

MERGER BETWEEN BRITISH AEROSPACE PLC AND THE MARCONI ELECTRONIC SYSTEMS BUSINESS OF THE GENERAL ELECTRIC COMPANY PLC

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY BRITISH AEROSPACE PLC PURSUANT TO S75G(1) OF THE FAIR TRADING ACT 1973

WHEREAS:

(a) On 27 April 1999 British Aerospace plc (“BAE SYSTEMS”) agreed with The General Electric Company plc (“GEC”) the proposed merger (“the merger”) of GEC’s defence electronics business Marconi Electronic Systems (“MES”) with BAE SYSTEMS;

(b) The merger came within the jurisdiction of Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings (“the EC Merger Regulation”);

(c) Article 296 (ex Article 223) of the EC Treaty permits any Member State to take such measures as it considers necessary to protect its essential security interests which are connected with the production of or trade in arms, munitions and war material;

(d) BAE SYSTEMS was requested, under the former Article 223(1)(b) of the EC Treaty, not to notify the military aspects of the merger to the European Commission under the EC Merger Regulation;

(e) The military aspects of the merger were consequently considered by Her Majesty’s Government under national merger control law;

(f) The Secretary of State has power under section 75(1) of the Fair Trading Act 1973 to make a merger reference to the Competition Commission and, under section 75G(1), to accept undertakings as an alternative to making such a reference;

(g) The Secretary of State has requested that the Director General of Fair Trading seek undertakings from BAE SYSTEMS in order to remedy or prevent the adverse effects of the merger.

NOW THEREFORE BAE SYSTEMS hereby gives to the Secretary of State the following undertakings in order to remedy or prevent the adverse effects of the military aspects of the merger

1 Appointment of Compliance Officer

- 1.1 BAE SYSTEMS shall following consultation with the DGFT appoint a competent person (the “Compliance Officer”), who shall be responsible for facilitating and overseeing the compliance by BAE SYSTEMS with these Undertakings.
- 1.2 The Compliance Officer shall be a person having, among other matters, extensive knowledge of the defence industry and defence procurement and such other skills as the DGFT considers are necessary to carry out the duties and tasks in 1.12.
- 1.3 BAE SYSTEMS shall not appoint as a Compliance Officer any person that has been an employee of BAE SYSTEMS or an MES Employee within the period of two years prior to his appointment. If the person was an employee of BAE SYSTEMS or an MES Employee within the period between two and five years prior to his appointment, BAE SYSTEMS shall be required to obtain the consent in writing of the DGFT prior to his appointment.
- 1.4 The Compliance Officer shall not have any pecuniary or other interest in BAE SYSTEMS, save in respect of the matters set out in 1.14 below and that he shall be reimbursed for his time and expenses by BAE SYSTEMS.
- 1.5 The Compliance Officer shall have direct access to the Chairman of the BAE SYSTEMS Audit Committee in relation to his responsibilities in connection with these Undertakings.
- 1.6 The first appointment of a Compliance Officer shall be made as soon as is reasonably practicable. On the date of completion of the merger, BAE SYSTEMS shall appoint, subject to the prior consent of the DGFT, an external adviser to be the Compliance Officer, who shall have the same authority, duties and responsibilities of the Compliance Officer set out in these Undertakings, in the interim period until such time as the first appointment of a Compliance Officer is made by BAE SYSTEMS.

- 1.7 BAE SYSTEMS shall publish and upon request inform any person of the identity and contact details of the person from time to time holding the office of Compliance Officer.
- 1.8 The appointment of a person to hold the office of Compliance Officer shall be for a term of five years or a shorter term if the prior written consent (not to be unreasonably withheld) of the DGFT is given and either term may in exceptional circumstances be extended with the prior written consent (not to be unreasonably withheld) of the DGFT.
- 1.9 On the termination or, following any extension under 1.8, the expiry of the revised date of termination of the term referred to in 1.8, BAE SYSTEMS shall appoint a new person to hold the office of Compliance Officer in accordance with these Undertakings.
- 1.10 BAE SYSTEMS shall not remove a person from the office of Compliance Officer without the written consent of the DGFT and BAE SYSTEMS shall remove a person from such office and appoint a replacement within three months of being requested to do so by the Secretary of State acting on the advice of the DGFT.
- 1.11 BAE SYSTEMS shall not, unless it has obtained the prior written consent (not to be unreasonably withheld) of the DGFT to do so, re-appoint, employ or engage a person who has held the office of Compliance Officer, in any capacity within five years of the end of his term or removal from such office if earlier.
- 1.12 The duties and tasks assigned to the Compliance Officer shall be:
 - 1.12.1 to provide relevant advice and information to BAE SYSTEMS for the purpose of ensuring its compliance with all aspects of these Undertakings;
 - 1.12.2 to oversee compliance by BAE SYSTEMS with all aspects of these Undertakings;
 - 1.12.3 to perform the specific duties and responsibilities set out in these Undertakings, including without limitation those Undertakings relating to the Future Scout and Cavalry System/Tracer and Joint Strike Fighter Programs;

- 1.12.4 to investigate any complaint or representation made to him directly, or indirectly pursuant to paragraph 1.13 below, in respect of any matter arising in relation to or connected with the compliance by BAE SYSTEMS with these Undertakings;
- 1.12.5 to recommend and advise upon the remedial action to be taken by BAE SYSTEMS to resolve any breach of these Undertakings that he considers any investigation has demonstrated to be necessary or desirable, or failing its resolution to his satisfaction, to refer the matter to the DGFT; and
- 1.12.6 to report to the DGFT as required by 1.16 and/or 1.17 below.
- 1.13 BAE SYSTEMS shall make available to the Compliance Officer without delay a copy of any complaint or representation received by it in respect of any matter arising in relation to or connected with the compliance by BAE SYSTEMS with these Undertakings.
- 1.14 BAE SYSTEMS shall ensure
- 1.14.1 that the Compliance Officer:
- (i) is provided without delay upon request with such staff, premises, equipment, facilities and other resources (including for the avoidance of doubt external advisers); and
 - (ii) has such unrestricted access to its premises, staff, systems, information, records and documentation (irrespective of the form in which such information, records and documentation is stored)
- as, in each case, he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him; and in particular
- 1.14.2 that the Compliance Officer may conduct unannounced inspections and interviews.
- 1.15 Subject to applicable laws, BAE SYSTEMS's corporate policy shall provide for a range of disciplinary procedures and sanctions in respect of BAE SYSTEMS staff and sanctions in respect of sub-contractors, consultants and external advisers

whose actions or omissions are found to give rise to a breach by BAE SYSTEMS of these Undertakings.

- 1.16 The Compliance Officer shall make an annual report to the DGFT within three months of the end of each financial year on compliance by BAE SYSTEMS with each of these Undertakings and on the activities of the Compliance Officer during the relevant financial year. The first report shall be made for the year ending 31 December 2000 and subsequent reports shall be made for each subsequent financial year. The Compliance Officer shall include in his report the information he believes necessary to give a full and fair picture of compliance in the year that is the subject of the report as well as such information as the DGFT may from time to time reasonably require and unless the MoD agrees in writing to the contrary the report shall also include details of
 - 1.17 each competition for MoD programmes involving any BAE SYSTEMS Company having any business from internal BAE SYSTEMS customers;
 - 1.18 the extent to which other suppliers were invited to bid or were otherwise involved in each such competition and the timing of any such involvement; and
 - 1.19 the measures taken by BAE SYSTEMS to promote effective competition in each case.
- 1.20 The Compliance Officer shall make a special report to the DGFT if he believes there are matters relating to compliance which should be brought to the DGFT's attention, or at the request of the DGFT. He shall also include such information as the DGFT may from time to time reasonably require for the purpose of monitoring compliance with these Undertakings.
- 1.21 At the same time as the Compliance Officer submits a report to the DGFT pursuant to 1.16 or 1.17 above, he shall submit a copy to BAE SYSTEMS and the MoD with such excisions as are necessary in order to preserve any Confidential Information that it contains and to preserve any other confidentiality that has been requested by a person making representations to him. As soon as is reasonably practicable following each annual report of the Compliance Officer, BAE

SYSTEMS shall produce a report as to its compliance during the relevant calendar year with these Undertakings. BAE SYSTEMS shall submit a copy of its report to the DGFT and, subject to any excisions as are necessary to preserve any Confidential Information, to the MoD.

- 1.22 The Compliance Officer shall provide upon request to a person involved in any programme affected by these Undertakings a copy of relevant extracts of his annual report after obtaining the written consent of the DGFT and with such excisions as are necessary in order to preserve any Confidential Information that it contains and to preserve any other confidentiality that has been requested by a person making representations to him.

2 Joint Strike Fighter

General Provisions

- 2.1 Consistent with this Undertaking 2 BAE SYSTEMS shall establish and promulgate a clear corporate policy of supporting both the Boeing and Lockheed Martin prime contracting Teams, with independent subcontractor teams to Boeing and Lockheed Martin, throughout the remainder of the current competitive phase (Concept Demonstration (CD)) through the downselect decision, that is, the execution of the contract for the Engineering and Manufacturing Development (“EMD”) phase of the Joint Strike Fighter (JSF) Program (“JSF Program”). The “Boeing JSF Team” as used herein consists of the Boeing prime contractor and all of its subcontractors supporting the JSF Program. The “Lockheed Martin JSF Team” as used herein consists of the Lockheed Martin prime contractor and all of its subcontractors supporting the JSF Program. Within the Boeing JSF Team and Lockheed Martin JSF Team are BAE SYSTEMS subcontractor teams (“BAE SYSTEMS subcontractor teams”). The BAE SYSTEMS subcontractor teams include BAE SYSTEMS employees, consultants and external advisors involved in supporting any of the BAE SYSTEMS subcontractor teams described below in this paragraph.
- 2.2 After completion of the merger between BAE SYSTEMS and MES, there will continue to be avionics teams within the merged company (“BAE SYSTEMS”) supporting Boeing and Lockheed Martin respectively. The avionics teams supporting Boeing are referred to herein as the “Boeing JSF avionics teams” and the avionics teams supporting Lockheed Martin are referred to herein as the “Lockheed Martin JSF avionics teams.” These teams are comprised of personnel from various business units within MES which operate as suppliers of products to each of the Boeing JSF Team and the Lockheed Martin JSF Team, sometimes directly and at other times through subsystems suppliers. Each avionics team will

continue to report to the line Business Managers and will continue to be coordinated by the MES JSF Program Director and the MES JSF Management Board chaired by the Group Managing Director Avionics, who will report to a BAE SYSTEMS Chief Operating Officer (“COO”). The MES JSF Management Board operates to provide oversight, coordination, functional support and a common interface to the customers. The Lockheed Martin JSF Team also has a separate contractor team with BAE SYSTEMS currently supporting Lockheed Martin, which shall continue to support Lockheed Martin after the merger. This team shall be referred to as the “BAE SYSTEMS JSF project team”. The BAE SYSTEMS JSF project team will report to the BAE SYSTEMS Managing Director – General Air Projects and ultimately to a BAE SYSTEMS COO other than the BAE SYSTEMS COO to which the business units supporting the avionics teams report.

- 2.3 After completion of the merger, the MES JSF Management Board shall retain the same functions specified in paragraph 2.1 above. BAE SYSTEMS shall comply with the existing contractual and communications restriction (“firewall”) arrangements between MES and each of the Boeing and Lockheed Martin BAE SYSTEMS avionics subcontractor teams for the operation of the Boeing JSF avionics teams and the Lockheed Martin JSF avionics teams respectively. Under these firewalls, there shall be no communication (“communication” as used herein means transmission by any media, including, telephone, facsimile, electronic mail, or any other means of transmission) of any kind with respect to JSF Program Information between the members of the Boeing JSF avionics teams and Lockheed Martin JSF avionics teams. As used herein, “JSF Program Information” means all information relating to the JSF Program either received by BAE SYSTEMS from other participants in the Lockheed Martin JSF Team and Boeing JSF Team or which is related to any and all competitive sensitive proposals, technology, ideas, cost data, suppliers, designs, sketches, preliminary drawings, plans, test results, specifications, pricing, technical interface information, data or other sensitive competitive information.

- 2.4 Subject to any provision to the contrary in this Undertaking 2, BAE SYSTEMS shall without delay erect new additional firewalls that will prevent any communication of any kind with respect to JSF Information between any members of the BAE SYSTEMS JSF project team and, respectively, members of the Boeing JSF avionics teams or the Lockheed Martin JSF avionics teams. As used herein, “JSF Information” means all information relating to the JSF Program, including, but not limited to information received by BAE SYSTEMS from other participants in the Lockheed Martin JSF Team and Boeing JSF Team or information relating to any and all proposals, technology, ideas, cost data, suppliers, designs, sketches, preliminary drawings, plans, test results, specifications, pricing, technical interface information, data or other sensitive competitive information.
- 2.5 BAE SYSTEMS also shall without delay erect new additional firewalls which prevent any employee in a managerial role at BAE SYSTEMS (BAE SYSTEMS management), including its senior management (such as the BAE SYSTEMS Board of Directors, Chief Operating Officers, Chief Financial Officer, and any other senior officer of the company) and all BAE SYSTEMS employees not members of any of the BAE SYSTEMS subcontractor teams from having any communication of any kind with the Boeing JSF avionics teams, the Lockheed Martin JSF avionics teams, the MES JSF Management Board or its members, or any third party with respect to JSF Information as it relates to each of the avionics teams.
- 2.6 Subject to any provision to the contrary in this Undertaking 2, BAE SYSTEMS’s management firewalled pursuant to paragraph 2.4 above shall have no role of any kind or any visibility into any decision making with respect to the Boeing JSF avionics teams, the Lockheed Martin JSF avionics teams, or the MES JSF Management Board. Each of the Boeing JSF avionics teams and the Lockheed Martin JSF avionics teams shall have autonomy to make all decisions concerning

the development of competitive proposals to support the Boeing JSF Team or, as the case may be, Lockheed Martin JSF Team in accordance with the procedures/arrangements put in place by or for the MES JSF Management Board as of September 9, 1999, as thereafter may be amended only with the permission of the Compliance Officer.

