

Contract Number: CBCVF/00201

**AMENDMENT No. 1 to
AIRCRAFT CARRIER
MANUFACTURING PHASE
ALLIANCE AGREEMENT**

DATED 12th February 2010

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

MAA AMENDMENT NO. 1

BETWEEN

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

(together the "Manufacturing Alliance Participants" or "MAPS")

WHEREAS

- (A) The Manufacturing Alliance Participants entered into the aircraft carrier manufacturing phase manufacturing alliance agreement, dated 3 July 2008 (the "MAA").
- (B) Since the date of the MAA, BVT Surface Fleet Limited changed its name to BAE Systems Surface Ships Limited and its registered office from Daring Building, Bldg 2-166, Postal Point 100, Portsmouth Naval Base, Portsmouth, Hampshire PO1 3NJ to

Warwick House, PO Box 87, Farnborough Aerospace Centre, Farnborough, Hampshire, GU14 6YU, as stated above.

- (C) As a consequence of the Authority receiving fully ratified approvals the Manufacturing Alliance Participants are now in a position to amend the Key Project Agreements to reflect the outcome of the Authority's Planning Round 09 (PR09) Equipment Examination (the "**Equipment Examination**") [together with the other changes agreed between the MAPS] by an amendment to the MAA (this "**MAA Amendment No. 1**"), an amendment to the MFTC (the "**MFTC Amendment No. 1**") and an amendment to each of the IP MFTC Sub-Contracts (together the "**IP MFTC Sub-Contract Amendments No. 1**"), each of even date herewith.
- (D) Any change to the MAA is governed by clause 26 of, and the Change Procedure set out in schedule 16 to, the MAA.
- (E) In accordance with clause 26.2 of the MAA, any alteration or variation of any Key Project Agreement, which includes the MAA, is required to be agreed in writing by all of the Manufacturing Alliance Participants. Agreement to the proposed alterations and variations to the MAA, as set out in this MAA Amendment No. 1, and to the proposed alterations and variations to the other Key Project Agreements, has been given in writing by all Manufacturing Alliance Participants.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions and Interpretation

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

2 Amendment to the MAA

- 2.1 With effect on and from the date of this MAA Amendment No. 1 the MAA shall be amended as set out in schedule 1 and annexes A, B, C and D to this MAA Amendment No. 1 and the MAPS agree to be bound by the terms of the MAA as so amended.
- 2.2 The MAPS agree that, other than the amendments referred to in this MAA Amendment No. 1, (including schedule 1 and annexes A, B, C and D attached hereto), the MAA shall continue unamended and in full force and effect and otherwise without prejudice to all subsisting rights and obligations under it.
- 2.3 The MAPS agree that, in accordance with paragraph 14.2 of schedule 16 to the MAA the provisions of this MAA Amendment No. 1 shall be enforceable in all respects as if executed as a deed.
- 2.4 The MAPS do not intend this MAA Amendment No. 1 to become legally binding on any of them until the date of this MAA Amendment No. 1 is written at its head, notwithstanding that any or all of them may have signed this MAA Amendment No. 1 prior to that date being inserted.

3 Dispute Resolution

- 3.1 Any dispute or claim arising out of or in connection with this MAA Amendment No. 1 shall be resolved in accordance with the Dispute Resolution Procedure.

4 Third Party Rights

- 4.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this MAA Amendment No. 1. No person who is not a Party to this MAA Amendment No. 1 (including any member of the Relevant Group of any Industrial Participant, any employee, officer, agent, representative, sub-contractor, Sub-Contractor or Indemnified Sub-Contractor of any Manufacturing Alliance Participant or, in relation to any Industrial Participant, of any member of its Relevant Group) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of this MAA Amendment No. 1 which expressly or by implication confers a benefit on that person without the express prior agreement in

writing of the Manufacturing Alliance Participants which agreement must refer to this clause 4.1.

5 Severability

5.1 If at any time any part of this MAA Amendment No. 1 (including any one or more of the clauses of this MAA Amendment No. 1 or paragraphs of the schedule or of any annex to this MAA Amendment No. 1 or any part of one or more of the clauses of this MAA Amendment No. 1 or paragraphs of the schedule or any annex to this MAA Amendment No. 1) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this MAA Amendment No. 1 and replaced by provisions which shall be determined in accordance with the Change Procedure.

