

Communities, Culture and Heritage

Secretariat Division

Our File Number: CCH-13-07

October 16, 2013

Kevin Lacey
2615 Fuller Terrace
Halifax, NS B3K 3V8

Re: Acknowledgement and Routine Disclosure of Contracts [CCH-13-07]

Dear Mr. Lacey,

Your application for access under the *Freedom of Information and Protection of Privacy (FOIPOP) Act*, was received at this office on October 15th, 2013. Your request is for:

"Provide contact between Government of Nova Scotia and MHPM regarding Bluenose work and/or work with Lunenburg Shipyard Alliance. Also include all invoices and accompanying documentation for 2009, 2010, 2011, 2012, 2013"


Pursuant to our routine access policy, contracts with the parties noted above are available to you and copies are attached with this notice. Therefore, the remainder of the application is for the portion related to the invoices with MHPM and Lunenburg Shipyard Alliance.

Pursuant to Section 7(2) of the FOIPOP Act, the Department of Communities, Culture and Heritage has thirty days to respond to your application. You may expect a response by November 14, 2013, unless we determine that an extension is required for consultations with third parties or other public bodies. We may also require an extension if we determine that there is a large number of records involved. If we require an extension, we will advise you.

Please note that we have received your application fee of \$5.00. Thank-you. Service fees may be charged for processing the application and a fee estimate may be forthcoming.

If you have any questions about this notice or would like to discuss your application in detail, please contact me at the address or telephone number provided above or in my absence you may contact Deborah Day at 424-4732. .

Yours truly,



Lauren Smith
Information, Access and Privacy Administrator

HER MAJESTY THE QUEEN, in right of the Province of Nova Scotia,
as represented by the Minister of Tourism, Culture and Heritage
(hereinafter called the 'Minister')

- and -

LUNENBURG SHIPYARD ALLIANCE LIMITED, a body corporate registered under the laws of
the Province of Nova Scotia, having its head office at Lunenburg, Nova Scotia
(hereinafter called the 'Builder')

SHIPBUILDING CONTRACT
Relating to the Bluenose II

I N D E X

1. **INTERPRETATION**
2. **DESCRIPTION**
3. **DESIGN RESPONSIBILITY**
4. **CLASS AND REGULATIONS**
5. **CONSTRUCTION, MATERIALS AND INSPECTION**
6. **MODIFICATIONS AND CHANGE ORDERS**
7. **MINISTER FURNISHED EQUIPMENT**
8. **PRICE AND TERMS OF PAYMENT**
9. **PROPERTY AND JURISDICTION**
10. **INSURANCE**
11. **TRIALS AND PERFORMANCE**
12. **DELIVERY**
13. **FORCE MAJEURE**
14. **DEFAULT OF THE MINISTER**
15. **DEFAULT OF THE BUILDER**
16. **TERMINATION BY MINISTER WITHOUT CAUSE**
17. **BUILDER'S WARRANTIES AND WARRANTY PERIOD**

18. BUILDER'S FINANCIAL GUARANTEE
19. INDEMNITIES FOR INFORMATION SUPPLIED
20. TAXES AND DUTIES, ETC.
21. COMPLIANCE WITH LAWS
22. DISPUTE RESOLUTION
23. LIABILITY AND INDEMNIFICATION
24. INDEPENDENT CONTRACTOR
25. CONFIDENTIALITY AND FOIPOP
26. TIME SHALL BE OF THE ESSENCE
27. CONSENT TO BREACH NOT WAIVER
28. PARTIAL INVALIDITY
29. ASSIGNMENT OF CONTRACT
30. WAIVER
31. NOTICES AND COMMUNICATIONS
32. AUTHORITY
33. ENTIRE CONTRACT AND AMENDMENTS
34. GOVERNING LAWS

SCHEDULE 1 – BENCHMARK SCOPE

SCHEDULE 2 – BUILDER'S FINANCIAL GUARANTEE

SCHEDULE 3 – INSURANCE COVERAGES

SCHEDULE 4 – LIST OF MINISTER FURNISHED EQUIPMENT

SCHEDULE 5 – PERSONAL INFORMATION PROTECTION SCHEDULE

SCHEDULE 6 – CHANGE ORDER REQUEST

SCHEDULE 7 – MILESTONE PAYMENTS SCHEDULE

SCHEDULE 8 – SUBCONTRACTORS LIST

SCHEDULE 9 – TENDER OF DELIVERY

SCHEDULE 10 – FORM OF DECLARATION

SCHEDULE 11 – LIST OF ITEMIZED PRICES

SCHEDULE 12 – CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

SCHEDULE 13 – PROMOTION

THIS CONTRACT made at Halifax in the Province of Nova Scotia this 2nd day of July, 2010.

BETWEEN:

HER MAJESTY THE QUEEN, in right of the Province of Nova Scotia,
as represented by the Minister of Tourism, Culture and Heritage

(hereinafter called the 'Minister')

OF THE ONE PART

- and -

LUNENBURG SHIPYARD ALLIANCE LIMITED, a body corporate registered under the
laws of the Province of Nova Scotia, having its head office at Lunenburg, Nova Scotia

(hereinafter called the 'Builder')

OF THE OTHER PART

WHEREBY IT IS AGREED that the Builder will perform the Work and deliver to the Minister the Vessel described herein and the Minister shall duly pay the Builder therefore all in accordance with the terms and conditions set forth in this Contract:

1. INTERPRETATION

1.1. In this Contract

- 1.1.1. 'Authorized Representative(s)' shall mean any person who has been designated in writing as having authority to act for the Minister or the Builder, as the case may be, and the extent of such authority shall be defined therein.
- 1.1.2. 'Benchmark Scope' shall mean the document attached hereto as Schedule 1, being the basis on which the Contract Price has been negotiated and agreed to by the parties hereto.
- 1.1.3. 'Builder's Financial Guarantee' shall mean the Guarantees acceptable in all respects to the Minister and attached hereto as Schedule 2.
- 1.1.4. 'Builder's Construction Manager' shall mean the person authorized in writing by the Builder, and confirmed in writing to the Minister as having authority to act on behalf of the Builder, in the discharge of the Builder's obligations hereunder. The authority of the Builder's Construction Manager includes, but is not limited to, the authority to sign Project Change Orders pursuant to Clause 6.
- 1.1.5. 'Builders Yard' shall mean the premises of the Builder located at Lunenburg Industrial Foundry, Lunenburg; Covey Island Boatworks, Riverport; and Snyder's Shipyard, Dayspring, all in Lunenburg County, Nova Scotia, Canada. For purposes of delivery of the Vessel as provided

for in Clause 12.1, the Builders Yard located at Lunenburg Industrial Foundry shall be used.

- 1.1.6. 'Change Order Request' shall mean a request in the form set out in Schedule 6 attached hereto.
- 1.1.7. 'Contract Delivery Date' shall mean 29 May 2012 as from time to time extended pursuant to this Contract by Force Majeure delays, by Permissible Delay and/or by Minister Delays.
- 1.1.8. 'Contract Documents' shall mean those documents identified in section 33.
- 1.1.9. 'Contract Price' shall mean the price stipulated in Clause 8.1 as amended by the provisions of this Contract or any amendment thereof, which in any event is exclusive of Harmonized Sales Tax
- 1.1.10. 'Days' shall mean calendar days.
- 1.1.11. 'Defect or Defective Work' shall mean Work that has been determined by the Inspector to fail to conform to the Contract Documents whether or not the defective work has been incorporated in the Work and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the Builder.
- 1.1.12. 'Delivery' or 'Delivery Date' shall mean the date upon which the Vessel is delivered to and accepted by the Minister in accordance with Clause 12.
- 1.1.13. 'Inspector' shall mean Lengkeek Vessel Engineering Inc., or such qualified alternate as the Minister may propose to the Builder and as the Builder may consent to, such consent not to be unreasonably withheld by the Builder
- 1.1.14. 'Milestone Payment Schedule' shall mean the Schedule of Work to be performed by the Builder as specified therein and attached hereto as Schedule 7.
- 1.1.15. 'Minister' shall mean the Minister of Tourism, Culture and Heritage or his Authorized Representative(s).
- 1.1.16. 'Minister Delays' shall mean acts or failure to act by the Minister, its employees, agents, subcontractors and suppliers as provided for in this Contract.
- 1.1.17. 'Minister Furnished Equipment' or 'MFE' shall mean any item of equipment outfit and/or stores for the Vessel set out as Schedule 4 attached hereto and as may otherwise be provided for in the Specifications.
- 1.1.18. 'Minister's Project Manager' shall mean the person authorized in writing by the Minister, and confirmed in writing to the Builder as having authority to act on behalf of the Minister, in the discharge of Minister's obligations hereunder. The authority of the Minister's Project Manager includes, but is

not limited to, the authority to sign Project Change Orders pursuant to Clause 6.