- 2.7 BAE SYSTEMS shall procure that the members of the BAE SYSTEMS JSF project team and, respectively, the Lockheed Martin JSF avionics teams, Boeing JSF avionics teams or MES JSF Management Board do not have access rights to each other's JSF Information on the same communications network.
- 2.8 BAE SYSTEMS, including all the BAE SYSTEMS subcontractor teams, shall preserve and maintain all JSF Program records, including electronic records, relating to the respective subcontractor teams, including business plans, competitive proposals, correspondence with Lockheed Martin and Boeing and records of board meetings and decisions. The time period for the preservation and maintenance of such records is specified in paragraph 2.15 below.
- 2.9 BAE SYSTEMS shall inform all BAE SYSTEMS JSF project team members, Boeing and Lockheed Martin JSF avionics team members, and all other BAE SYSTEMS employees, consultants and external advisors that may have a need to know, that there are firewalls between the Teams and associated restrictions on information flow:
 - (a) BAE SYSTEMS shall provide training for its employees, consultants, and external advisors, concerning implementation of the firewall restrictions.
 - (b) BAE SYSTEMS shall obtain and maintain on record, written commitments from all of its employees, consultants and external advisors subject to the firewall restrictions, that they will abide by the requirements to maintain information security during the CD phase of the JSF Program.

- 2.10 Should any BAE SYSTEMS JSF project team member, Boeing JSF avionics team member or Lockheed Martin JSF avionics team member have any concern about the effective operations of this Undertaking 2 that person may, in complete confidence, bring such matter to the attention of the Compliance Officer and request that the Compliance Officer investigate. The Compliance Officer may interview any person he requires and shall have access to and may call for any and all information he considers necessary for the investigation. The Compliance Officer may require BAE SYSTEMS to take all appropriate steps to remedy any breach of this undertaking.
- 2.11 After the merger, the MES JSF Management Board shall provide business plans including planned levels of investment for the activities of each avionics team. If such planned levels are not met, the MES JSF Management Board shall provide a report to the Compliance Officer explaining the circumstances, and the Compliance Officer shall determine if the planned levels shall in fact be put into effect. Should any business involved in the operations of the Boeing or Lockheed Martin JSF avionics teams require investment over and above that established in the business plan or any higher amount endorsed by the MES JSF Management Board or object to spending below the planned levels, the President/MD of that business unit may apply to the BAE SYSTEMS COO for such funds and the BAE SYSTEMS COO shall ensure that such funds are provided unless the BAE SYSTEMS COO objects to the provision of such funds, in which case he shall have the right to make such objection to the Compliance Officer who shall have the discretion to make the final decision.
- 2.12 BAE SYSTEMS shall procure that no BAE SYSTEMS JSF project team member moves to a position that would provide access to Boeing JSF Program Information related to the Boeing JSF avionics teams or, as the case may be, Lockheed Martin JSF Program Information related to the Lockheed Martin JSF avionics teams without the consent of Boeing and Lockheed Martin. BAE SYSTEMS shall procure that no Boeing JSF or any Lockheed Martin JSF avionics team member

moves to a position that would provide access to BAE SYSTEMS JSF Program Information related to the Lockheed Martin JSF Team or, as the case may be, the Boeing JSF Team, without the consent of Boeing and Lockheed Martin.

- 2.13 Subject to applicable laws, BAE SYSTEMS's corporate policy shall provide for a range of sanctions that will be taken against individual BAE SYSTEMS employees who are found to have breached any of the requirements or policies listed herein, and against its consultants and external advisors whose acts or omissions give rise to a breach by BAE SYSTEMS of any requirements or policies listed herein. To the extent that it is within its power to do so, BAE SYSTEMS shall place appropriate post-employment restrictions on BAE SYSTEMS employees covered by these undertakings. Decisions on specific sanctions shall be made by the heads of the most senior subcontractor team members in consultation with their respective BAE SYSTEMS COO and the Compliance Officer. The adequacy of the range of sanctions and post-employment restrictions referred to above shall be monitored by the Compliance Officer.

Changes to JSF Program

- 2.14 BAE SYSTEMS shall notify the DGFT in writing as soon as reasonably practicable of any changes to the JSF Program that might impact the application of this Undertaking 2 to that Program.

Precedence

- 2.15 If and to the extent that the application of any of the remaining Undertakings conflicts with the application of Undertaking 2 to the JSF Program, then Undertaking 2 shall prevail.

Effective Period

- 2.16 The provisions of this Undertaking 2 shall remain in force until the downselect decision, that is, the execution of the contract for the next stage of the JSF Program (EMD). Records specified in paragraph 2.7 above shall be preserved and maintained for a period of six years following the execution of the contract for the EMD phase of the JSF Program.

- [3 **Future Scout and Cavalry System/Tracer [BAE SYSTEMS was released from this Undertaking on 10 January 2002 by the Director General of Fair Trading.]**

General Provisions

- 3.1 Consistent with this Undertaking 3 BAE SYSTEMS shall establish and promulgate a clear corporate policy of supporting both the SIKA and LANCER independent prime contracting Teams throughout the remainder of the current competitive phase (Project Definition (PD)/Advanced Technology Demonstration (ATD)) through and until the downselect decision, that is, the execution of the contract for the Engineering and Manufacturing Development (“EMD”) / Full Development (“FD”) phase of the Future Scout & Cavalry System (FSCS) / TRACER Program (“FSCS/TRACER Program”).
- 3.2 Subject to any provision to the contrary in this Undertaking 3, BAE SYSTEMS shall without delay establish communications restriction (“firewall”) arrangements that prevent any employee in a managerial role at BAE SYSTEMS (BAE SYSTEMS management), including its senior management (including members of the BAE SYSTEMS Board of Directors, the Chief Operating Officers, Chief Financial Officer, and any other senior officer of the company) and all non-SIKA / non-LANCER team members from having any communication of any kind with SIKA or LANCER Team members, with respect to FSCS/TRACER Program Information (“Information” as used herein means all information relating to the FSCS/TRACER Program, including, but not limited to, information relating to any and all proposals, technology, ideas, cost data, suppliers, designs, sketches, preliminary drawings, plans, test results, specifications, pricing, technical interface information, data, or other sensitive competitive information). The SIKA or LANCER Team (“Team”), as used herein means BAE SYSTEMS employees on SIKA or LANCER, respective partners and subcontractors of SIKA or LANCER, and consultants and external advisors to SIKA and LANCER who support the

FSCS/TRACER Program; “team” as used herein means BAE SYSTEMS employees on part of the SIKA or LANCER Team, including BAE SYSTEMS employees on the prime contracting team and all other BAE SYSTEMS employees on the Team.

- 3.3 Subject to any provision to the contrary in this Undertaking 3, BAE SYSTEMS management shall have no role in any decision-making with respect to either the SIKA or LANCER Team. Each Team shall have complete autonomy to: make all decisions concerning the development and submission of its competitive bid/proposal to the appropriate FSCS/TRACER Program U.K. and/or U.S. official; spend funds up to the BAE SYSTEMS Maximum Investment level set forth in paragraph 3.12 below; and draw on BAE SYSTEMS corporate resources as needed to execute the business plan set forth in paragraph 3.12 below.
- 3.4 BAE SYSTEMS shall without delay erect firewalls between the SIKA and LANCER teams such that there shall be no communication (“communication” as used herein means transmission by any media, including telephone, facsimile, electronic mail, and any other means of transmission) of any kind with respect to FSCS/TRACER Program Information between the teams.
- 3.5 BAE SYSTEMS shall procure that the SIKA and LANCER teams do not operate on the same communications network and shall ensure that separate communications networks are established to maintain Information security. Other means of addressing Information security with respect to communications networks may be proposed to the Compliance Officer for his approval without delay.
- 3.6 Except to the extent deemed necessary and with the unanimous consent of their Team partners, the SIKA and LANCER team members shall not have any communication with respect to FSCS/TRACER Program Information with any personnel outside the Team, including personnel from any other company with

which BAE SYSTEMS is teamed or subcontracting to for purposes of this FSCS/TRACER Program.

- 3.7 Subject to paragraph 3.18 below, in relation to the FSCS/TRACER Program, BAE SYSTEMS shall without delay erect firewalls identical to those described in paragraph 3.2 above between BAE SYSTEMS personnel, consultants, and external advisors that are not SIKA and LANCER Team members, as defined in paragraph 3.2 above, and SIKA and LANCER Team members as well as personnel from any other company with which BAE SYSTEMS is teamed or subcontracting to for purposes of this FSCS/TRACER Program. These firewalls do not prevent communications with respect to FSCS/TRACER Program Information between SIKA or LANCER Team members and BAE SYSTEMS employees who provide support or advice with respect to the FSCS/TRACER Program to either Team, provided that BAE SYSTEMS employees who support the SIKA Team shall be prohibited from supporting the LANCER Team and vice versa. A list of BAE SYSTEMS personnel who will provide such support to either the SIKA or LANCER Team shall be forwarded for approval to the DGFT and MoD before any such communications occur and this list shall be updated as necessary.
- 3.8 BAE SYSTEMS shall without delay erect firewalls identical to those described in paragraph 3.2 above between BAE SYSTEMS personnel, consultants, and external advisors that are not SIKA and LANCER Team members, as defined in paragraph 3.2 above, and U.S. and U.K. government officials or any other third parties, involved in any capacity with the FSCS/TRACER Program for the purpose of any communications with respect to FSCS/TRACER Program Information except to the extent such communications are required or specifically requested by U.S. or U.K. government officials.
- 3.9 BAE SYSTEMS shall allow a direct line of communication between the most senior Lockheed Martin and BAE SYSTEMS members on the SIKA Team and the

BAE SYSTEMS Chief Operating Officer (COO) for SIKA, and between the most senior members of each of the partners on the LANCER Team and the separate BAE SYSTEMS COO for LANCER. Such direct lines of communication are for the sole purpose of seeking additional resources, or submitting a letter of assurance, or performing specific functions established under these this Undertaking 3. The communications shall be limited to Information necessary for the respective COO to execute these functions, but may not provide any visibility to the respective COO into the operations, plans, designs or other FSCS/TRACER Program Information of either Team. Subject to any provision to the contrary in this Undertaking 3, each COO shall be restricted by this Undertaking 3 from disseminating or discussing Program Information with anyone other than the designated points of contact within the relevant Team. Except as otherwise provided herein, the BAE SYSTEMS COOs shall facilitate the implementation of decisions of the SIKA and LANCER Boards, where, for instance, additional resources are required from BAE SYSTEMS.

- 3.10 As part of the business plan described in paragraph 3.12 below, BAE SYSTEMS shall without delay establish procedures in consultation with its respective partners and in consultation with MoD and DGFT, and subject to the approval of the Compliance Officer, to record all Information that flows within the prime contracting teams and from those teams to their respective COOs. In addition, any other Information that flows from the prime contracting teams, such as the execution of letters of assurance, shall be recorded.
- 3.11 BAE SYSTEMS shall inform all SIKA and LANCER Team members, their respective COOs, BAE SYSTEMS management, and all other BAE SYSTEMS employees, consultants, and external advisors that may have a need to know, that there are firewalls between the Teams and the associated restrictions on Information flow.

- (a) BAE SYSTEMS shall provide training for its employees, consultants, and external advisors, including SIKA and LANCER team members, concerning implementation of the firewall restrictions.
- (b) BAE SYSTEMS shall obtain and maintain on record, written commitments from all of its employees, consultants, and external advisors subject to the firewall restrictions, that they will abide by the requirements to maintain Information security during the PD/ATD phase of the FSCS/TRACER Program.

3.12 BAE SYSTEMS shall develop, in consultation with its respective partners (Lockheed Martin on the SIKA Team and Raytheon, UDLP, and Alvis on the LANCER Team), a business plan for each prime contracting team. The plan shall specify the planned level of investment (financial, including bid/proposal preparation costs, personnel, and other corporate support) (“BAE SYSTEMS Planned Investment”) to be contributed by BAE SYSTEMS for each prime contracting team. The plan shall also specify a maximum investment sum, which BAE SYSTEMS shall contribute (“BAE SYSTEMS Maximum Investment”), which, together with contributions from its respective partners where appropriate, shall exceed the total value of the prime contract for the PD/ATD phase of the FSCS/TRACER Program, in excess of the total planned BAE SYSTEMS investment, and that sum shall be placed in separate escrow accounts for each prime contracting team. The amount of the BAE SYSTEMS Maximum Investment shall not include or be utilized to provide for infrastructure, restructure, or other related costs of the merger. Each prime contracting team shall be able to draw upon funds in the escrow account without the prior approval or consent of BAE SYSTEMS. In the case of Lockheed Martin on the SIKA Team, and where appropriate on the LANCER Team, the plan shall also specify the planned level of investment (financial, personnel and other type of corporate support) to be contributed by the respective partners for each Team. The business plans shall be reviewed by the Compliance Officer, who shall certify without delay to the DGFT, that to the best of his/her knowledge, there has been no

preference in the absence of an objective justification for either prime contracting team as regards investment. BAE SYSTEMS shall submit the plan to the Compliance Officer within one month of the date of completion of the merger. The Compliance Officer shall submit the plan to the DGFT and the MoD upon completion of the certification without delay.

- 3.13 Investment funds for each Team as established in paragraph 3.12 above shall remain available to the SIKA and LANCER Teams as designated during the PD/ATD phase of the FSCS/TRACER Program. None of these funds shall revert to BAE SYSTEMS before competitive downselect to one Team for the EMD/FD phase of the FSCS/TRACER Program without the unanimous consent of BAE SYSTEMS's partners on each respective Team.
- 3.14 BAE SYSTEMS shall maintain separate physical locations of the LANCER team and SIKA team until execution of the contract for the next phase of the FSCS/TRACER Program and BAE SYSTEMS shall refrain from transferring any personnel between the SIKA and LANCER teams.
- 3.15 BAE SYSTEMS shall procure that the SIKA and LANCER teams do not share any facilities of BAE SYSTEMS.
- 3.16 BAE SYSTEMS shall procure that no SIKA or LANCER BAE SYSTEMS team member moves to a position that would provide access to the other Team's Information without the unanimous consent of its Team partners and the MoD.
- 3.17 BAE SYSTEMS, in consultation with its respective partners, shall designate certain employees as key employees of the SIKA and LANCER prime contracting teams as of September 9, 1999, in the business plans for each prime contracting team. BAE SYSTEMS shall be prohibited, unless it has obtained the prior written consent (not to be unreasonably withheld) of the MoD and the US Department of

Defense to do so, from transferring these key employees to other programs. BAE SYSTEMS shall establish additional personal financial incentives for these key employees directed at each winning the competition for the EMD/FD phase of the FSCS/TRACER Program. To the extent possible, if a key employee decides to terminate his or her employment from BAE SYSTEMS, BAE SYSTEMS shall provide a replacement employee of comparable expertise and experience.

