REQUEST FOR PROPOSAL

MANUFACTURE, DELIVER AND COMMISSION ONE NEW HIGH-SPEED PASSENGER FERRY OF PROVEN DESIGN, OPERATING IN THE TABLE BAY AREA BETWEEN THE NELSON MANDELA GATEWAY AT THE VICTORIA AND ALFRED WATERFRONT IN CAPE TOWN HARBOUR, AND MURRAY’S BAY HARBOUR AT ROBBEN ISLAND.

LEVEL 3

ANNEXURE C: CONTRACTUAL BID DOCUMENTS
RFP
Annexure C: Contractual Bid Documents

[Title Page]
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1. Annexure C1: Signing Power – Resolution of Board of Directors

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MANUFACTURE, DELIVER AND COMMISSION ONE NEW HIGH-SPEED PASSENGER FERRY OF PROVEN DESIGN, OPERATING IN THE TABLE BAY AREA BETWEEN THE NELSON MANDELA GATEWAY AT THE VICTORIA AND ALFRED WATERFRONT IN CAPE TOWN HARBOUR, AND MURRAY’S BAY HARBOUR AT ROBBEN ISLAND.

Annexure C1: SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS

NAME OF ENTITY: _______________________________________________________________

It was resolved at a meeting of the Board of Directors held on ________________ that

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in his/her capacity as indicated above is/are hereby authorised to enter into, sign, execute and complete any documents relating to this Proposal and any subsequent Agreement for the supply of Goods.

CHAIRMAN

FULL NAME & SURNAME__________________________________________________________

SIGNATURE: CHAIRMAN __________________________________________________________

WITNESS

FULL NAME & SURNAME__________________________________________________________

SIGNATURE: WITNESS ____________________________________________________________
2. Annexure C2: Certificate of Acquaintance with RFP Documents

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MANUFACTURE, DELIVER AND COMMISSION ONE NEW HIGH-SPEED PASSENGER FERRY OF PROVEN DESIGN, OPERATING IN THE TABLE BAY AREA BETWEEN THE NELSON MANDELA GATEWAY AT THE VICTORIA AND ALFRED WATERFRONT IN CAPE TOWN HARBOUR, AND MURRAY’S BAY HARBOUR AT ROBBEN ISLAND.

Annexure C2: CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS

NAME OF ENTITY:

__________________________________________________________

1. I/we

________________________________________________________________

do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising this RFP and all conditions contained therein, as laid down by Robben Island Museum for the carrying out of the proposed supply/service/works for which I/we submitted my/our Proposal.

2. I/We furthermore agree that Robben Island Museum shall not be liable against any claim from me/us for relief based on an allegation that I/we overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating my/our offered process or otherwise. I further agree that I/we will not make or assert any such claim.

SIGNED at ____________________________ on this _____ day of ___________________ 20__

___________________________________________  ____________________________

SIGNATURE OF WITNESS  SIGNATURE OF BIDDER
3. Annexure C3: Certificate of Acquaintance with the New Build Contract (appended hereto as Annexure C6)
MANUFACTURE, DELIVER AND COMMISSION ONE NEW HIGH-SPEED PASSENGER FERRY OF PROVEN DESIGN, OPERATING IN THE TABLE BAY AREA BETWEEN THE NELSON MANDELA GATEWAY AT THE VICTORIA AND ALFRED WATERFRONT IN CAPE TOWN HARBOUR, AND MURRAY’S BAY HARBOUR AT ROBBEN ISLAND.

Annexure C3: CERTIFICATE OF AQUAINTANCE WITH THE NEW BUILD CONTRACT

NAME OF ENTITY:
__________________________________________________________________________________

I/We ______________________________________________________________________________

do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the BIMCO New Build Contract as received on ________________ [insert date] from Robben Island Museum for the carrying out of the proposed supply for which I/we submitted my/our Proposal.

I/We furthermore agree that Robben Island Museum will not be liable against any claim from me/us for relief based on an allegation that I/we overlooked any of provisions in the BIMCO New Build Contract or failed to take it into account for the purpose of calculating my/our offered prices or otherwise. I/We further agree that I/we will not make or assert any such claim.

SIGNED at ___________________________ on this _____ day of ___________________________ 20___

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES
1 ___________________________ ___________________________
Name ___________________________

2 ___________________________ ___________________________
Name ___________________________

SIGNATURE OF RESPONDENT’S AUTHORISED REPRESENTATIVE: ___________________________
NAME: ___________________________
DESIGNATION: ___________________________
4. Annexure C4: Certificate of Acquaintance with the General Conditions of Contract (appended hereto as Annexure C5)
MANUFACTURE, DELIVER AND COMMISSION ONE NEW HIGH-SPEED PASSENGER FERRY OF PROVEN DESIGN, OPERATING IN THE TABLE BAY AREA BETWEEN THE NELSON MANDELA GATEWAY AT THE VICTORIA AND ALFRED WATERFRONT IN CAPE TOWN HARBOUR, AND MURRAY’S BAY HARBOUR AT ROBBEN ISLAND.

Annexure C4: CERTIFICATE OF ACQUAINTANCE WITH THE GENERAL CONDITIONS OF CONTRACT

NAME OF ENTITY:

__________________________________________

I/We

__________________________________________

do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising the General Conditions of Contract as received on ________________ [insert date] from Robben Island Museum for the carrying out of the proposed supply for which I/we submitted my/our Proposal.

I/We furthermore agree that Robben Island Museum will not be liable against any claim from me/us for relief based on an allegation that I/we overlooked any of the provisions in the General Conditions of Contract or failed to take it into account for the purpose of calculating my/our offered prices or otherwise. I/We further agree that I/we will not make or assert any such claim.

__________________________________________

SIGNED at ___________________________ on this _____ day of ___________________ 2016

__________________________________________

SIGNATURE OF WITNESS

__________________________________________

SIGNATURE OF BIDDER

[Signature]
5. Annexure C5: General Conditions of Contract
GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010
NOTES

The purpose of this document is to:

(i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
(ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.

- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.
TABLE OF CLAUSES

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.

1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

1.5 “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 “Day” means calendar day.

1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.

1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.

1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
1.14 “GCC” means the General Conditions of Contract

1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract

1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured

1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 “Project site,” where applicable, means the place indicated in bidding documents.

1.21 “Purchaser” means the organization purchasing the goods.

1.22 “Republic” means the Republic of South Africa.

1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
4. Standards

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection

5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier’s failure to complete his obligations under the contract

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser’s country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier’s or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier’s performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and Analyses

8.1 All pre-bidding testing will be for the account of the bidder

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods’ final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
(d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
(e) training of the purchaser’s personnel, at the supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
(b) in the event of termination of production of the spare parts:
   (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
   (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser’s specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier’s risk and expense and without prejudice to any other rights which the purchaser may have against the supplier.
16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser’s request for bid validity extension, as the case may be.

18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser’s prior written consent.

20. Subcontractors

The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier’s performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier’s notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier’s time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier’s point of supply is not situated at or near the place where the supplies are required, or the supplier’s services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier’s expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.
22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

(a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2

(b) if the Supplier fails to perform any other obligation(s) under the contract; or

(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

(i) the name and address of the supplier and / or person restricted by the purchaser
(ii) the date of commencement of the restriction
(iii) the period of restriction; and
(iv) the reasons for the restriction.

These details will be loaded in the National Treasury’s central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person’s name be endorsed on the
Register for Tender Defaulters. When a person’s name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law 30.1 The contract shall be interpreted in accordance with South African law laws, unless otherwise specified in SCC.

31. Notices 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser’s country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

34. Prohibition of Restrictive practices 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)
6. Annexure C6: New Build Contract
MANUFACTURE, DELIVER AND COMMISSION ONE NEW HIGH-SPEED PASSENGER FERRY OF PROVEN DESIGN, OPERATING IN THE TABLE BAY AREA BETWEEN THE NELSON MANDELA GATEWAY AT THE VICTORIA AND ALFRED WATERFRONT IN CAPE TOWN HARBOUR, AND MURRAY’S BAY HARBOUR AT ROBBEN ISLAND.