- 1.1.19. 'Minister Subcontractor' or 'Minister Supplier' shall mean any person under contract to the Minister in connection with the performance of any of the obligations of Minister hereunder.
- 1.1.20. 'Notice' shall mean formal notice as further provided in Clause 31.
- 1.1.21. 'Permissible Delay' shall mean a delay on account of causes which under the terms of this Contract permit postponement of the Contract Delivery Date which delay shall be documented by a Project Change Order.
- 1.1.22. 'Regulatory Bodies' shall mean the authorities imposing rules and regulations with which the Work must comply, and for greater certainty shall include Transport Canada Marine Safety as regards statutory and regulatory requirements for Canadian flag ships, and American Bureau of Shipping as regards classification requirements.
- 1.1.23. 'Shop Drawings' shall mean drawings, notes, manufacturer's literature or similar data prepared or deliverable by the Builder in accordance with and based on the Specifications.
- 1.1.24. 'Specifications' shall mean the specifications, plans and drawings to be delivered by the Minister to the Builder in accordance with Clause 3, and which shall conform with the requirements of and have the approval of the Regulatory Bodies. The Specifications may be amended by the issuance of such revised or supplemental specifications, plans or drawings as may be subsequently agreed between the Minister and the Builder and signed by the Builder's Construction Manager and the Minister's Project Manager, in accordance with Clause 6.
- 1.1.25. 'Subcontract(s)' shall mean any contract entered into by the Builder for the construction or manufacture of any materials, machinery, services or equipment for the Work.
- 1.1.26. 'Subcontractor(s)' shall mean any person under the contract to the Builder for the construction, or manufacture of any materials, machinery, services or equipment for the Works.
- 1.1.27. 'Subcontractor's List' shall mean the List attached hereto as Schedule 8.
- 1.1.28. 'Supplier' shall mean any person under contract to the Builder or otherwise engaged for the supply of any materials, machinery, services, or equipment for the Works.
- 1.1.29. 'Vessel' shall mean the ship BLUENOSE II registered at Lunenburg, Nova Scotia, Official Number 320756, of which the Minister is registered owner and on or in respect of which the Works are to be performed.
- 1.1.30. 'Warranty Period' shall mean the period referred to in Clause 17.

1.1.31. 'Work' or 'Works' means the works and services (which expressions shall include the supply of materials and equipment) to be performed by the Builder or, to the extent permitted by Clause 5, by its Subcontractors or Suppliers under this Contract.

1.2. The order of precedence for the documents forming this Contract shall be:

1.2.1. in case of any inconsistency between any provision of this Contract and the Specifications, this Contract shall prevail;

1.2.2. In the case of any inconsistency between the Specifications and a plan or drawing, the Specifications shall prevail; and

1.2.3. in the case of an inconsistency between one plan or drawing and another plan or drawing, the later in date shall prevail.

1.3. Any reference to a Clause is to a Clause of this Contract.

1.4. The Index and Clause headings appearing in this Contract are inserted for convenience of reference only and shall not affect the construction of this Contract.

2. DESCRIPTION

2.1. The Builder shall carry out the Work as provided for herein and in the Specifications, including supplying and installing all materials, labor, machinery, equipment, furnishings, fittings, as specified in the Specifications save and except to the extent of MFE. In the case of MFE the Builder shall install same and provide the necessary foundations, wiring, piping and successfully- tested and commissioned interface connections to ensure the MFE functions as complete operational systems. Upon Delivery, the Vessel and all its parts and appurtenances shall be complete as specified hereinafter. The Specifications shall be signed by each party hereto for identification and shall be made an integral part hereof.

3. DESIGN RESPONSIBILITY

3.1. The Builder and the Minister acknowledge that the Minister is responsible to provide the Builder with the Specifications. In order that the parties may proceed with the Works, the parties have executed this Contract on the basis of the Benchmark Scope.

3.2. The Minister shall deliver the Specifications to the Builder as set out herein:

3.2.1 Specifications and digital information setting out the scantlings and shape of the laminated frames and floors in sufficient detail to permit layout and fabrication to begin on or before fourteen Days from execution of this Contract and in any event not later than ten (10) Days thereafter (delivery date);

- 3.2.2 Specifications corresponding to Section 3.1 Hull of the Benchmark Scope of Work on or before thirty-five Days from execution of this Contract and in any event not later than ten (10) Days thereafter (delivery date);
- 3.2.3. Specifications corresponding to Section 3.9 Propulsion and Generators, 3.10, Plumbing Systems, 3.11 Piping materials and Specifications, 3.12 Ventilation System, and 3.13 Electrical System on or before thirty-five Days from execution of this Contract and in any event not later than ten (10) Days thereafter (delivery date); and
- 3.2.4. Specifications corresponding to 3.2 Hatches and Deck Houses, 3.3 Accommodations, 3.4 Galley, 3.5 Gear, 3.6 Rig and 3.8 Tanks on or before forty-nine Days from execution of this Contract and in any event not later than ten (10) Days thereafter (delivery date).
- 3.3. In the event the Specifications are not delivered in accordance with a delivery date set out in Clause 3.2 and the Builder does not agree to extend the delivery date the Builder may, not later than five (5) days after such delivery date, submit a Change Order Request. The Change Order Request shall be in respect to the time period subsequent to the delivery date and shall set out in detail the reasons for an extension of the Contract Delivery Date.
- 3.4. In addition to its obligations under this Contract the Builder, at no additional cost to the Minister, shall be responsible for:
 - 3.4.1. the preparation of Shop Drawings which shall, if required by the Minister, be provided to the Minister and/or the Regulatory Bodies for review;
 - 3.4.2. the performance of the Work in accordance with the Shop Drawings; and
 - 3.4.3. using reasonable diligence document any inaccuracy(s) in the Specifications and/or other data or information provided by the Minister or by a third party acting on behalf of the Minister and to promptly Notify the Minister as to the specifics of such inaccuracy(s).
- 3.5. Where the Minister receives notification under clause 3.4.3 the Minister shall have seven (7) Days from the date of notification to respond to the Builder.
- 3.6. The Builder shall remain liable hereunder for:
 - 3.6.1. any defect or deficiency in the preparation of the Shop Drawings, whether or not the same have been reviewed by the Minister and/or the Regulatory Bodies; and
 - 3.6.2. performance of work undertaken by Builder in connection with a Change Order Request.
- 3.7. The Specifications and all intellectual property rights in the same (including plans and drawings and all intellectual property rights in the same being herein called the 'Minister IPR') shall at all times be and remain the sole and exclusive property of

the Minister who reserves all proprietary rights in and to the same. The Builder will not obtain any rights of ownership or other proprietary rights in connection therewith or any part thereof and will not act in any way to indicate to any third party that he has any right in or to.

The Builder shall only be entitled to use the Minister IPR for the sole purpose of (and for no other purpose) performing the Works.