3.18 Subject to any provision to the contrary in this Undertaking 3, BAE SYSTEMS shall ensure that the SIKA and LANCER Teams shall have, at reasonable rates, separate access to the personnel of BAE SYSTEMS necessary to continue work being conducted during the PD/ATD phase of the FSCS/TRACER Program.

3.19 Subject to any provision to the contrary in this Undertaking 3, BAE SYSTEMS shall provide to the SIKA and LANCER Teams the necessary licenses and/or appropriate authorities to have separate access to the intellectual property rights of BAE SYSTEMS that are necessary for those Teams to continue work being conducted during the PD/ATD phase. However, neither the LANCER nor SIKA Team shall have access to FSCS/TRACER Program Information developed respectively by the other Team for the FSCS/TRACER Program during the PD/ATD phase of the FSCS/TRACER Program. Where necessary, BAE SYSTEMS shall take steps to ensure its existing patents, licenses, and other technology-related agreements remain in effect. Notwithstanding this Undertaking 3 or any other Undertaking: (i) the SIKA Team shall not have access to any intellectual property, technology, facilities, employees or other assets of MES or Alenia Marconi Systems Limited; and (ii) the LANCER Team shall not have access to any intellectual property, technology, facilities, employees or other assets of the SIKA joint venture, BAE SYSTEMS Land and Sea Systems group, Royal Ordnance, Sowerby Research Centre, and the intellectual property vested in BAE SYSTEMS which related solely to the Military Aircraft and Aerostructures and Systems & Services business units as at the date of the merger of BAE SYSTEMS with MES and technology, facilities, employees and other assets

utilised by Military Aircraft and Aerostructures and Systems & Services as of the date of that merger.

3.20 Subject to applicable laws, BAE SYSTEMS's corporate policy shall provide for a range of sanctions that will be taken against individual BAE SYSTEMS employees who are found to have breached any of the requirements or policies listed herein, and against its consultants and external advisors whose acts or omissions give rise to a breach by BAE SYSTEMS of any requirements or policies listed herein. To the extent that it is within its power to do so, BAE SYSTEMS shall place appropriate post-employment restrictions on BAE SYSTEMS employees covered by these undertakings. Decisions on specific sanctions shall be made by the heads of the SIKA and LANCER teams in consultation with their respective BAE SYSTEMS COO and the Compliance Officer. The adequacy of the range of sanctions and post-employment restrictions referred to above shall be monitored by the Compliance Officer.

3.21 BAE SYSTEMS, including the SIKA and LANCER team members, shall preserve and maintain all records, including electronic records, related to the SIKA and LANCER Teams, including, but not limited to: business plans, competitive proposals, correspondence, records of board meetings and decisions. The time period for the preservation and maintenance of such records is specified below under the "Effective Period" provision in paragraph 3.27.

3.22 BAE SYSTEMS shall require a different dedicated external lawyer, and different consultants and external advisors, for the SIKA and LANCER teams.

Specific Provisions for the SIKA and LANCER Teams

3.23 SIKA

3.24 BAE SYSTEMS's representatives to the SIKA Shareholders Committee shall be non-voting, until execution of the contract for the following phase of the

FSCS/TRACER Program. The BAE SYSTEMS SIKA Shareholders Committee members shall be members of the SIKA prime contracting team, shall be subject to the same firewalls as all other SIKA team members regarding communications with BAE SYSTEMS management and other parties, and may not have any other responsibilities for BAE SYSTEMS until the downselect decision to the EMD/FD phase of the FSCS/TRACER Program. The Lockheed Martin members of the SIKA Shareholders Committee shall be considered SIKA Team members.

3.24.1 BAE SYSTEMS agrees to limit its representation on the SIKA Board of Directors to one non-voting director and one voting director until the downselect decision to the EMD/FD phase of the FSCS/TRACER Program has been awarded. The BAE SYSTEMS SIKA Board members shall be members of the SIKA prime contracting team, shall be subject to the same firewalls as all other SIKA team members regarding communications with BAE SYSTEMS management and other parties, and shall not have any other responsibilities for BAE SYSTEMS until the downselect decision to EMD/FD phase of the FSCS/TRACER Program. A quorum of the SIKA Board shall consist of at least two Lockheed Martin voting directors and all decisions of the Board shall be made on the basis of a majority vote until the downselect decision to the EMD/FD phase of the FSCS/TRACER Program.

3.24.2 Requests for additional investment or resources above the BAE SYSTEMS Maximum Investment sum set forth in the SIKA business plan (as referred to in paragraph 3.12 of the General Provisions above) shall be reviewed and addressed by the SIKA Shareholders Committee without the involvement, consultation and approval of the BAE SYSTEMS COO except to the extent specified herein. Decisions of the SIKA Shareholders Committee concerning such investment or resource requirements shall be submitted to the BAE SYSTEMS COO for implementation. BAE SYSTEMS agrees to be bound by any such decision made by the SIKA Shareholders Committee. If the BAE SYSTEMS COO objects to such a request, he may appeal to the Compliance Officer for a final decision. In making his decision, the Compliance Officer shall consult with the BAE SYSTEMS members of the SIKA Board and may consult with any other person on the SIKA Team. The Compliance Officer shall have access to all

Information he requires, including, the bid/proposal criteria described in the letter of assurance. The Compliance Officer shall make his decision without delay.

3.24.3 The BAE SYSTEMS SIKA Board member will be required to provide without delay to the Board of Directors of BAE SYSTEMS, via the BAE SYSTEMS COO, a letter of assurance that meets the key bid/proposal terms (to be agreed with BAE SYSTEMS as soon as is reasonably practicable and without delay) based upon criteria including assumptions relating to the entire FSCS/TRACER Program rather than solely on the EMD/FD phase (which letter is designed to meet the BAE SYSTEMS Board's fiduciary duties to the company). No earlier than 10 working days prior to submission of the EMD/FD bid/proposal for the FSCS/TRACER Program, the BAE SYSTEMS SIKA Board member shall provide to the BAE SYSTEMS COO information concerning the EMD/FD proposal to support the letter of assurance, which would normally be provided to the BAE SYSTEMS Board to meet its fiduciary duty to the company. If the BAE SYSTEMS COO seeks additional information to support the letter of assurance from the SIKA Team members, such information may be provided upon the consent, and with the participation of, the Compliance Officer. Both the BAE SYSTEMS COO and the SIKA BAE SYSTEMS Board member shall certify to the accuracy of the information provided in the letter of assurance. The BAE SYSTEMS COO will have no right to make material changes in the bid/proposal of SIKA and shall be empowered by BAE SYSTEMS to, and shall in fact, authorize on behalf of BAE SYSTEMS, the submission of the bid/proposal once he provides the letter of assurance to the BAE SYSTEMS Board. No financial, legal, or commercial data provided to the SIKA BAE SYSTEMS Board member and BAE SYSTEMS COO, or otherwise in support of the letter of assurance, shall be provided with the letter of assurance, or otherwise provided, to the BAE SYSTEMS Board.

3.24.4 If the LANCER prime contracting team is awarded the EMD/FD contract for the FSCS/TRACER Program, any intellectual property (including, patents, copyrights, trademarks, common law rights, any other rights to proprietary information, and any licenses or agreements authorizing the use of technology, ideas, designs, processes or any other information) developed by BAE SYSTEMS related to FSCS/TRACER for use by SIKA

may not be used by the LANCER Team except where BAE SYSTEMS obtains the agreement of Lockheed Martin to authorize such use. Such intellectual property may not be used by BAE SYSTEMS to develop products and/or technologies that directly compete with SIKA. The requirements of this provision do not apply to FSCS/TRACER Program Information generated in the performance of the FSCS/TRACER Program delivered or required to be delivered pursuant to the PD/ATD contracts for the FSCS/TRACER Program.

3.25 LANCER

3.25.1 BAE SYSTEMS agrees to establish a LANCER Team Steering Group comprised of a single representative from BAE SYSTEMS, Raytheon, United Defense Limited Partnership, and Alvis. The BAE SYSTEMS LANCER Steering Group member shall be a member of the LANCER prime contracting team and shall not have any other responsibilities for BAE SYSTEMS until the downselect decision for EMD/FD phase of the FSCS/TRACER Program.

3.25.2 The BAE SYSTEMS LANCER prime contracting team shall, in accordance with existing contractual and teaming agreements, continue in the operational role of prime contractor. However, key decisions with respect to the activities of the LANCER Team, including, without limitation, investments, resource allocations, and preparation and implementation of the bid/proposal for the EMD/FD phase of the FSCS/TRACER Program, shall be subject to the review of the LANCER Steering Group. All members of the LANCER Team Steering Group shall represent their views concerning such matters and shall attempt to reach consensus. Except as otherwise provided herein, on those matters for which the Steering Group cannot agree, BAE SYSTEMS's member shall make the decision after taking into account all of the views of the Steering Group members. If two out of the three respective partners (Raytheon, UDLP, and Alvis) disagree with BAE SYSTEMS's decision, they may appeal to the Compliance Officer for a final decision that shall be made without delay. However, with respect to the bid/proposal for the EMD/FD phase of the FSCS/TRACER Program, the LANCER Steering Group shall review the bid/proposal in accordance with the contractual arrangements

existing within the LANCER Team, and the BAE SYSTEMS member of the LANCER Steering Group shall not have veto authority on bid/proposal approval provided that such bid/proposal falls within the criteria confirmed in the letter of assurance described in paragraph 3.24.4 below. If the BAE SYSTEMS LANCER Board member disagrees with the LANCER Steering Group that the bid/proposal falls within the criteria confirmed in the letter of assurance, he can request a final decision on this matter from the Compliance Officer. The Compliance Officer shall make his decision without delay.

3.25.3 Requests for additional investment or resources above the BAE SYSTEMS Maximum Investment sum set forth in the LANCER business plan (as referred to in paragraph 3.12 of the General Provisions above) shall be reviewed and addressed by the LANCER Steering Group without the involvement, consultation and approval of the BAE SYSTEMS COO except as otherwise provided herein. In accordance with the procedures set forth in paragraph 3.24.2 above, BAE SYSTEMS agrees to be bound by any such decision made by the LANCER Steering Group and the responsibility for ensuring the implementation of the revised business plan shall fall to the BAE SYSTEMS COO in so far as it relates to the provision of additional investments or resources. If the BAE SYSTEMS COO objects to such a request, he may appeal to the Compliance Officer for a final decision. In making his decision, the Compliance Officer shall consult with the BAE SYSTEMS member of the LANCER Steering Group and may consult with any other person on the LANCER Team. The Compliance Officer shall have access to all Information he requires, including, the bid/proposal criteria described in the letter of assurance. The Compliance Officer shall make his decision without delay.

3.25.4 In accordance with paragraph 3.24.2 above, the BAE SYSTEMS LANCER Steering Group will provide without delay to the Board of Directors of BAE SYSTEMS, via the BAE SYSTEMS COO, a letter of assurance that meets the key bid/proposal terms (to be agreed with BAE SYSTEMS as soon as is reasonably practicable and without delay) based upon criteria including assumptions relating to the entire FSCS/TRACER Program rather than solely on the EMD/FD phase (which letter is designed to meet the BAE SYSTEMS Board's fiduciary duties to the company). No earlier than 10 working days prior to submission of the EMD/FD bid/proposal for

the FSCS/TRACER Program, the BAE SYSTEMS LANCER Board member shall provide to the BAE SYSTEMS COO information concerning the EMD/FD proposal to support the letter of assurance, which would normally be provided to the BAE SYSTEMS Board to meet its fiduciary duty to the company. If the BAE SYSTEMS COO seeks additional information to support the letter of assurance from the LANCER Team members, such information may be provided upon the consent, and with the participation of, the Compliance Officer. The BAE SYSTEMS COO will, in addition to the LANCER BAE SYSTEMS Steering Group member, certify to the accuracy of the information provided in the letter of assurance. The BAE SYSTEMS COO will have no right to make material changes in the bid/proposal of LANCER and shall be empowered by BAE SYSTEMS to, and shall in fact, authorize on behalf of BAE SYSTEMS, the submission of the bid/proposal once he provides the letter of assurance to the BAE SYSTEMS Board. No financial, legal, or commercial data provided to the LANCER BAE SYSTEMS Steering Group member and BAE SYSTEMS COO, or otherwise in support of the letter of assurance, shall be provided with the letter of assurance, or otherwise provided, to the BAE SYSTEMS Board.

Changes to FSCS/TRACER Program

- 3.26 BAE SYSTEMS shall notify the DGFT in writing as soon as reasonably practicable of any changes to the FSCS/TRACER Program that might impact the application of this Undertaking 3 to that Program.

Precedence

- 3.27 If and to the extent that the application of any of the remaining Undertakings conflicts with the application of Undertaking 3 to the FSCS/TRACER Program, then Undertaking 3 shall prevail.

Effective Period

- 3.28 Except with respect to the preservation and maintenance of records specified in paragraph 3.21 of the General Provisions above, the provisions of this

Undertaking 3 shall remain in full force and effect until the competitive downselect, that is, the execution of the contract for the EMD/FD phase of the FSCS/TRACER Program. Records specified in paragraph 3.21 above shall be preserved and maintained for a period of six years following the execution of the contract for the EMD/FD phase of the FSCS/TRACER Program.]