Annexure C6: NEW BUILD CONTRACT
### NEWBUILDCON
STANDARD NEWBUILDING CONTRACT

**PART I**

1. **Place and date of Contract** *(Cl. 3, Cl. 44(b), Cl. 47)*
   Cape Town, South Africa
   [DATE OF CONTRACT TO BE INSERTED]

2. **Builder’s name, full style address and contact details** *(Definitions)*
   Name: 
   Address: 
   Country: 
   Phone/Fax: 
   E-mail: 
   Company registration No.

   **Additional names, addresses and contact numbers:**
   Name: 
   Address: 
   Country: 
   Phone/Fax: 
   E-mail: 
   Company registration No.

3. **Buyer’s name, full style address and contact details** *(Definitions)*
   Name: Robben Island Museum, a declared cultural institution established in terms of the Cultural Institutions Act, No. 29 of 1969
   Address: Nelson Mandela Gateway, Clock Tower Precinct, Waterfront, Cape Town, 8001
   Country: South Africa
   Phone/Fax: Insert Phone / 021 425 0206
   E-mail: 
   Company registration No.

   **Additional names, addresses and contact numbers:**
   Name: 
   Address: 
   Country: 
   Phone/Fax: 
   E-mail: 
   Company registration No.

4. **Vessel description/type** *(Definitions, Cl. 2(b))*
   **High speed catamaran ferry**

### A. **Main dimensions** *(Cl. 2(b))*

| (i) | LOA (m): [TO BE DETERMINED] |
| (ii) | Length between perpendiculars (m): [TO BE DETERMINED] |
| (iii) | Breadth amidships (m): [TO BE DETERMINED] |
| (iv) | Mean draft in salt water (m): [TO BE DETERMINED] |

### B1. **Cargo capacity** *(Cl. 2(b)iv) and Cl. 13)*

| (i) | Cubic capacity: Not applicable |
| (ii) | Bale capacity: Not applicable |
| (iii) | Grain capacity: Not applicable |

### B2. **TEU carrying capacity** *(only if applicable)*

| (i) | Total on deck |
| a. | 20'/40'/45'' TEU: Not applicable |
| b. | No. of reefers: Not applicable |
| (ii) | Total under deck |
| a. | 20'/40'/45'' TEU: Not applicable |
| b. | No. of reefers: Not applicable |
| (iii) | No. of TEU homogenous loaded at 14 mts: Not applicable |

### C. **Main engine(s)** *(Cl. 2(b)ii, Cl. 2(b)vi and Cl. 9)*

| (i) | Maker/Type: [TO BE DETERMINED] |
| (ii) | Continuous Rating (MCR) (kilowatts at MCR): [TO BE DETERMINED] |
| (iii) | RPM at MCR: [TO BE DETERMINED] |
| (iv) | Specific Fuel Oil Consumption at MCR: Not relevant |
| (v) | Normal Continuous Rating (NCR): Not relevant |
| (vi) | RPM at NCR: Not relevant |
| (vii) | Type of fuel and specification (including Calorific Value (kcal/kg)): Marine Gas Oil, 500ppm as available at Cape Town Bunker Point |

### D. **Average speed** *(Cl. 2(b)ii and Cl. 8)*

| (i) | Service speed at design draft (m): Fully loaded draft (deadweight [INSERT] ton) not exceeding 1.8m at even trim and at 85% Maximum Continuous Rating |
| (ii) | Min. number of knots: Service Speed of 22 knots outside the harbour in a South Easter wind maximum Beaufort 4, swell maximum 3.5m at fully loaded conditions (deadweight [INSERT] ton), and shall be capable of operating in |

### E. **Other matters** *(optional)*

| (i) | Total compliment 180 to 200 passengers to be seated comfortably and safely in an enclosed space, from the Nelson Mandela Gateway at the Victoria and Alfred Waterfront in Cape Town, to Murrays Bay Harbour at Robben Island Museum and return, including suitable access and seating arrangements for disabled persons |

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<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 5. **Shipyard(s)** (if different from Box 2) (Full style address and contact details)  
(Definitions) | 7. **Flag State** (Definitions)  
Republic of South Africa |
| Name: | Name: |
| Address: | Address: |
| Country: | Country: |
| Phone/Fax: | Phone/Fax: |
| E-mail: | E-mail: |
| Additional names, addresses and contact numbers: | Additional names, addresses and contact numbers: |
| Name: | Name: |
| Address: | Address: |
| Country: South Africa | Country: |
| Phone/Fax: | Phone/Fax: |
| E-mail: | E-mail: |
| 6. **Builder’s Hull Number** (Definitions, Cl. 2(a)) | 8. **Classification Society/Class Notation** (Definitions, Cl. 3)  
TO BE AN IACS CLASSIFICATION SOCIETY APPROVED BY SAMSA |
|   |   |
| 9. **Contract Price and Currency** (Definitions, Cl. 7)  
(a) Price ZAR ____________________ inclusive of Value Added Tax  
(b) Currency South African Rand |
|   |   |
| 10. **Contractual Date of Delivery** (Definitions, Cl. 14(c)(iii)(1)) | 11. **Payment Amounts and Time Due** (Definitions, Cl. 17, Cl. 15, Cl. 39(c))  
1st Installment (see Cl. 15(a)(ii)) 15% of the Contract Price within 10 Banking Days of signature of this Contract by both parties or 5 Banking Days after both the Refund Guarantee and the Builder’s Performance Guarantee have been provided in accordance with Clause 14(b), whichever date is the later  
2nd Installment and time due 10% upon commencement of steel/aluminium cutting  
3rd Installment and time due 10% upon completion of laying both of the keels  
4th Installment and time due 20% upon completion of Hulls, decks, bulkheads and superstructure plating  
5th Installment and time due 25% upon completion of fitment of Main Engines and Gearboxes |
<p>| | |
|   |   |
| 12. <strong>Builder’s Bank Account Details</strong> (Cl. 15(a)) |   |
| Name: |   |
| Address: |   |
| Country: South Africa |   |
| Phone/Fax: |   |
| E-mail: |   |
| Swift address |   |
| Sort code: |   |
| Account number: |   |
| Account name: |   |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>Speed Deficiency (Cl. 8, Cl. 39(a)(vi))</td>
</tr>
<tr>
<td>(i)</td>
<td>Contract Price reduction amount:</td>
</tr>
<tr>
<td>If speed of 21.7 knots, then liquidated damages of 0.2% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 21.6 knots, then liquidated damages of 0.4% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 21.5 knots, then liquidated damages of 0.7% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 21.4 knots, then liquidated damages of 1.0% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 21.3 knots, then liquidated damages of 1.4% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 21.2 knots, then liquidated damages of 1.8% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 21.1 knots, then liquidated damages of 2.4% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 21.0 knots, then liquidated damages of 3.0% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.9 knots, then liquidated damages of 3.6% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.8 knots, then liquidated damages of 4.2% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.7 knots, then liquidated damages of 4.9% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.6 knots, then liquidated damages of 5.6% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.5 knots, then liquidated damages of 6.3% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.4 knots, then liquidated damages of 7.1% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.3 knots, then liquidated damages of 7.9% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.2 knots, then liquidated damages of 8.9% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.1 knots, then liquidated damages of 10.0% of Contract Price</td>
<td></td>
</tr>
<tr>
<td>If speed of 20.0 knots or less, then see clause 8(c)</td>
<td></td>
</tr>
<tr>
<td>(ii)</td>
<td>Maximum amount: (state monetary limit): 10% of the Contract Price</td>
</tr>
<tr>
<td>14.</td>
<td>Excessive Fuel Consumption (Cl. 8, Cl. 39(a)(v))</td>
</tr>
<tr>
<td>(i)</td>
<td>Contract Price reduction amount: 0.25% of the Contract Price for every whole percentage in excess of 2%</td>
</tr>
<tr>
<td>(ii)</td>
<td>Maximum amount: (state monetary limit): 5% of the Contract Price</td>
</tr>
<tr>
<td>15.</td>
<td>Deadweight Deficiency (Cl. 10, Cl. 39(a)(vii))</td>
</tr>
<tr>
<td>(i)</td>
<td>Deadweight tolerance: Not applicable</td>
</tr>
<tr>
<td>(ii)</td>
<td>Contract Price reduction amount: Not applicable</td>
</tr>
<tr>
<td>(iii)</td>
<td>Maximum amount: (state monetary limit): Not applicable</td>
</tr>
<tr>
<td>16.</td>
<td>Cubic Deficiency (Cl. 11, Cl. 39(a)(vii))</td>
</tr>
<tr>
<td>(i)</td>
<td>Cubic capacity tolerance: Not applicable</td>
</tr>
<tr>
<td>(ii)</td>
<td>Contract Price reduction amount: Not applicable</td>
</tr>
<tr>
<td>(iii)</td>
<td>Maximum amount: (state monetary limit): Not applicable</td>
</tr>
<tr>
<td>17.</td>
<td>Other Deficiencies (Optional)(Cl. 12, Cl. 39(a)(viii))</td>
</tr>
<tr>
<td>(i)</td>
<td>Air Conditioning: 0.1% of the Contract Price for every 1 (one) Degree Celsius over the specified limit up to 25 Degrees Celsius, at which temperature, the system is to be replaced with one which meets the Specification requirement of 20 degrees Celsius.</td>
</tr>
<tr>
<td>18.</td>
<td>Late Delivery Compensation (Cl. 13)</td>
</tr>
<tr>
<td>(i)</td>
<td>Amount per day: R30,000.00</td>
</tr>
<tr>
<td>(ii)</td>
<td>Maximum amount: (state monetary limit): 10% of the Contract Price</td>
</tr>
<tr>
<td>19.</td>
<td>Guarantees (Cl. 14(a) and (b))</td>
</tr>
<tr>
<td>(a)</td>
<td>Buyer’s guarantees</td>
</tr>
<tr>
<td>(i)</td>
<td>Number of days after signing Contract: 10 Banking Days</td>
</tr>
<tr>
<td>(ii)</td>
<td>Buyer’s Performance Guarantee: 10 Banking Days</td>
</tr>
<tr>
<td>(b)</td>
<td>Builder’s guarantees</td>
</tr>
<tr>
<td>(i)</td>
<td>Number of days after signing Contract: 10 Banking Days</td>
</tr>
<tr>
<td>20.</td>
<td>Guarantee Period (state number of months. If left blank 12 months apply) (Cl. 39(a)(ii))</td>
</tr>
<tr>
<td>12 months</td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>Additional Guarantee Period (state number of months) (Cl. 39(a)(ii))</td>
</tr>
<tr>
<td>6 months</td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>Suspension and Termination (Cl. 39)</td>
</tr>
<tr>
<td>(i)</td>
<td>Running period (state number of days): 30 (thirty)</td>
</tr>
<tr>
<td>(ii)</td>
<td>Notice period (state number of days): 15 (fifteen)</td>
</tr>
<tr>
<td>23.</td>
<td>Governing law and Dispute Resolution (Cl. 41 and Cl. 42)</td>
</tr>
<tr>
<td>(a)</td>
<td>Governing law</td>
</tr>
<tr>
<td>(b)</td>
<td>Place of dispute resolution South African Law, Cape Town</td>
</tr>
<tr>
<td>24.</td>
<td>Guarantee Engineer (state monthly lump sum) (Cl. 36(b))</td>
</tr>
<tr>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>Effective Date of Contract (state conditions to be fulfilled) (Cl. 44(a))</td>
</tr>
<tr>
<td>The Effective Date of Contract shall be the Date stipulated in Box 1 or the date on which the last of the suspensive conditions set out in clause 62.1 is fulfilled, whichever is the later</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>State number of days within which conditions have to be satisfied (Cl. 44(b))</td>
</tr>
<tr>
<td>30 (thirty) days</td>
<td></td>
</tr>
<tr>
<td>27.</td>
<td>Optional additional vessels (state number) (Cl. 46)</td>
</tr>
<tr>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>Optional additional vessels contract price and delivery dates (Cl. 46)</td>
</tr>
<tr>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>Declaration of Options (state number of months after Effective date) (Cl. 46)</td>
</tr>
<tr>
<td>Not applicable</td>
<td></td>
</tr>
<tr>
<td>30.</td>
<td>Interest (state rate of interest) (Cl. 16, Cl. 38(b)(ii)(x)(ii), Cl. 39(e) and 39(f) (iv))</td>
</tr>
<tr>
<td>Prime rate of interest plus 2% (two percent)</td>
<td></td>
</tr>
</tbody>
</table>
31. **Buyer’s Guarantor** (state name of bank or party as appropriate, full style address and contact details) (Cl. 14(a))

