

[Note to Tenderers: – *A separate On-Demand Guarantee is to be provided in relation to each Ship*]

SCHEDULE 12

On Demand Guarantee

Defence Equipment and Support
Commercially Supported Shipping
Ash 2a, #3203
MOD Abbey Wood,
Bristol
BS34 8JH

Dated _____ 20XX

Dear Sirs

ON DEMAND GUARANTEE NO. CSS/XXXX ODG No. x (*On Demand Guarantee*)

FSS.0x

Shipbuilding Contract for Fleet Solid Support Vessels (Contract CSS/0113) dated _____ 20XX as amended and supplemented from time to time (the "*Contract*") between The Secretary of State for Defence for and on behalf of the Crown and in exercise of all and any powers attaching to his office as Secretary of State of Defence, Defence Equipment and Support, Ministry of Defence, Abbeywood, Bristol BS34 8JH (the "*Authority*") and _____ (the "*Contractor*")

1. **Guarantee:** We hereby unconditionally and irrevocably undertake to the Authority that, upon the Business Day immediately following that on which we receive a written demand from the Authority, we will, without proof or conditions and notwithstanding any contest, dispute or counterclaim by the Contractor, pay to the Authority in full and without any set-off, deductions, retentions or withholdings whatsoever, the sum claimed by the Authority in such demand or such lesser amount as, when aggregated with all payments previously made under this On Demand Guarantee, equals the maximum amount set out in paragraph 2. Any payment made under this On Demand Guarantee shall be made to the account specified in the demand.

2. **Maximum Amount:** The maximum aggregate amount which may be demanded by the Authority under this On Demand Guarantee is £30,000,000 GBP (Thirty Million Great British Pounds). More than one demand may be made under this On Demand Guarantee. All payments to be made under this On Demand Guarantee shall be made in Pounds Sterling (GBP).

3. **Expiry Date:** Any demand under this On Demand Guarantee must be received by us no later than 30 calendar days after the expiry of the Warranty Period as defined in the Contract and as may be amended from time to time.

4. **Form of Demands:** Any demand under this On Demand Guarantee shall be in writing, shall be issued to us at _____ and shall be in the following form:

"The understated are authorised officers of The Secretary of State for Defence (the "*Authority*"). We refer to the Contract dated _____ 20XX as amended and supplemented from time to time (the "*Contract*") between the Authority and _____ (the "*Contractor*"), and we hereby certify that the Contractor has defaulted under the Contract. Accordingly the Authority hereby demands the sum of UK £ _____ (UK £ _____) pursuant to your On Demand Guarantee No. CSS/XXXX ODG No. x dated _____ 20XX. We hereby instruct you to transfer such sum to [*insert appropriate bank details*], immediately and provide electronic confirmation to us of such payment being made."

5. **Default Interest:** If we fail to pay any amount payable by us under this On Demand Guarantee on its due date in accordance with paragraph 1, 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 paragraph 5 shall be immediately due and payable by us on demand by you. Notwithstanding the foregoing, no interest under this paragraph 5 shall accrue or be payable in addition to interest accruing on the relevant overdue amount in accordance with the Contract.

6. **No Deduction:** All payments to be made under this On Demand 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 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. **No Impairment:**

(a) Our liability under this On Demand Guarantee shall not be discharged or impaired by:

(i) the existence or validity of any other security taken by the Authority in relation to the Contract or any enforcement of or failure to enforce such security and/or the Contract; or

(ii) any amendment to or variation of the Contract or any security relating to the Contract or any assignment thereof or hereof; or

(iii) any waiver of or granting of time or any other indulgence to the Contractor or any third party; or

(iv) any insolvency, liquidation, reconstruction, reorganisation, legal limitation, incapacity or lack of corporate power or change in the corporate identity or constitution of the Contractor or any other person; or

(v) any other act, event, neglect or omission which would or might (but for this paragraph) operate to discharge or impair our liability hereunder.

(b) Demands may be made under this On Demand Guarantee irrespective of:

(i) whether any demands, steps or proceedings are being or have been made or taken against the Contractor or any third party, and

(ii) whether or in what order any security to which the Authority may be entitled in respect of the Contractor's obligations is enforced.

8. **Indemnity:** As a separate, continuing and primary obligation, we undertake to fully and effectually indemnify the Authority on demand against all Losses, claims or costs suffered or incurred by the Authority if and to the extent that any amounts specified in paragraph 1 above are not recoverable for any reason whatsoever, including, but not limited to, all or any provisions of the Contract being or becoming void, voidable or unenforceable. The maximum aggregate amount which may be demanded from us pursuant to the foregoing indemnity,

together with any payments made by us under paragraph 1, is the maximum amount specified in paragraph 2 above.

9. **No Competition:** For so long as any obligations (***Contract Obligations***) remain outstanding by the Contractor to the Authority pursuant to the Contract and have not been discharged in full, we shall not, without the Authority's prior written consent, prove in a liquidation or winding up of the Contractor in competition with the Authority for any Contract Obligation, by way of subrogation or otherwise, or for any amount owing to us pursuant to any counter-indemnity or similar instrument issued by the Contractor to us in respect of this On Demand Guarantee.

10. **ICC:** This On Demand Guarantee is subject to the ICC Uniform Rules for Demand Guarantees (International Chamber of Commerce Publication no. 758).

11. **Third Parties:** A person who is not a party to this On Demand Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 as amended from time to time to enforce any of its terms.

12. **Governing Law:** This On Demand Guarantee is governed by and shall be construed in accordance with the laws of England and Wales.

13. **Process Agent:** We hereby authorise and nominate the following agent to accept service of any proceedings under this On Demand Guarantee on our behalf:

[NAME AND ADDRESS OF PROCESS AGENT FOR SERVICE OF NOTICES IN ENGLAND TO BE INSERTED]

14. **No Immunity:** 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 On Demand 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.

15. **Arbitration:** All disputes, controversies or claims arising out of or in connection with this On Demand Guarantee, including the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules:

(a) the seat of the arbitration shall be London; and

(b) the language of the arbitration shall be English.

16. **Interpretation:** Capitalised words and expressions used in this On Demand Guarantee shall, unless otherwise defined, have the same meanings as are ascribed to them in the Contract save that "Business Day" means a day (other than Saturday or Sunday) when banks in London are open for business.

17. **Transfer and Assignment:** We agree that we shall not assign, transfer or novate any of our obligations or rights under this On Demand Guarantee without your prior written consent. We agree that you may assign, transfer or novate all or any of your rights, title and

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interest in this On Demand 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.

This On Demand Guarantee is entered into as a deed and delivered on the date stated at the beginning of this On Demand Guarantee.

EXECUTION PAGE

Executed as a deed by [♦] acting by:

Director _____

Witness signature _____

Witness name: _____

Witness address: _____