4 Skynet 5 and Associated Satellite Communications Programmes

- 4.1 The provisions of this Undertaking 4 shall apply respectively and severally to each Relevant Programme.
- 4.2 BAE SYSTEMS shall establish and promulgate a clear corporate policy to ensure, in so far as its role in each Relevant Team permits:
 - 4.2.1 that the Relevant Teams remain competitors for the Relevant Programme independent of one another until the selection of a single prime contractor or cancellation of the Relevant Programme by the MoD; and
 - 4.2.2 the provision of a fair balance of financial and technical support for each Relevant Team.
- 4.3 Without prejudice to the generality of 4.2, BAE SYSTEMS shall comply with the following provisions of this Undertaking 4.

Separation of the Relevant Teams

- 4.4 BAE SYSTEMS shall preserve the existing separation between the Relevant Teams and in particular shall, in so far as its role in each Relevant Team permits:
 - 4.4.1 maintain separate physical locations for each Relevant Team;
 - 4.4.2 procure that the Relevant Teams shall not share any facilities in a manner that could confer a competitive advantage on either Relevant Team;
 - 4.4.3 procure that no Relevant Team member moves to a position on the other Relevant Team or to any other position within the BAE SYSTEMS Group that would provide access to Relevant Programme Information from the other Relevant Team;
 - 4.4.4 except as allowed in 4.4.6, 4.6, 4.8 and 4.9, procure that there is no communication of Relevant Programme Information between each Relevant Team and any persons outside that Relevant Team;
 - 4.4.5 procure that there is no communication about the Relevant Programme between BAE SYSTEMS staff, consultants and external advisers who are not members of a Relevant Team and UK government officials or Ministers involved in any capacity with a Relevant Programme, except to the extent that such communication is required by UK government officials or Ministers;

- 4.4.6 procure that the Relevant Teams have separate access, at reasonable rates, to BAE SYSTEMS staff, consultants and external advisers who are not members of a Relevant Team but who are necessary to support the work of that Relevant Team, provided that:
- 4.4.6.1 prior to the initial communication of Relevant Programme Information with such BAE SYSTEMS staff, consultants and external advisers, BAE SYSTEMS shall consult with the Compliance Officer; and
 - 4.4.6.2 following the initial communication of Relevant Programme Information with such BAE SYSTEMS staff, consultants and external advisers, they shall be treated as members of the Relevant Team to which they are providing support and all provisions of this Undertaking 4 shall apply in respect of them except 4.4.1 above;
- 4.4.7 provide to the MoD a list of all BAE SYSTEMS staff, consultants and external advisers on each Relevant Team and shall update this list as required from time to time by the MoD.

Delegation of Operational and Financial Control

- 4.5 Except as provided in 4.6, BAE SYSTEMS shall procure that no member of the BAE SYSTEMS Board of Directors shall be a member of a Relevant Team and BAE SYSTEMS shall procure that BAE SYSTEMS Management shall not communicate Relevant Programme Information with Relevant Team members and shall not have any decision-making role in respect of the Relevant Programme.
- 4.6 BAE SYSTEMS shall appoint a separate Chief Operating Officer (“COO”) from the BAE SYSTEMS Board of Directors for each Relevant Team and who shall be a member of that Relevant Team.
- 4.7 BAE SYSTEMS shall procure that management arrangements are established for each Relevant Team with appropriate representation from each partner company in that Relevant Team and shall procure that the BAE SYSTEMS members of each Relevant Team cannot individually or collectively exercise sole control over the decisions of the Relevant Team.
- 4.8 The COO of each Relevant Team shall provide to the BAE SYSTEMS Board of Directors a letter of assurance in terms to be agreed with the MoD that meets the

key bid/proposal terms for the next phase of the Relevant Programme. No Relevant Programme Information provided to the COO or otherwise in support of the letter of assurance shall be provided to the BAE SYSTEMS Board of Directors. In circumstances where the COO is unable to provide such a letter of assurance the bid may, by agreement with the MoD, be considered by the BAE SYSTEMS Board of Directors. In these circumstances, the MoD shall be given visibility of the deliberations of the Board prior to formal submission of the bid to the MoD and any corporate financial, legal or other advice provided to the BAE SYSEMS Board of Directors for this purpose shall be drawn from separate and independent sources for each bid.

- 4.9 BAE SYSTEMS shall develop, in consultation with the partners on each Relevant Team, business plans for each Relevant Team. These plans shall specify the planned level of investment (covering finance, including such finance as is required to be raised to support a private finance initiative programme if appropriate, bid/proposal preparation costs, staff and other corporate support) to be contributed by BAE SYSTEMS (the “BAE SYSTEMS Planned Investment”) and, subject to the agreement of its partners, to be contributed by its partners in each Relevant Team.
- 4.10 Each business plan shall on completion be submitted to the MoD and the Compliance Officer who shall certify without delay to the DGFT that to the best of his knowledge no preference in the absence of an objective justification has been shown to either Relevant Team.
- 4.11 The COO for each Relevant Team shall ensure that BAE SYSTEMS corporate resources are made available as needed to execute the business plan.

General

- 4.12 BAE SYSTEMS shall establish procedures in consultation with its partners in each Relevant Team and in consultation with the MoD and the Compliance Officer, to record all Relevant Programme Information that flows within the BAE SYSTEMS elements of the Relevant Teams.

- 4.13 BAE SYSTEMS shall inform all members of the Relevant Teams, their respective COOs, BAE SYSTEMS Management and all other BAE SYSTEMS staff, consultants and external advisers that are affected by this Undertaking 4 of the restrictions on communications with and between the Relevant Teams.
- 4.14 BAE SYSTEMS shall to the extent that it is within its power to do so obtain written commitments from those of its staff, consultants and external advisers who are subject to restrictions on communications with and between the Relevant Teams that they will abide by the requirements to maintain information security and shall provide appropriate training for those persons.
- 4.15 BAE SYSTEMS shall designate certain key BAE SYSTEMS staff for each Relevant Team as from 9 September 1999 and shall not, unless it has obtained the prior written consent (not to be unreasonably withheld) of the MoD to do so, transfer those key staff to other programmes. BAE SYSTEMS shall establish personal financial incentives for those key staff directed at winning the competition for the Relevant Programme. If a key member of staff terminates his employment with BAE SYSTEMS, BAE SYSTEMS shall provide a replacement member of staff of comparable expertise and experience.
- 4.16 BAE SYSTEMS shall provide to each Relevant Team the necessary licences and/or appropriate authorities to have separate access to the Intellectual Property of BAE SYSTEMS that is necessary for each Relevant Team to continue work on the Relevant Programme. BAE SYSTEMS shall ensure that a Relevant Team shall not have access to Relevant Programme Information developed by or for the other Relevant Team. Where necessary, BAE SYSTEMS shall take steps to ensure that its existing patents, licences and other technology-related agreements remain in effect.
- 4.17 To the extent that it has the power to do so, BAE SYSTEMS shall ensure that appropriate post-employment restrictions are placed on BAE SYSTEMS employees covered by this Undertaking 4. The adequacy of the post-employment restrictions shall be monitored by the Compliance Officer.

4.18 BAE SYSTEMS shall preserve and maintain and shall procure that the BAE SYSTEMS elements of each Relevant Team preserve and maintain all records, including electronic records, related to the Relevant Teams including, but not limited to, business plans, competitive proposals, correspondence, records of Management Board meetings and decisions in such a manner that they are readily available to the Compliance Officer.

Changes to a Relevant Programme

4.19 BAE SYSTEMS shall notify the DGFT in writing as soon as reasonably practicable of any changes to a Relevant Programme that might impact the application of this Undertaking 4 to that Relevant Programme.

Precedence

4.20 If and to the extent that the application of any of the remaining Undertakings conflicts with the application of this Undertaking 4 to a Relevant Programme, then this Undertaking 4 shall prevail.

Effective Period

4.21 Except for the requirement in 4.18, which shall apply for a period of six years following the execution of a contract or cancellation of the Relevant Programme by the MoD and the requirements in 4.2.1 and 4.15, which shall apply until selection of a single prime contractor or cancellation of the Relevant Programme by the MoD, this Undertaking 4 shall remain in full force and effect for each Relevant Programme until the execution of a contract or cancellation of the Relevant Programme by the MoD.

Definitions

4.22 Terms used in this Undertaking 4 shall have the following meaning:

“**Relevant Programme**” means, severally, each of the following programmes as they continue to evolve or any other programme formed by the MoD by the combination of two or more of the following programmes:

(a) the competitive design phase of the Skynet 5 programme;

- (b) the implementation phase of the Baseband Control and Traffic Exchange/Advanced Modem (BCTE/AM) programme; and
- (c) the competitive bidding phase of the UK MILSATCOM Communication Infrastructure Rationalisation (CIRCE) programme;

“Relevant Programme Information” means competition-sensitive information relating to a Relevant Programme including, but not limited to, information relating to any and all proposals, technology, ideas, cost data, suppliers, designs, sketches, preliminary drawings, plans, test results, specifications, pricing, technical interface information and data;

“Relevant Team” means each of the two competing bid teams for each Relevant Programme that prior to 29 November 1999 involved BAe Defence Systems Ltd on the one team and Matra Marconi Space Ltd on the other (and these teams as may be subsequently expanded or reorganised) and comprising their respective employees, partners, subcontractors, consultants and external advisers involved in the respective Relevant Programme.

5 Maintenance of Competition in the Astute Training Programme

- 5.1 The provisions of this Undertaking 5 shall apply to the assessment phase of the Astute training programme (hereinafter referred to as the ‘Astute Training Programme’).
- 5.2 BAE SYSTEMS shall establish and promulgate a clear corporate policy to ensure, insofar as its role in each Relevant Team permits:
- 5.2.1 that the Relevant Teams remain competitors for the Astute Training Programme independent of one another until the selection of a single prime contractor or cancellation of the Astute Training Programme by the MoD; and
 - 5.2.2 the provision of a fair balance of financial and technical support for each Relevant Team.
- 5.3 Without prejudice to the generality of 5.2, BAE SYSTEMS shall comply with the following provisions of this Undertaking 5.

Separation of the Relevant Teams

- 5.4 BAE SYSTEMS shall preserve the existing separation between the Relevant Teams and in particular shall, in so far as its role in each Relevant Team permits:
- 5.4.1 maintain separate physical locations for each Relevant Team;
 - 5.4.2 procure that the Relevant Teams shall not share any facilities in a manner that could confer a competitive advantage on either Relevant Team;
 - 5.4.3 procure that no Relevant Team member moves to a position on the other Relevant Team or to any other position within the BAE SYSTEMS Group that would provide access to Astute Training Programme Information from the other Relevant Team;

- 5.4.4 except as allowed in 5.4.6, 5.6 and 5.7.1, procure that there is no communication of Astute Training Programme Information between each Relevant Team and any persons outside that Relevant Team;
- 5.4.5 procure that there is no communication about the Astute Training Programme between BAE SYSTEMS staff, consultants and external advisers who are not members of a Relevant Team and UK government officials or Ministers involved in any capacity with the Astute Training Programme, except to the extent that such communication is required by UK government officials or Ministers;
- 5.4.6 procure that the Relevant Teams have separate access, at reasonable rates, to BAE SYSTEMS staff, consultants and external advisers who are not members of a Relevant Team but who are necessary to support the work of that Relevant Team, provided that:
- (i) prior to the initial communication of Astute Training Programme Information with such BAE SYSTEMS staff, consultants and external advisers, BAE SYSTEMS shall consult with the Compliance Officer; and
 - (ii) following the initial communication of Astute Training Programme Information with such BAE SYSTEMS staff, consultants and external advisers, they shall be treated as members of the Relevant Team to which they are providing support and all provisions of this Undertaking 5 shall apply in respect of them except 5.4.1 above;
- 5.4.7 provide to the MoD a list of all BAE SYSTEMS staff, consultants and external advisers on each Relevant Team and shall update this list as required from time to time by the MoD.

Delegation of Operational and Financial Control

- 5.5 Except as provided in 5.6 and 5.7.1, BAE SYSTEMS shall procure that no member of the BAE SYSTEMS Board of Directors shall be a member of a Relevant Team and BAE SYSTEMS shall procure that BAE SYSTEMS Management shall not communicate Astute Training Programme Information with Relevant Team members and shall not have any decision-making role in respect of the Astute Training Programme.

- 5.6 BAE SYSTEMS shall appoint a separate senior manager (the “Senior Manager”) from the BAE SYSTEMS Management for each Relevant Team and who shall be a member of that Relevant Team.
- 5.7 BAE SYSTEMS shall:
- 5.7.1 delegate to the Senior Manager the authority to authorise necessary investments appropriate to and in support of the bid of one Relevant Team without visibility to the other Relevant Team;
 - 5.7.2 in the event that elements of either bid are to be placed before the BAE SYSTEMS Board of Directors, BAE SYSTEMS shall procure that the board considers each proposal as a business opportunity in its own right;
 - 5.7.3 procure that the Senior Manager and the BAE SYSTEMS members of a Relevant Team shall not be present at any discussion between or meeting of the board of directors of BAE SYSTEMS which concerns the other Relevant Team’s business or involves the receipt or consideration of Astute Training Programme Information of the other Relevant Team.

General

- 5.8 BAE SYSTEMS shall establish procedures in consultation with its partners in each Relevant Team and in consultation with the MoD and the Compliance Officer, to record all Astute Training Programme Information that flows within the BAE SYSTEMS elements of the Relevant Teams.
- 5.9 BAE SYSTEMS shall inform all members of the Relevant Teams, their respective Senior Managers, BAE SYSTEMS Management and all other BAE SYSTEMS staff, consultants and external advisers that are affected by this Undertaking 5 of the restrictions on communications with and between the Relevant Teams.

