

Schedule 16

Parent Company Guarantee

Part A: Form of Parent Company Guarantee

(1) [♦] (as Guarantor)

and

(2) THE SECRETARY OF STATE FOR DEFENCE (as Beneficiary)

PARENT COMPANY GUARANTEE

relating to the

Shipbuilding Contract for Fleet Solid Support Vessels (Contract CSS/0113)

THIS GUARANTEE is made on

20[♦]

BETWEEN:

- (1) [♦], a company established under the laws of [♦], with its principal office at [♦] (the **Guarantor**); and
- (2) **THE SECRETARY OF STATE FOR DEFENCE** (the **Authority**).

WHEREAS:

- (A) [♦] (registered number [♦]), a company incorporated in [♦] whose registered office is [♦] (the Contractor) and the Authority are entering into a Shipbuilding Contract for, inter alia, the build and supply of Fleet Solid Support Vessels (Contract CSS/0113) on or about the date of this Guarantee (the **Contract**).
- (B) It is a condition of the Contract that the Contractor procures the execution and delivery to the Authority of a guarantee in the form set out herein.
- (C) The Guarantor has agreed to guarantee the due performance of the Contract by the Contractor in accordance with the terms and conditions of this Guarantee.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Guarantee:

- (a) "Business Day" means a day (other than Saturday or Sunday) when banks in London are open for business; and
- (b) words and expressions defined in the Contract have the same meaning when used in this Guarantee, including the recitals to this Guarantee, unless the context otherwise requires or unless otherwise defined or provided for in this Guarantee.

- 1.2 The provisions of Clause 1 (*Definitions and Interpretation*) of the Contract shall apply to this Guarantee as if set out in full herein. The parties hereto agree that this Guarantee shall take effect as a deed notwithstanding that a party may execute this Guarantee under hand.

2 GUARANTEE

- 2.1 In consideration of the Authority entering into the Contract (a copy of which the Guarantor acknowledges having received) with the Contractor, the Guarantor, subject to clause 7 (*Limitation on Liability and Defences*) and clause 9 (*Continuing Effect and Duration*) hereby irrevocably and unconditionally:

- (a) guarantees to the Authority, as a continuing obligation, the due, proper and punctual observance and performance by the Contractor, of each and all of the obligations, warranties, duties and undertakings of the Contractor under, or pursuant to, the Contract (the **Guaranteed Obligations**) as and when such Guaranteed Obligations shall become due in accordance with the terms of the Contract; and
- (b) undertakes to pay to the Authority, if the Contractor fails to pay the Authority when due and payable in accordance with the terms of the Contract, all such unpaid amounts whatsoever which the Contract provides are to be paid by the

Contractor to the Authority. Any such amounts shall be due from the Guarantor as principal debtor and not merely as surety.

2.2 The Guarantor shall perform:

- (a) its Guaranteed Obligations under this Guarantee within seven (7) calendar days or such period as is reasonable in the circumstances; and
- (b) its payment obligations under this Guarantee within seven (7) calendar days, in each case, after receipt of written notice from the Authority in accordance with clause 16 (Notices), provided only that the Authority shall have first made a demand in writing for performance of the relevant obligation(s) to the Contractor and (in respect of clause 2.2(a) (Guarantee) only) any cure period available to the Contractor in respect of its performance of such relevant obligation(s) pursuant to the terms of the Contract (if and to the extent that any such cure period is available and applicable in respect of the Contractor's performance of such relevant obligation(s)) has expired and the Contractor has failed to perform the relevant obligations during such cure period.

3 INDEMNITY

- 3.1** The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1 (*Guarantee*), undertakes that if any of its obligations or liabilities under clause 2.1 (*Guarantee*) are or become unenforceable, invalid or illegal for any reason whatsoever attributable to any act or omission of the Guarantor or the Contractor (whether or not they are aware of the same), the Guarantor will separately indemnify and keep indemnified the Authority on demand against any and all losses, actions, claims, proceedings, liabilities, expenditure or costs suffered or incurred by the Authority arising out of or in connection with such unenforceability, invalidity or illegality. The amount payable by the Guarantor under this indemnity will be equal to the amount it would have had to pay under clause 2 (*Guarantee*) had the relevant obligations not been unenforceable, invalid or illegal.

