3
£495m Profile	10.0	10.0	10.0	10.0	10.0
£595m Profile	16.7	16.7	16.7	16.7	16.7
£650m Profile	21.3	21.3	21.3	21.3	21.3
£795m Profile	24.8	24.8	24.8	24.8	24.8
£900m Profile	31.3	31.3	31.3	31.3	31.3

Target Yearly Efficiency Savings for Years 11-15

Years 11 – 15	£m (Target Yearly Efficiency Savings Against 3rd 5 Year Baseline)				
	Year 11	Year 12	Year 13	Year 14	Year 15
£395m Profile	4.5	4.5	4.5	4.5	4.5
£495m Profile	5.0	5.0	5.0	5.0	5.0
£595m Profile	6.7	6.7	6.7	6.7	6.7
£650m Profile	8.5	8.5	8.5	8.5	8.5
£795m Profile	14.0	14.0	14.0	14.0	14.0
£900m Profile	23.5	23.5	23.5	23.5	23.5

Note in relation to the tables above:

- (i) The BVT Overhead Baseline for measuring Efficiency Savings will be reset in accordance with Clause 18.6.
- (ii) All amounts above shall be Indexed.

Part 3 - Key Performance Indicators

Section A - High Level Description

KPI	High Level Description
Benefits Delivery	Measured in accordance with the actual level of Delivered Efficiency Savings delivered against the Projected Savings Levels in the table in Part 4 below
Transformation Events	Measured by the achievement of Transformation Events as detailed on the 5-year Transformation Plan
Partnering	Measured by the Partnering Diagnostic
Relationship Management	Measured by the MoD Supplier Relations Team Annual Performance Review
Continuous Improvement and Benchmarking	Measured by improvement against the Benchmarking Metrics and achievement of Upper Quartile Performance
Reporting – Rates Data	Measured by the timely delivery of reports
Reporting – Business Information	Measured by the timely delivery of reports

Section B - Key Performance Indicators – First Year of Contract

KPI	Key Milestone Description
Benefits Delivery	Measured in accordance with the actual level of Delivered Efficiency Savings delivered against the Projected Savings Level in the table in Part 4 below
Transformation	<ol style="list-style-type: none"> 1. Integration: Internal submission of functional budgets incorporating synergy commitments for BVT 10-year plan (Apr 09). 2. Integration: Phase 2 OD&A organisational changes and FTE reductions presented to BVT Exec Team (Aug 09). 3. Integration: Phase 1 FTE reductions realised (May 10). 4. TPS: OJEU notice for initial package placed (Jul 09). 5. TPS: PQQ and ITT Criteria developed (Aug 09). 6. TPS: Tender Evaluation to Contract Award (May 10).
Partnering	<ol style="list-style-type: none"> 1. Agreement of Partnering Diagnostic metric (Dec 09) 2. Agreement of Partnering Improvement Plan (Dec 09)
Relationship Management	DSR score maintained in upper quartile
Continuous Improvement and Benchmarking	<ol style="list-style-type: none"> 1. BVT/Mod/Benchmark Consultant study team formed (Sep 09). 2. TOR agreed and Independent Expert contract placed (Nov 09)
Reporting – Rates Data	Provision of data to support annual rates agreement (July 2010, or 4 months after BVT's financial year end, if changed)
Reporting – Business Information	Provision of reports in accordance with Schedule 6 (<i>Reporting</i>).
Maximum payment available	

- Notes:
1. All dates should be on 5-Year Transformation Plan.
 2. PIs developed as part of Annual Performance Review.

Part 4 – Incentive Payments

Key Performance Indicator	Weighting	Projected Savings Levels					
		£395 million	£495 million	£595 million	£650 million	£795 million	£900 million
		Incentive Payment					
Benefits Delivery	█	█	█	█	█	█	█
Transformation Events	█	█	█	█	█	█	█
Partnering & Relationship Management	█	█	█	█	█	█	█
Continuous Improvement and Benchmarking	█	█	█	█	█	█	█
Reporting – Rates Data & Reporting – Business Information	█	█	█	█	█	█	█
Maximum Incentive Payment available	█	█	█	█	█	█	█

Note:
 (i) All amounts to be indexed.