6 Law

6.1 This MAA Amendment No. 1 and any Dispute arising out of or in connection with it, whether such Dispute is contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise, shall be governed by, and construed in accordance with, the laws of England.

7 Jurisdiction

7.1 Subject to clause 40 and schedule 17 to the MAA (the Dispute Resolution Procedure), the MAPS hereby submit to the exclusive jurisdiction of the English courts.

8 Counterparts

8.1 This MAA Amendment No. 1 may be entered into in the form of two or more counterparts each signed by one or more of the parties but, taken together and provided that each party duly signs such a counterpart, each of the signed counterparts, when duly exchanged, shall be deemed to be an original, but, taken together, they shall constitute one instrument.

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

Signed: **P. R. Tozer**.....

Name: **P. R. Tozer**

Date: **12th February 2010**.....

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

Signed: [REDACTED].....

Name: [REDACTED]

Date: **12th February 2010**.....

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

Signed: [REDACTED].....

Name: [REDACTED]

Date: **12th February 2010**.....

Signed for and on behalf of
BAE SYSTEMS INTEGRATED SYSTEM TECHNOLOGIES LIMITED

Signed: [REDACTED].....

Name: [REDACTED]

Date: **12th February 2010**.....

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

Signed: [REDACTED].....

Name: [REDACTED]

Date: **12th February 2010**.....

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

Signed: [REDACTED].....

Name: [REDACTED]

Date: **12th February 2010**.....

SCHEDULE 1 TO MAA AMENDMENT NO. 1

AMENDMENTS TO AIRCRAFT CARRIER MANUFACTURING PHASE ALLIANCE AGREEMENT

- A. All references to "BVT" which do not appear as part of the name "BVT Surface Fleet Limited" or as part of a document reference to be replaced with "BAES SS".
- B. All references to CVF Programme Director to be replaced with QEC Programme Director.
- C. **CLAUSE 29 – CHANGE OF CONTROL**
DELETE: Sub Clause 29.6
- D. **CLAUSE 36 - NOTICES**
Sub Clause 36.3
DELETE: Existing detail in entirety.
INSERT:

"36.3 The nominated addresses for the parties are:

(A) Authority

Defence Equipment and Support
Capital Ships
MoD Abbey Wood
Ash 0c #3016
Bristol
BS34 8JH
Facsimile No. 0117 913 5958
Attention: DES Capital Ships Head

(B) Babcock Marine (Rosyth) Limited

Babcock Marine (Rosyth) Limited
Rosyth Business Park
Rosyth
Dunfermline
Fife KY11 2YD
Facsimile No. 01383 423027
Attention: Commercial Director / Company Secretary

(C) BAE Systems Marine Limited

BAE Systems Marine Limited
Building A42 – Main Shipyard Offices
Bridge Road
Barrow-in-Furness
Cumbria
LA14 1AF
Facsimile No. 01229 873222
Attention: Commercial Manager, Central Services

(D) BAE Systems Integrated System Technologies Limited

BAE Systems Integrated System Technologies Limited
Victory Point
Lyon Way
Frimley
Camberley
Surrey
GU16 7EX
Facsimile No. 01276 603104
Attention: Commercial Manager, QE Class Project

(E) BAE Systems Surface Ships Limited (BAES SS)

QEC Project Office,
Building 100,
Rosyth Dockyard,
Fife,
KY11 2YD
Facsimile No. 01383 425740
Attention: Commercial Director - QEC

(F) Thales Naval Limited

Thales Naval Limited
Building 630
The Gardens
Bristol Business Park
Bristol
BS16 1EJ
Facsimile No. 0117 317 0697
Attention: Head of Commercial, QE Class Project”

E. SCHEDULE 1 - DEFINITIONS AND INTERPRETATION

DELETE: Existing detail against each of the following definitions and their interpretations in entirety