   Name: Standard Bank of South Africa Limited
   Address: 
   Country: South Africa
   Phone/Fax: 
   E-mail: 

32. **Builder’s Guarantor** (state name of bank or party as appropriate, full style address and contact details) (Cl. 14(b), Cl. 27(d)(v)(3))

   Name: [A first class South African bank acceptable to the Buyer]
   Address: 
   Country: South Africa
   Phone/Fax: 
   E-mail: 

33. **Additional Annexes**
   Annex D

34. **Numbers of Additional Clauses**
   49 to 62

This Contract consists of PART I including additional clauses, if any agreed and stated in Box 34, and PART II as well as any Annexes agreed and attached hereto and shall be performed subject to the conditions contained herein. In the event of a conflict of conditions the provisions of PART I shall prevail over those of PART II to the extent of such conflict, but no further.

The Specification, Maker’s List, Plans, and/or Drawings hereafter approved by the Buyer shall form part of this Contract, but in the event of conflict between the provisions of this Contract and the Specification, Maker’s List, Plans and/or drawings, the provisions of this Contract shall prevail. In the event of inconsistency between the Specification and Maker’s List, on the one hand and the Plans and/or Drawings on the other, the Specifications/Maker’s List shall prevail. In the case of inconsistency between any of the Plans and/or Drawings, the later in date shall prevail.

**Signature (Builder)**

**Signature (Buyer)**
Robben Island Museum
# NEWBUILDCON - Standard Newbuilding Contract - PART II

## LIST OF CLAUSES

### DEFINITIONS

**SECTION 1 – VESSEL**
- 1. Builder’s and Buyer’s obligations
- 2. Description
- 3. Classification, Rules and Regulations
- 4. IMO Hazardous Materials Inventory
- 5. Protective Coatings
- 6. Source of Origin

**SECTION 2 – FINANCIAL**
- 7. Contract Price
- 8. Speed Deficiency
- 9. Excessive Fuel Consumption
- 10. Deadweight Deficiency
- 11. Cubic Capacity Deficiency
- 12. Other Deficiencies (optional Clause)
- 13. Late Delivery for non-permissible delays
- 14. Guarantees
  - (a) Buyer’s Instalment/Performance Guarantee
  - (b) Builder’s Refund Guarantee
  - (c) Guarantee Compliance and Expiry
- 15. Payments
  - (a) Instalments
  - (b) Payment for Modifications and other items
  - (c) Payment of Liquidated Damages
  - (d) Payment Procedures
- 16. Taxes, duties, stamps, dues and fees
- 17. Right to set-off
- 18. Interest

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- 19. Sub-contracting
- 20. Approvals
- 21. Buyer’s Supplies
  - (a) Buyer
  - (b) Builder
- 22. Buyer’s Representative, Assistants, Officers and Crew
- 23. Inspections, Tests and Trials
- 24. Modifications and Changes
- 25. Builder’s Modifications and Substitution of Materials
- 26. Changes in Rules and Regulations
- 27. Sea Trials
  - (a) Notice
  - (b) Weather Conditions
  - (c) Conduct of the Sea Trials
  - (d) Method of Acceptance or Rejection

### SECTION 4 – DELIVERY
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- 29. Documents on Delivery
- 30. Final Instalment
- 31. Title and Risk
- 32. Possession and Removal of the Vessel
- 33. Vessel Registration

**SECTION 5 – LEGAL**
- 34. Permissible Delays
- 35. Builder’s Guarantee
- 36. Guarantee Engineer
- 37. Responsibilities and exclusions from liabilities
  - Builder’s exclusion Clauses
    - (a) Liability for Defects discovered before or at the time of delivery.
    - (b) Liability for Defects discovered after delivery
    - (c) Liability for third party replacement or repair
    - (d) Implied terms
    - Mutual exclusion Clauses
    - (e) Liability following termination
    - Responsibility Clauses
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    - (g) Responsibility for damage to or loss of property
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  - (b) Allocation of Insurance Proceeds
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  - (a) Buyer’s Termination
  - (b) Builder’s Termination
  - (c) Suspension of Work
  - (d) Deemed Insolvency
  - (e) Effect of Buyer’s Termination
  - (f) Effect of Builder’s Termination
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- 41. Governing law
- 42. Dispute Resolution
  - (a) Classification/Regulatory Authorities
  - (b) Expert determination
  - (c) Arbitration and Mediation

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- 43. Notices
- 44. Effective date of Contract
- 45. Assignment
  - (a) Builder’s assignment
  - (b) Buyer’s assignment
- 46. Options
- 47. Entire Agreement
- 48. Third party rights

### ANNEXES

- ANNEX “A” – (GUARANTEES)
- ANNEX “B” – (SPECIFICATION)
- ANNEX “C” – (MAKER’S LIST)
DEFINITIONS

In this Contract:

“Banking Day” means a day on which banks are open in the places stated in Box 2 and Box 3, and, where a remittance is in US dollars, in New York.