Part 5 – Benefit Tracking and Realisation

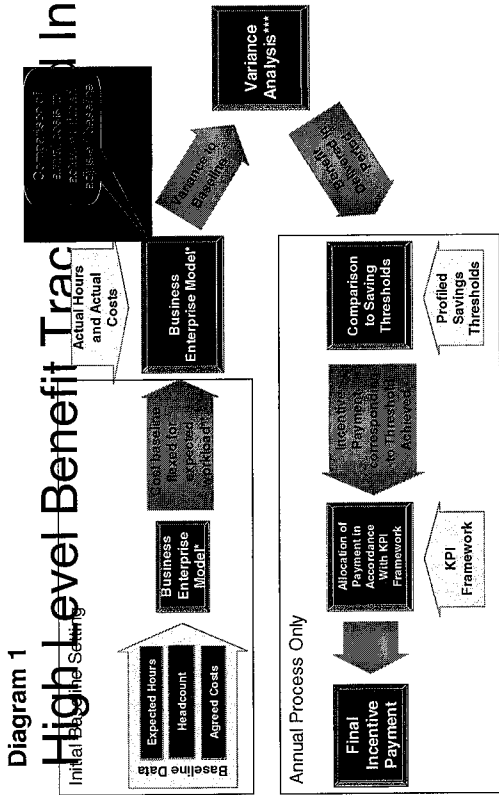
Benefit Tracking and Realisation

1. Principles for tracking and realising Efficiency Savings relating to overheads and Other Savings

The following principles (which are not exhaustive) agreed by both BVT and the MoD will guide the measurement of benefits tracking and realisation of the Efficiency Savings:

- (1) the Baseline will be agreed pursuant to Clause 14 (*Savings Targets*);
- (2) Delivered Efficiency Savings will be tracked using the Quarterly Reports in accordance with Clause 15.3.1 (*Quarterly Report*) and reported at Annual Performance Reviews in accordance with Clause 15.3.2 (*Annual Performance Review*);
- (3) variants in actual performance against the BVT Overheads Baseline and the agreed Baseline for the Other Savings will be established by the JPO;
- (4) the JPO shall allocate all Delivered Efficiency Savings to an Approved Transformation Benefit Proposal through the reduction of overhead and/or rates payable under a Project Contract and the delivery of such Delivered Efficiency Savings shall be demonstrated in accordance with Clause 16.2; and
- (5) Diagram 1 illustrates the methodology for the tracking and realisation of Efficiency Savings relating to overheads.

High Level Benefit Tracking and Incentivisation Process



* Business Enterprise Model will only be used to store Overhead baseline. Baselines for other savings, to be agreed on a case by case basis [law clause], will be stored appropriately and as agreed.

** Where the saving being measured will vary with workload only.

*** Benefit that will not flow to MoD contracts and agreed one-off non-ToBA one-off savings removed and remaining variance attributed to approved savings initiatives.

2. Methodology for Other Savings

2.1 Other Savings for the purpose of Clause 14.1.9 (*Baseline for Other Savings*) relate to non-overhead related BVT cost savings and/or MoD cost savings associated with an Agreed Transformation Benefit Proposal. These savings will include, but will not be limited to, direct labour and direct materials savings.

2.2 *Baseline for "Other Savings"*

- (a) The Baseline for measurement of "Other Savings" will be agreed between the MoD and BVT on a case-by-case basis. Where possible, the baseline will refer to operational norms as at 1 January 2007 or otherwise agreed between the MoD and BVT.
- (b) BVT will nominate programmes or initiatives as Transformation Benefit Proposals for the purpose of benefits tracking and delivery. Working with the relevant BVT team, the JPO will agree the baseline for BVT, and where appropriate, MoD costs.
- (c) It is acknowledged by the MoD and BVT that in some cases the Baseline for costs will not be readily available and will have to be supported by financial and operational assumptions to be agreed by MoD and BVT.

2.3 *Benefits Tracking*

- (a) The Baseline for Other Savings will be tracked against outline BVT costs by programme teams as part of BVT's normal programme reporting process. When appropriate, this will be extended to cover relevant elements of the MoD cost base.
- (b) Information to validate paragraph 2.2(a) will be provided to the JPO on a quarterly basis to enable a review of performance against the Baseline for each Transformation Benefit Proposal. Variation against the Baseline will take into account changes in scope, workload or other changes agreed between MoD and BVT.

2.4 *Delivered Efficiency Savings*

At the end of each Contract Year for those contracts included within Approved Transformation Benefit Proposals detailing savings other than overhead savings, Annual Transformation Cost Certificates and Final Transformation Cost Certificates will be compared with the baseline to be agreed in accordance with paragraph 2.1.