- 3.8. Notwithstanding anything to the contrary in Clause 3.4 above, the Builder shall retain ownership of all Shop Drawings and all ownership and intellectual property rights thereto, except for those which have been developed directly from the Specifications or other information and/or data supplied by the Minister, Minister Subcontractor or Supplier. For the avoidance of doubt, the Minister shall own all Shop Drawings and all ownership and intellectual property rights thereto, inclusive of those approved by the Regulatory Bodies, which have been developed directly from the Specifications or other information and/or data supplied by the Minister, Minister Subcontractor, Supplier or third party acting on behalf of the Minister. With respect to all Shop Drawings, regardless of ownership, the Builder shall:
- 3.8.1. make copies thereof available to the Minister and/or Regulatory Bodies and the Minister shall be entitled to make the same available to Minister Subcontractor or Supplier or any third party or thereafter at the request of the Minister, to assist the Minister, or any third party, in the operation, repair or maintenance of the Vessel after Delivery; and
 - 3.8.2. not design or build any vessel or similar vessel to the Vessel on the basis of 'Minister IPR'; and
 - 3.8.3. not disclose Minister IPR nor Shop Drawings to third parties to enable them to effect such design of any vessel similar to the Vessel.
 - 3.8.4. notwithstanding this clause, the Builder may use the Builder's Shop Drawings for marketing and promotional purposes.

4. CLASS AND REGULATIONS

- 4.1. The Work shall be carried out in compliance with the specified rules and regulations of the Regulatory Bodies, including any alterations and modifications thereto published as at the date of signature of this Contract and including rules or regulations announced but not in effect on the date of signature of this Contract provided that they are scheduled to come into effect prior to the Contract Delivery Date, so as to enable the Vessel to be registered under the Canadian Flag and, should the Minister so determine, classed with American Bureau of Shipping. All fees and charges incidental to classification and to compliance with the specified rules and regulations of Regulatory Bodies and the requirements of this Contract payable in connection with the Work including fees, charges and expenses of the Regulatory Bodies incidental to the approval of the Specifications and registration of the Vessel shall be payable by the Minister.
- 4.2. If, after the date of signature of this Contract, any requirements of the Regulatory Bodies, with which the Work is required to conform including requirements

announced prior to the date of signature of this Contract and scheduled to come into effect prior to the Contract Delivery Date, are altered or changed by the Regulatory Bodies and the Minister is unable to obtain a dispensation therefrom or waiver of compliance therewith, the Builder shall comply with any such alterations or changes (if any) in the Work occasioned thereby, and any adjustments to the Contract Price and/or Contract Delivery Date, arising out of the changes in the rules or regulations shall be determined in accordance with Clause 6.

- 4.3. Clauses 4.1 and 4.2 shall apply mutatis mutandis, in the event that, following the signature of this Contract, any alterations or modifications are made to the laws, rules, regulations and enactments of the Regulatory Bodies (including any rules or regulation or alterations or modifications thereto announced but not in effect on the date of signature of this Contract and provided they are scheduled to come into effect prior to the Contract Delivery Date), to which the Work or Specifications are required to conform, save that each party on becoming aware of such modification, deletion or addition shall forthwith advise the other in writing

5. CONSTRUCTION, MATERIALS AND INSPECTION

- 5.1. The Builder shall commence performance of the Work and shall proceed with the same with all due diligence, so as to achieve the completion of the Work on or before the Contract Delivery Date in accordance with this Contract and the Specifications.
- 5.2. The Builder shall perform all Work under this contract in a good and workmanlike manner, in accordance with good marine practices and according to the Contract Documents. The Minister has entered into this contract relying upon the individual vessel construction skills of the Builder. For greater certainty all machinery, outfit, equipment, materials and workmanship shall be in accordance with this Contract and the Specifications and shall otherwise be in conformity with first class commercial shipbuilding practice.
- 5.3. If any specified materials are not available when required for incorporation in the Works, the Builder shall be at liberty to use other suitable materials in substitution therefore subject to the approval of the Minister which approval shall not be unreasonably withheld and where applicable approval of the Regulatory Bodies. If such approvals are forthcoming, any consequent modification or change shall be dealt with in accordance with the provisions of Clause 6.
- 5.4. The Builder may sub-contract any portion of the Work to any of the Subcontractors or Suppliers respectively specified and/or listed in the Subcontractor's List but shall not otherwise be entitled to sub-contract any portion of the Work without the Minister's written consent which shall not be unreasonably withheld.
- 5.5. During performance of the Work the Builder shall permit the Minister's Authorized Representatives and the Ministers' Project Manager to attend any inspections, tests and trials, notice of which shall be communicated in writing to the Minister's Project Manager as follows:
- 5.5.1. in the case of an inspection, test or trial where a representative of the Minister must be present, the Builder shall give seven (7) Days Notice of

such inspection, test and/or trial; and

- 5.5.2. in the case of an inspection, test or trial for which a formal procedure with acceptance/rejection criteria is applicable, the Builder shall give seven (7) Days Notice of such inspection, test and/or trial;

Such inspection, test and/or trial shall in no way diminish, affect or impair the obligations, guarantees or undertakings of the Builder in relation to the due and proper execution of the Work or the materials employed or guarantees hereinafter mentioned. The failure of the Minister's Authorized Representatives and/or Project Manager to attend any inspection, test and/or trial, after receipt of Notice as above, shall be deemed a waiver of Minister's right to attend same, however the Builder shall provide the Minister with the written results of such inspection, tests and/or trial as soon as practicable thereafter and in any event not later than seven (7) Days thereafter.

- 5.6. The Builder shall permit the Minister's Project Manager and the Inspector access during all working hours to the Builder's Yard, the facilities of the Builder and its Subcontractors for the purposes of inspecting the Work.
- 5.7. If during performance of the Work and prior to dock and sea trials the Inspector becomes aware of any defect arising out of the Works he shall as soon as practicable specify the same in writing to the Builder and the Builder shall at its own cost rectify any such defect.
- 5.8. The Builder shall permit the Minister's Subcontractors and Suppliers, all necessary and appropriate access to the Vessel for performing the scopes of work of the Minister's Subcontractors and Suppliers. The Minister's Project Manager and the Builder's Construction Manager shall liaise and shall co-operate with each other to minimize any disruption. The Minister's Project Manager, Subcontractors and Suppliers shall be permitted ready access to the Builder's Yard to enable them to carry out and complete their work to ensure that the Vessel is fully operational at Delivery.
- 5.9. The Minister undertakes that its Project Manager and Authorized Representatives shall carry out their duties hereunder in such a way as to avoid any increase in the Contract Price or delay in the Milestone Payment Schedule or Contract Delivery Date.
- 5.10. If Delivery of the Vessel is delayed, the following shall occur:
- 5.10.1. In the event of delay in Contract Delivery Date the Minister shall be entitled to recover from the Builder all provable damages for breach of contract in accordance with the governing law, such damages to be agreed in writing between the parties or to be determined in accordance with the provisions of Clause 22.
- 5.10.2. In addition to the Minister's right to damages, if Delivery has not occurred within the period of sixty (60) Days after the Contract Delivery Date, the Minister shall be entitled to exercise the rights and remedies available to it under Clause 15.