“Builder” means the company or companies stated in Box 2, organised and existing under the laws of the country or countries stated in Box 2 having their principal office at the address stated in Box 2 and including their personnel. If more than one company is stated in Box 2 then they shall be jointly and severally liable.

“Buyer” means the entity company or companies stated in Box 3, organised and existing under the laws of the country or countries stated in Box 3 having their principal office at the address stated in Box 3 and including their personnel.

“Buyer’s Representative” means the named representative of the Buyer who may be present at the Shipyard throughout the construction of the Vessel.

“Buyer’s Supplies” means all of the items to be provided by the Buyer in accordance with the Specification at its own risk, cost and expense.

“Classification Society” means the classification society stated in Box 8.

“Contract Price” means the amount stated in Box 9 as may be adjusted in accordance with the terms of this Contract.

“Contract” means this BIMCO Standard Newbuilding Contract consisting of Part I including additional Clauses, if any agreed, and Part II as well as any Annexes (including the Specification and Maker’s List) and Plans and Drawings attached hereto and the General Conditions of Contract.

“Contractual Date of Delivery” means the contractual date of delivery stated in Box 10.

“Defects” means any deficiencies or defects in the design, construction, material and/or workmanship on the part of the Builder or its Sub-contractors.

“Delivery Date” means the Contractual Date of Delivery as may be adjusted in accordance with the terms of this Contract.

“Final Instalment” means the last instalment payable at delivery calculated in accordance with Clause 15 (Payments).

“Flag State” means the State of the flag which the Vessel will fly when registered, as stated in Box 7.

“General Conditions of Contract” means the government procurement general conditions of contract issued by National Treasury dated July 2010;


“Instalments” means the amounts payable in accordance with Box 11.

“In writing” means any method of legible communication.

“Maker’s List” means the list of suppliers for equipment, machinery and services approved by
the Parties and stated in Annex C.

“Parties” means the Builder and the Buyer.

“Party” means the Builder or the Buyer, as the case may be.

“Permissible Delays” means delays to the construction and/or delivery of the Vessel and which entitle the Builder to extend the Delivery Date in accordance with Clause 34 (Permissible Delays).

“Personnel” means the employees, agents, servants, suppliers and independent contractors engaged by either Party in order to perform work or duties under this Contract for which that Party is responsible.

“Plans and Drawings” means the plans and drawings attached hereto or listed and/or described in the Specification.

“Regulatory Authorities” means the regulatory authorities whose rules and regulations must be complied with in the construction and delivery of the Vessel. Such bodies shall include the Flag State together with the other bodies listed in the Specification.

“Shipyard” means the place or places stated in Box 5 where the Vessel will be assembled and/or constructed.

“Specification” means the technical details contained in Annex B.

“Standard Bid Documents” means the Standard Bid Documents issued by the Buyer as part of the Request For Proposal (“RFP”) issued by the Buyer in respect of the Vessel.

“Sub-contractor” means any person (not being a servant or employee of the Builder) or company with whom the Builder has entered into a contract for the design, construction, manufacture or supply of any item, equipment, work or service for the Vessel.

“Vessel” means the vessel described in Box 4 (including its machinery, equipment and appurtenances described in the Specification) with hull number as per Box 6, built in accordance with this Contract.

INTERPRETATION

Singular/Plural
In this Contract the singular includes the plural and vice versa as the context admits or requires.

Headings
The index and headings to the Clauses and Annexes to this Contract are for convenience only and will not affect its construction or interpretation.

Jointly and severally
All covenants, agreements, undertakings, indemnities, representations and warranties by more than one person are entered into, given or made by such persons jointly and severally.
SECTION 1 – VESSEL

1. Builder’s and Buyer’s obligations
   It is mutually agreed between the Builder and the Buyer that:

   (a) the Builder shall design, construct, test and survey, launch, equip, complete, sell and deliver the Vessel, being of a proven design, to the Buyer all in accordance with good-first class international shipbuilding and marine engineering practice; and

   (b) the Buyer shall purchase, take delivery of and pay for the Vessel.

2. Description
   (a) The Vessel shall be constructed at the Shipyard and shall have the Builder’s Hull Number stated in Box 6.

   (b) The Vessel shall have the dimensions and characteristics as stated in Box 4 and the Specification and shall comply with the requirements of the HSC Code. These shall be defined, measured and calculated in accordance with the Specification or, if omitted from the Specification, in accordance with the following:

   (i) Speed – The Vessel’s average speed on a sea trial undertaken in both directions over a measured distance of one (1) nautical mile, with clean hull, in weather with wind speed and sea state not exceeding Beaufort Wind Force Scale 3-4 and Douglas Sea State Scale 2-5 respectively on a draft as stated in Box 4D(i) shall be at least the number of knots stated in Box 4D(ii). During such a sea trial the engine’s output in kilowatts shall be as stated in Box 4D(iii) corresponding to the percentage of the engine’s maximum continuous power output stated in Box 4D(iv) at the approximate revolutions per minute stated in Box 4D(v).

   (ii) Fuel Consumption - The fuel consumption of the main engine on the test bed using fuel of the type and specification stated in Box 4C(vii) shall not exceed the number of grams per kilowatt/hour stated in Box 4C(iv) when the engine develops the number of kilowatts with an effective calorific value of the number of kilocalories per kilogram stated in Box 4C(ii) and Box 4C(vii) respectively.

   (iii) Deadweight - The Vessel’s deadweight shall be the number of metric tons stated in Box 4A(iii) on international summer freeboard, corresponding to a mean draft in saltwater (specific gravity 1.025) as stated in Box 4A(iv). The specified deadweight shall include fuel, provisions, stores, freshwater, crew and passengers in addition to spare parts not less than the requirements of the Classification Society.

   (iv) Propulsion - The Vessel’s propulsion machinery shall be of the type and with maximum continuous power in kilowatts at the number of revolutions per minute as stated in Box 4C(i), 4C(ii) and 4C(iii).

   (v) Cargo Capacity – The Vessel’s cargo capacity shall be the capacities stated in Box 4B1 and 4B2.

   (vi) Other matters – The Vessel shall meet the technical requirements stated in Box 4E.

3. Classification, Rules and Regulations
   (a) The Vessel shall be designed, constructed, surveyed, tested and delivered in...
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compliance with the applicable laws, rules, regulations and requirements of the Classification Society stated in Box 8, and the Regulatory Authorities:

(i) in force as of the date of this Contract stated in Box 1, or

(ii) if not in force as of the date of this Contract, which are ratified and promulgated on or before the date of this Contract and which will be compulsory for the Vessel on or before the delivery of the Vessel in accordance with Clause 28 (Delivery).

All such laws, rules, regulations and requirements of the Classification Society and the Regulatory Authorities shall be complied with without qualification (see Clause 26 (Changes in Rules and Regulations)).

(b) The final decisions of the Classification Society or Regulatory Authorities shall be binding on the Parties as to the Vessel’s compliance with their respective applicable laws, rules, regulations and requirements.

(c) All costs, fees and charges incidental to and in respect of compliance with the applicable laws, rules, regulations and requirements of the Classification Society or Regulatory Authorities referred to above shall be for the Builder’s cost and expense.

4. IMO Hazardous Materials Inventory
The Builder shall, in accordance with the IMO Guidelines on Ship Recycling, Resolution A.962 (23), with amendments in force as of the date of this Contract:

(a) Endeavour to take due account of the Vessel’s ultimate disposal when designing and constructing the Vessel by:

(i) using materials which can be recycled safely and in an environmentally sound manner; and

(ii) by minimising the use of materials known to be potentially hazardous to health and the environment.