4 VARIATION TO THE CONTRACT

- 4.1** The Guarantor hereby authorises the Authority and the Contractor to make any changes, modifications or variations to the Contract, including any Change under and in accordance with the Contract, and the Guarantor irrevocably agrees:
- (a) that any such change, modification and variation, including a Change under and in accordance with the Contract, shall be binding on the Guarantor in all circumstances;
 - (b) to guarantee the due and punctual performance of the Guaranteed Obligations, as so amended, modified and varied;
 - (c) to perform its obligations in accordance with the terms of this Guarantee, notwithstanding that such amendment, modification or variation may increase or otherwise affect the liability of the Guarantor under this Guarantee; and
 - (d) to promptly provide the confirmation in the form set out at Part B for any Change no later than ten (10) calendar days after such Change has been agreed between the Parties.

5 UNDERTAKINGS

- 5.1** The Guarantor waives any right it may have to require the Authority (or any agent on its behalf) to demand, proceed against or enforce any other right or claim for payment against the Contractor before claiming from the Guarantor under this Guarantee,

save only for the making of a demand to the Contractor in accordance with clause 2.2 (*Guarantee*).

6 DEMANDS

- 6.1 In accordance with clause 18 (*Rights Cumulative and Continuing*), the Authority may make any number of demands against the Guarantor under clause 2.2 of this Guarantee, provided that no more than one demand shall be outstanding at any time in relation to the same Guaranteed Obligation or payment obligation. For the avoidance of doubt, the Authority shall not be entitled to recover against this Guarantee more than once for the same loss under the Contract.

7 LIMITATION OF LIABILITY AND DEFENCES

- 7.1 The Guarantor may:

- (a) raise hereunder all objections and defences the Contractor has or would have under the Contract;
- (b) subject to the rights of the Authority under the Contract, proceed against the Contractor with any rights of reimbursement and subrogation that the parent company may have, provided that such action by the Guarantor does not have an adverse effect on the Contractor's performance of its obligations under the Contract; and
- (c) assume all rights of set-off, defence, counterclaim, limitation and/or exclusion of liability as the Contractor may have against the Authority under the Contract,

save for any such rights, objections and defences that arise on grounds of any of the events or matters set out in clause 7.4 (Limitation of Liability and Defences).

- 7.2 The liability of the Guarantor pursuant to this Guarantee shall not exceed (when taken together with any other amount recovered under the Contract and/or this Guarantee, the value of any Guaranteed Obligation performed or procured by the Guarantor, and/or from any other security provided under or pursuant to the terms of the Contract (excluding any such security provided by the Contractor to the Authority)) the aggregate of (i) the Guaranteed Obligations and (ii) any amount payable by the Guarantor to the Authority under clause 12 (*Costs*) of this Guarantee.
- 7.3 The Authority shall not be entitled to receive and retain any amount paid under this Guarantee to the extent that the Authority has already received payment in respect of the same claim, whether such payment was made under the Contract or any other guarantee or security issued to the Authority in respect of the obligations of the Contractor under the Contract. Any amount received by the Authority which, in accordance with this clause 7.3 (*Limitation of Liability and Defences*), the Authority is not entitled to receive and retain shall be held by the Authority on trust for the Guarantor, and shall be promptly returned to the Guarantor, upon the Authority becoming aware that it is not entitled to receive and retain such amount.
- 7.4 Save as expressly stated in this Guarantee, the obligations and liability of the Guarantor under this Guarantee shall remain in full force and effect notwithstanding any act, omission, event or matter whatsoever whether or not known to the Guarantor, the Contractor or the Authority (other than irrevocable payment to the Authority of amounts under and in accordance with this Guarantee and performance in full of all Guaranteed Obligations) and nothing shall affect, impair, discharge, release or otherwise exonerate the Guarantor from any of its liabilities or obligations under this Guarantee, including the following:
- (a) anything (other than such rights, objections and defences of the Contractor under the Contract as the Guarantor is entitled to raise or assume in

accordance with clause 7.1 (*Limitation of Liability and Defences*) which would have discharged, reduced or otherwise adversely affected the liability of the Guarantor, whether as surety, co-obligor or otherwise, or which would have afforded the Guarantor any legal or equitable defences;