INSERT: The following revised definitions and interpretations

“Agreement”	means this deed as amended by the parties hereto from time to time
“BAES”	means together BAES MARINE, BAES INSYTE and BAES SS;
“Contract Acceptance Date or “CAD”	shall mean 21 st December 2015 for the First Vessel and 04 th June 2018 for the Second Vessel;
“CVF”	has the same meaning as “QEC”
“Dispute Resolution Panel” or “DRP”	means a panel comprising the Chief of Defence Material for the Authority and the Chief Executive Officers of the Guarantor for each of Babcock, BAES and Thales who will meet as necessary pursuant to Paragraph 2 of Schedule 17 (Dispute Resolution Procedure) to resolve disputes;

<p>“Final Target Cost”</p>	<p>means the sum agreed by the parties in accordance with Paragraph 1.2 of Schedule 4 (Risk and Reward Incentive Arrangement) to be calculated as the aggregate of:</p> <ul style="list-style-type: none"> (a) the actual Incurred Costs incurred to end of Phase 1; (b) the estimate of Incurred Costs forecast for completion of the Works as at the end of Phase 1 for the period to the end of Phase 2 set out in the Cost Model at the end of Phase 1 at P70 (based on the Time Phased Budget); (c) the Risk Contingency; and (d) the Fixed Fee;
<p>“Fixed Fee”</p>	<p>means the sum of [REDACTED] (amended as set out in Paragraph 8 of the First AMB Board Minutes) before being Indexed, being the mark-up on:</p> <ul style="list-style-type: none"> (a) the estimate of Incurred Costs forecast for completion of the Works as at 1st April 2006 economic conditions; and (b) the Risk Contingency, <p>which the Authority shall pay to BAES SS as part of the payment for the Works;</p>

<p>“Industrial Participant’s Phase 2 Fixed Fee Portion”</p>	<p>shall have the meaning ascribed to that term in Paragraph 4.5 of Schedule 4 (Risk and Reward Incentive Arrangement)</p>
<p>“Initial Target Cost”</p>	<p>means the sum of £3,552,555,250 ex-VAT at April 2006 economic conditions (amended as set out in Paragraph 8 of the First AMB Minutes and as adjusted pursuant to Schedule 4 (Risk and Reward Incentive Arrangement)) agreed by the parties based on:</p> <ul style="list-style-type: none"> (a) the estimate of the Allowable Costs for the Manufacturing Phase (based on the Time Phased Budget); (b) the Risk Contingency and opportunities; and (c) the Fixed Fee;
<p>“Interim Outturn Cost”</p>	<p>shall mean the aggregate of:</p> <ul style="list-style-type: none"> (a) all Incurred Costs; and (b) the Fixed Fee; <p>in each case which is paid to BAES SS at the relevant time during the Manufacturing Phase in respect of the performance of the Works under the Manufacturing Phase Works Contracts but shall not include any Gain Share or Pain Share which is payable or which is due, or which has been paid or satisfied, at the relevant time in respect of Phase 2.</p>

<p>“IP MFTC Sub-Contracts”</p>	<p>means the agreements relating to the Manufacturing Phase entered into between BVT Surface Fleet Limited (now BAES SS) and each of:</p> <ul style="list-style-type: none"> (a) Babcock; (b) BAES Marine (c) BAES INSYTE: and (d) Thales <p>on 3 July 2008, and as amended by the parties thereto from time to time, and “IP MFTC Sub-Contract” means any one of them;</p>
<p>“Manufacturing Alliance Participants”</p>	<p>means subject to the provisions of Clause 24 (Exclusion, Step-In, Novation and Termination):</p> <ul style="list-style-type: none"> (a) the Authority; (b) Babcock; (c) BAES MARINE; (d) BAES INSYTE; (e) BAES SS; and (f) Thales <p>and “Manufacturing Alliance Participant” means any one of the above;</p>
<p>“Manufacturing Flow Through Contract” or “MFTC”</p>	<p>means the agreement relating to the Manufacturing Phase entered into between the Authority and BVT Surface Fleet Limited (now BAES SS) on 3 July 2008, as amended by the parties thereto from time to time;</p>