(b) In consultation with equipment manufacturers provide the Buyer with a Green Passport Statement of Compliance issued by the Classification Society containing information including the Vessel’s hull number and main particulars and listing any and all materials known to be potentially hazardous utilised in the construction of the Vessel, its equipment and systems.

The list of the materials known to be potentially hazardous shall contain the location and the approximate quantity/volume of each identified material on board the Vessel.

5. Protective Coatings
The Vessel’s double-side skin spaces and dedicated seawater ballast tanks shall be coated in accordance with the Specification and in accordance with Clause 3(a) (Classification, Rules and Regulations). In any event the minimum coating standard shall be in accordance with the requirements of the IMO Performance Standard for Protective Coatings for dedicated seawater ballast tanks in all types of ships and double-side skin spaces of bulk carriers (IMO PSPC, Resolution MSC. 215(82)) and, where applicable, in accordance with the IACS Common Structural Rules for Bulk Carriers and for Oil Tankers or subsequent modifications or replacement applicable in accordance with Clause 3(a) (Classification, Rules and Regulations).

6. Source of Origin
(a) The South African local content of the Vessel, its onboard systems and fittings, as specified in Annexure A10 of the Standard Bid Documents must be complied with without compromising quality, reliability, availability, maintainability and supportability. If so requested by the Buyer, the Builder shall identify the country of origin of all the main components listed in the Maker’s List and Specification.

(b) Local Content Threshold

A Local Content spend of 60% (sixty percent) is required for the Vessel, its onboard systems and fittings, in terms of this Contract. The required 60% Local Content spend shall be calculated on that portion of the Contract Price that is not exempted by the DTI pursuant to the letter of exemption granted by DTI to the Builder for [INSERT REFERENCE] attached hereto marked Annex “D”. Such Local Content spend must be made in accordance with the determination of Local Content more particularly set out in:

(1) Department of Trade and Industry Requirements (DTI) Guideline [Annexure A10 of the Standard Bid Documents Annexure A10]

(2) SABS approved technical specification number SATS 1286:2011; and

(3) The DTI guidance on the calculation of Local Content, which is available on the website: http://www.thedti.gov.za

(c) Mandatory Local Content Annexures

The Builder shall comply with the requirements, guidelines, representations, undertakings and commitments set out in Annexures A7, A10, C, D and E of the Standard Bid Documents, which are annexed to this Contract marked “D.A7”, “D.A10”, “D.C”, “D.D” and “D.E” respectively.

The regulatory and mandatory Annexures which the Builder was required to complete and submit as part of its tender in relation to the Local Content requirements, including Annexures “D.A7”, “D.C”, “D.D” and “D.E” respectively shall be updated by the Builder to reflect the actual values for the duration of the Contract.

(d) The Buyer may conduct quarterly reviews with the Supplier(s) to monitor progress with respect to the completion of the projected milestones and compliance with the declarations, representations, undertakings and commitments set out in Annexures “D.A7”, “D.C”, “D.D” and “D.E” respectively.

(e) Challenges meeting the Local Content Threshold

(1) Should the Builder experience difficulty in meeting the stipulated minimum
threshold for Local Content due to unforeseen circumstances, the Builder is required to inform the DTI (with copy to the Buyer) of the unforeseen circumstances, and to seek guidance and directives from the DTI regarding the verification of the difficulties encountered, and to obtain directives from the DTI and the Buyer regarding the agreed steps to be taken in response to the unforeseen circumstances.

(2) All costs associated with the validation process of Local Content as required by the DTI, i.e. SABS inspections and verification of Local Content documentation during the build phase, shall be borne by the Builder.

Failure to meet such spend or to comply with the declarations, representations, undertakings and commitments set out in Annexures “D.A7”, “D.C”, “D.D” and “D.E” respectively will constitute a material breach of the Contract.
SECTION 2 – FINANCIAL

7. Contract Price

The Contract Price shall be the amount stated in Box 9(a) as may be adjusted in accordance with the terms of this Contract.

The Contract Price and any other payments to be made to the Builder pursuant to this Contract shall be paid in the currency stated in Box 9(b) and in accordance with the payment terms stated in Box 11 and Clause 15 (Payments).

8. Speed Deficiency

If the speed of the Vessel as stated in Box 4D(ii) is not achieved in the manner stated in the Specification or Clause 2(b)(i) the following shall apply:

(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 8(b).

(b) If the reduction in speed is greater than 2/10ths of a knot, the Contract Price shall be reduced by the amounts stated in Box 13(i) for each whole 1/10th of a knot reduction in speed in excess of 2/10ths of a knot as liquidated damages up to the maximum amount stated in Box 13(ii).

(c) If the reduction in speed would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 13(ii), the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(iv) (Suspension and Termination).

9. Excessive Fuel Consumption

The Main Engine Fuel consumption rate must be determined as installed on the Vessel with the Vessel speed between 22 knots and 24 knots and the Main Engine within 5 (five) percent of its optimal consumption rate (the stipulated condition). If the fuel consumption of the Vessel’s main engine on the test bed simulating the stipulated condition and using the fuel specified in Box 4C(vii) exceeds the figure stated in Box 4C(iv) the following shall apply:

(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 9(b).

(b) If the excess fuel consumption is greater than 2% (two percent) of the specified fuel consumption the Contract Price shall be reduced by the amount stated in Box 14(i) for each whole percentage in excess of 2% as liquidated damages up to a maximum amount as stated in Box 14(ii).

(c) If the excess fuel consumption would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 14(ii), the Buyer shall have the option to:

(i) accept the main engine at a reduction in the Contract Price corresponding to the maximum amount stated in Box 14(ii) or

(ii) reject the main engine and either

(1) require the Builder to rectify the deficiency and repeat the trial or replace the main engine with one that conforms to the requirements of the Contract. (The time taken to rectify the deficiency and repeat the trial or replace the main engine in accordance...
10. Deadweight Deficiency
If the actual deadweight of the Vessel determined in accordance with the Specification is less than the deadweight stated in Box 4A(iii) the following shall apply:

(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 10(b).
(b) If the reduction in deadweight is greater than the number of metric tonnes stated in Box 15(ii) then for each whole metric tonne in excess of the figure in Box 15(ii) below the deadweight stated in Box 4A(iii) the Contract Price shall be reduced by the amount stated in Box 15(ii) as liquidated damages up to a maximum amount as stated in Box 15(iii).
(c) If the reduction in deadweight would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 15(iii) the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(vi) (Suspension and Termination).

11. Cubic Capacity Deficiency
If the actual cubic capacity of the Vessel determined in accordance with the Specification is less than the cubic capacity specified in Box 4B1(i) the following shall apply:

(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 11(b).
(b) If the reduction in cubic capacity is greater than the number of cubic metres stated in Box 16(i) then for each full cubic metre in excess of the figure in Box 16(i) below the cubic capacity stated in Box 4B1(i) the Contract Price shall be reduced by the amount stated in Box 16(ii) as liquidated damages up to a maximum amount as stated in Box 16(iii).
(c) If the reduction in cubic capacity would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 16(iii) the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(vii) (Suspension and Termination).

12. Other Deficiencies (optional Clause)
NOTE: This Clause has been left blank intentionally to allow the parties to insert, where appropriate, a liquidated damages provision covering deficiencies in any special technical requirements for a particular vessel type and specified by the parties in Box 4E and Box 17. (See also Clause 39(a)(viii)).

(a) Air Conditioning: If the Temperatures as stated in Box 4E (iii) exceed the levels stated in the Specification, then the penalties stated in Box 17 (ii) shall apply.

If the temperature limit of 25.0 Degrees Celcius is exceeded, then the Builder shall replace the air conditioning system with one that is able to meet the Specification requirement of 20 Degrees Celcius, failing which the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(viii).
13. Late Delivery for non-permissible delays

If delivery takes place more than 2130 days after the Delivery Date then for each day thereafter the Contract Price shall be reduced by the amount stated in Box 18 per day as liquidated damages up to a maximum delay of 180 days (comprising a 2130 day grace period plus 150–159 days).

If the delay exceeds 180 days the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(iii) (Suspension and Termination).

14. Guarantees

(a) Buyer’s Instalment/Performance Guarantee

To secure the Buyer’s obligation to pay the instalments of the Contract Price prior to delivery the Buyer shall, within the number of days stated in Box 19(a)(i) after the signing of this Contract, deliver to the Builder an irrevocable and unconditional guarantee issued by the bank or party stated in Box 31 substantially in the form and substance set out in Annexes A(i) (Instalments) or A(ii) (Performance) as stated in Box 19(a)(ii), failing which the Builder shall have the option to terminate this Contract in accordance with Clause 39(b)(iv) (Suspension and Termination).