6. MODIFICATIONS AND CHANGE ORDERS

- 6.1. Upon delivery to the Builder of the Specifications in accordance with Clause 3.2, if and to the extent that the Specifications do not conform with the corresponding section of the Benchmark Scope and the parties cannot reach an agreement, either party may issue to the other a Change Order Request seeking adjustment of the Contract Price, and if applicable an extension of the Contract Delivery Date, by reason of that non-conformity. The other party shall have the right to accept or reject the Change Order Request in his discretion. In the event of an acceptance the other party shall countersign the Change Order Request. If agreement cannot be reached the dispute shall be resolved in accordance with Clause 22.
- 6.2. The Minister may without invalidating the Contract issue a Change Order Request. The cost or credit to the Minister, and the resulting adjustment in the Contract Delivery Date, resulting from a Change Order Request shall be determined by mutual agreement between the Builder and the Minister, and, in the event agreement cannot be reached, shall be determined pursuant to the provisions of Clause 22. Unless otherwise determined in accordance with Schedule 11 attached, changes shall be charged or credited on a time and material basis, net of time and material saved by not proceeding in accordance with original plans and specifications. For purposes of this section, charges shall be as follows:
- Labor, \$62 per hour regular time
Labor, \$93 per hour overtime
Materials, actual cost to Builder plus 43%
- 6.3. In the event that the Builder submits a Change Order Request seeking an adjustment of the Contract Price or an extension of the Contract Delivery Date, including but not limited to a Change Order Request under Clause 3.3, the Minister shall, in his discretion, have the right to reject the Change Order Request. In the event of an acceptance the Minister shall countersign the Change Order Request. If agreement cannot be reached the dispute shall be resolved in accordance with Clause 22.
- 6.4. The Builder's Construction Manager and the Minister's Project Manager, respectively, shall have authority to bind the Builder and the Minister, respectively, in relation to this Clause.
- 6.5. Notwithstanding that a Change Order Request has been rejected and/or accepted by either party, a party has not responded to a Change Order Request under Clause 6.6 or the Minister has not provided a response under Clause 3.5, the Minister shall have the right to issue a directive instructing the Builder to proceed with the Work and the Builder shall immediately comply with such directive, but such compliance shall not prejudice either party's rights to resolve the dispute in accordance with Clause 22.
- 6.6. For greater certainty a party shall reply to any Change Order Request within seven (7) Days, of submission or such longer period as the parties may agree to in writing.

7. MINISTER FURNISHED EQUIPMENT

- 7.1. The Minister shall deliver to the Builder's Yard all MFE not specified in Schedule 4 attached hereto (as amended from time to time).
- 7.2. Upon delivery of such equipment to the Builder, the Builder shall be responsible for the care, custody, and risk of loss of MFE from the time of delivery until the Delivery Date of the Vessel.
- 7.3. On arrival of MFE at the Builder's Yard, the Builder shall inspect the same to ensure that the MFE contain no obvious defects or signs of damage, and shall measure and review the same to ensure that they are in accordance with the specifications. The Builder shall promptly advise the Minister's Project Manager in writing of any MFE which are damaged or do not appear to be in accordance with the specifications.

8. PRICE AND TERMS OF PAYMENT

- 8.1. The Contract Price shall be Twelve Million Four Hundred and Fifty Five Thousand Seven Hundred and Seventy Seven Canadian Dollars (CDN \$12,455,777.00).
- 8.2. The Builder shall provide the Builder's Financial Guarantee to the Minister on or before the date of signature of this Contract.
- 8.3. Provided that the Minister has received the Builder's Financial Guarantee and proof of insurance coverage as provided for in this Contract, payment of the Contract Price shall be made in accordance with the Milestone Payment Schedule.
- 8.4. Payments shall be subject to:
 - 8.4.1. verification by the Inspector that the Work set out in the Milestone Payment Schedule has been completed in accordance with the Specifications;
 - 8.4.2. receipt by the Minister's Project Manager of the Builder's invoice in the amount of the relevant payment; and
 - 8.4.3. submission by the Builder of a completed statutory declaration in the form attached hereto as Schedule 10.
- 8.5. The cost or credit for Change Order Requests will be adjusted and paid or credited on the next payment due under the Milestone Payment Schedule.
- 8.6. The amount of each payment hereof shall be due and payable within thirty (30) Days of compliance by the Builder of the requirements set out in Clause 8.4.
- 8.7. The amount of damages agreed to by the parties under Clause 5.10 and the value of the Minor Item(s) agreed to by the parties under 11.8 shall be payable on or before Delivery of the Vessel. If said amounts or value are not paid on or before Delivery of the Vessel the Minister shall be entitled to deduct said amount and value from the Contract Price.

8.8. In the event the parties cannot agree:

- (i) to the amount of damages payable under clause 5.10 and/or
- (ii) the value of Minor Items under clause 11.8, the Minister shall be entitled to withhold the amount of damages claimed and the value of the Minor Item(s) from the Contract Price pending resolution of the dispute in accordance with Clause 22.

9. PROPERTY AND JURISDICTION

- 9.1. Without prejudice to the rights of the Minister as provided in Clause 15, any engines, boilers, machinery or materials which are part of the Vessel or which are appropriated thereto shall not after delivery to the Builder's yard be removed outside the Builder's Yard except for the purposes of effecting repairs thereto or obtaining replacements therefore.
- 9.2. Without prejudice to the rights of the Minister as provided in Clause 15, the Work shall be performed at the Builder's Yard and the Vessel shall not be floated other than at the Builder's Yard without the prior written approval of the Minister.
- 9.3. The Builder may, subject to the approval of the Minister which approval will not be unreasonably withheld, erect signage identifying the Project at the premises of the Builder, the corporate members of the Builder's consortium and the Builder's principal consultants.
- 9.4. The Minister and the Government of Canada may, at the Builder's yard erect signage identifying the Project.
- 9.5. The Builder may engage in promotional activities as provided for in Schedule 13.
- 9.6. For greater certainty the Builder warrants and guarantees that title to all materials and equipment covered by a payment under Clause 8, whether then incorporated in the Vessel or which is identified to be incorporated in or placed on the Vessel when delivered, shall pass to the Minister upon said payment free and clear of all liens, claims, security interests or encumbrances; and that no such liens, claim, security interests or encumbrance will have been acquired by the Builder, Subcontractor, Supplier or by any other person performing Work or furnishing materials and equipment. Upon request of the Minister, the Builder shall at a reasonable time and place provide documentation of invoices, accounts, and proof of payment to establish that Subcontractors and Suppliers of machinery, equipment and supplies are being paid and that no liens, claims, security interests or encumbrances are being incurred other than as are being satisfied in the ordinary course of business.
- 9.7. Any person or entity which holds a security interest on property of the Builder which reasonably may be construed as applying to the Vessel (including materials and equipment), the secured party shall agree to subordinate its security interest to the interests of the Minister to the extent that the Minister has made payments covering such work, materials and equipment. The Builder agrees to obtain

subordination agreements from holders of security interests in property to which the Builder has title or possession which might apply to the Vessel, its materials, machinery and equipment. The Builder agrees to obtain subordination agreements in a form satisfactory to the Minister and to provide originals of such agreements to the Minister seven (7) Days prior to execution of this Contract. Said agreement shall be attached hereto and form part of the Contract.

10. INSURANCE

- 10.1. The Builder on or before the execution of this contract shall obtain insurance coverage as required by the Minister and shall not later than ten (10) days following execution of this Contract, provide proof acceptable to the Minister that said insurance is in place. The Builder shall maintain the insurance coverage for the duration of this Contract.
- 10.2. All insurance policies to be provided under this contract by the Builder shall name the Minister as co-insured. The Minister shall have the right at any time to require proof from the Builder that the insurance is being maintained.

11. TRIALS AND PERFORMANCE

- 11.1. Prior to the Vessel's Delivery to, and acceptance by the Minister, the Vessel shall undergo sea trials during a single trip, at a place appointed by the Builder and in accordance with the provisions of the Specifications. The Vessel shall also undergo dock trials in accordance with the provisions of the Specifications.
- 11.2. The Minister and the Inspector shall receive from the Builder at least thirty (30) Days written Notice of the time and place of the sea trials.
- 11.3. Prior to any trial to be conducted the Inspector shall have a reasonable time to inspect and test the Vessel and its systems. Any defects which may become apparent during such inspections shall be corrected by the Builder prior to trials and at the Builder's cost.
- 11.4. The Authorized Representatives of the Minister who will attend and witness the performance of the Vessel during such sea trials shall be present on the date specified in the Notice. Failure of the Minister or any of the Authorized Representatives to be present after due Notice shall render the Minister liable for the costs of the abortive sea trial arrangements and shall constitute a Permissible Delay extending the Contract Delivery Date of the Vessel by the period of delay caused by such failure to be present which extension shall be effected by a Project Change Order in accordance with Clause 6.
- 11.5. In the event of the weather on the date specified for the sea trials being in the reasonable opinion of either party unfavorable, then the same shall take place on the first available Day thereafter that weather conditions permit. If during the sea trials such changes in weather shall occur as would, in the opinion of either party, have precluded any commencement of the sea trials had the change in weather occurred before the sea trials had started then, in such event, either party shall have the option to discontinue the sea trials and require that the date for the sea trials be postponed until the first favorable Day next following unless the Minister

shall agree to accept the Vessel on the basis of the sea trials made prior to such sudden change in weather condition. Any delay in sea trials caused by adverse weather conditions shall be a Force Majeure delay within the terms of Clause 13.