Schedule 12 – List of Commercially Sensitive Information

Sections of this Contract

Clause	Description of Information	Duration
10	Pre April 2009 Integration	6 years following expiry or termination
11	Post April 2009 Integration	6 years following expiry or termination
13	Strategic Rationalisation	6 years following expiry or termination
14	Savings Targets	6 years following expiry or termination
16	Benefit Tracking	6 years following expiry or termination
17	Key Performance Indicators	6 years following expiry or termination
18	Incentive Payments	6 years following expiry or termination
Part 7	Key Industrial Capability	6 years following expiry or termination
Part 12 (Clauses 39 to 43)	Termination and Compensation	6 years following expiry or termination
Schedule 4	KIC	6 years following expiry or termination
Schedule 5	Integration, Transformation and Strategic Rationalisation	6 years following expiry or termination
Schedule 9	Equality of Information Statement	6 years following expiry or termination
Schedule 11	Performance Management and KPIs	6 years following expiry or termination

Schedule 12 – List of Commercially Sensitive Information

Information provided pursuant to this Agreement

Type of Information	Duration
Any Non-Disclosable Information	6 years following termination or expiry
Any information relating to BVT Group Company accounts or any other financial information	6 years following termination or expiry
Any information provided containing BVT's know-how capabilities	6 years following termination or expiry
Any pricing or technical proposal submitted as part of a tender pursuant to Clause 9 (<i>Exclusivity</i>)	6 years following termination or expiry

Schedule 13 – Forms

Part 1 – DEFFORM 111

DEFFORM 111
(Edn 04/09)

Appendix E- Addresses and Other Information

1. Commercial Officer

McIntosh Building
Level O
MoD Abbey Wood
Bristol
BS34 8JH

Email: [REDACTED]

8. Public Accounting Authority

(for Government owned stores issued or to be held by the Contractor)
Ministry of Defence, CAS/Asset Accounting Centre (AAC), West Point, 12th Floor, 501 Chester Road, Old Trafford, Manchester, M16 9HU

☎ 0161 908 3001 Fax : 0161 908 3000

2. Project Manager, Equipment Support Manager or IPT Leader

McIntosh Building
Level O
MoD Abbey Wood
Bristol
BS34 8JH

Email: [REDACTED]

9. Consignment Instructions

The items are to be consigned as follows:
N/A

3. Packaging Approving Authority

CTS Defence Packaging
Building S11
Fort Halstead
Sevenoaks
Kent
TN14 7BP
Tel: 01959 897253

10. Transport. The appropriate Ministry of Defence Transport Offices are:

A. AIR Air Freight Centre, Defence Supply Chain Operations & Movements (DSCOM), Building 400, Andover, Monxton Road, Andover, Hants, SP11 8HJ. Overseas:
☎ 01264 38 1589 for exports Fax. 01264 381598
☎ 01264 38 1580 for imports Tel. 01264 381585
Fax 01264 38 1581 Tel. 01264 381577

4. (a) Supply/Support Management Branch or JIGSAW Order Manager:

McIntosh Building
Level O
MoD Abbey Wood
Bristol
BS34 8JH

Email: [REDACTED]

B. SURFACE DSDA HQ Transport Stream, Building E1, E Site, Bicester, Oxon, OX25 2LD:

☎ 01869 258406/258403 for UK Ex-Works contracts
Fax 01869 257295 (Ex-Works)
☎ 01264 38 1605 for IMPORTS
☎ 01264 38 1602 for EXPORTS
Fax 01264 38 1643 (Imports and Exports)
Also note: www.freightcollection.com

5. Drawings/Specifications are available from

McIntosh Building
Level O
MoD Abbey Wood
Bristol
BS34 8JH

Email: [REDACTED]

11. The Invoice Paying Authority (see Note 1)

Ministry of Defence ☎ 0151-242-2000
DGFM FM SSC
Walker House, Exchange Flags Fax: 0151-242-2809
Liverpool, L2 3YL Website is: www.fmssc.mod.uk

6. For contracts containing DEFCON 5, mauve Copies of MOD Form 640 are to be sent to

N/A

(where no address is shown the mauve copy should be destroyed)

12. Forms and Documentation are available through *:

Ministry of Defence, Forms and Pubns Commodity Management
PO Box 2, Building C16, C Site
Lower Arcott
Bicester, OX25 1LP (Tel. 01869 256052)
A self-addressed label should be sent with each application.

Schedule 13 – Forms

7. Quality Assurance Representative:
 [Redacted]
 McIntosh Building
 Level O
 MoD Abbey Wood
 Bristol
 BS34 8JH
 Email: [Redacted]

AQAPS and DEF STANs are available from Stan 1, Kentigern House, 65 Brown St, Glasgow, G2 8EX. A self addressed label should be sent with each application. Website is: www.dstan.mod.uk

NOTES
 1. **Forms.** Hard copies, including MOD Form 640 are available from address in Box 12., All other invoicing forms e.g. AG Forms 169 and 173, are available from the website address shown at Box 11.
 2.* Many DEFCONs and DEFFORMs can also be obtained from the MOD Internet Website;
<http://www.aof.mod.uk/aofcontent/tactical/toolkit/inde>
 X

For Official Use Only Recoverable YES NO

Issue of Government Property YES NO

VAT Contractor - Country of Origin (delete those not applicable)

UK	Overseas (non-EC Country)	Overseas (EC Country)
----	---------------------------	-----------------------