- (b) the existence, validity, obtaining or renewal of any other guarantee, security or right of recourse, set-off or other right or interest held by the Authority in relation to the Contract or any other document entered into pursuant to the Contract or any demand or enforcement, failure to demand or enforce or the release or waiver of any such guarantee, security, right of recourse, set off or other right or interest;
- (c) any amendment, variation, assignment, novation, modification or waiver (express or implied and however substantial or material), to the Contract or any other document relating to the Contract (which shall be binding upon the Guarantor in all circumstances, notwithstanding that such amendment, variation, assignment, novation, modification or waiver may increase or otherwise affect the liability of the Guarantor), and for the avoidance of doubt the Guarantor shall be entitled to the benefit of any such amendment, variation, assignment, novation, modification or waiver (express or implied and however substantial or material) to the same extent as the Contractor;
- (d) any release of or granting of time or any other indulgence to the Contractor or any third party;
- (e) any winding up, insolvency, dissolution, reconstruction, reorganisation, legal limitation, disability, incapacity or lack of corporate power or authority or other circumstances of, or any change in the constitution or corporate identity by the Contractor or any other person; or
- (f) any circumstances which might render illegal, invalid, void, voidable or unenforceable the obligations of the Contractor under the Contract or which might affect the Authority's ability to recover amounts from the Contractor, unless the same effect would also have applied had the Guarantor been party to the Contract instead of the Contractor.

8 CONDITIONAL DISCHARGE

- 8.1 Any release, compromise, discharge or settlement by the Guarantor and the Authority in relation to this Guarantee shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Contractor or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.
- 8.2 If any such right, security or disposition is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Guarantee as if such release, compromise, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

9 CONTINUING EFFECT AND DURATION

- 9.1 The obligations and liabilities of the Guarantor under this Guarantee shall constitute and be continuing obligations and shall remain in full force and effect until the date on which all the obligations and liabilities of the Contractor which become due under the Contract have been satisfied or performed in full in accordance with the Contract, notwithstanding any intermediate satisfaction or performance of such obligations by the Contractor, the Guarantor or any other party.

- 9.2 The expiry of this Guarantee in accordance with clause 9.1 (*Continuing Effect and Duration*) shall not affect any liabilities or obligations of the Guarantor which have arisen or accrued or are related or attributable to matters occurring prior to the date of expiry of this Guarantee. Any demand by the Authority hereunder (excluding any demands reinstated pursuant to clause 8.2 (*Conditional Discharge*)) shall be barred and be unenforceable, unless written notice of the same, specifying in reasonable detail the nature and amount of the demand has been received by the Guarantor within twelve (12) months after the date of expiry of this Guarantee as set out in clause 9.1 (*Continuing Effect and Duration*).

10 REPRESENTATIONS

10.1 The Guarantor represents and warrants to the Authority that:

- (a) on the date of this Guarantee, it is duly organised, validly existing and in good standing under the law of the jurisdiction of its organisation;
- (b) on the date of this Guarantee, it has all necessary requisite power and authority, and has taken all necessary corporate action, to enable it to enter into this Guarantee and perform its obligations under this Guarantee;
- (c) on the date of this Guarantee, its obligations under this Guarantee shall, when executed, constitute valid and legally binding obligations of the Guarantor;
- (d) on the date of this Guarantee, the Guarantor does not require the consent, approval or authority of any other person to enter into or perform its obligations under this Guarantee;
- (e) on the date of this Guarantee, it has no contemplation of filing, and has not filed for, insolvency or any other form of analogous proceedings;
- (f) on the date of this Guarantee, the Guarantor is not engaged in any actions, litigation or arbitration proceedings or investigations which are reasonably likely to impair its capacity or ability to perform its obligations and duties under this Guarantee and, to its knowledge, no such actions, litigation or arbitration proceedings or investigations have been threatened or are pending against it;
- (g) on the date of this Guarantee, it has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which have or are reasonably likely to adversely affect its ability to perform its obligations and duties under this Guarantee;
- (h) on the date of this Guarantee, the execution of this Guarantee (and the performance of all obligations contained in the Guarantee) does not and will not constitute a breach of, or a default under, any law, regulation or official directive to which the Guarantor is subject or any agreement by which the Guarantor is bound and the Guarantee will be valid, binding and enforceable, subject to the principle that equitable remedies may be granted or refused in court, in accordance with the terms of all such agreement;
- (i) on the date of this Guarantee, it has no knowledge that there are any pending notices of violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which are reasonably likely to have a material effect on its ability to perform its obligations under this Guarantee;
- (j) it shall take all necessary actions to perform the obligations to be assumed by the Guarantor under this Guarantee;
- (k) it has not entered into this Guarantee in reliance on any representation, warranty or undertaking which is not set out in this Guarantee; and