- 11.6. Prior to dock and sea trials the Minister shall select the fuel oil and main engine lubricating oils in compliance with the Specifications and machinery manufacturer's recommendations, whereupon the Builder shall provide the Vessel with the required quantity of fuel oil, lubricating oils, grease and other stores necessary for the conduct of such dock and sea trials.
- 11.7. If the Inspector determines that the Vessel fails any of the dock or sea trials for which the Builder is responsible, the Builder shall, at no cost to the Minister and not later than five (5) days after such trial rectify any defects which caused such failure and shall conduct at the Builder's expense additional trials until the Vessel meets or exceeds the applicable Specifications.
- 11.8. The Minister and Builder may agree that any defects noted in the trials do not substantially affect the intended operation of the Vessel, which defects shall be deemed to be Minor Items. In the event that, Minor Items exist that have not been corrected to the satisfaction of the Inspector, a list of the Minor Items will be made by the Inspector and a value assigned by the Inspector to each Minor Item and the list shall be provided to the Builder. In the event the Minister and Builder cannot agree in writing as to the value of any Minor Item, the value shall be determined in accordance with Clause 22.

12. DELIVERY

- 12.1. The Vessel shall be delivered to the Minister by the Builder in the water at the Builder's Yard on or before the Contract Delivery Date. The Builder shall be responsible for the successful launching of the Vessel.
- 12.2. The Builder shall, not less than ten (10) Days prior to the Contract Delivery Date, provide to Minister the following: (1) a Builder's Certificate; (2) any forms or documents necessary to obtain registration of the Vessel; (3) a warranty and maintenance package that shall include the manufacturers' literature collected as stated in the Contract Documents and/or as otherwise may have been obtained by the Builder for maintenance of the Vessel, its finishes and appurtenant equipment; and (4) written assurance from the Builder warranting that the Vessel is free and clear of all liens, claims, security interests and encumbrances arising from the performance of the Work.
- 12.3. Provided that:
 - 12.3.1. the Work is determined by the Inspector to have been completed in compliance with the requirements of the Contract Documents and the Regulatory Bodies;
 - 12.3.2. all defects have been corrected to the satisfaction of the Inspector;
 - 12.3.3. all certificates, documents and protocols referred to in Clause 12.2 have been tendered;

12.3.4. the Contract Price has been adjusted in accordance with the terms of this Contract;

12.3.5. any other document, certificate, plan, information or otherwise to be provided by the Builder under this Contract has been so provided; and

12.3.6. written assurance from the Builder, in the form acceptable to the Minister warranting that no liens have been filed, pending or threatened against the Vessel;

12.3.7. the Builder has complied with all of its obligations under this Contract; and

12.3.8. the Builder has submitted a completed statutory declaration in the form attached hereto as Schedule 10 and the Minister has accepted same.

the Delivery of the Vessel shall be forthwith effected by the concurrent signature of the Minister and the Builder on the Tender of Delivery attached hereto as Schedule 9 acknowledging Delivery of the Vessel by the Builder and Acceptance thereof by the Minister.

12.4. The Minister shall take possession of the Vessel immediately upon execution of the Tender of Delivery and, except as otherwise mutually agreed in writing in advance, remove the Vessel within seven (7) Days thereof from the Builder's Yard. If the Minister fails to remove the Vessel within seven (7) Days, the Minister shall reimburse the Builder for any actual and direct costs incurred by the Builder as a result of such failure to remove after seven (7) Days.

12.5. If the Minister fails without just cause to take Delivery upon tender of a Tender of Delivery by the Builder, the Minister shall nevertheless pay payment on the date of tender and shall thereafter reimburse the Builder for all costs and expenses which the Builder reasonably incurs by reason of the Minister's failure to take Delivery.

13. FORCE MAJEURE

13.1. A Force Majeure occurrence shall mean any of the following occurrences beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the said party is unable to prevent or provide against and which delays the performance of the Work and thereby the Contract Delivery Date:

13.1.1. act of God, fire, inclement weather of abnormal severity and/or duration;

13.1.2. war (whether declared or not), riots, insurrections or malicious damage;

13.1.3. damage to Vessel which constitutes a partial loss and is repaired from the proceeds of insurance under the provisions of Clause 10;

13.1.4. cessation, curtailment or interruption of fuel, power, gas, water or any other essential services; and

13.1.5. except where due to the fault or negligence of the Builder or its Subcontractors or Suppliers, any delay in or short delivery of, or defects in materials machinery services or equipment for the Vessel (provided that the Builder demonstrates that they are critical to construction of the Vessel at the time of delay and that they were ordered in due time).

Provided, however, that the Builder shall not be entitled to rely upon any of the occurrences listed in Clause 13.1 unless the Builder has taken all reasonable steps to mitigate their effect upon the completion of the Work.

- 13.2. The Builder shall, within two (2) Days of becoming aware that an occurrence specified in clause 13.1 is likely to cause delay, Notify the Minister in writing thereof. The Builder shall also advise the Minister in writing after any such occurrence of which Notice was given in accordance with the provisions of this clause ceases within two (2) Days of such cessation and shall then provide the Minister with the Builder's best estimate of the likely period of delay resulting therefrom. Failure of the Builder to provide due Notice as provided for in this clause shall be deemed a waiver of Builder's right to claim Force Majeure.
- 13.3. A delay in the Contract Delivery Date caused by Force Majeure shall constitute Permissible Delay and issues as to (i) whether an event constitutes Force Majeure and (ii) the extent of any delay due to Force Majeure, shall be documented, agreed and/or resolved in accordance with Clause 22. The revised Contract Delivery Date resulting from Permissible Delays due to Force Majeure causes shall be established by extending the Contract Delivery Date by one Day for each Day of Force Majeure calculated after making full provision for concurrent delays and mitigation by the Builder.
- 13.4. In the event of a period of Force Majeure lasting more than forty-five (45) consecutive Days, or period or periods thereof of more than sixty (60) Days in the aggregate, the Minister shall be entitled to exercise his rights under Clause 15.2.
- 13.5. The Builder shall not charge the Minister for any standby, moving, or like costs that may be incurred by the Builder in connection with any work stoppage caused by the above events or like circumstances beyond either party's reasonable control.
- 13.6. An occurrence specified in 13.1 shall not, under any circumstances, be a basis for increasing the Contract Price.

14. DEFAULT OF THE MINISTER

- 14.1. The Minister shall be in default and this Contract may be cancelled by the Builder by Notice in writing to the Minister if:

14.1.1. the Minister fails without just cause to make a payment within seven (7) Days of its becoming due and payable in accordance with Clause 8.

Notice of cancellation by the Builder under this Clause shall be given by facsimile and confirmed in writing and shall (unless the Minister shall have then remedied the default) be effective fourteen (14) Days after receipt of the written confirmation thereof by the Minister whereupon the Builder shall be entitled to exercise the rights provided for in Clause 14.1

and provided that the Builder shall not be entitled to exercise such rights in respect of any amount in dispute and for which the Dispute Resolution process under Clause 22 has been commenced.

14.2. However, the Builder shall not be entitled to exercise its rights under this Clause if the Minister has already commenced the exercise of its rights pursuant to Clause 15.

14.3. If the Builder elects to cancel the Contract under Clause 14.1, the Builder shall be entitled to provable losses resulting from the default plus interest at the rate of 2% per month, such losses to be agreed between the parties or to be determined in accordance with the provisions of Clause 22.