The obligation of the Buyer to deliver to the Builder the guarantee contemplated in this clause 14(a) read with Box 19 and Box 31 is wholly subject to and conditional upon the Buyer being successful in obtaining (i) any necessary Ministerial approval and (ii) other consents required by law (collectively “the Guarantee Approvals”). In the event that the Buyer is unable to obtain the Guarantee Approvals it shall be under no obligation to deliver a guarantee, and lines 228 to 235 of this clause, the Boxes referred to therein, and any other reference in this Contract to the Buyer’s Instalment/Performance Guarantee shall be read as pro non scripto.

(b) Builder’s Refund Guarantee

To secure the Builder’s obligation to refund the Buyer’s pre-delivery instalments pursuant to this Contract the Builder shall, within the number of days stated in Box 19(b)(i) after the signing of this Contract and before the date for payment of the first instalment in accordance with Clause 15(a)(i) (Payments – Instalments), provide the Buyer with a Refund Guarantee issued by the bank or party named in Box 32 substantially in the form and substance set out in ANNEX A(iii)(Refund Guarantee), failing which the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(ix) (Suspension and Termination).

The Builder shall also provide the Buyer with a performance guarantee (“Builder’s Performance Guarantee”) from the Builder’s parent company, on terms acceptable to the Buyer, to cover the Builder’s obligation to make good Guarantee Defects discovered after delivery of the Vessel and during the period of the builder’s guarantee provided in terms of Clause 35. The Builder’s Performance Guarantee shall be provided by the date stipulated in Box 19(b)(i).

(c) Guarantee Compliance and Expiry

The Parties shall ensure that any guarantee issued on their behalf shall:

(i) comply with the laws, regulations, constitution and procedures of the guarantor and its country of issue, including but not limited to, its registration with any necessary authorities; and

(ii) on expiry be returned to the guarantor; and
15. Payments

(a) Instalments

The Contract Price shall be paid by the Buyer to the Builder by Instalments, when due and payable in accordance with Box 11 and this Clause, the pre-delivery Instalments being paid as advances and not deposits as follows:

(i) Unless otherwise stated in Box 11 the first Instalment shall be due and payable by the Buyer five (5) Banking Days after the Refund Guarantee has been provided in accordance with Clause 14(b) (Builder’s Refund Guarantee).

(ii) The Builder shall give the Buyer invoices for each Instalment under this Contract. With the exception of the first and Final Instalment the Builder shall give the Buyer an invoice to cover the sum due to it not less than ten (10) Banking Days prior to the due date of each Instalment.

(iii) All Instalments other than the first and Final Instalment shall be payable within 30 (thirty) days of presentation of a valid tax invoice issued by the Builder, provided the Builder has furnished the Buyer with a valid tax clearance certificate, and provided the invoice is accompanied by a proper statement. No payment will be made without receipt of a proper statement four (4) Banking Days of the due date thereof.

(iv) The Final Instalment shall be due and payable upon delivery of the Vessel in accordance with Box 11 and Clause 28 (Delivery).

(b) Payment for Modifications and other items

(i) The sums due or refundable as a result of modifications and changes, and changes in Rules and Regulations under Clause 24 (Modifications and Changes) and Clause 26 (Changes in Rules and Regulations) shall be added to or deducted from the Final Instalment save to the extent agreed otherwise as contemplated in clause 24(d).

(ii) Sums due for other items shall be paid within 30 (thirty) days of presentation of a valid tax invoice issued by the Builder, provided the Builder has furnished the Buyer with a valid tax clearance certificate, fifteen (15) Banking Days after receipt by the Buyer of the Builder’s invoice.

(c) Payment of Liquidated Damages

Any amounts for liquidated damages under Clause 8 (Speed Deficiency), Clause 9 (Excessive Fuel Consumption), Clause 10 (Deadweight Deficiency), Clause 11 (Cubic Capacity Deficiency), Clause 12 (Other Deficiencies) and Clause 13 (Late Delivery for non-permissible delays) shall be calculated and determined before delivery and may be deducted from the Final Instalment.
(d) Payment Procedures

(i) If the date on which any payment is due in accordance with the provisions of this Contract does not fall on a Banking Day, payment shall be made on the next Banking Day.

(ii) Payment of sums due in accordance with the provisions of this Contract shall be made, in the case of payments to the Builder, by electronic transfer to the Builder’s account stipulated in Box 12 and, in the case of payments to the Buyer by electronic transfer to such bank as the Buyer by notice to the Builder nominates to receive payments on its behalf.

(iii) The cost of remitting payments shall be for the account of the payer.

(iv) Payments by either Party to the other under this Contract, and their receipt, shall not be deemed a waiver of any right or claim either Party may have against the other.

(v) In the event of late payment of Instalments by the Buyer, the Builder shall have the right to suspend work under this Contract in accordance with Clause 39(c) (Suspension of Work).

(e) All payments shall be into a South African bank account nominated by the Party to whom the payment is due in writing from time to time, which bank account details may be amended by the Party concerned on 30 (thirty) days’ notice in writing to the other Party from time to time.

16. Taxes, duties, stamps, dues and fees

(a) The Builder shall bear and pay all taxes, duties, stamps, dues and fees imposed in the place stated in Box 2 in connection with the execution and/or performance of this Contract, excluding any taxes, duties, stamps, dues and fees imposed in the place stated in Box 2 upon the Buyer’s Supplies which shall be for the Buyer’s cost and expense.

(b) The Buyer shall bear and pay all taxes, duties, stamps, dues and fees imposed outside the place stated in Box 2 in connection with the execution and/or performance of this Contract, except for taxes, duties, stamps, dues and fees imposed upon those items and services procured by the Builder for construction of the Vessel.

(c) If either Party pays any taxes, duties, stamps, dues and fees for which the other Party is responsible under this Clause, the other Party shall reimburse the paying Party within thirty fifteen (1530) Banking Days of receipt of notice to that effect, together with evidence of the amount paid, presentation of a valid tax invoice issued by the Builder, and provided the Builder has furnished the Buyer with a valid tax clearance certificate.

17. Right to set-off

The Buyer shall not have the right to retain or set-off any amount against any payment due to the Builder under this Contract except in relation to the Final Instalment as specifically provided in this Contract (see Clause 15 (Payments) and Clause 30 (Final Instalment)).

18. Interest

If either Party fails to pay any sum due in accordance with the terms of this Contract, the other Party shall have the right to charge interest from the due date at the rate stated in Box 30 on such outstanding sums (see also Clause 39 (Suspension and Termination)).
SECTION 3 – PRODUCTION

19. Sub-contracting
   The Builder shall employ the Sub-contractors as set out in the Specification or Maker’s list. Except for minor work, the Builder shall not employ other sub-contractors without the Buyer’s approval, which shall not be unreasonably delayed or withheld. If the Buyer does not raise a query in writing regarding the employment of a sub-contractor within three (3) days after receipt of a written request for approval from the Builder, then the Buyer shall be deemed to have approved the sub-contractor concerned.

   Notwithstanding any sub-contracting, the Builder shall remain fully responsible for the due performance of such work as if undertaken by the Builder at the Shipyard.

   In the event of the Builder utilising the services of a Sub-contractor or an agent:
   
   (a) the Builder shall be solely responsible for the due fulfilment of its obligations in terms of this Contract by the Sub-contractor or agent, as the case may be;
   
   (b) the Builder shall procure that the Sub-contractor or agent agrees to, and renders its services in accordance with the terms of this Contract;
   
   (c) any failure by a Sub-contractor or agent to comply with the terms of this Contract as applicable to the Builder shall be deemed to be a material breach of this Contract by the Builder;
   
   (d) the Builder shall be responsible for the acts and omissions of the Sub-contractor or agent as if they were employees and/or personnel of the Builder; and
   
   (e) the Builder may not subcontract more than 25% of the value of the Contract to any other party that does not have an equal or better BBBEE status level that the Builder at the date of the bid submission by the Builder that resulted in the conclusion of this Contract, unless an Exempted Micro Enterprise in terms of a code of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003 is appointed as the subcontractor.