- 5.10 BAE SYSTEMS shall to the extent that it is within its power to do so obtain written commitments from those of its staff, consultants and external advisers who are subject to restrictions on communications with and between the Relevant Teams that they will abide by the requirements to maintain information security and shall provide appropriate training for those persons.
- 5.11 BAE SYSTEMS shall designate certain key BAE SYSTEMS staff for each Relevant Team as from 9 September 1999 and shall not, unless it has obtained the prior written consent (not to be unreasonably withheld) of the MoD to do so, transfer those key staff to other programmes. If a key member of staff terminates his employment with BAE SYSTEMS, BAE SYSTEMS shall provide a replacement member of staff of comparable expertise and experience.
- 5.12 BAE SYSTEMS shall provide to each Relevant Team the necessary licences and/or appropriate authorities to have separate access to the Intellectual Property of BAE SYSTEMS that is necessary for each Relevant Team to continue work on the Astute Training Programme. BAE SYSTEMS shall ensure that a Relevant Team shall not have access to Astute Training Programme Information developed by or for the other Relevant Team. Where necessary, BAE SYSTEMS shall take steps to ensure that its existing patents, licences and other technology-related agreements remain in effect.
- 5.13 To the extent that it has the power to do so, BAE SYSTEMS shall ensure that appropriate post-employment restrictions are placed on BAE SYSTEMS employees covered by this Undertaking 5. The adequacy of the post-employment restrictions shall be monitored by the Compliance Officer.
- 5.14 BAE SYSTEMS shall preserve and maintain and shall procure that the BAE SYSTEMS elements of each Relevant Team preserve and maintain all records, including electronic records, related to the Relevant Teams including, but not limited to, business plans, competitive proposals, correspondence, records of

Management Board meetings and decisions in such a manner that they are readily available to the Compliance Officer.

Changes to the Astute Training Programme

- 5.15 BAE SYSTEMS shall notify the DGFT in writing as soon as reasonably practicable of any changes to the Astute Training Programme that might impact the application of this Undertaking 5 to the Astute Training Programme.

Precedence

- 5.16 If and to the extent that the application of any of the remaining Undertakings conflicts with the application of this Undertaking 5 to the Astute Training Programme, then this Undertaking 5 shall prevail.

Effective Period

- 5.17 Except for the requirement in 5.14, which shall apply for a period of six years following the execution of a contract or cancellation of the Astute Training Programme by the MoD and the requirements in 5.2.1 and 5.11, which shall apply until selection of a single prime contractor or cancellation of the Relevant Programme by the MoD, this Undertaking 5 shall remain in full force and effect for the Astute Training Programme until the execution of a contract or cancellation of the Astute Training Programme by the MoD.

Definitions

- 5.18 Terms used in this Undertaking 5 shall have the following meaning:

“Astute Training Programme Information” means competition-sensitive information relating to the Astute Training Programme including, but not limited to, information relating to any and all proposals, technology, ideas, cost data,

suppliers, designs, sketches, preliminary drawings, plans, test results, specifications, pricing, technical interface information and data;

“Relevant Team” means each of the two competing bid teams for the Astute Training Programme that prior to 29 November 1999 involved British Aerospace Land and Sea Systems Ltd on the one team and the Flagship Training Consortium on the other (and these teams as may be subsequently expanded or reorganised) and comprising their respective employees, partners, subcontractors, consultants and external advisers involved in the Astute Training Programme.

6 MES Shipyards

- 6.1 BAE SYSTEMS shall vest and maintain the Shipbuilding Business and the Shipbuilding Assets in a separate Shipbuilding Subsidiary of BAE SYSTEMS, with its own management and published accounts, and shall ensure that its shipbuilding capacity and ancillary services are available for MoD programmes to all potential prime contractors (including BAE SYSTEMS) on fair and reasonable and non-discriminatory terms. The requirements in 6.2 to 6.12 shall also apply without prejudice to the generality of the foregoing.

Formation and Maintenance of a Business

- 6.2 BAE SYSTEMS shall ensure that the following shall have been completed:
- 6.2.1 by 29 February 2000, the incorporation or allocation within BAE SYSTEMS of a Shipbuilding Subsidiary, the main object of which shall be to carry on the Shipbuilding Business;
- 6.2.2 as soon as is reasonably practicable and without delay, the transfer to the Shipbuilding Subsidiary of staff and tenancies and the vesting (to the extent that it is within the power of BAE SYSTEMS to do so) in the Shipbuilding Subsidiary of legal and beneficial ownership of other Shipbuilding Assets, save that
- (i) where the transfer or vesting of assets is subject to third party consents, BAE SYSTEMS shall in the first instance exercise reasonable endeavours to ensure that the Shipbuilding Subsidiary has without delay the right to use (and pursuant to 6.9 and 6.10 below to make available) the assets in question until the transfer or vesting is possible; and
 - (ii) where intellectual property is to be licensed instead of transferred to the Shipbuilding Subsidiary, or arrangements are to be made for secondments of staff to the Shipbuilding Subsidiary, BAE SYSTEMS shall ensure that the Shipbuilding Subsidiary has without delay the right to use (and pursuant to 6.9 and 6.10 below to make available) the intellectual property and/or the services of the staff in question; and

- 6.2.3 as soon as is reasonably practicable and without delay, all other actions which are necessary for the Shipbuilding Subsidiary to carry on and maintain the Shipbuilding Business.
- 6.3 BAE SYSTEMS shall not transfer from the Shipbuilding Subsidiary to BAE SYSTEMS or any other member of the BAE SYSTEMS Group all or part of the Shipbuilding Business or the Shipbuilding Assets without having provided 20 working days' notice in writing to the MoD and subject to the prior written consent (not to be unreasonably withheld) of the MoD. For this purpose none of the following shall be deemed to be a transfer unless it affects the requirement in 6.2.3 above to carry on and maintain the Shipbuilding Business:
- 6.3.1 the transfer of assets in the ordinary course of business;
 - 6.3.2 the exchange of assets or property respectively of a similar nature;
 - 6.3.3 the transfer of assets or property on arm's length terms against the allotment or transfer of share capital and/or payment of cash;
 - 6.3.4 the payment of cash as consideration or part consideration for the acquisition of any undertaking or business or assets for the purposes of carrying on the Shipbuilding Business;
 - 6.3.5 the expenditure of cash in the ordinary course of business including, without limitation, repayment of debt;
 - 6.3.6 the payment of a dividend;
 - 6.3.7 the transfer of the businesses and activities to be excluded under the definition of the Shipbuilding Business in 17.4 below;
 - 6.3.8 the transfer by way of mortgage, charge or other form of fixed or floating security;
 - 6.3.9 the transfer of real property which is surplus to the requirements of the Shipbuilding Business;
 - 6.3.10 any transfer being of a type that the MoD shall have agreed in writing with BAE SYSTEMS shall not be taken into account for the purposes of 6.3.
- 6.4 BAE SYSTEMS shall not transfer into the Shipbuilding Subsidiary from BAE SYSTEMS or any other member of the BAE SYSTEMS Group any business not

falling within, or any assets not required to carry on, the Shipbuilding Business without having provided 20 working days' prior written notice to the DGFT and subject to the prior written consent (not to be unreasonably withheld) of the DGFT. If the DGFT raises no concerns within 15 working days of the giving of such notice, BAE SYSTEMS shall be free to proceed with the transfer.

Separate Reports and Accounts

6.5 BAE SYSTEMS shall

- 6.5.1 maintain accounting records in respect of the Shipbuilding Subsidiary so that the revenues, costs, assets, liabilities, reserves and provisions of the Shipbuilding Subsidiary are identifiable in the books of the Shipbuilding Subsidiary separately from those of any other business of the BAE SYSTEMS Group. The accounting records shall include charges between the Shipbuilding Subsidiary and any other business of the BAE SYSTEMS Group, in particular to reflect that transactions have been conducted at arm's length and on fair and reasonable and non-discriminatory terms;
- 6.5.2 prepare in respect of the Shipbuilding Subsidiary and on a consistent basis from such accounting records, financial statements that comply with the Companies Acts 1985 and 1989 and with applicable UK accounting standards. The financial statements shall be prepared without taking the benefit of any reduced reporting requirements which arise from any Companies Act small or medium sized company exemptions and in the event that the Shipbuilding Subsidiary holds shares in any other enterprise the financial statements shall be prepared on a consolidated basis in accordance with UK GAAP (Generally Accepted Accounting Practice). The financial statements shall disclose the turnover derived by the Shipbuilding Subsidiary from other businesses of the BAE SYSTEMS Group separately from the turnover derived from any other person;
- 6.5.3 procure an annual report by BAE SYSTEMS's auditors to be addressed to the Compliance Officer within three months of the end of the financial year to which it relates,
 - (i) stating whether in their opinion the accounting statements prepared pursuant to 6.5.2 above are adequate for the purposes of and are in compliance with 6.5.2 and present a true and fair view of the results and balance sheet of the Shipbuilding Subsidiary; and

- (ii) confirming that appropriate processes are in place and operating effectively to ensure appropriate and reasonable charges for transactions and the use of assets and liabilities between the Shipbuilding Subsidiary and any other business of the BAE SYSTEMS Group;

- 6.5.4 provide a statement at the end of the list of subsidiary companies published in the BAE SYSTEMS Group annual report and accounts that the Shipbuilding Subsidiary (identified by name) is covered by undertakings given to the Secretary of State and a statement that the annual financial statements of the Shipbuilding Subsidiary are available on request together with details from where they can be obtained;
- 6.5.5 refrain, without the prior written consent of the Compliance Officer (not to be unreasonably withheld) from changing, so far as concerns the Shipbuilding Subsidiary, the principles (including the consistency) of charging between the Shipbuilding Subsidiary and any other business of BAE SYSTEMS; and
- 6.5.6 ensure that the accounting records referred to in 6.5.1 and the financial statements referred to in 6.5.2 are maintained in accordance with the accounting rules for, and state the accounting policies used by, BAE SYSTEMS.

Separate Management and Staff

- 6.6 BAE SYSTEMS shall procure that the Shipbuilding Subsidiary has its own management and staff and that the staff, directors or executives of the Shipbuilding Subsidiary shall not carry out any functions in the BAE SYSTEMS Group that could conflict with their duties to the Shipbuilding Subsidiary or with any provisions of these Undertakings.
- 6.7 Without prejudice to 6.6 BAE SYSTEMS may provide service functions such as IT support both to the Shipbuilding Subsidiary as well as to any other business of the BAE SYSTEMS Group subject to the provisions of 6.5.1 above.

Availability of Capacity and Non-discrimination

- 6.8 The provisions of 6.9 to 6.12 inclusive below shall apply without prejudice to the provisions of Undertakings 9 and 10 below.

- 6.9 Subject to 6.12 below, BAE SYSTEMS shall procure that the Shipbuilding Subsidiary shall not refuse in the absence of an objective justification to make available for the purposes of an MoD programme to a potential prime contractor (including BAE SYSTEMS) upon request and to the extent that there is available capacity, the shipyards and ancillary services for which the Shipbuilding Subsidiary is responsible. In making the foregoing available, BAE SYSTEMS shall procure that the Shipbuilding Subsidiary does so on fair and reasonable terms.
- 6.10 In particular and without prejudice to 6.9 and subject to 6.12 below, BAE SYSTEMS shall procure that in relation to MoD programmes the Shipbuilding Subsidiary shall not
- 6.10.1 in respect of its products or services; and
 - 6.10.2 whether in relation to prices charged or quoted or to other terms or conditions applied or to be applied, services or support levels, standards of performance or otherwise; and
 - 6.10.3 in the absence of an objective justification discriminate between a BAE SYSTEMS Company and a person that is not a member of the BAE SYSTEMS Group or give preference to a BAE SYSTEMS Company.
- 6.11 In particular and without prejudice to the generality of the foregoing, BAE SYSTEMS shall whether for the purposes of (a) an MoD programme or (b) any other military programme involving a person that is not a member of the BAE SYSTEMS Group and who produces goods, or supplies goods or services, in the United Kingdom that are to be used in connection with such a military programme
- 6.11.1 preserve the confidentiality of Confidential Information it receives from any actual or potential sub-contractor and shall ensure that, unless it has the consent of such sub-contractor to do so, no Confidential Information received from any such sub-contractor is communicated to the Shipbuilding Subsidiary whether or not the Shipbuilding Subsidiary is competing with such sub-contractor; and

- 6.11.2 procure that the Shipbuilding Subsidiary shall preserve the confidentiality of Confidential Information it receives from any actual or potential prime contractor and that, unless the Shipbuilding Subsidiary has the consent of such prime contractor to do so, no Confidential Information received from any such prime contractor is communicated by or through the Shipbuilding Subsidiary to any other business of the BAE SYSTEMS Group.
- 6.12 For the avoidance of doubt, the provisions of 6.9 and 6.10 above shall not apply so as to require BAE SYSTEMS or the Shipbuilding Subsidiary to make available to a team competing for an MoD programme (“the requesting team”) the capacity or those products or services which BAE SYSTEMS or the Shipbuilding Subsidiary has in compliance with general competition laws contracted to provide to another team competing for the same MoD programme (“the original team”), save that where the original team is to include another BAE SYSTEMS Company, BAE SYSTEMS shall request prior consent in writing (not to be unreasonably withheld) from the MoD before BAE SYSTEMS or the Shipbuilding Subsidiary enters into such a contract.

7 Teaming Arrangements with Potential Prime Contractors

- 6.13 BAE SYSTEMS shall consult the MoD in writing at the earliest opportunity and in any event at least twenty-one working days prior to entering into any teaming arrangement with a third party to bid as prime contractor in future MoD competitions in order to enable the MoD to take steps towards ensuring that its competitive procurement strategy is not frustrated.

8 **MES Avionics Business**

6.14 BAE SYSTEMS shall vest and maintain the Avionics Business and the Avionics Assets in a separate Avionics Subsidiary of BAE SYSTEMS, with its own management and published accounts, and shall ensure that its avionics systems capability, equipment capability and ancillary services are available for MoD programmes to all potential prime contractors (including BAE SYSTEMS) on fair and reasonable and non-discriminatory terms. The requirements in 8.2 to 8.12 shall also apply without prejudice to the generality of the foregoing.