- (l) on the date of this Guarantee, its financial condition satisfies the Guarantee Criteria set out in Clause [6.4] (*Guarantees*) of the Contract.

11 PAYMENTS

- 11.1 All sums payable by the Guarantor under this Guarantee shall be paid, no later than the time required under clause 2.2 (*Guarantee*), in full to the Authority without any set off or counterclaim and free and clear of any present or future deduction or withholding on account of taxes, duties, levies, assessments and/or charges of any kind (except for those required by any law or regulation binding on the Guarantor), in freely transferable, cleared funds in Pounds Sterling (GBP).
- 11.2 If any deduction or withholding is required to be made by law or regulation binding on the Guarantor, the Guarantor shall pay that additional amount which is necessary to ensure that the Authority receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 11.3 If following the payment by the Guarantor of any additional amounts in relation to a deduction or withholding under clause 11.1 and 11.2 (*Payments*), the Authority receives and/or is granted (as the case may be):
- (a) a tax credit;
 - (b) a relief of a tax;
 - (c) a remission for a tax; and/or
 - (d) a repayment of a tax,
- 11.4 (any one or more of clauses 11.3(a) to (d) being a **Tax Benefit**) solely and directly attributable to that deduction or withholding, the Authority shall, to the extent the Authority is able to utilise and pass on such Tax Benefit and to the extent the Authority (acting reasonably) does utilise such Tax Benefit, pass on such Tax Benefit to the Guarantor as soon as reasonably practicable after the Authority has received and/or is granted such Tax Benefit (as the case may be).
- 11.5 If the Guarantor fails to pay any amount payable by it under this Guarantee on its due date in accordance with clause 2.2 (*Guarantee*), interest shall accrue on the overdue amount from the date on which it fell due up to the date of actual payment (both before and after judgement) at the Prescribed Rate, but without any double-counting, with the rate of interest accruing on the relevant overdue amount under the Contract. Any interest accruing under this clause 11.4 (*Payments*) shall be immediately due and payable by the Guarantor on demand by the Authority. Notwithstanding the foregoing, no interest under this clause 11.4 (*Payments*) shall accrue or be payable in addition to interest accruing on the relevant overdue amount in accordance with the Contract.
- 11.6 If payment under this Guarantee is due on a day which is not a Business Day, the due date for that payment will instead be the next Business Day.

12 COSTS

- 12.1 The Guarantor shall on a full indemnity basis pay to the Authority on demand the amount of all reasonable costs and expenses (including legal and out of pocket expenses and any value added tax on those costs and expenses) which the Authority properly and reasonably incurs in connection with:
- (a) any discharge or release under this Guarantee; and
 - (b) the preservation, exercise or enforcement of any rights under or in connection with this Guarantee (including in respect of the indemnity granted by the

Guarantor in favour of the Authority pursuant to clause 3 (*Indemnity*) or any attempt to do so (an **Enforcement Action**), provided that:

- (i) the Guarantor takes any action to perform any of the Guaranteed Obligations in respect of such Enforcement Action; or
- (ii) the Guarantor makes any payment in connection with the Contract in respect of such Enforcement Action; or
- (iii) any court, arbitration or other dispute resolution process finds that the Guarantor is required to perform any of the Guaranteed Obligations or make any payment in connection with the Contract, in respect of such Enforcement Action.