“Manufacturing Phase Works Contracts”	means the Manufacturing Flow Through Contract and the IP MFTC Sub-Contracts;
“Outturn Cost”	shall mean the aggregate of: (a) Allowable Costs in Phase 1 and Phase 2 in performance of the Manufacturing Phase Works Contracts ; and (b) the Fixed Fee (Indexed), but shall not include any Gain Share or Pain Share due in respect of Phase 2 or any VAT which has been paid by the Authority to BAES SS;
“Pain Share Cap”	shall be the maximum level of Pain Share set out in Schedule 4 (Risk and Reward Incentive Arrangement) Paragraph 3.2 b (iii)
“Phase 1 Incentive Payment”	Not Used – deleted
“Project”	means the design, manufacture, testing, commissioning and integrated logistics support of the Vessels to achieve Vessel Acceptance and any Support Assessment Phase work authorised under the Key Project Agreements.
“Project Budget Requirement”	means the Authority’s approval for the Concept, Assessment, Demonstration and Manufacturing Phases and revenue from the aircraft carrier cooperation memorandum of understanding with the French government being £5.254 billion excluding VAT;
“QE Class” or “QEC”	means the Queen Elizabeth Class Aircraft Carrier

“Support Assessment Phase”	means the development of the QE Class in-service support solution

G. SCHEDULE 2 – ALLIANCE MANAGEMENT

PART 1 – Alliance Management Board

15. Members and Alternate Members

(1) Paragraphs 15.1 and 15.2

DELETE: “initial”

(2) Paragraph 15.4

DELETE: Existing 15.4 (a)

INSERT:

“15.4 (a) BAES MARINE, BAES INSYTE and BAES SS shall together be entitled to appoint and remove one Member of the Alliance Management Board;”

(3) **DELETE:** Existing 15.4 (b) in entirety

INSERT: “15.4 (b) Not used”

PART 3 -- Alliance Management Board Members and Alternate Members

(4) **DELETE:** Existing Part 3 in entirety

INSERT: New Part 3 attached at Annex A

H SCHEDULE 3 – OPEN BOOK

Annex 3 – CVF Confidentiality Undertaking

All references to “BVT Surface Fleet Limited” to be replaced with “BAE Systems Surface Ships Limited”

I SCHEDULE 4 - RISK AND REWARD INCENTIVE ARRANGEMENT

DELETE: Existing Schedule 4 in entirety

INSERT: Revised Schedule 4 attached at Annex B

J SCHEDULE 5 - INDEXATION

Paragraph 4.1

DELETE: "in order to determine whether any Phase 1 Incentive Payment will be payable"

K SCHEDULE 7- EXCLUDED RISKS AND ASSUMPTIONS

DELETE: Existing Schedule 7 in entirety

INSERT: Revised Schedule 7 attached at Annex C

L SCHEDULE 8 - INTELLECTUAL PROPERTY RIGHTS

DELETE: Existing Schedule 8 Annex C in entirety

INSERT: Revised Schedule 8 Annex C attached at Annex D

M SCHEDULE 16 – CHANGE PROCEDURE

Paragraph 6 - Analysis of Proposals for Major Changes

INSERT: New Paragraph 6.4:

"6.4 Notwithstanding the preceding Paragraphs 6.1 to 6.3, where any Major Change has an impact of less than £5M per event, the Alliance Management Board may by a resolution of the Alliance Management Board delegate approval to the QEC Programme Director and Capital Ships Head. If the QEC Programme Director or the Authority's Capital Ships Head considers that there is anything novel or contentious about the Change, then approval for the same shall be referred back to the Alliance Management Board in accordance with Paragraphs 6.1 to 6.3."

PART 3

Alliance Management Board Members and Alternate Members

<u>Alliance Participant</u>	<u>Member</u>	<u>Alternate Member</u>
Authority	Rear Admiral Robert Love (Chairman)	Tony Graham
Babcock	[REDACTED]	[REDACTED]
BAES	[REDACTED]	[REDACTED]
Thales	[REDACTED]	[REDACTED]
In attendance	AMB Secretary DES Capital Ships Head [REDACTED]	