Formation and Maintenance of a Business

6.15 BAE SYSTEMS shall ensure that the following shall have been completed:

8.2.1 by 29 February 2000, the incorporation or allocation within BAE SYSTEMS of an Avionics Subsidiary, the main object of which shall be to carry on the Avionics Business;

8.2.2 as soon as is reasonably practicable and without delay, the transfer to the Avionics Subsidiary of staff and tenancies and the vesting (to the extent that it is within the power of BAE SYSTEMS to do so) in the Avionics Subsidiary of legal and beneficial ownership of other Avionics Assets, save that

- (i) where the transfer or vesting of assets is subject to third party consents, BAE SYSTEMS shall in the first instance exercise reasonable endeavours to ensure that the Avionics Subsidiary has without delay the right to use (and pursuant to 8.9 and 8.10 below to make available) the assets in question until the transfer or vesting is possible; and
- (ii) where intellectual property is to be licensed instead of transferred to the Avionics Subsidiary, or arrangements are to be made for secondments of staff to the Avionics Subsidiary, BAE SYSTEMS shall ensure that the Avionics Subsidiary has without delay the right to use (and pursuant to 8.9 and 8.10 below to make available) the intellectual property and/or the services of the staff in question; and

- 8.2.3 as soon as is reasonably practicable and without delay, all other actions which are necessary for the Avionics Subsidiary to carry on and maintain the Avionics Business;
- 6.16 8.3 BAE SYSTEMS shall not transfer from the Avionics Subsidiary to BAE SYSTEMS or any other member of the BAE SYSTEMS Group all or part of the Avionics Business or the Avionics Assets without having provided 20 working days' notice in writing to the MoD and subject to the prior written consent (not to be unreasonably withheld) of the MoD. For this purpose none of the following shall be deemed to be a transfer unless it affects the requirement in 8.2.3 above to carry on and maintain the Avionics Business:
- 8.3.1 the transfer of assets in the ordinary course of business;
 - 8.3.2 the exchange of assets or property respectively of a similar nature;
 - 8.3.3 the transfer of assets or property on arm's length terms against the allotment or transfer of share capital and/or payment of cash;
 - 8.3.4 the payment of cash as consideration or part consideration for the acquisition of any undertaking or business or assets for the purposes of carrying on the Avionics Business;
 - 8.3.5 the expenditure of cash in the ordinary course of business including, without limitation, repayment of debt;
 - 8.3.6 the payment of a dividend;
 - 8.3.7 the transfer of the businesses and activities to be excluded under the definition of the Avionics Business in 17.4 below;
 - 8.3.8 the transfer by way of mortgage, charge or other form of fixed or floating security;
 - 8.3.9 the transfer of real property which is surplus to the requirements of the Avionics Business;
 - 8.3.10 any transfer being of a type that the MoD shall have agreed in writing with BAE SYSTEMS shall not be taken into account for the purposes of 8.3.
- 6.17 BAE SYSTEMS shall not transfer into the Avionics Subsidiary from BAE SYSTEMS or any other member of the BAE SYSTEMS Group any business not

falling within, or any assets not required to carry on, the Avionics Business without having provided 20 working days' prior written notice to the DGFT and subject to the prior written consent (not to be unreasonably withheld) of the DGFT. If the DGFT raises no concerns within 15 working days of the giving of such notice, BAE SYSTEMS shall be free to proceed with the transfer.

Separate Reports and Accounts

6.18

6.19 BAE SYSTEMS shall

8.3.11 maintain accounting records in respect of the Avionics Subsidiary so that the revenues, costs, assets, liabilities, reserves and provisions of the Avionics Subsidiary are identifiable in the books of the Avionics Subsidiary separately from those of any other business of the BAE SYSTEMS Group. The accounting records shall include charges for the military business of the Avionics Subsidiary and between the Avionics Subsidiary and any other business of the BAE SYSTEMS Group, in particular to reflect that transactions have been conducted at arm's length and on fair and reasonable and non-discriminatory terms;

8.3.12 prepare in respect of the Avionics Subsidiary and on a consistent basis from such accounting records, financial statements that comply with the Companies Acts 1985 and 1989 and with applicable UK accounting standards. The financial statements shall be prepared without taking the benefit of any reduced reporting requirements which arise from any Companies Act small or medium sized company exemptions and in the event that the Avionics Subsidiary holds shares in any other enterprise the financial statements shall be prepared on a consolidated basis in accordance with UK GAAP (Generally Accepted Accounting Practice). The financial statements shall disclose the turnover derived by the Avionics Subsidiary from other businesses of the BAE SYSTEMS Group separately from the turnover derived from any other person;

8.3.13 procure an annual report by BAE SYSTEMS's auditors to be addressed to the Compliance Officer within three months of the end of the financial year to which it relates,

(i) stating whether in their opinion the accounting statements prepared pursuant to 8.5.2 above are adequate for the purposes of and are in

compliance with 8.5.2 and present a true and fair view of the results and balance sheet of the Avionics Subsidiary; and

(ii) confirming that appropriate processes are in place and operating effectively to ensure appropriate and reasonable charges for transactions and the use of assets and liabilities between the Avionics Subsidiary and any other business of the BAE SYSTEMS Group;

8.5.4 provide a statement at the end of the list of subsidiary companies published in the BAE SYSTEMS Group annual report and accounts that the Avionics Subsidiary (identified by name) is covered by undertakings given to the Secretary of State and a statement that the annual financial statements of the Avionics Subsidiary are available on request together with details from where they can be obtained;

8.5.5 refrain, without the prior written consent of the Compliance Officer (not to be unreasonably withheld) from changing, so far as concerns the Avionics Subsidiary, the principles (including the consistency) of charging between the Avionics Subsidiary and any other business of the BAE SYSTEMS Group; and

8.5.6 ensure that the accounting records referred to in 8.5.1 and the financial statements referred to in 8.5.2 are maintained in accordance with the accounting rules for, and state the accounting policies used by, BAE SYSTEMS.

Separate Management and Staff

6.20 BAE SYSTEMS shall procure that the Avionics Subsidiary has its own management and staff and that the staff, directors or executives of the Avionics Subsidiary shall not carry out any functions in the BAE SYSTEMS Group that could conflict with their duties to the Avionics Subsidiary or with any provisions of these Undertakings.

6.21 Without prejudice to 8.6 BAE SYSTEMS may provide service functions such as IT support both to the Avionics Subsidiary as well as to any other business of the BAE SYSTEMS Group subject to the provisions of 8.5.1 above.

6.22

- 6.23 Availability of Capacity and Non-discrimination
- 6.24 The provisions of 8.9 to 8.12 inclusive below shall apply without prejudice to the provisions of Undertakings 9 and 10 below.
- 6.25 Subject to 8.12 below, BAE SYSTEMS shall procure that the Avionics Subsidiary shall not refuse in the absence of an objective justification to make available for the purposes of an MoD programme to a potential prime contractor (including BAE SYSTEMS) upon request and to the extent that there is available capacity, the avionics systems capability, equipment capability and ancillary services for which the Avionics Subsidiary is responsible. In making the foregoing available, BAE SYSTEMS shall procure that the Avionics Subsidiary does so on fair and reasonable terms.
- 6.26 In particular and without prejudice to 8.9 and subject to 8.12 below, BAE SYSTEMS shall procure that in relation to MoD programmes the Avionics Subsidiary shall not
- 6.27 in respect of its products or services; and
- 6.28 whether in relation to prices charged or quoted or to other terms or conditions applied or to be applied, services or support levels, standards of performance or otherwise; and
- 6.29 in the absence of an objective justification
- 6.30 discriminate between a BAE SYSTEMS Company and a person that is not a member of the BAE SYSTEMS Group or give preference to a BAE SYSTEMS Company.
- 6.31 In particular and without prejudice to the generality of the foregoing, BAE SYSTEMS shall whether for the purposes of (a) an MoD programme or (b) any other military programme involving a person that is not a member of the BAE SYSTEMS Group and who produces goods, or supplies goods or services, in the United Kingdom that are to be used in connection with such a military programme
- 6.32

- 8.11.1 preserve the confidentiality of Confidential Information it receives from any actual or potential sub-contractor and shall ensure that, unless it has the consent of such sub-contractor to do so, no Confidential Information received from any such sub-contractor is communicated to the Avionics Subsidiary whether or not the Avionics Subsidiary is competing with such sub-contractor; and
 - 8.11.2 procure that the Avionics Subsidiary shall preserve the confidentiality of Confidential Information it receives from any actual or potential prime contractor and that, unless the Avionics Subsidiary has the consent of such prime contractor to do so, no Confidential Information received from any such prime contractor is communicated by or through the Avionics Subsidiary to any other business of the BAE SYSTEMS Group.
- 8.12 For the avoidance of doubt, the provisions of 8.9 and 8.10 above shall not apply so as to require BAE SYSTEMS or the Avionics Subsidiary to make available to a team competing for an MoD programme (“the requesting team”) the capacity or those products or services which BAE SYSTEMS or the Avionics Subsidiary has in compliance with general competition laws contracted to provide to another team competing for the same MoD programme (“the original team”), save that where the original team is to include another BAE SYSTEMS Company, BAE SYSTEMS shall request prior consent in writing (not to be unreasonably withheld) from the DGFT before BAE SYSTEMS or the Avionics Subsidiary enters into such a contract.

9 Access by Prime Contractors to BAE SYSTEMS In-house Suppliers

- 6.33 BAE SYSTEMS shall not refuse in the absence of an objective justification to make available upon request to an actual or potential prime contractor, to the extent that BAE SYSTEMS has available capacity, those resources of BAE SYSTEMS that are required by such a contractor to bid for or perform contracts for the purposes of an MoD programme.
- 6.34 In making available the resources referred to in 9.1 above, BAE SYSTEMS shall do so on fair and reasonable terms and shall not, in the absence of an objective justification, discriminate between a BAE SYSTEMS Company and a person that is not a member of the BAE SYSTEMS Group or give preference to a BAE SYSTEMS Company whether in relation to the prices charged or quoted or to other terms or conditions applied or to be applied, services or support levels, standards of performance or otherwise.
- 6.35 For the avoidance of doubt, the provisions of 9.1 and 9.2 above shall not apply so as to require BAE SYSTEMS to make available to a team competing for an MoD programme (“the requesting team”) the resources which BAE SYSTEMS has in compliance with general competition laws contracted to provide to another team competing for the same MoD programme (“the original team”), save that where the original team is to include another BAE SYSTEMS Company, BAE SYSTEMS shall request prior consent in writing (not to be unreasonably withheld) from the DGFT before BAE SYSTEMS enters into such a contract.

10 Sub-contract Competition

- 6.36 The provisions of 10.1 shall apply whether in relation to (a) an MoD programme or (b) any other military programme involving a person that is not a member of the BAE SYSTEMS Group and who produces goods, or supplies goods or services, in the United Kingdom that are to be used in connection with such a military programme. BAE SYSTEMS shall, in the context of sub-contract tendering situations, extending from the initial point of drafting and developing engineering specifications for sub-contract packages (whether before or during any competition at prime or sub-contractor level) through to the commercial selection of the winning supplier,
- 6.37 deal on fair and reasonable terms with all persons (including BAE SYSTEMS and a BAE SYSTEMS Company); and
- 6.38 refrain, in the absence of an objective justification, from discriminating between a BAE SYSTEMS Company and a person that is not a member of the BAE SYSTEMS Group or giving any preference to a BAE SYSTEMS Company.
- 6.39 Subject to 10.3 below and except and to the extent that the MoD may give consent in writing to BAE SYSTEMS, the provisions of 10.2 shall apply in respect of all sub-contract competitions run by BAE SYSTEMS in relation to contracts placed by the MoD with BAE SYSTEMS or a BAE SYSTEMS Company. BAE SYSTEMS shall
- 10.1.1 accept within and as terms of all prime contracts where BAE SYSTEMS or a BAE SYSTEMS Company has been selected without competitive procurement the Principles for the Conduct of Sub-Contract Competitions (attached at Annex A to these Undertakings) or such alternative or substitute terms as may be agreed between the MoD and BAE SYSTEMS;
- 10.1.2 accept within and as terms of all prime contracts where BAE SYSTEMS or a BAE SYSTEMS Company has been selected through competitive procurement the Principles for the Conduct of Sub-Contract Competitions (attached at Annex A to these Undertakings) or such alternative or

substitute terms as may be agreed between the MoD and BAE SYSTEMS but only to the extent that the MoD has required other prospective bidders to apply such Principles or alternative or substitute terms;

10.2.3 include in its internal governance manual the text of this Undertaking 10 and Annex A; and

10.2.4 take no action to prevent, or impose restrictions on, any of its sub-contractors supplying follow-on spare parts direct to the MoD (if the MoD wishes to purchase such parts directly from the sub-contractors) that are required for BAE SYSTEMS Products and for which spare parts the sub-contractor owns the Intellectual Property rights. For the purposes of 10.2.4 “BAE SYSTEMS Products” means all products (except computer software) supplied by BAE SYSTEMS or the BAE SYSTEMS Group to the MoD.

10.3 In respect of the FSCS/TRACER Program, BAE SYSTEMS shall consult and follow the advice of the MoD as to the extent to which Annex A or alternative or substitute terms relating to 10.2.1 or 10.2.2 or 10.2.3 above are to be applied to each such Program.

11 Access to Intellectual Property Rights and Technical Information for Follow-on Work

- 11.1 BAE SYSTEMS shall on or before 31 May 2000 enter into a legally-binding agreement with the MoD that implements and is fully consistent with the Principles of Agreement set out in Annex B to these Undertakings. The agreement shall take effect immediately upon its execution.

12 JTIDS Licensing

- 6.40 12.1 BAE SYSTEMS shall comply with the requirements of this Undertaking 12 in order to enable the MoD to obtain competitive tenders from persons other than BAE SYSTEMS for contracts in connection with any work required by the MoD in relation to the Initial JTIDS Equipment, Further JTIDS Equipment and/or test equipment therefor and to enable any such persons effectively to carry out such work.
- 6.41 12.2 BAE SYSTEMS shall carry out such acts and enter into such agreements as the MoD may from time to time reasonably specify in writing for the purpose of enabling companies designated by the MoD to have access to the relevant technology and licences for the production, maintenance, testing, support and servicing of Initial or Further JTIDS Equipment.
- 6.42 12.3 Subject to 12.4 below, BAE SYSTEMS shall at any time after 29 November 1999 on receipt of a written request from the MoD enter into a Licence Agreement with any party or parties nominated from time to time by the MoD and with whom the MoD wishes to place, is considering placing or has placed a contract for production or any other work in relation to Initial JTIDS Equipment, Further JTIDS Equipment and/or test equipment for either, such Licence Agreement being in the form agreed between the MoD and The General Electric Company plc on 1 August 1989 or in such other form as the MoD may reasonably specify. BAE SYSTEMS may from time to time request that amendments be made to any such Licence Agreement with the consent (not to be unreasonably withheld) of the MoD.
- 6.43 12.4 BAE SYSTEMS shall exercise its best endeavours to obtain any third party consent that may be necessary or desirable to enable BAE SYSTEMS to enter into the Licence Agreement referred to in 12.3 above.

