

SCHEDULE 06

Contractor's Refund Guarantee

CONTRACTOR'S REFUND GUARANTEE FLEET SOLID SUPPORT SHIP 0X

To: The Secretary of State for Defence ('you')
HM Government of the United Kingdom
Commercially Supported Shipping,
Ash 2a #3203,
Ministry of Defence
Abbey Wood
Bristol BS34 8JH

From: [Insert name and address of Guarantor] ('we' or 'us')

1. In this Refund Guarantee, the following terms have the following meanings:

'Award Interest' means any interest which may be awarded against the Contractor in connection with the final determination of any dispute notified to us in accordance with paragraph 5 below;

'Contract' means the Shipbuilding Contract for Fleet Solid Support Vessels (Contract CSS/0113) dated (**insert date**) made between the Contractor and you for the construction of, inter alia, the Ship, as the same is amended at any time;

'Contractor' means <**Insert name and address at Contract Award**>;

'Contractual Interest' means the sum payable on an Instalment at the 'Prescribed Rate' (as defined in the Contract) and in accordance with clauses [70.2, 70.6 or 65.15 (as applicable)] of the Contract;

'Demand' means a written demand for payment under this Refund Guarantee from you to us;

'Instalment' means the amount of each payment in respect of the contract price for the Ship¹ under the Contract (to the extent that it has not been refunded) which is made on or after the date of this Refund Guarantee to the Contractor (or at the Contractor's discretion) by you or on your behalf;

'Interest rate' means the Bank of England Base Rate plus 8% as applicable to any part of an Instalment which the Contractor is obliged to repay under the terms of the Contract calculated from the date on which the Contractor received the Instalment to the date of your receipt of the repayment;

'Maximum Liability' means our maximum liability under this Refund Guarantee which shall at the date of this Refund Guarantee be £<Insert at Contract Award> plus Contractual Interest and any Award Interest. The value of the Refund Guarantee and our Maximum Liability shall increase by the amount of each Instalment as and when the Contractor receives such Instalment payments under the Contract; and

‘Ship’ means <Insert details of the relevant FSS Ship to which this Refund Guarantee relates> (as further described in the Contract).

2. In consideration of you entering into the Contract, agreeing to pay an Instalment or instalments to the Contractor, and agreeing to accept this Refund Guarantee pursuant to the Contract, at the request of the Contractor we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that if the Contractor becomes liable under the Contract to repay any Instalments, or part thereof, we shall, upon receipt by us from you of a Demand for the same (together with a copy of a demand made by you against the Contractor for repayment) pay to you or to your order upon the expiry of thirty (30) calendar days from receipt of such Demand the sum demanded by you by way of the repayment of any Instalment together with Contractual Interest and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

3. This Refund Guarantee shall not be affected by any indulgence or delay allowed to the Contractor nor by any amendment to, or variation of, the Contract whether as to time or otherwise that may be agreed between you and the Contractor nor by any circumstances that would otherwise discharge our liability as guarantor.

This Refund Guarantee shall become effective in the amount corresponding to the amount of each and every Instalment paid to the Contractor under the Contract together with Contractual Interest and Award Interest as and when each such Instalment has been received by the Contractor.

4. Subject to paragraph 5 below, this Refund Guarantee shall remain in force until the first to occur of:

- 4.1 Acceptance Off Contract (as defined by the Contract) of the Ship, by you; or
- 4.2 the payment to you by the Contractor or by us of all sums secured by this Refund Guarantee.

5. Notwithstanding the other terms of this Refund Guarantee, if within thirty (30) calendar days after our receipt of a Demand we receive a written notice from you or the Contractor stating that your claim for repayment of any sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract (including, as may be, by a mediator or in arbitration) then we shall not be obliged to make any payment to you under this Refund Guarantee until thirty (30) calendar days after the dispute has been finally determined or in the event of an appeal from the arbitration award, until thirty (30) calendar days after delivery of the final unappealable judgement; or in the event that the court remits the matter to the arbitrator, until thirty (30) calendar days after publication of the revised final award or in the event of an appeal from the award, until thirty (30) calendar days after delivery of the final unappealable judgment.
6. All payments to be made under this Refund Guarantee shall be made in full and without any set off, contest, dispute or counterclaim and without deduction, retention or withholding whatsoever including for on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct, retain or withhold

[Note to Tenderers– A separate Refund Guarantee is to be provided in relation to each Ship]

the same in which case we shall make the minimum deduction or withholding permitted and will pay such additional amounts as may be necessary in order that the amount received by you after such deductions, retentions or withholdings shall be equal to the amount which would have been received had no such deduction, retention or withholding been made.

7. All payments to be made under this Refund Guarantee shall be made in Pounds Sterling.
8. Notwithstanding any provision in the Contract, this Refund Guarantee shall be freely assignable by you and by any assignee. Upon assignment all references in this Refund Guarantee to “you” shall be read as references to the assignee or subsequent assignees. We shall not assign, transfer or novate any of our obligations or rights under this Refund Guarantee without your prior written consent.
9. This Refund Guarantee is governed by and shall be construed in accordance with the laws of England and Wales and we hereby submit to the exclusive jurisdiction of the High Court of England and Wales. We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: **(insert name and address)**.
10. Any notice, claim or Demand to be given or made by you under this Refund Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by authorised SWIFT or equivalent, and if sent by post to **(insert name and address)** (or such other address as we may notify to you in writing) or if by SWIFT or equivalent at **(insert number)** via your bank and shall be effective only upon actual receipt.
11. To the extent that we may be or may hereafter become entitled, in any jurisdiction, to claim for ourselves or our property, assets or revenue immunity (whether by reason of sovereignty or otherwise) in respect of our obligations under this Refund Guarantee from service of process, suit, jurisdiction, judgment, order, award, attachment (before or after judgment or award), set off, execution of a judgment or other legal process and to the extent that in any such jurisdiction there may be attributed to us or any of our property, assets or revenue such an immunity (whether or not claimed) we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction.
12. We hereby warrant that we are permitted by any relevant law to which we are subject (including, where relevant, the laws of the place or places of each of our incorporation, establishment, regulation, registration and residence) to:
 - 12.1 issue a guarantee in this form;
 - 12.2 make payment under this Refund Guarantee in a currency other than that of the place of (where relevant) each of our incorporation, establishment, regulation, registration and residence in case of a Demand for payment under this Refund Guarantee; and

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12.3 designate the place stated in paragraph 9 above as the forum and place of jurisdiction to which we irrevocably submit.

13. We hereby warrant that this Refund Guarantee has been, or will be, duly registered with the relevant authority in any legal jurisdiction in which such registration is required for any reason.

14. We hereby warrant that we have obtained all necessary approvals and authorisations to issue this Refund Guarantee.

This Refund Guarantee has been entered into as a deed and delivered on the date stated below.

Dated the day of 20XX

Executed as a deed by [♦] acting by:

Director _____

Witness signature _____

Witness name: _____

Witness address: _____