Schedule 4

Risk and Reward Incentive Arrangement

1 Final Target Cost, Phase 1 and General

- 1.1 Throughout Phase 1 the Parties shall advance the design, engineering and procurement of the Works including commencement of manufacture to a stage whereby the Integrated Schedule, supply and build packages can be defined with greater certainty as to the costs of the Works than is possible as at the date hereof in order for the Alliance Management Board to determine a Final Target Cost which is less than the Initial Target Cost (to the extent possible).
- 1.2 Not less than thirty (30) Business Days before the end of Phase 1, the QEC Programme Director shall report the proposed Final Target Cost calculated at P70 in accordance with the Project Controls Requirement and the Alliance Management Board shall, within twenty (20) Business Days of receipt of such report, determine the Final Target Cost and the Parties shall be bound by such determination.
- 1.3 At the same time as the Final Target Cost is determined, pursuant to the provisions of Paragraph 1.2 the AMB shall determine the Final Target Cost at P70 and P90 and the difference between the P70 and P90 values shall determine the value of the plateau as indicated in Paragraph 3 below of this Schedule 4.
- 1.4 Any amounts which are due to be paid to or by BAES SS or any of the Other Industrial Participants pursuant to calculations undertaken under and in accordance with this Schedule 4 shall be paid or satisfied in accordance with schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract and the IP MFTC Sub-Contracts as appropriate.

2 Phase 2 Incentive Regime

- 2.1 The RRIA in relation to Phase 2 is based on sharing any under or over spend between the Authority and BAES SS determined through comparisons, carried out during and following Phase 2 of the Outturn Cost with the Final Target Cost. For the purpose of such comparisons of the Final Target Cost with the Outturn Cost, the Final Target Cost shall be Indexed.

The amount of any Gain Share or Pain Share shall be determined in accordance with the provisions of Paragraphs 2 and 3, inclusive, of this Schedule 4.

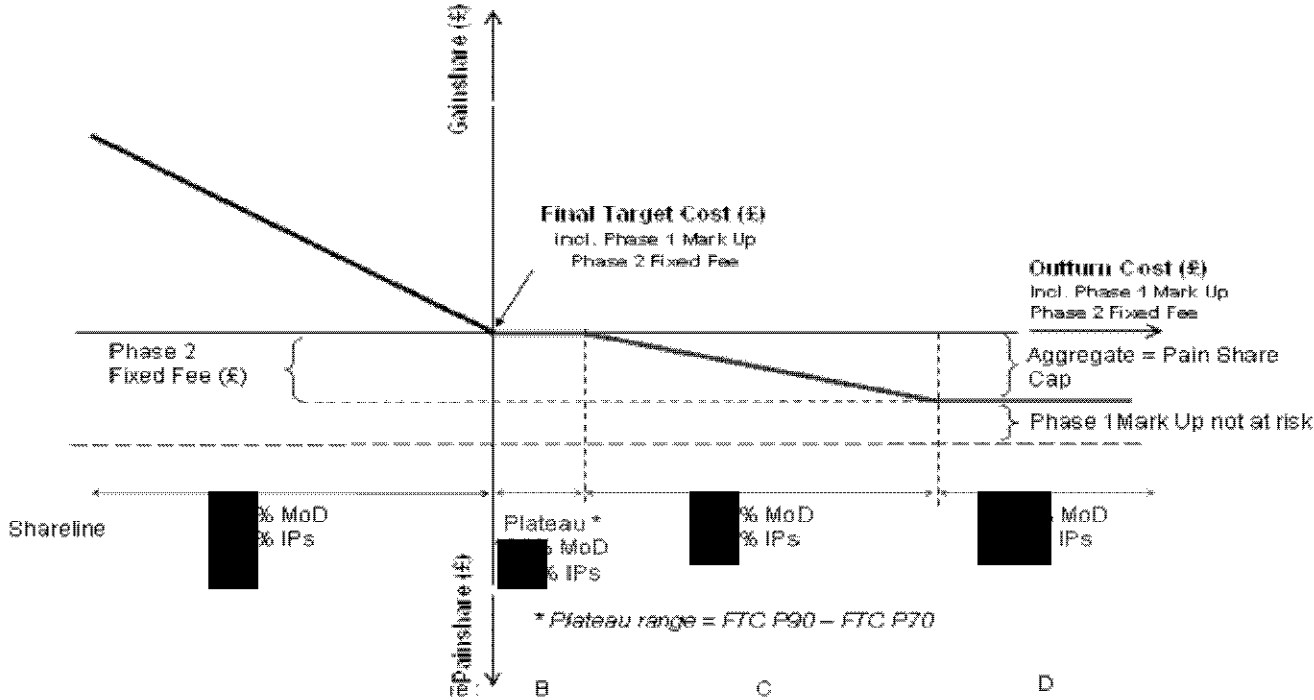
- 2.2 Any Gain Share or Pain Share shall be calculated using the provisions of Paragraph 3 below.
- 2.3 If the Outturn Cost or Interim Outturn Cost is greater than the Final Target Cost (as calculated in accordance with Paragraph 2.1 above), an amount or amounts calculated in accordance with Paragraph 3 below and identified in such Paragraph as the Pain Share, (the "**Pain Share**") shall be due and payable by BAES SS to the Authority and such amount or amounts shall be paid or satisfied in accordance with the provisions of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract. For the final calculation of any Pain Share, the Outturn Cost will be adjusted to follow the Allowable Costs reconciliation pursuant to paragraph 1.5 of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract.
- 2.4 If the Outturn Cost is less than the Final Target Cost then the difference between the two shall be shared by the Authority and BAES SS in accordance with Paragraph 3 below. BAES SS' proportion is identified in such Paragraph as the Gain Share (the "**Gain Share**") and shall be payable by the Authority to BAES SS in accordance with paragraph 2.8 of schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract.
- 2.5 When comparing the Interim Outturn Cost or the Outturn Cost with the Final Target Cost (as calculated and indexed in accordance with Paragraph 2.1 above) for the purpose of determining any Gain Share or Pain Share, the Final Target Cost shall take into account any adjustments to the Final Target Cost agreed in accordance with the Change Procedure.
- 2.6 Within one month of Vessel Acceptance of the Second Vessel, and again within one month of the D3B Clearance Date of the Second Vessel, and again following the Cost Audit of the Phase 2 Final Cost Certificates the Authority shall calculate any Gain Share payable to BAES SS or any Pain Share payable by BAES SS in each case in accordance with the provisions of this Schedule 4, and shall notify the Alliance Management Board and each of the Industrial Participants of such calculation.
- 2.7 Within ten (10) Business Days of the issue of the Authority's notice pursuant to Paragraph 2.6 above, the Alliance Management Board shall confirm such calculation and notify the Manufacturing Alliance Participants accordingly that payment is due in accordance with paragraph 2.8 and the other provisions of Schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract.