- 6.44 12.5 BAE SYSTEMS shall not take any action that will adversely affect or in any way prevent or hinder its ability or the ability of any member of the BAE SYSTEMS Group to enter into the Licence Agreement referred to in 12.3 above provided that this requirement shall not prevent BAE SYSTEMS from disposing of its shareholding in or the business of MES.
- 6.45 12.6 The provision of JTIDS Technical Assistance by BAE SYSTEMS under any such Licence Agreement shall be free of charge up to a maximum aggregate total of thirty (30) man years of BAE SYSTEMS's suitably qualified staff.
- 6.46 12.7 The provision of JTIDS Technical Assistance beyond that to be provided free of charge pursuant to 12.6 above shall be subject to a charge having regard to the experience, skill and ability of BAE SYSTEMS's staff providing the JTIDS Technical Assistance, the rates for which shall be BAE SYSTEMS's then current rate for rendering JTIDS Technical Assistance subject to such rates being reasonable.
- 6.47 12.8 If JTIDS Technical Assistance is provided at the premises of BAE SYSTEMS all expenses such as travel and subsistence of the staff of the Licensee shall be the sole responsibility of and shall be paid by the Licensee.
- 6.48 If JTIDS Technical Assistance is provided at the premises of the Licensee, the Licensee shall pay the reasonable lodging, food and travel expenses of BAE SYSTEMS' staff necessarily incurred for the purposes of providing such JTIDS Technical Assistance.
- 6.49 12.10 Without prejudice to 12.5, BAE SYSTEMS shall release, and shall exercise its best endeavours to ensure that Marconi plc releases, any third party from any obligation which respectively MES or Marconi plc (or its predecessor The General Electric Company plc) has imposed upon such third party that has or

could have the effect of preventing or hindering the ability of any such third party to enter into the Licence Agreement referred to in 12.3 above either alone or in conjunction with other persons.

6.50 12.11 EXISTING JTIDS CONTRACTS

12.11.1 Notwithstanding any terms to the contrary in the Existing JTIDS Contracts, BAE SYSTEMS shall (subject to it having received all requisite consents):

- (i) supply, or procure the supply, to the MoD or its nominated agent all JTIDS Technical Information which BAE SYSTEMS or any member of the BAE SYSTEMS Group owns, or has access to, relating to the Initial JTIDS Equipment and/or test equipment therefor as soon as reasonably practicable after receiving a written request from the MoD (which shall give as much notice as possible of its intention to make such a request) for such JTIDS Technical Information and in any event within one month of receipt of any such request; and
- (ii) permit or procure that the MoD or its nominated agent is permitted to copy and use such JTIDS Technical Information and all Intellectual Property rights therein solely for tendering purposes.

12.11.2 BAE SYSTEMS shall be entitled, upon making a request to the MoD, to receive from the latter all reasonable costs of collation, reproduction and dispatch of the Technical Information supplied to the MoD pursuant to 12.11.1.(i) above.

13 Maintenance of Capacity at the Clyde Shipyards

- 6.51 Until such time as a design and build contract is awarded for the Type 45 AAW Warship or the programme is cancelled by the MoD, BAE SYSTEMS shall maintain the necessary facilities and capacity at its Clyde shipyards to enable it to build and outfit the First-of-Class AAW Warship.

14 Allocation of Engineering Staff

6.52 BAE SYSTEMS shall provide the MoD with full visibility (including a written report) and the right to comment on, in sufficient time in advance of, any proposed re-deployment or reduction in the number of engineering staff

14.1.1 in any business of the BAE SYSTEMS Group into which MES has been merged;

14.1.2 in any business of the BAE SYSTEMS Group that competes or might compete with the business referred to in 14.1.1 above; and

14.1.3 in any business of the BAE SYSTEMS Group that supports the businesses referred to in 14.1.1 or 14.1.2 above.

6.53 BAE SYSTEMS may, by a request in writing, seek the MoD's prior agreement to waive the requirement in 14.1 above (or any part or parts thereof) in respect of a proposed re-deployment or reduction in the number of engineering staff below a specified level or in respect of an individual or category of engineering staff, to be agreed with the MoD on a case-by-case basis.

6.54 The report to be provided pursuant to 14.1 above and any request made pursuant to 14.2 above shall explain the impact of a proposed re-deployment or reduction in the number of engineering staff on

14.1.4 existing contractual commitments;

14.1.5 contracts under negotiation; and

14.1.6 the range of technical competencies available to the businesses referred to in 14.1.1 to 14.1.3 inclusive.

6.55

15 Parent Company Guarantees

6.56 BAE SYSTEMS shall provide to the MoD as soon as is reasonably practicable parent company guarantees and parent company indemnities in the same terms as those provided to the MoD by The General Electric Company plc in respect of contracts between the MoD and members of MES.

16 General

- 6.57 BAE SYSTEMS shall procure to the extent that it is within its power to do so that each of its Subsidiary Undertakings complies with these Undertakings as if it had given them.
- 6.58 Without prejudice to 16.1 above, BAE SYSTEMS shall exercise reasonable endeavours to procure that any provision in these Undertakings relating to activities carried on or to be carried on by or through, or by staff of, a BAE SYSTEMS Company that is not a Subsidiary Undertaking is complied with as if the BAE SYSTEMS Company in question had given these Undertakings.
- 6.59 Where in any case to which any of 16.1 or 16.2 applies, BAE SYSTEMS is unable, or anticipates that it may be unable, to ensure compliance by the Subsidiary Undertaking or the BAE SYSTEMS Company in question, BAE SYSTEMS shall, as soon as it is reasonably practicable to do so, inform the Compliance Officer, the DGFT and the MoD by notice in writing.
- 6.60 Within three months of the date of the appointment of the Compliance Officer BAE SYSTEMS shall submit a statement to the DGFT and the MoD setting out the practices, procedures and systems which it has adopted in order to ensure compliance with these Undertakings. The statement shall be revised and amended as may be required from time to time by the DGFT.
- 6.61 Subject to any express provision to the contrary in these Undertakings, each Undertaking shall continue to have full force and effect until such time as it is varied or superseded by a new undertaking, or BAE SYSTEMS is released from the Undertaking by the Secretary of State acting on the advice of the DGFT.
- 6.62 These Undertakings do not in any way preclude or restrict any action that may be taken under the Fair Trading Act 1973 or the Competition Act 1998 in respect of a matter relating to the breach or alleged breach of any Undertaking or otherwise.
- 6.63 BAE SYSTEMS shall comply with such written directions as the DGFT may from time to time reasonably give to take such steps within its power and to provide to

the DGFT such information within its possession as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.

- 6.64 BAE SYSTEMS shall publish these Undertakings as may be varied from time to time on its website in a form that is easily accessible, visible, legible and that is capable of being printed from the website.

17 Interpretation and Definitions

6.65 Where reference is made in any Undertaking to BAE SYSTEMS, a particular BAE SYSTEMS Company or officer, then in the event of any merger, joint venture, reorganisation or change of name such Undertaking shall be interpreted as applying to the equivalent or successor organisation or officer in the new structure.

6.66 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.

6.67 Subject to 17.2 above, any question arising as to the interpretation of these Undertakings shall be determined by the DGFT.

6.68 Terms used in these Undertakings shall have the following meaning:

“the Act” means the Fair Trading Act 1973;

“Affiliate” means a person who satisfies the following condition, namely that any enterprise (as defined in section 63(2) of the Act) that he carries on or were to carry on and any enterprise that BAE SYSTEMS carries on or were to carry on would be regarded as being under common control for the purposes of section 65 of the Act;

“Avionics Assets” means the assets of MES that prior to the merger were used or intended for future use by the Avionics Business;

“Avionics Business” means all of (1) to (4) below:

- (1) the business of those parts of MES that were managed by Marconi Avionics Limited from 9 September 1999 with the exception of
 - the research and materials activities conducted by Marconi Research at Baddow, Borehamwood and Towcester;
 - customer support covering platform orientated support and the management of customer facilities and training (save that this exception shall not extend to product related support activities);

- cooled and uncooled infra-red detectors which form the base sensor technology across land, naval, missile and avionic applications; and
- GEC-Marconi Electronic Systems Pty Limited;

6.69 the provision of management, support and technical services that are in the ordinary course of business;

6.70 the activities developed from the existing businesses comprised in (1) to (2) above as a result of technology evolution;

6.71 research and development, design, manufacture, assembly, testing and in-service support relating to the products and services of (1) to (3) above.

“**Avionics Subsidiary**” means the subsidiary company to be created by BAE SYSTEMS pursuant to Undertaking 8.2, or if BAE SYSTEMS chooses to create more than one such subsidiary company, each and every such subsidiary company;

“**BAE SYSTEMS**” means British Aerospace plc and without prejudice to 17.1, references to BAE SYSTEMS shall be interpreted as being references to British Aerospace plc as it exists after completion of the merger and, where appropriate, to British Aerospace plc as it existed before completion of the merger;

“**BAE SYSTEMS Company**” means a company that is a member of the BAE SYSTEMS Group;

“**BAE SYSTEMS Group**” means BAE SYSTEMS and its Affiliates;

“**business**” has the meaning given by section 137(2) of the Act;

“**Confidential Information**” means any commercially sensitive or competition-sensitive business or financial information, but does not include any such information that has become generally available to the public otherwise than as a result of a breach of these Undertakings;

“**DGFT**” means the Director General of Fair Trading or, in consequence of any variations to these Undertakings made on or after 1 April 2003, the Office of Fair Trading;

“**Existing JTIDS Contracts**” means contracts A57B/1395 and A57B/1944 placed by the MoD with The Singer Company, acting through its Kearfott Division, and contract AWL 32A/100 placed by the MoD with The Singer Company, acting through its Electronic Systems Division;

“**Further JTIDS Equipment**” means such further JTIDS systems as the MoD may from time to time require to have designed, developed and manufactured on its behalf being systems substantially based on the Initial JTIDS Equipment;

“**Initial JTIDS Equipment**” means the Class 2 Time Division Multiple Access Terminal consisting of four major line replacement units, namely the Receiver Transmitter, the Data Processor, Platform Interface Units and the Battery Unit, together with all other units currently designed to fit the Tornado, UK AEW, 1 UK ADGE and all other platforms which have been or are the subject of any agreement between the MoD and Singer, Singer Kearfott, Plessey Electronic Systems Corporation, Singer Electronic Systems Division or any of them or to which the MoD may wish to have any of the aforesaid equipment fitted;

“**Intellectual Property**” means, without limitation, letters patent, registered or unregistered designs, utility models, applications for any of the foregoing, and the right to apply therefor in any part of the world, copyright (including, without limitation, design copyright, inventions and other rights thereto), confidential information and know-how and any similar rights in any country;

“**JTIDS**” means the system for transmission of voice and data between military aircraft and ground or shipborne terminals as amended or varied from time to time which substantially complies with STANAG 5516 (the NATO Standardisation Agreement for Tactical Data Exchange-Link 16 (NU) as amended or varied from time to time) and STANAG 4175 (the NATO Standardisation Agreement for Technical Characteristics of the Multi-functional Information Distribution System as amended or varied from time to time);

“**JTIDS Technical Assistance**” means the assistance to be provided by BAE SYSTEMS under the Licence Agreement referred to in 12.3;

“JTIDS Technical Information” means all information and know-how in the form and to the extent that it exists and is from time to time in the possession of BAE SYSTEMS or a member of the BAE SYSTEMS Group (including any which it is entitled to receive from third parties) and which it is free to disclose (including, but not limited to, that comprised in formulae, techniques, designs, specifications, drawings, component lists, manuals, computer software (including both source and object codes), instructions and catalogues) relating to the design, development, manufacture, use, repair, maintenance and quality control of JTIDS and the Initial or Further JTIDS Equipment (as may be the case) and/or test equipment therefor and all improvements, modifications, revisions and alterations of any such information and/or know-how made from time to time including without limitation the documentation specified in the Licence Agreement in the form agreed between the MoD and the General Electric Company plc on 1 August 1989 and in the form and to the extent that such documentation may from time to time exist;

“Licence Agreement” means the licence agreement entered into pursuant to Undertaking 12;

“MES” means the Marconi Electronic Systems business that is the subject of the merger;

“MES Employee” means any employee of The General Electric Company plc group that was employed by, or assigned or seconded to, MES prior to completion of the merger;

“MoD” means the Secretary of State for Defence;

“Secretary of State” means the Secretary of State for Trade and Industry;

“Shipbuilding Assets” means (a) the assets of MES that prior to the merger were used or intended for future use by the Shipbuilding Business, (b) the land and buildings under lease on 29 November 1999 to FBM Lairdside Limited at Birkenhead and (c) the assets used at the Govan shipyard on 8 November 1999;

“Shipbuilding Business” means the design, manufacture, assembly, launch, fitting out and trials of military platforms, (including naval and auxiliary surface ships and conventional and nuclear submarines) and including, but not limited to, the physical installation of propulsion systems and combat systems (weapons,

communications, electronic warfare systems, sensors and decoys etc) and the testing and trials of the platforms; but excluding the armaments business managed by the Land and Naval Systems Division of MES, the business of VSEL Overseas Projects Limited and Marconi Marine (Prime Contracts) Limited and the Combat Systems and Integrated Logistics Support activities carried out by the Naval Systems Support Group;

“**Shipbuilding Subsidiary**” means the subsidiary company to be created by BAE SYSTEMS pursuant to Undertaking 6.2, or if BAE SYSTEMS chooses to create more than one such subsidiary company, each and every such subsidiary company;

“**Subsidiary Undertaking**” shall be construed in accordance with section 258 of, and Schedule 10A to, the Companies Act 1985.

- 17.1 For the avoidance of doubt, references in these Undertakings to “fair and reasonable” shall be construed in accordance with general competition laws and in the context of the Undertaking in which that term appears; they are not intended to import any additional or different meaning that may be attributable to that term from the Profit Formula for Non-Competitive Government Contracts.