If EC specify country:

Outside the scope	<input type="checkbox"/>	Item Nos	<input style="width: 95%;" type="text"/>
Exempt	<input type="checkbox"/>	Item Nos	<input style="width: 95%;" type="text"/>
Taxable Zero Rate	<input type="checkbox"/>	Item Nos	<input style="width: 95%;" type="text"/>
Taxable - Standard Rate	<input type="checkbox"/>	Item Nos	<input style="width: 95%;" type="text"/>

Finance Branch

LH No/Project No

Requisition No

Project Management/ Production branch reference

Place of manufacture

Place of packaging

Contractor's Tel No

(where contract is with an overseas contractor RP (FIN) VAT Guidance Note No 3 should be consulted)

Part 2 – DAB 10

FMSSC Invoicing Group Walker House, Exchange Flags, Liverpool L2 3YL
 Website: www.fmssc.mod.uk e-mail: DGFM-FMSSC-BS-HELPshared@mod.uk



MINISTRY OF DEFENCE

Summary of Supplier's Claim

Supplier's Name and Address

Supplier's DAB 10 Reference
<i>Your own unique number for each DAB 10 presented (optional)</i>
<input style="width: 100%;" type="text"/>
Page 1 of <input style="width: 50px;" type="text"/>

VAT Number	TAX Point
<input style="width: 90%;" type="text"/>	<input style="width: 90%;" type="text"/>
Supplier Code	Address Code
<input style="width: 30px;" type="text"/> <input style="width: 30px;" type="text"/> <input style="width: 30px;" type="text"/> <input style="width: 30px;" type="text"/>	<input style="width: 30px;" type="text"/> <input style="width: 30px;" type="text"/>
Type of Currency	
<input style="width: 90%;" type="text"/>	

FMSSC Use Only
Registered Serial No.
<input style="width: 90%;" type="text"/>
Group No.
<input style="width: 90%;" type="text"/>

Note - All invoice forms relating to the same contract may be aggregated and detailed below as a single line entry.

Contract Number	Supplier's Invoice Reference <small>(Max 10 Characters)</small>	Value (Ex. VAT)	VAT	Total Value

Total Brought Forward From Reverse			
Total claimed From Continuation Sheets			
Grand Total			

Schedule 13 – Forms

Total To Be Carried Forward to Front

--	--	--

Part 4 – DEFCON 110

DEFCON 110 (Edm 4/88)				
CONTRACTS – IN – CONFIDENCE				
<p>MINISTRY OF DEFENCE Schedule of Requirement For Terms of Business Agreement relating to BVT Surface Fleet Ltd and its business</p>	<p>CONTRACT NO MCP/001 Issued with DEFCON On: 20 July 09</p>			
<p>Name and Address of Contractor BVT Surface Fleet Limited Daring Building 2-166 Postal Point 100 Portsmouth Naval Base Portsmouth Hampshire PO1 3NJ</p>				
Table I Articles Required				
Item No	Reference No.	Specification number Drawing number Part number	DESCRIPTION	Quantity (each unless otherwise stated)
1	N/A	N/A	Any Contract Payments listed in Clause 31.1(a-e) subject to the terms of this Contract.	
Table II Packaging requirements				
Item No	Packaging specifications/special markings etc	Quantity	Adjustment* £	Quantity

Schedule 13 – Forms

Table III Delivery of Articles		NOTE: *to price per quantity shown in Table I		CONDITION OF CONTRACT
Item No	Start	Rate	Finish	This contract is subject to: DEFCON
	From date of contract		From date of contract	

Schedule 14 – Certificate of Commencement

TERMS OF BUSINESS AGREEMENT

relating to

BVF SURFACE FLEET LIMITED AND ITS BUSINESS

(Contract No. MCP/001)

CERTIFICATE OF COMMENCEMENT

This is the Certificate of Commencement referred to in Clause 5.1 of the Terms of Business Agreement dated 2009 relating to BVT Surface Fleet Limited and its business and entered into between (1) the Secretary of State for Defence of the United Kingdom and Great Britain and Northern Ireland (MoD), (2) BVT Surface Fleet Limited, (3) BAE Systems plc and (4) VT Group plc (the **Contract**).

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

.....

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

Dated: 2009

Executed and delivered as a Deed by)
)
)
a duly appointed attorney for and on behalf of)
BVT SURFACE FLEET LIMITED)

..... Attorney

..... Witness

Executed and delivered as a Deed by)
)
)
a duly appointed attorney for and on behalf of)
BAE SYSTEMS PLC)

..... Attorney

..... Witness

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

..... Attorney

..... Witness

The corporate seal of
**The Secretary of State for Defence of the
United Kingdom of Great Britain and
Northern Ireland**
hereunto affixed is hereby authenticated by:

..... Authorised Signatory