20. Approvals
   The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.

   (a) As soon as possible and not later than thirty (30) sixty (60) running days after the effective date of the Contract (see Clause 44 (Effective date of Contract)) the Builder shall provide the Buyer with proposed detailed building and testing schedules. The Buyer shall comment on the schedules as soon as possible and at the latest within fourteen (14) running days after receipt of the proposals. The Builder shall thereafter prepare and issue in writing amended building and testing schedules incorporating the Buyer’s comments within fourteen (14) running days thereafter.

   (b) The Builder shall despatch to the Buyer a total of three (3) full sets of the Plans and Drawings for the Buyer’s approval and shall also submit such other technical information as the Buyer may reasonably require, not less than fourteen (14) thirty (30) running days before any construction works commence. The Builder shall give notice to the Buyer advising the date of despatch of the Plans and Drawings and the Buyer shall give notice to the Builder confirming receipt thereof. The Buyer shall within fourteen (14) running days of receipt
send to the Builder one (1) set of the Plans and Drawings with the Buyer's approval or approval with comments, amendments or reservations.

In the event that the Buyer needs additional time to consider the Plans and Drawings submitted pursuant to this Clause, it shall request the same in writing of the Builder whose agreement shall not be unreasonably withheld. In the event that the Buyer's comments, amendments or reservations are unclear, unspecified or illegible, the Builder may give notice requesting clarification. If the Buyer fails to respond to the request to provide clarification within five (5) running days of receipt of the Builder's notice, the Builder shall determine whether and to what extent it can adopt the comments, amendments or reservations.

If requested by the Buyer in writing, the Plans and Drawings shall also be sent in an agreed electronic format.

(c) The Builder shall take due note of the Buyer's comments, amendments or reservations (if any) on Plans and Drawings submitted pursuant to this Clause and, if such comments, amendments or reservations are not of such a nature or extent as to constitute a modification or change of the Specification within the meaning of Clause 24 (Modifications and Changes), then the Builder shall commence or continue construction of the Vessel in accordance with the corrected or amended Plans and Drawings.

(d) If the Builder considers the comments, amendments or reservations to the Plans and Drawings are of a nature or extent that constitutes a modification or change under Clause 24 (Modifications and Changes), the Builder shall notify the Buyer accordingly and proceed in accordance with Clause 24 (Modifications and Changes). If the Buyer disagrees the matter shall be resolved in accordance with Clause 24(e).

(e) In the event that the Buyer fails to return any Plans and Drawings to the Builder with approval or approval with comments, amendments or reservations, if any, within the time limit stated above, such Plans and Drawings shall be deemed to have been approved by the Buyer.

(f) The Buyer's approval or deemed approval of any Plans and Drawings shall not affect the obligations of the Builder to design, construct and deliver, or the obligations of the Buyer to take delivery of, and pay for, the Vessel in accordance with the other provisions of this Contract; nor shall it diminish the Builder's responsibility in respect of its obligations under this Contract nor shall it constitute any acceptance by the Buyer of any responsibility for any defect in the Vessel.

(g) The Builder shall give the Buyer, as soon as practicable, copies of all relevant correspondence relating to the Vessel to and from the Classification Society and the Regulatory Authorities, together with all plans approved by the Classification Society.

21. Buyer's Supplies

(a) Buyer

(i) The Buyer shall, at its own risk, cost and expense, supply and deliver to the Builder all of the Buyer's Supplies. Such items shall be delivered at a warehouse or other storage facility at the Shipyard or as otherwise directed by the Builder in a proper condition ready for installation by the Builder or Sub-contractor in or on the Vessel (hereinafter “Installation”), in accordance with the building and testing schedules in Clause 20(a) (Approvals) or as may reasonably be required by the Builder.

(ii) To assist Installation, the Buyer shall provide the Builder with the necessary documentation including specifications, plans, drawings, instruction books, manuals, test reports and certificates required to comply with all applicable rules and regulations.
If so requested by the Builder, the Buyer shall, if reasonably possible and at no cost to the Builder, arrange for the representatives of the manufacturers of the Buyer’s Supplies to assist the Builder in installation and/or to carry out the installation of the Buyer’s Supplies by themselves or to make necessary adjustments at the Shipyard in accordance with the manufacturer’s instructions, including commissioning.

(iii) The Builder may reject any and all of the Buyer’s Supplies when and if found on reasonable grounds to be unsuitable or in improper condition for installation or not in compliance with the Classification Society or Regulatory Authorities’ requirements.

(iv) If delay in delivery of any of the Buyer’s Supplies in accordance with Sub-Clause (a) (i) exceeds thirty (30) days and will cause actual delay to the delivery of the Vessel, the Builder shall have the right to proceed with the construction of the Vessel without installation of the delayed items. The Buyer shall accept and take delivery of the Vessel so constructed.

(b) The Builder shall safely store and handle the Buyer’s Supplies after delivery thereof at a warehouse or other storage facility at the Shipyard or elsewhere as determined by the Builder and shall, at its own cost, expense and responsibility, install them in or on the Vessel in accordance with the Specification, provided that the Builder shall not be responsible for the quality, efficiency and/or performance of any of the Buyer’s Supplies.

(ii) The Buyer’s Supplies shall be at all times the property of the Buyer but shall be at the Builder’s risk from the time of their delivery to the Shipyard until the time of their redelivery to the Buyer whether or not as part of the Vessel.

22. Buyer’s Representative, Assistants, Officers and Crew

(a) The Buyer may, at its own cost and expense, have one representative present at the Shipyard throughout the construction together with a reasonable number of assistants and, as appropriate, officers and crew. The Buyer shall notify the Builder in advance in writing of:

(i) the names of the Buyer’s Representative, assistants and, as appropriate, officers and crew; and

(ii) the scope of the Buyer’s Representative’s authority which, in particular, shall include the extent to which the Buyer’s Representative has authority to approve plans, drawings and calculations, agree modifications and invoices and attendance at and approval of tests, trials and inspections relating to the Vessel at the Shipyard and/or premises of Sub-contractors; and

(iii) any other information reasonably required by the Builder to facilitate access to the Shipyard and/or premises of Sub-contractors.

(b) The Builder shall, at its own cost and expense, provide the Buyer’s Representative and assistants with reasonable office accommodation and facilities (including communication equipment, such as telephone, fax and appropriate internet access, and printers or a connection to the Builder’s printers) as the Buyer may reasonably require. The Buyer shall bear the costs of all communication expenses arising from the use by the Buyer’s Representative and assistants of the communications equipment provided by the Builder. Such expenses shall be payable by the Buyer on receipt of an invoice from the Builder in accordance with Clause 15(b) (Payments - Payment for Modifications and other
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items).

(c) The Builder shall have the right to request the Buyer to replace the Buyer’s
Representative or any assistants but only if the Builder shows that they are carrying
out their duties in an unreasonable manner detrimental to the proper progress of the
construction of the Vessel, in which case the Buyer shall make proper replacement as
soon as possible.

(d) The Buyer’s Representative shall have the right to communicate directly with the
Classification Society, provided such communication does not unreasonably interfere
with the Builder’s communication with the Classification Society.

(e) The Builder shall render reasonable assistance to the Buyer in helping to provide
suitable accommodation, obtain necessary visas, residence and work permits and any
other administrative assistance as the case may be for the Buyer’s Representative,
assistants and, as appropriate, officers and crew.

23. Inspections, Tests and Trials

(a) To enable the Buyer’s Representative and assistants to carry out their duties and
inspect the work being done, the Buyer’s Representative and/or assistants shall have
the right to inspect the Vessel throughout the period of the construction of the Vessel and
until its delivery and acceptance.

(b) The Buyer’s Representative and/or assistants shall have the right to attend all tests,
trials and inspections, including those supervised by the Classification Society and Regulatory
Authorities, on any parts of the Vessel whether or not installed. The Builder shall give the
Buyer reasonable notice in advance of all such tests, trials and inspections to enable the
Buyer’s Representative and/or assistants to attend. If the Buyer’s Representative and/or
assistants becomes aware of non-conformity of any aspect of the design, construction, material
or workmanship arising out of such tests, trials and inspections he/they shall notify the Builder
as soon as possible.