On behalf of British Aerospace plc:

Signed (director)

..... (director/secretary)

Date

ANNEX A

Principles for the Conduct of Sub-Contract Competitions

Initiation of the Competition Process

1. On agreement of those subcontract tasks that are to be met through competition, BAE SYSTEMS shall appoint a Bid Manager who shall be responsible for the management and administration of all subcontract competition exercises. The Bid Manager shall arrange for the issue of a notice to all company personnel advising of his appointment and identifying any other company personnel which it is intended shall be involved in the evaluation of tenders for subcontracts. This notice shall stress the importance of confidentiality and impartiality in all subcontract competition activities.
2. Where the estimated value of any proposed subcontract is in excess of £500,000 (Five Hundred Thousand Pounds), the MoD will arrange for the requirement to be published in the MOD Contracts Bulletin. Any enquiries that this generates will be directed to the Bid Manager.
3. The Bid Manager shall prepare lists of prospective tenderers on the basis of his knowledge of the market place for the items in question, any responses to Contracts Bulletin entries, and any specific provisions of Government policy notified to him. In particular the Bid Manager shall observe the policy of treating overseas companies on an equal footing with UK companies. He shall seek the agreement of the MoD to the proposed lists of companies, and draw particular attention to those subcontract tasks for which it is proposed that [company name] or an affiliated or subsidiary company, or a company with which [company name] has a commercial relationship, is to be invited to tender. The MoD will be entitled to suggest potential bidders to the Bid Manager, but the responsibility for proposing such bidders will be his.
4. The Bid Manager shall produce a set of Terms and Conditions governing each planned invitation to tender. These will reflect those contained in the [planned] prime contract between [company name] and the MoD insofar as these impinge on a subcontractor and his performance of any subcontract unless otherwise agreed in writing between BAE SYSTEMS and the MoD. They shall not be more onerous than those of the prime contract, without the prior approval of the MoD.

5. Evaluation criteria for each subcontract competition shall be proposed by the Bid Manager, agreed with the MoD and published to tenderers. Where appropriate these shall be recorded in a separate protocol.
6. The invitation to tender must provide a complete statement of the requirement. Where the invitation to tender includes data packs these shall be complete and accurate and to a level of detail sufficient to enable the product to be manufactured to the correct standard by a competent manufacturer. Complete copies of all proposed invitations to tender and associated material shall be sent to the MoD prior to issue. Where this is not practicable, the Bid Manager shall arrange for the invitation to tender and associated material to be made available for inspection by representatives of the MoD. BAE SYSTEMS shall agree with the MoD as soon as is reasonably practicable those invitations to tender that shall be the subject of prior MoD approval before issue.
7. The invitation to tender shall clearly identify the dates and times for the return and opening of tenders, and the intended programme for tender evaluation and award of subcontracts. A covering letter shall be issued with each invitation to tender restating the dates and times for the return and opening of tenders and identifying the Bid Manager as the sole point of contact for any queries in the period between issue of the invitations to tender and award of subcontracts.
8. Prospective tenderers shall be instructed to bring any error, omission or ambiguity in the invitation to tender to the attention of the Bid Manager. Any such communication shall immediately be copied to the MoD. If an error, omission or ambiguity is accepted by the Bid Manager and necessitates correction of the invitation to tender or associated documentation, the Bid Manager shall inform the MoD and arrange for corrected material to be transmitted to all tenderers in parallel and copied to the MoD.
9. Where it is considered that a bidders' conference is necessary to ensure comprehension of the requirement, this will be arranged by the Bid Manager. The MoD will be represented at any conference held. The Bid Manager shall produce a record of any questions asked and answers given at the bidders' conference, and provide copies to all those invited to tender.

Receipt and Evaluation of Tenderers' Responses

10. Tenderers shall be requested to submit an agreed number of copies of each of their technical and commercial responses to the invitation to tender by the due date and time. In the interests of commercial confidentiality, each tenderer shall be requested to double pack its response. The inner package only shall show that the contents are a competitive tender to be opened on a certain date by the Bid Manager. The commercial and technical proposals are to be submitted in separate envelopes within the inner package with their contents clearly marked.
11. All responses received from tenderers shall, upon receipt by the Bid Manager, be stored in a secure location or container to which only the Bid Manager has access. They shall be opened on the due day by the Bid Manager in the presence of a representative of the MoD.
12. The representative of the MoD shall examine carefully each page of the commercial proposal of each tenderer's response to verify that no alterations have been made to it. If any amendment or alteration to any page of the commercial proposal is found, this will be brought to the attention of the Bid Manager. Both the Bid Manager and the representative of the MoD shall certify their knowledge of the amendment by initialling and dating the amendment or alteration.
13. The Bid Manager shall produce a log of all tenders received in response to each invitation to tender. This shall be signed by the Bid Manager and the representative of the MoD. One copy of each of the technical proposals contained in each tender will be removed by the representative of the MoD, and all copies of the commercial proposals. The remaining copies of each tenderer's technical proposals shall be retained by the Bid Manager for the purposes of evaluation.
14. The Bid Manager shall be responsible for arranging and overseeing evaluation of the technical proposals on the basis of the agreed evaluation criteria. On completion he shall make a recommendation on technical grounds to the MoD. Supporting evaluation documentation shall be provided to the MoD in a form to be agreed.
15. In cases where BAE SYSTEMS or the MoD wish to employ the services of a third party to assist in the evaluation of tenders, appropriate terms of reference for the third party will be agreed between [company name] and the MoD.

16. The commercial proposals shall be made available to the Bid Manager for assessment only on receipt of the technical recommendation. The Bid Manager shall then arrange for a final recommendation to be made to the MoD which will normally be the lowest priced compliant tender. A full supporting case for the recommendation shall be provided. The MoD shall advise the Bid Manager promptly and in writing if for any reason it does not agree with the recommended subcontractors stating its concerns. The Bid Manager shall arrange for a review of the recommendation. Any continuing disagreement shall be brought to the attention of higher authority in [company name] and the MoD for resolution.
17. If, following assessment of the commercial proposals, the Bid Manager considers that there is scope to obtain better value for money by a further round of bidding or through post-tender negotiations, he shall immediately inform the MoD with his proposals for this activity. This shall be conducted with the same regard for confidentiality as the initial round of tendering, utilising any of the above procedures where appropriate. The MoD shall advise of any special arrangements it wishes to introduce in the event that [company name] or an affiliated or subsidiary company, or a company with which [company name] has a commercial relationship, is to be involved in this activity.

Notification of Tender Results

18. The Bid Manager shall arrange for the simultaneous notification of all tenderers of the outcome of the competition. Unsuccessful tenderers shall be advised of those factors which rendered their submission unacceptable and be provided with an indication of the broad percentage price difference between their bid and that selected. If requested by an unsuccessful tenderer, the Bid Manager shall arrange for the provision of a formal de-brief at which a representative of the MoD might wish to be present. The nature of any de-brief and the scope of any information to be divulged is to be agreed between the Bid Manager and the MoD.

Records

19. The Bid Manager shall retain detailed records of the subcontract competition procedures. These records may be needed by the MoD for audit purposes and should only be destroyed with the agreement of the relevant Contracts Branch.

ANNEX B

Principles of Agreement Relating to Undertaking 11

Date: [Not later than 31 May 2000]

Parties: British Aerospace plc (expected to be shortly renamed as BAE SYSTEMS plc) (“BAES”)

Secretary of State for Defence (“MoD”)

Recital: [Reference back to the undertaking]

Terms agreed to:

For the avoidance of doubt the definitions and interpretations in Undertaking 17 do not apply to these Principles of Agreement.

BAES shall procure that these Principles of Agreement are complied with by its wholly-owned subsidiaries.

1. In these Principles of Agreement the following definitions shall apply:

“**ROF Scheme**”: The Scheme made on 20 December 1984 by the MoD pursuant to the Ordnance Factories and Military Services Act 1984.

“**Products**”: products supplied by the BAES or by ex-BAe or ex-Marconi Electronics Systems (MES) business which is at the effective date of the Undertakings a wholly-owned UK subsidiary of BAES and either in service with the Armed Forces of the UK Government or in the course of procurement therefore as of 29 November 1999.

“**Old DEFCON 15**”: DEFCON 15 Edition 8/74 and the equivalent provision of the ROF Scheme relating to those Products whose design was not funded under the Royal Ordnance Factories Trading Fund.

“**COTS Products**”: Products comprising Commercial-off-the-shelf Products bought directly from BAe or MES and (in respect of the ROF Scheme) those Products whose design was funded under the Royal Ordnance Factories Trading Fund.

“Follow on Work”: work by any United Kingdom Government Department or any agent acting on behalf of, or a contractor in pursuance of a contract with, any such Department and consisting of any of the activities listed in DEFCON 15 Edition 2/98 (“New DEFCON 15”) clauses 4(b) to 4(g) and 5 (“New DEFCON 15 Work”) or in DEFCON 16 Edition 2/98 (“DEFCON 16”) clauses 4(b) to 4(e) and 5 (“DEFCON 16 Work”) as qualified by this agreement in relation to a Product.

“Technical Information”: a manufacturing data pack (“MDP”) as defined by UK DID MDP (Issue 2/98) or an Operation, or Repair and Maintenance Pack (“RMP”) consisting of documentation selected from the publications listed in Annex D to MoD’s Guidelines for Industry No. 10 to the extent that the contents of such MDP and RMP exist in recorded form and are in the ownership or control of BAES at the relevant time.

2. The terms set out in paragraphs 3 to 9 below shall be without prejudice to:
 - (a) MoD’s right to rely on existing rights retained under the ROF Scheme or secured under any contract between BAES and MoD in relation to a Product where it is in MoD’s interests to do so, and
 - (b) BAES’ right to rely on terms already agreed or extensions of MoD’s rights granted under special agreements (a non-exhaustive list of which is attached hereto) relating to, or a procurement contract for, a Product rather than those set forth in paragraph 3 onwards below.

3. The provisions of the following paragraphs shall henceforth apply to Products PROVIDED THAT before disclosing Technical Information to a third party for the exercise of its rights hereunder in any instance, MoD shall first –
 - (a) inform BAES of the identity of the third party and the purpose of the disclosure;
 - (b) ensure that the third party has entered into an agreed form of confidentiality agreement with BAES;
 - (c) afford to BAES a reasonable opportunity to make representations as to why the disclosure should not be made in that instance; and

- (d) afford to BAES an opportunity to review the Technical Information which MoD proposes to disclose, to remove therefrom any matter that is inappropriate and to apply a suitable proprietary or other legend thereto.
4. Where MoD invites other companies to bid for Follow on Work it shall include BAES in the competition.
5. BAES shall not be obliged to infringe the pre-existing rights of third parties nor to set aside pre-existing obligations to third parties in respect of the provision of Technical Information or the grants of rights hereunder.
6. In respect of a Product subject to Old DEFCON 15, but not New DEFCON 15 or DEFCON 16, MoD shall have the right as the need arises to do the following:-
- (i) To use and have used Technical Information previously delivered or available on request under Old DEFCON 15 for the purposes of New DEFCON 15 Work PROVIDED THAT work consisting of designing, developing and producing trainers and simulators (clause 4(c)), shall be on fair and reasonable payment terms to be agreed in advance with BAES and that nothing in this clause 6(i) shall be construed as giving MoD rights in relation to the manufacture of parts of Products.
 - (ii) To call for the delivery of any part of the MDP not previously delivered in pursuance of Old DEFCON 15 subject to the prior agreement of fair and reasonable payment terms reflecting the cost of its reproduction and supply with BAES and to use it as in (i) above.
 - (iii) To call for the delivery of an RMP subject to the prior agreement of fair and reasonable payment terms with BAES reflecting the cost of its reproduction and supply.
 - (iv) To use any Technical Information delivered in pursuance of Old DEFCON 15 or (ii) or (iii) above for DEFCON 16 Work. Such use of Technical Information delivered under (iii) above shall be except for Operation of Products (clause 4(e)) subject to the prior agreement of fair and reasonable payment terms with BAES.
7. In respect of a COTS Product MoD shall have the right as the need arises to do any of the following:-

- (i) To call for the delivery of Technical Information subject to the prior agreement of fair and reasonable payment terms with BAES reflecting the cost of its reproduction and supply.
 - (ii) To use an MDP delivered in accordance with (i) above for New DEFCON 15 Work consisting of the manufacture of spare parts for such COTS Products (within clause 4(e)) on fair and reasonable payment terms to be agreed in advance with BAES, PROVIDED THAT this right shall not extend to spare parts the first sale of which was made less than 10 years before the proposed date of use.
 - (iii) To use a RMP delivered in accordance with (i) above for DEFCON 16 Work PROVIDED THAT such work shall be except for Operation of Products (clause 4(e)) subject to fair and reasonable payment terms to be agreed in advance with BAES.
8. In addition to the above terms Clauses 1 to 3 and Clauses 6 onward of both New DEFCON 15 and DEFCON 16 will apply to the provision and use of Technical Information hereunder, save that:
- (i) the operation of the Contract Data Requirement mechanism of New DEFCON 15 and DEFCON 16 will be replaced by the use of the terms MDP and RMP respectively as defined above;
 - (ii) Clause 8 will be amended to allow BAES to receive any payment where this is provided for above;
 - (iii) Clause 9 of both New DEFCON 15 and DEFCON 16 will be amended to require BAES to declare relevant background patents at the time of bidding for Follow on Work and the last sentence will be deleted;
 - (iv) alternative (b) in Clause 12 of New DEFCON 15 will be deleted; and
 - (v) Clause 18 of New DEFCON 15 will not impose any new obligations on BAE SYSTEMS.
9. The exercise of rights by MoD hereunder shall be subject to the assurances given by CDP in his letter to the CBI dated 18 March 1998.

Non-Exhaustive list of Special Agreements between MoD and BAES

Paragraph 2(b) of the Principles of Agreement

1. Nimrod 2000 Contract
2. RARDEN APEP Licence Agreement
3. CHARM 3 Training Round Licence Agreement
4. GPMG Spares Licence Agreement
5. Surplus Army Ammunition Agreement