13 ASSIGNMENT

13.1 The Guarantor shall not assign, transfer or novate its rights or obligations under this Guarantee without the prior written consent of the Authority.

13.2 The Authority only may assign, transfer or novate all or any of its rights, title and interest in this Guarantee to any person to whom its rights, title and interest in the Contract is or are assigned, transferred or novated in accordance with the Contract. The Authority hereby undertakes to promptly notify the Guarantor in writing of any such assignment, transfer or novation.

13.3 In the event that this Guarantee should become invalid or otherwise cease to exist as a result of:

- (a) the exercise by the Authority of its rights under the Contract to assign, transfer or novate its rights, title and interest in the Contract; or
- (b) the accession of another person to the Contract as Authority thereunder in accordance with the terms of the Contract,

the Guarantor undertakes to replace this Guarantee with a valid guarantee on the same terms and conditions as this Guarantee in respect of the remainder of the term of this Guarantee, provided that the cumulative obligation of the Guarantor shall not exceed the Guaranteed Obligations and the Guarantor's other obligations set out in this Guarantee.

13.4 Clause 13.3 (*Assignment*) shall survive any termination or expiration of this Guarantee that occurs as a result of any of the events described in paragraphs (a) and (b) of clause 13.3 (*Assignment*), and shall remain valid and enforceable by the Authority and/or any person to whom the relevant rights, title or interest are assigned or transferred or who accedes to the Contract as described therein, at any time up to the expiry of this Guarantee in accordance with clause 9.1 (*Continuing Effect and Duration*).

14 FURTHER ASSURANCE

14.1 The Guarantor agrees to perform (or procure the performance of) all further acts and things and execute and deliver such further documents, as may be required by law or as may be necessary, in the reasonable opinion of the Authority, to implement and/or give effect to this Guarantee and the matters set out herein.

15 NOTICES

15.1 All notices under, or in connection, with this Guarantee shall, unless otherwise stated, be given in writing and delivered by hand and/or sent by post (first class recorded delivery if inland and by international overnight courier services (such as DHL or Federal Express) if overseas) to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party.

- 15.2 The address details of the Guarantor and the Authority are as follows (or such other address details which may be subsequently notified by the relevant party):

Guarantor: [♦]¹

Address: [♦]

Name: TBC

Authority: [♦]²

Address: [♦]

Name: TBC

- 15.3 Subject to clause 15.4 (Notices) below, a notice shall be deemed to have been given and received as follows:

(a) if delivered by hand, at the time of delivery;

(b) if sent by registered post or courier, on the day received;

except that if a notice of other communicating was delivered, or would be deemed to be delivered under the above provisions;

(c) after 5.30pm (at the place of delivery) on any day; or

(d) on a day which is not a Business Day,

then it shall be deemed instead to have been delivered at 09.30 am (at the place of delivery) on the next day which is a Business Day.

- 15.4 In proving such service it shall be sufficient to prove that personal delivery was made, by obtaining the signature of an authorised employee of the recipient.

- 15.5 Without prejudice to any other mode of service allowed under English law, the Guarantor:

(a) irrevocably appoints [*insert name of service agent*] as its agent for service of process in relation to any notice under or in connection with this Guarantee and any proceedings before the English courts in connection with this Guarantee; and

(b) agrees that failure by an agent for service of process to notify the Guarantor of the process will not invalidate the proceedings concerned.

- 15.6 If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process in England, the Guarantor must immediately (and in any event within five (5) Business Days of such event taking place) appoint another agent in England on terms acceptable to the Authority.

16 WAIVER

- 16.1 No delay or omission by the Authority in exercising any right, power or privilege under this Guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

¹ Bidders to provide Notice details.

² Authority to provide Notice details.

- 16.2 A waiver or variation given or consent granted by the Authority under this Guarantee shall be effective only if given in writing, signed by the Authority and then only in the instance and for the purpose for which it is given.

17 RIGHTS CUMULATIVE AND CONTINUING

- 17.1 The Authority's rights under the Guarantee are cumulative and may be exercised as often as the Authority considers appropriate. This Guarantee is a continuing guarantee for the payment of all Guaranteed Obligations and shall not be satisfied by any intermediate payment or discharge of the Guaranteed Obligations in whole or in part.