2.8 In the event the Alliance Management Board has not confirmed or is unable to confirm any Gain Share or Pain Share payable within thirty (30) Business Days of the issue of the Authority's notice pursuant to Paragraph 2.6 above it shall be determined in accordance with the Dispute Resolution Procedure.

3 Calculation of Gain Share or Pain Share, if any

3.1 The Gain Share or Pain Share, if any, shall be determined in accordance with the following provisions of this Paragraph 3 including the following shareline.

Phase 2 Shareline



3.2 Phase 2 Shareline:

(a) Gain Share

If the Outturn Cost is less than the Final Target Cost, then the applicable Gain Share shall be calculated in accordance with the shareline set out in Paragraph 3.1 above. i.e. ■% share of the difference shall be the Gain Share which shall be payable to BAES SS and ■% share of the difference shall be retained by the Authority. The Gain Share shall be paid by the Authority to BAES SS in addition to payment of Allowable Costs and the Phase 2 Fixed Fee in accordance with schedule 6 (Price and Payment) of the Manufacturing Flow Through Contract;

(b) Pain Share

If the Outturn Cost or Interim Outturn Cost exceeds the Final Target Cost, then the applicable Pain Share shall be calculated in accordance with the shareline set out in Paragraph 3.1 above and more particularly in steps in the order set out below:

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

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

4 Allocation of any Gain Share and Pain Share between Industrial Participants and application to Fixed Fee apportionment

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

Industrial Participant	Proportion
BAES SS	47%
BAES MARINE	10%
BAES INSYTE	10%
Babcock	19%
Thales	14%

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

Industrial Participant	Amount at April 2006 economic conditions
BAES SS	██████████
BAES MARINE	██████████
BAES INSYTE	██████████
Babcock	██████████
Thales	██████████
Total (As at Amendment No 1)	██████████

The numbers in the above table are calculated by reference to ACA document identifier CVF-10065144 (CVF Manufacturing Phase – IP % Cost Split) and the ACA document identifier CVF-10114255 (Contract Change List – Amendment 1).