15. DEFAULT OF THE BUILDER

15.1. Upon the occurrence of any of the following events the Builder shall be in default:

15.1.1. the Vessel becomes a total loss; or

15.1.2. the Builder without just cause refuses to proceed with the Work;

15.1.3. the builder fails to comply a directive issued under clause 6.5.

15.1.4. an order is made or an effective resolution is passed for the winding up of the Builder (otherwise than a voluntary winding up for the purpose of amalgamation or reconstruction) or a receiver or administrator is appointed of the whole or in part of the undertaking of the Builder; or

15.1.5. the Builder fails to obtain or to maintain insurance coverage and/or to provide proof thereof as required under with Clause 10.1 and/or Clause 10.2.

15.2. In circumstances of the Builder's default as described in Clause 15.1 or in the circumstances set out in Clause 5.11 or 13.4, the Minister, without prejudice to its rights under the Builder's Financial Guarantee, shall be entitled by Notice to the Builder to EITHER:

15.2.1. cancel this Contract in which event the Minister shall pay to the Builder an amount representing value of work performed by the Builder to the date of the termination, determined in accordance with Clause 16.1.4; OR

15.2.2. take possession of the Vessel in its unfinished state and complete the Work in accordance with this Contract and the Specifications either at the Builder's Yard or elsewhere, at the Minister's sole option. In the event the Minister decides to complete the Work at the Builder's Yard, the Minister and its agents or Subcontractors shall, at no cost to the Minister, be entitled to use the Builder's Yard, buildings, plant, machinery, tools and implements and all materials appropriated to or ordered for the Vessel. In the event that the cost of completing the Work exceeds the Contract Price, the Builder shall pay to the Minister on demand an amount equal to the amount of such excess from the time of demand with interest thereon at zero (0) %

percent per month calculated from the date of demand until the date of receipt of payment.

- 15.3. If the Minister elects to take possession pursuant to sub-clause 15.2.2, the Minister shall be entitled then or at any time thereafter to make demand under the Builder's Financial Guarantee and to utilize all sums from time to time received thereunder for the purposes of completing the Work (in accordance with the terms of this Contract and the Specifications).
 - 15.4. Subject always to the provisions of Clause 15, in the event of the cancellation of this Contract by the Minister, the property in the Vessel and all its materials, machinery and equipment shall, following receipt by the Minister of the full amount of all payments paid up to the date of such cancellation and all other amounts payable by the Builder to the Minister hereunder, shall remain vested in the Minister.
 - 15.5. In the event that the Minister elects to take possession of the Vessel pursuant to Clause 15.2.2, the Builder shall assign (or procure the assignment of) the Subcontracts, Supplier contracts and/or any rights arising hereunder to the Minister and shall do and execute such assurances, acts and documentation required or desirable for vesting the aforementioned rights and/or any rights arising thereunder in the Minister. Such assignment shall include all warranties and guarantees.
 - 15.6. All MFE not incorporated in the Vessel shall be made available to the Minister by the Builder upon request of the Minister.
 - 15.7. In the event the Minister elects to take possession of the Vessel pursuant to Clause 15.2.2, any sums due from the Builder to the Minister pursuant to Clause 5.11.1 already incurred at the date of Notice under Clause 15.2 shall be set off against any remaining payments due from the Minister to the Builder.
 - 15.8. Notice of cancellation by the Minister under Clause 15.2 shall be given by facsimile and confirmed in writing and shall be effective fourteen (14) Days after receipt by the Builder unless the Builder shall have demonstrated to the satisfaction of the Minister that it can speedily remedy the default, and is exercising the necessary due diligence to do so. Any other Notice of cancellation under 15.2 shall be effective forthwith upon service.
16. TERMINATION BY MINISTER WITHOUT CAUSE
- 16.1. Notwithstanding any other provision herein contained the Minister may, at its sole discretion and without cause, terminate the Contract at any time by giving written Notice to the Builder and the Builder shall:
 - 16.1.1. unless the Notice directs otherwise, cease performance of the work and shall perform only such work as is necessary in order to preserve and protect the permanent works, and shall, if at the Builder's Yard, store the same at the Builder's risk and expense, until such time as it is removed from the Builder's Yard;

16.1.2. deliver and transfer to the Minister in accordance with the Minister's instructions all materials, supplies and other items for which the Builder is entitled to receive reimbursement according to the Contract, together with all plans, drawings, specifications and other documents which the Minister is entitled to according to the Contract.

16.1.3. if requested by the Minister, undertake all reasonable endeavours to cancel any or all of its outstanding orders or Subcontracts upon such terms as may be approved by the Minister or if the Minister shall so request, the Builder shall assign such orders or Subcontracts to the Minister and take such actions as may be necessary in order to secure for the Minister the rights of the Builder therein.

16.1.4. in the event of termination by the Minister in accordance with this Clause, the Minister shall pay to the Builder the following amounts in full and final settlement of all amounts due or in any way arising from the Contract, less all amounts previously paid:

16.1.4.1. an amount for the cost and expenses incurred by the Builder for materials and equipment being in conformity with the Contract and which are ordered for incorporation into the Work, together with all direct costs for work performed up to the date of the notice of termination hereunder, inclusive of overhead recovery and reasonable allowance for profit;

16.1.4.2. an amount for all other documented costs which the Builder is legally obliged to pay Subcontractors or suppliers, or in respect of liabilities or costs which the Builder has undertaken in good faith in connection with the work; and

16.1.4.3. an amount for all costs, charges and expenses directly attributable to the orderly close out of the performance of the Work, such as the cost incurred for personnel in order to satisfy the requirements of law and labour agreements.

16.2. the Minister shall, within fourteen (14) Days of Notice of termination, at its cost and expense, remove the Vessel, all equipment, material, machinery and MFE (Property) from the Builder's Yard, but in no case any longer than thirty (30) Days. If any of the Minister's Property remains in the Builder's Yard longer than thirty (30) Days from the Notice of termination under this Clause and the Minister and the Builder are unable to mutually agree on the disposition of the Property, then the Builder may remove, at the Minister's expense, all remaining Property which obstructs the Builder's activities within the Builder's Yard; or

16.2.1. the Minister may take possession of the Vessel pursuant to clause 15.2.2 and clauses 15.4, 15.6 and 15.8 shall apply thereto;

17. BUILDER'S WARRANTIES AND WARRANTY PERIOD

17.1. The Builder, for the whole of the Warranty Period, guarantees the Work against all defects which are due to defective material, poor workmanship and that the Work

has been performed in accordance with this Contract. The Warranty Period shall be for a period of twelve (12) months from Delivery of the Vessel provided always that, in respect of any repairs or replacement or such additional works as are referred to in clause 17.8, the Warranty Period shall in respect only of such repairs, replacements or additional works be twelve (12) months after the completion of same. The Warranty Period shall not in any event exceed twenty four (24) months in total from Delivery.

- 17.2. The Builder shall obtain written warranties from all Subcontractors, Suppliers, manufacturers, and any other person engaged by the Builder in the performance of the Work. To the extent reasonably available, the Builder shall use commercially reasonable efforts to ensure that the Warranty Period respecting the warranties obtained pursuant to this sub-clause shall be in effect for a period of not less than twelve (12) months from Delivery of the Vessel and in addition that, in respect of any repairs or replacement or additional work, the Warranty Period shall be twelve (12) months after the completion of such repairs or replacement and additional work.
- 17.3. The Builder shall hold the benefit of all warranties, guarantees, and other rights and remedies obtained under clause 17.2 in trust for and in accordance with the Minister's instructions. At the end of the Warranty Period the builder shall assign to the Minister the benefit of any remaining warranties.
- 17.4. The remedies contained in this Clause concerning the defects which are covered by this Clause are the sole and exclusive remedies in favor of the Minister concerning such matters. For the avoidance of doubt, this Clause has no application to warranties concerning title or intellectual property rights.
- 17.5. The Builder's warranty set out in clause 17.1 does not extend to loss or damage or expense to the extent arising from wear and tear, perils of the sea, accident, negligence or misuse on the part of the Minister or any third party.
- 17.6. The Minister shall give Notice to the Builder within fourteen (14) Days after discovery of any defect in material or workmanship by any supervisory personnel on board the Vessel. The Notice shall include full details as to the nature of the defect and the extent of the damage caused thereby. The Builder shall be freed from all liability under this Clause for any defects discovered prior to the expiry of the Warranty Period, unless Notice thereof is given by the Minister not later than fourteen (14) Days after the expiry of the Warranty Period. The Builder shall have no liability in respect of defects discovered after the expiry of the Warranty Period.
- 17.7. Without prejudice to Clause 17.6, upon receipt of Notice under Clause 17.6 the Builder shall be entitled to arrange for inspection of the Vessel on its own behalf. The Minister shall make available to the representatives of the Builder at such inspection the Vessel's logbooks and any other relevant documents and information and shall supply such certified copies of such log books, documents and information as may reasonably be requested by the Builder.
- 17.8. The Builder shall, within thirty (30) days of notification under Clause 17.6 or such further period as the Minister may agree to remedy at its own expense including the costs of bringing the vessel to the Builder's yard, all defects in material or