18 PARTIALLY INVALIDITY

- 18.1 The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee, in any respect under any law, shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

19 ENTIRE AGREEMENT

- 19.1 This Guarantee sets out the entire agreement and understanding between the parties in respect of this Guarantee. It is agreed that:
- (a) no party has entered into this Guarantee in reliance upon any representation, warranty or undertaking of any other party which is not expressly set out or referred to in this Guarantee;
 - (b) (except for any breach of any express warranty under this Guarantee) no party shall have any claim or remedy under this Guarantee in respect of misrepresentation (whether negligent or otherwise, and whether made prior to or in this Guarantee) or untrue statement made by any other party; and
 - (c) this clause shall not exclude liability for fraudulent misrepresentation.

20 COUNTERPARTS

- 20.1 This Guarantee may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be original but all of which together shall constitute one and the same instrument.

21 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 21.1 Subject to clause 13.4 (*Assignment*), a person who is not a party to this Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

22 DISPUTES

- 22.1 The provisions of appendix 1 (Guarantee Fast-track Dispute Resolution Procedure) shall apply in respect of any dispute arising between the parties in relation to this Guarantee.

23 GOVERNING LAW

- 23.1 This Guarantee (including any non-contractual obligations arising out of or in connection with it), and any dispute or claim arising out of or in connection with it or its subject matter, is governed by and shall be construed in accordance with the laws of England and Wales and the parties irrevocably agree that, subject to appendix 1 (*Guarantee Fast-track Dispute Resolution Procedure*), the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Guarantee (including any non-contractual obligations arising out of or in connection with it).

IN WITNESS whereof this Guarantee has been executed as a deed and delivered on the day and date referred to above.

EXECUTION PAGE

EXECUTED as a DEED

by [♦]

acting by [its duly authorised attorney]

in the presence of:

Name of Witness:

Address:

EXECUTED as a DEED

by **THE SECRETARY OF STATE FOR DEFENCE**

acting by [its duly authorised attorney]

in the presence of:

Name of Witness:

Address:

APPENDIX 1: GUARANTEE FAST-TRACK DISPUTE RESOLUTION PROCEDURE

1. Disputes

Any dispute arising in relation to any aspect of this Guarantee or any non-contractual obligations arising out of or in connection with it (including a dispute regarding the existence, validity or termination of this Guarantee) (a **Dispute**) shall be resolved in accordance with this appendix 1 (*Guarantee Dispute Resolution Procedure*).

2. Alternative Dispute Resolution

If a Dispute arises out of or in relation to any aspect of this Guarantee, the Guarantor and the Authority shall attempt in good faith to resolve such Dispute through negotiations between their respective representatives having authority to settle the matter. Such attempts may include the use of any alternative dispute resolution procedure on which the parties may agree.

3. Adjudication

- 3.1 Without prejudice to paragraph 2 (*Alternative Dispute Resolution*) above, the Dispute may be referred to non-binding adjudication by one party serving notice on the other (an **Adjudication Notice**) stating that it wishes the Dispute to be resolved by an adjudicator if the parties so agree and the adjudicator shall be selected in accordance with paragraphs 3.2 and 3.3 below.
- 3.2 Within three (3) Business Days of an Adjudication Notice being served, the parties shall endeavour to agree on the identity of an Adjudicator to consider the Dispute (the **Adjudicator**).
- 3.3 If the parties are unable to agree upon the identity of an Adjudicator within the time specified in paragraph 3.2 or such longer period as the parties agree, either party may refer the matter to the Centre for Effective Dispute Resolution, which body shall be requested to nominate a natural person to be the Adjudicator and such nomination shall be binding on the parties.
- 3.4 Within seven (7) calendar days of selection in relation to a particular Dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.
- 3.5 In any event, the Adjudicator shall provide to both parties his written decision on the Dispute, within fourteen (14) calendar days of selection to consider the Dispute (or such other period as the parties may agree after the reference). Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision.
- 3.6 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, if not specified, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 3.7 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