- 4.3 To the extent that an Industrial Participant has not been paid its proportion of the Fixed Fee, Statement of Work transfers between Industrial Participants shall not affect the Fixed Fee allocation set out in the table at Paragraph 4.2 above until a cumulative transfer value of £10 million has been reached, at which point the Fixed Fee shall be reallocated between the relevant Industrial Participants at a flat rate of ■% of the cost of Work transferred.
- 4.4 Each Industrial Participant's share of the Phase 2 Fixed Fee shall be an amount equal to their share of the Fixed Fee set out in the table at Paragraph 4.2 above less that Industrial Participant's Phase 1 Mark Up.
- 4.5 At the beginning of Phase 2 the sum calculated pursuant to Paragraph 4.4 above when expressed as a percentage of the aggregate Phase 2 Fixed Fee shall be that portion of the Phase 2 Fixed Fee to which that Industrial Participant is entitled ("Industrial Participant's Phase 2 Fixed Fee Portion").
- 4.6 The Phase 2 Fixed Fee payable in accordance with Paragraph 4.2 above shall be set annually in relation to the Time Phased Budget. The actual amounts payable shall be proposed by the Alliance Management Board and agreed by the Authority at the commencement of Phase 2 and reviewed on an ongoing annual basis.

5 No Profit payable on Sub-Contracts to Industrial Participants Group

- 5.1 The Manufacturing Alliance Participants agree that, except as provided below, it is not appropriate for any member of an Industrial Participant's Group to receive any profit for carrying out any part of the Works as this would be in addition to profit included within any Outturn Cost claimed directly or indirectly by any Industrial Participant to which an Industrial Participant may be entitled under any Key Project Agreement. It is therefore agreed that if and to the extent that any contract for Works or part thereof is awarded to any person(s) by any Industrial Participant without first having been won by that/those person(s) in a free and fair competition, and if such person(s) is (are) a member of an Industrial Participant's Group, then such Sub-Contract shall be awarded at a price which does not allow that/those person(s) to make a profit which is additional to that which the Industrial Participant is entitled to earn in relation to such work. If such contract is awarded in a free and fair competition to any third party or a member of an Industrial Participant's Group then such award may be at a price which includes a reasonable element of profit. This shall not prevent BAES SS from paying the Fixed Fee to the Industrial Participants in accordance with the IP MFTC Sub-Contracts.

Schedule 7

Excluded Risks and Assumptions

Part A

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

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

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

such cost arising from the occurrence of an Excluded Risk or failure of an Assumption to materialise or an Assumption proving to be incorrect.

9. Where Assumptions relate to opportunities included in the Risk and Opportunities Register as an opportunity against the Project Target Cost, the relevant parties will work together to realise such opportunities.

Part B - Excluded Risks

- 1 The Excluded Risks are those risks set out in the Risk and Opportunities Register at the Commencement Date with the following numbers:
- i. Risk No 91 - any UK DII delay or scope changes will have an adverse effect on Information System and will not meet QE Class required by dates;
 - ii. Risk No 310 – the Authority holds the budget for inflation outside the Project Target Cost and there is a risk that it is insufficient;
 - iii. Risk No 373 – the Ship Specification may not be achievable using the GFA;
 - iv. Risk No 737 - caveated security domains shall not be fully supported in DII adopted GFA applications or networks;
 - v. Risk No 739 – QE Class Mission System ISTAR facilities are not sufficient to enable full JCA capability;
 - vi. Risk No 750 – structural design of hangar deck (plate thickness and scantlings) not suitable for accommodation of the JCA Air System (Air Vehicle and associated support equipment);
 - vii. Risk No 753 – JCA take off scatter does not meet current assumptions. (The pilot will be able to control the aircraft within +/-3m during the take off run based upon JSF being no worse than legacy STOVL aircraft);
 - viii. Risk No 754 – QE Class Link 16 is not inter-operable with JCA Link 16 solution;
 - ix. Risk No 755 – QE Class not able to support the full band-width requirements of JCAMS;
 - x. Risk No 758 – Mission Systems provisions for the storage of JCA post flight data does not meet the needs of the JSF developed processes;