workmanship arising during the Warranty Period of which it is notified in accordance with Clause 17.6, by making all necessary repairs and replacements and by performing such additional work as may be required to remedy such defect (including without prejudice to the foregoing generally the provision of such personnel as the parties may agree). Further, if the Minister deems that it would be impractical to bring the Vessel back to the Builder's Yard or otherwise to have the work performed by the Builder, the Minister shall Notify the Builder in accordance with Clause 17.6, in which case the Builder shall, within seven (7) Days of receipt of such notification, Notify the Minister in writing that the Builder:

- (i) will complete the repair work at the Builder's yard, at the Builder's expense including all costs associated with bringing the vessel to the Builder's yard and within the time frame stipulated by the other shipyard; or
- (ii) that the Minister may have the repair work completed at the shipyard identified in the notice and that the Builder shall, within thirty (30) days of completion of the repairs, reimburse the Minister for all costs incurred by the Minister.

17.8.1. If the Builder fails to notify the Minister as provided for 17.8 the Minister shall be entitled to proceed in accordance with Clause 17.8.1(ii).

17.8.2. The Builder shall have the right to be Notified prior to the commencement of repair work and the Builder shall not be liable for the efficacy of the same.

17.9 The Builder has the right to appoint or nominate upon terms and conditions to be agreed a competent guarantee engineer acceptable to the Minister to sail with the Vessel as guarantee engineer during the whole or any part of the Warranty Period and, if the Minister has reason to be dissatisfied with the guarantee engineer so appointed, shall replace him by another guarantee engineer. The wages and expenses and repatriation expenses of the guarantee engineer in any case shall be paid by the Builder. The Minister and its employees shall give such guarantee engineer full co-operation in carrying out his duties on board the Vessel

18. BUILDER'S FINANCIAL GUARANTEE

18.1. The Builder shall deliver to the Minister on or before execution of this contract the Builder's Financial Guarantee in a form acceptable to the Minister and same shall be attached hereto as Schedule 2 and shall form an integral part of this Contract.

19. INDEMNITIES FOR INFORMATION SUPPLIED

19.1. The Builder shall indemnify the Minister from and against all claims of third parties arising by reason of the use by the Minister or the Minister Subcontractor or Minister Supplier of any information supplied to the Minister, Minister Subcontractors or Minister's Suppliers by the Builder in connection with the performance of the Work, and from all costs and expenses (including costs and expenses of litigation) incurred by the Minister by reason of such claim.

- 19.2. The Minister shall indemnify the Builder from and against all claims of third parties arising by reason of the use by the Builder of the Specifications and of any document or information supplied to the Builder by the Minister, in connection with the performance of the Work or installation of the machinery or equipment thereof or the provision of MFE and from all costs and expense (including costs and expenses of litigation) incurred by the Builder by reason of any such claim.

20. TAXES AND DUTIES, ETC.

- 20.1. The Builder shall bear any taxes and duties applicable to materials or equipment supplied by the Builder, its Subcontractors or Suppliers.
- 20.2. The Minister shall bear any taxes and duties applicable to materials or equipment supplied by the Minister, Minister Subcontractors or Suppliers.

21. COMPLIANCE WITH LAWS

- 21.1. The Builder shall give all the notices and obtain all the licenses and permits required to perform the Work and shall comply with all laws applicable to the performance of the Work under this Contract.
- 21.2. The Builder shall ensure that all employees and Subcontractors are in possession of valid permits and/or licenses required to perform the Work and comply with all laws applicable to the performance of the Work under this Contract.
- 21.3. The Builder shall comply with *Nova Scotia Workers' Compensation Act*. Prior to making any payments under this Contract, the Minister may require the Builder to submit a Workers' Compensation Board (WCB) Clearance Letter indicating that all WCB assessments have been paid.

22. DISPUTE RESOLUTION

- 22.1. This Contract shall be governed by and construed in accordance with the Law of Nova Scotia and the laws of Canada applicable therein.
- 22.2. In the event of dispute or disagreement whether the Specifications or the Works comply with the requirements of the Regulatory Bodies, the decision of the relevant Regulatory Body shall be final and binding on the parties.
- 22.3. In the event of dispute or disagreement whether the Builder's performance of the Work conforms with the requirements of the Specifications (or as applicable, with work to be performed under a Change Order Request), the decision of the Inspector shall be final and binding on the parties.
- 22.4. In the event of any disagreement or dispute other than one to which Clauses 22.2 or 22.3 apply, the Builder and the Minister agree that they shall make all reasonable efforts to resolve any dispute that arises by amicable negotiation and each shall provide to the other, on a without prejudice basis, timely disclosure of relevant facts, information and documents (except such documentation and information that is subject to legal privilege), as may be required or reasonably requested by the other to facilitate the resolution of a dispute.

- 22.5. Disputes shall initially be referred for resolution to the Minister's Project Manager and the Builder's Construction Manager.
- 22.6. If the dispute is not resolved by the parties referred to in sub-clause 22.5 within seven (7) Days, or such longer period as they may agree to in writing, the dispute shall be referred to the Authorized Representatives of the Minister and the Builder.
- 22.7. In the event the the Authorized Representatives for each party cannot resolve the dispute within seven (7) Days, or such longer period as they may both agree to in writing, the dispute shall be resolved by arbitration at Halifax in accordance with the following provisions:
- 22.7.1. The arbitration shall be before a single arbitrator, to be appointed by agreement between the parties within 14 Days following service of by one party upon the other specifying the nature of the dispute and requiring reference of the dispute to arbitration pursuant to this Clause;
- 22.7.2. In the event that the parties fail to agree within 14 Days on the identity of an arbitrator, the arbitrator with demonstrated commercial marine construction experience shall be appointed, on motion of either party, by a Justice of the Supreme Court of Nova Scotia;
- 22.7.3. The arbitration shall be subject to and shall be governed by the *Commercial Arbitration Act* of Nova Scotia, subject in any specific case to such modifications as to procedure as the parties may in writing agree;
- 22.7.4. The arbitrator shall have power to make any interim award as he or she may think fit;
- 22.7.5. The arbitrator shall have power to order costs of the arbitration to be borne by the parties in such proportions as he or she may think fit; and
- 22.7.6. The award(s) of the arbitrator shall be final and binding on the parties.
- 22.8. The Minister and the Builder acknowledge and confirm that the Representatives referred to in sub-clauses 22.5 and 22.6 shall have the authority to resolve and settle, on their behalf any disputes between the parties, in respect of this Contract.
- 22.9. Notwithstanding any other Clause of this Contract the Builder agrees that it shall at all times continue to perform the Work under this Contract, including without limitation that portion of the Work that is the subject of a dispute between the parties to this Contract, notwithstanding the existence of a dispute or the fact that dispute resolution negotiations are on-going or that the dispute has been referred to the Regulatory Bodies, the Inspector or an arbitrator for decision.