- 3.8 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any certificate, instruction, determination or decision of whatever nature given or made under this Guarantee.
- 3.9 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.
- 3.10 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

4. Arbitration

4.1 In the event that:

- 4.1.1 the Dispute is not resolved further paragraph 2 (*Alternative Dispute Resolution*); or
- 4.1.2 either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with paragraph 2; or
- 4.1.3 notwithstanding paragraphs 2 (*Alternative Dispute Resolution*) and 3 (*Adjudication*), either party wishes to refer the Dispute directly to arbitration,

then either party may notify the other party of its intention to refer the Dispute to arbitration. Such notification shall invite the other party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten (10) years' standing (the **Arbitrator**). If the parties are unable to agree upon the identity of an Arbitrator within three (3) Business Days of a notification provided or such longer period as the parties agree, either party may refer the matter to the chartered Institute of Arbitrators to request the nomination of a suitable arbitrator, and such nomination shall be binding on the parties. The arbitration shall take place in London and shall be governed by the provisions of the Arbitration Act 1996.

4.2 The Arbitrator shall have the power to:

- 4.2.1 open up, review and revise any certificate, instruction, determination or decision of whatever nature given or made under this Guarantee; and
- 4.2.2 to vary or cancel the decision of the Adjudicator; and
- 4.2.3 where appropriate, to order financial compensation to be paid by one party to the other; and
- 4.2.4 to make provisional awards as provided for in Section 39 of the Arbitration Act 1996.

- 4.3 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.
- 4.4 The Arbitrator shall deliver his decision on any matter referred to him within fourteen (14) calendar days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) months (or such other period as the parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitrator.

5. Continuing compliance with obligations

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this appendix 1 (*Guarantee Dispute Resolution Procedure*) and shall give effect forthwith to every decision of the Arbitrator delivered under this appendix 1 (*Guarantee Dispute Resolution Procedure*) and to those decisions of the Adjudicator that are accepted by the parties.

Part B: Form of Confirmation of Parent Company Guarantee

[Print on Authority headed paper]

[Insert name and address of Guarantor]

[insert date]

Dear Sir/Madam

[♦] Contract – [Name of Guarantor] parent company guarantee

On *[insert date of Contract]* *[insert name of Contractor]* (Company Number *[insert registered number]*) (the “**Contractor**”) entered in a shipbuilding contract with the Secretary for State for Defence (the “**Authority**”) relating to , inter alia, the build and supply of Fleet Solid Support Vessels (Contract CSS/0113) **[♦]** (the “**Contract**”).

On *[insert date of PCG]* *[insert name of Guarantor]* (company number *[insert registered number]*) (the “**Guarantor**”) entered into an undertaking and guarantee with the Authority under which, inter alia, it guarantees the obligations of the Contractor under the Contract (the “**Guarantee**”).

The Authority and the Contractor have agreed to amend the Contract [as amended by *[insert details or dates and amendment reference numbers or previous amendments, if any]*]. A copy of the Contract [as previously amended and] incorporating [further] amendments which the Authority and the Contractor have agreed to incorporate in it is set out in the appendix to this letter (the “**Amended Contract**”).

By executing and returning a copy of this letter, the Guarantor acknowledges the terms of the Amended Contract and hereby confirms that it agrees that:

- (i) the Guarantee will continue in full force and effect and will apply to the Amended Contract, when executed, as if it were the Contract;
- (ii) the Amended Contract does not materially alter the obligations guaranteed under the Guarantee,
- (iii) none of its liabilities under the Guarantee shall be reduced, discharged or released by reason of the amendments to the Contract set out in the Amended Contract; and
- (iv) it will not attempt to avoid any of its obligations under the Guarantee.

On Copy

[To: *[insert contact details of Authority]*]

We acknowledge receipt of the original of this letter, which we have read, and agree to the terms set out in it.

EXECUTED and delivered as a deed on [***insert date***]

by

[***Insert name of Guarantor***]

acting by its duly authorised attorney

.....

in the presence of:

Witness

Signature :

Name :

Address :

[***Or***]

Executed and delivered as a Deed on [***insert date***]

by

[***Insert name of Guarantor***]

acting by:

Director

Director/Secretary