- xi. Risk No 759 – JCA Equipment Shock Requirements outside QE Class Shock Policy;
- xii. Risk No 760 – JCA Mission Support equipment and personnel in QE Class Mission Support Complex is not subject to change and could be insufficient to enable JCA to achieve optimal capability;
- xiii. Risk No 761 - Mission System architecture not constrained by the implementation of DII and can support the ALIS Architecture;
- xiv. Risk No 762 - JCA RADAR Communication, Navigation and ID Systems (CNI) Radio Frequency energy has a detrimental effect on QE Class and its personnel;
- xv. Risk No 766 - QE Class Mission System Architecture supports the OMSE architecture.
- xvi. Risk No 768 - Mission Systems supports all of the data interfaces expected by the ALIS and OMSE applications.
- xvii. Risk No 769 - QE Class General Arrangement, weight, power and cooling provision for JCA Engineering Support Equipment is not sufficient.
- xviii. Risk No 813 - flight deck strength is not sufficient to enable JCA operations with expected capability and support equipment post Lloyd Rules submission and pre construction.
- xix. Risk No 814 – that flight deck strength is not sufficient to enable JCA operations with the expected capability and support equipment.
- xx. Risk No 851 – that JCA power requirements will not be met by QE Class.
- xxi. Risk No 888 - Mission System Infosec architecture does not support the security architecture required by the JCA Air System.
- xxii. Risk No 889 - QE Class Mission Systems Integration Strategy does not support existing contractual commitments of Team-JSF.
- xxiii. Risk No 890 - QE Class security accreditation evidence will not be sufficient to enable the authorities (US and UK) to enable operation of JCA from QE Class.
- xxiv. Risk No 899 - QE Class physical design does not protect Special Access Required data in accordance with US requirements for the protection of data.

- xxv. Risk No 901 - QE Class workshops and Hangar / Flight maintenance services can not support JCA requirements.
- xxvi. Risk No 1302 - Hellfire electro magnetic environment is not compatible with QE Class.
- xxvii. Risk No 1303 - Stingray electro magnetic environment is not compatible with QE Class.
- xxviii. Risk No 1304 - LW30 (lightweight gun) electro magnetic environment is not compatible with QE Class and
- xxix. Risk No 1305 - ASRAAM is not compatible with magazine environment.

Part C: Assumptions

1 The following Assumptions form the basis on which the Project Target Cost has been calculated:

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

v. [REDACTED]:

a. [REDACTED]:

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

[REDACTED]

[REDACTED]

b. [REDACTED]

c. [REDACTED]



- vi. Savings of £40m arising from the formation of BVT are included as an opportunity in the Risk and Opportunities Register at the date of the Key Project Agreements, of which £20m is directly attributable to QE Class labour reduction and £20m will be realised by industry rationalisation and credited to the Authority for QE Class purposes.
- vii. Deleted.
- viii. Financing costs excluded on basis of neutral cash flow for payments.

Schedule 8 Annex C

Independently Developed Deliverables developed by the Industrial Participants

A Hardware (non software)

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

N/A

(ii) Partially Funded

1. Combat Management System
2. S1850M Long Range Radar
3. Visual Surveillance System
4. METOC

B Software

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

1. CMS Software contained in the hardware above
 - a. Console Software Foundation
 - b. Console Software Supplement - Time Based Displays
 - c. TV Video Distribution
 - d. Radar Video Distribution
 - e. Data Transfer System
 - f. Target Motion Analysis
 - g. Common Infrastructure Foundation
 - h. Common Infrastructure Supplement – DTS Extension
 - i. Common Infrastructure Supplement – Large Time Based Tables
 - j. Digital Charts Facility
 - k. Automatic Identification System
 - l. Additional Military Layers

(ii) Partially Funded

1. Long Range Radar Software contained in the hardware above
2. Visual Surveillance System Software contained in the hardware above
3. METOC Software contained in the hardware above

The list only applies to those Independently Developed Deliverables developed by the Industrial Participants themselves. Developed by BAES Insyte unless otherwise indicated.