23. LIABILITY AND INDEMNIFICATION

- 23.1. The Minister shall not be liable for any injury or damage (including death) to the person or for the loss of damage to the property of the Builder, its Subcontractors,

Suppliers or employees in any manner based upon, occasioned by or in any way attributable to the performance of the Work under this Contract unless such injury, loss, or damage is caused solely and directly by the negligence of an officer or servant of the Minister while acting within the scope of his or her employment.

23.2. The Builder shall use due care in carrying out the Work under this Contract. The Builder shall not be liable for an indirect or consequential damages relating to the Work performed under this Contract unless caused by the Builder's negligence.

23.3. The Builder agrees that it shall at all times indemnify and save harmless the Province, its Ministers, officers, employees and agents from and against all claims, demands, losses, costs, damages, actions, suits, or other proceedings of any kind based upon: (a) pollution or contamination occurring prior to Delivery (including without limitation the control and/or removal thereof) which originates from Builder's Yard or equipment, the equipment of Builder's Subcontractors or materials under the control of Builder's Subcontractors, including but not limited to fuels, lubricants, motor oils, pipe dope, paints, solvents, garbage or debris; (b) from the storage, transportation and/or disposal of any and all waste generated during the performance of the Work by Builder, its Subcontractors, Supplier or employees and (c) from pollution or contamination arising from the Vessel following Delivery and attributable to any breach by the Builder of its warranty under Clause 17, until the expiration of the Warranty Period provided for in Clause 17.

24. INDEPENDENT CONTRACTOR

24.1. It is understood and agreed that the Builder is engaged as an independent contractor and is not nor shall be deemed to be an employee, servant or agent of the Minister.

24.2. The Builder warrants that it has a valid and current Quality Assurance Program in effect. The Builder shall be responsible for the Quality Assurance of subcontract work and shall be solely responsible for ensuring that all Work performed by its Subcontractors, Suppliers and employees is in accordance with this Contract and the Specifications and shall be free from all defects.

25. CONFIDENTIALITY and FOIPOP

25.1. The Parties acknowledge that disclosure of information pursuant to this Agreement is governed in accordance with the mandatory requirements of the *Freedom of Information and Protection of Privacy Act* (Nova Scotia) or other similar law, provided however, in the event that the Minister is requested to disclose any confidential information, the Minister shall give prompt notice of this fact to the Builder before disclosure is required to be made so that the Builder may seek an appropriate remedy.

25.2. The Builder shall keep private, treat as being confidential, and not make public or divulge during as well as after the expiry of this Contract, any information or material to which the Builder, its employees, agents, Subcontractors and Suppliers, become privy as a result of acting under this Contract without having first obtained the Minister's consent in writing. Such information shall be provided

strictly and solely for the purpose of performing the Work.

- 25.3. The Builder, its agents and employees shall comply with the requirements set out in the Personal Information ('P/I') Protection Schedule attached hereto as Schedule 5.
- 25.4. The provisions of Clause 25.1, 25.2 and 25.3 shall apply to the Builder's employees, Subcontractors, Suppliers or other persons engaged by the Builder in the performance of the Work.
26. TIME SHALL BE OF THE ESSENCE
 - 26.1. Time shall be of the essence of this Contract, provided that the Contract Delivery Date may be extended in accordance with the terms of this Contract.
27. CONSENT TO BREACH NOT WAIVER
 - 27.1. No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, a waiver of, or excuse for any different or subsequent or a continuation of the same breach unless expressly stated.
28. PARTIAL INVALIDITY
 - 28.1. If any term or provision of this Contract shall be found to be illegal or unenforceable, notwithstanding, this Contract may, at the Minister's option, remain in full force and effect and such term or provision shall be deemed removed from the Contract.
29. ASSIGNMENT OF CONTRACT
 - 29.1. Except as provided for in this Contract, the Builder shall not be entitled to assign or transfer any of its rights or duties hereunder without the prior written consent of the Minister.
30. WAIVER
 - 30.1. Any waiver by or neglect or forbearance by either party to require or enforce any of the provisions of this Contract at any time given by either party shall not prejudice or affect any right of that party afterwards, with regard to any other failure to comply with the provisions of this Contract whether or not of a similar nature, to act strictly in accordance with the provisions herein contained.
31. NOTICES AND COMMUNICATIONS
 - 31.1. Any Notice to be given hereunder to the Minister shall be given to the Minister's Project Manager:

With copies to the Minister:

and

or such other person, address or electronic address as the Minister may from time to time by Notice in writing communicate to the Builder.

- 31.2. Any Notice to be given hereunder to the Builder shall be given to the Builder's Construction Manager:

or such other person, address or electronic address as the Builder may from time to time by Notice in writing communicate to the Minister.

- 31.3. Any Notice or other document to be given or served hereunder may be delivered by hand or sent by electronic transmission or posted by first-class mail, airmail or prepaid post, addressed to the address or electronic address of the respective party as given in Clause 31.1 and 31.2. Any such Notices or documents sent by post in the manner specified above shall be deemed served seven business days after posting. Where a Notice or document is transmitted by electronic transmission the document shall be deemed served when transmitted by the sending party.

Any Notice which is required or permitted to be given under the terms of this Contract may be sent to:

the Minister at: Tourism, Culture and Heritage
William (Bill) Greenlaw, Executive Director
1747 Summer Street, Halifax, NS B3H 3A6

Project Manager: MHPM Project Managers Inc.
Attention: Craig Chisholm
1559 Brunswick Street, Suite 500
Halifax, NS B3J 2G1

the Builder at: Lunenburg Shipyard Alliance
Attention: Peter J. Kinley
53 Falkland Street
P.O. Box 1240, Lunenburg, NS
B0J 2C0

All such notices shall be deemed to be received by the party to whom they are addressed on the date of delivery or electronic transmission.

32. AUTHORITY

- 32.1. The signatories of this Contract warrant that they have the full power and authority to enter into this Contract and that the person signing this Contract on behalf of each has been properly authorized and empowered. Each party further acknowledges that it has read the Contract, understands it, and agrees to be bound by it.

33. CONTRACT DOCUMENTS, ENTIRE CONTRACT AND AMENDMENTS

- 33.1. For greater certainty, the Contract Documents shall mean this Contract, the Request For Proposal and the Builder's Proposal, the Specifications and Drawings, the Builder's Shop Drawings, the Schedules and any other documents incorporated by mutual consent of the Parties together with any instruments to be executed and delivered pursuant to this Contract, shall constitute the full understanding of the parties and a complete and exclusive statement of the terms of their Contract. No condition, understanding, or Contract purporting to modify or vary the terms of the Contract shall be binding unless hereafter made in writing and signed by the Builder and the Minister.
- 33.2. It is the express intention of the parties hereto that the Contract Documents shall exclusively govern the allocation of risks and liabilities of said parties, it being acknowledged that the agreement reflected herein has been based upon such express understanding.
- 33.3. For greater certainty, this contract may be amended by the mutual consent of both parties in writing.

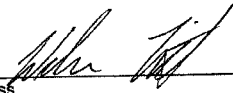
34. GOVERNING LAWS

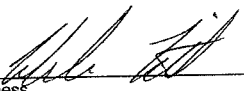
- 34.1 This Contract shall be construed and interpreted in accordance with the laws of the Province of Nova Scotia.

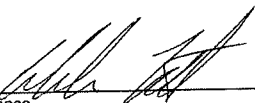
IN WITNESS WHEREOF the parties hereto have caused this Contract to be duly executed the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of:

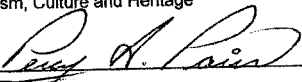

Witness


Witness



Witness


Witness

HER MAJESTY THE QUEEN, in right of the Province
of Nova Scotia, as represented by the Minister of
Tourism, Culture and Heritage

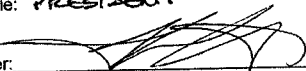
Per: 

BUILDER

Per: 

Name: PETER KINSEY

Title: PRESIDENT

Per: 

Name: JOHN R STEELE

Title: DIRECTOR

Per: 

Name: WADE CROFT

Title: DIRECTOR