(c) For the purposes of attending such inspections, tests and trials the Builder shall, at
any time during working hours or at any other time when work is being performed, provide
the Buyer’s Representative and/or assistants with unimpeded access to the Shipyard,
Vessel, workshops, and anywhere else where work on or storage of items connected with
the construction of the Vessel is being performed. The Builder shall use its best efforts
to-must arrange similar access for inspection purposes to Sub-contractor’s premises during
working hours or at any time when work is being performed.

(d) Neither the Buyer’s Representative’s and/or assistants’ inspection and/or attendance
at any inspection, test or trial, nor the Buyer’s Representative’s and/or assistants’ failure to
notify the Builder of any non-conformity shall relieve the Builder from its obligations under
this Contract or be deemed to be or construed as a waiver of any objection to, or any
acceptance of, faulty design, construction, material and/or workmanship, or any admission
that any materials or workmanship are of the standard required for due performance of
this Contract.

24. Modifications and Changes

(a) The Buyer shall have the right at any time to request reasonable modifications or
changes in the Specification and/or Plans and Drawings. The Buyer shall request such
modifications and/or changes in writing, giving sufficient particulars, documentation and
details fully to describe the modifications and/or changes requested.
(b) The Builder shall, as soon as possible after receipt of the written request for modifications or changes, give the Buyer a written proposal of the consequences of implementing such modifications and/or changes. These consequences may include changes in the Contract Price, Delivery Date, capacity, draft, speed, fuel consumption, or any other provisions of this Contract. If in the Builder’s reasonable judgment, such modifications and/or changes will adversely affect the Builder’s planning or programme in relation to the Builder’s other commitments, the Builder shall notify the Buyer that it declines to give such a proposal for the requested modifications and/or changes or part thereof.

(c) The Builder shall use reasonable efforts to minimise the extra costs, delay or other negative impact on the Vessel’s capacity, performance or other factors caused by the Buyer’s request. The Builder’s proposal shall be reasonable for such work.

(d) On the basis of the Builder’s proposal the Buyer may elect in writing to agree to the necessary amendments to this Contract, in which case the Builder shall build the Vessel in accordance with this Contract so amended.

(e) If the Buyer does not accept the Builder’s notice as provided in Clause 20(d) (Approvals) or if in the Buyer’s opinion the Builder’s proposal for modifications and/or changes under this Clause is unreasonable, the Buyer may, by giving notice to the Builder, order the Builder to proceed with the requested modifications and/or changes but the consequences of implementing such modifications and/or changes shall be decided in accordance with Clause 42 (Dispute Resolution).

(f) If the Buyer elects not to continue with the request for modifications and/or changes, the Buyer shall notify the Builder accordingly.

(g) If the Buyer does not respond within seven (7) running days after receipt of the Builder’s notice in Sub-Clause (b), the Buyer shall be deemed to have withdrawn the request for modifications and/or changes.

25. Builder’s Modifications and Substitution of Materials

The Builder shall have the right to make minor modifications and/or changes to the Specification and/or plans if so required by virtue of changes to the Builder’s local conditions or facilities, the availability of materials and equipment, the introduction of improved methods or for any other reason of a similar nature provided that the Builder shall first obtain the Buyer’s written approval, which shall not be unreasonably withheld or delayed. The Buyer shall be deemed to have consented to minor modifications and/or changes requested by the Builder in terms of this clause if the Builder makes such a request by way of an email setting out the nature and extent of the requested change, addressed to the Buyer at SandresanT@robben-island.org.za and zanelm@robben-island.org.za (with copy to pg@6s.co.za and jl@6s.co.za), and if the Buyer or its representatives do not raise any objection or further query by way of an email reply within a period of 2 business days after the date of the Builder’s email. These contact details may be amended by the Buyer on notice in writing to the Builder from time to time.

Such modifications and/or changes shall satisfy the requirements of the Classification Society and the Regulatory Authorities and shall not relieve the Builder from its obligation to otherwise deliver the Vessel in accordance with this Contract. Any savings obtained shall be credited to the Buyer and the Buyer shall not be obliged to pay any extra for, or suffer any delay in delivery or other adverse consequences of, such modifications and/
26. Changes in Rules and Regulations

If, after the date of Contract, there are any changes in applicable laws, rules, regulations or requirements (or their application) of the Classification Society or Regulatory Authorities, the following shall apply:

(a) Upon receipt of notice of such changes either Party shall promptly notify the other Party thereof.

(b) If such changes will be compulsory for the Vessel at the time of delivery, the Builder shall, unless the Buyer at its sole discretion seeks and obtains a waiver from the Classification Society or Regulatory Authorities (as appropriate), incorporate such modifications and/or changes into the construction of the Vessel. The Parties shall endeavour to agree on such adjustments to the Contract Price, Delivery Date or other Contract terms as are a direct consequence of the change in applicable laws, rules, regulations or requirements. If the Parties fail to agree on the adjustments, the Builder shall proceed with the required changes and the matter shall be decided in accordance with Clause 42 (Dispute Resolution).

(c) If such changes are not compulsory but the Buyer requires the changes to be incorporated, Clause 24 (Modifications and Changes) shall apply.

27. Sea Trials

The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.

(a) Notice
The Buyer’s Representative, together with a suitable number of assistants, officers and crew, shall have the right to be present at sea trials. The Builder shall give the Buyer at least fourteen (14) running days notice of the time and place and expected duration of sea trials and the Buyer shall promptly acknowledge receipt of such notice.

If neither the Buyer’s Representative nor any authorised assistants attend the sea trials for any reason after such notice to the Buyer, such absence shall be deemed to be a waiver by the Buyer of its right to be present. The Builder may then conduct the sea trials without the Buyer’s Representative being on board, provided that a representative of the Classification Society and Regulatory Authorities is present. In such circumstances, the results and conditions of the sea trials shall be as confirmed in writing by the Classification Society and/or Regulatory Authorities.

(b) Weather Conditions
The sea trials shall be conducted in weather conditions as described in this Contract and/or Specification. If the sea trials are interrupted or prevented by weather conditions in excess of the stated conditions, any resulting delay in delivery of the Vessel shall be deemed a Permissible Delay in accordance with Clause 34 (Permissible Delays). In such an event, the sea trials shall be discontinued or postponed until the first favourable day thereafter when weather conditions permit.

(c) Conduct of the Sea Trials
(i) The sea trials shall be conducted in the presence of representatives from the Classification Society and Regulatory Authorities and in the manner described in this Contract. The sea trials shall be of sufficient scope and duration to enable the Parties to verify and establish that the Vessel conforms in all respects with the performance requirements of this Contract. The Builder shall have the right to repeat any sea trials,
subject to appropriate notice to the Buyer.

(ii) The Builder shall provide sufficient crew necessary for the safe navigation of the Vessel.

(iii) All expenses in connection with the sea trials, including the provision of bunkers, lubricating oil, grease, fresh water and stores needed to undertake the sea trials shall be for the Builder’s cost and expense. Together with the Final Instalment, the Buyer shall reimburse the Builder at cost price for any quantities of bunkers and unbroached lubricating oil, grease, fresh water and stores remaining on board at delivery.

(d) Method of Acceptance or Rejection

(i) Upon completion of the sea trials the Builder shall give the Buyer the results of the sea trials in a readable and usable electronic format writing. If the Builder considers that the results thereof demonstrate that the Vessel conforms to the requirements of this Contract, the Builder shall give the Buyer notice of when delivery will take place. Such notice shall state where and when the Vessel will be ready for delivery, which will be at least fifteen (15) running days after the notice is given. Within five (5) running days after receipt of this notice and the trial results, the Buyer shall notify the Builder in writing of its acceptance for delivery or rejection of the Vessel.

(ii) If the results of the sea trials demonstrate that the Vessel or any part or equipment thereof does not conform to the requirements of this Contract, or if the Buyer rejects the Vessel for other reasons which the Builder accepts as valid, the Builder shall take all necessary steps to rectify such non-conformity. If necessary the Builder shall for its own cost and expense carry out a further sea trial in accordance with this Clause to ascertain that the Vessel complies with the terms of this Contract. Upon demonstration by the Builder that the deficiencies have been corrected, the procedure set out in this Sub-Clause (d) shall apply.

(iii) If the Buyer gives notice of rejection under (i) above or rejects the Vessel under (ii) above, the Buyer shall state in which respects the Vessel does not conform to the requirements of this Contract (hereinafter “Delivery Defects”).

(iv) If the Delivery Defects are of minor importance and do not affect Class or the operation of the Vessel in its intended trade but the Builder is unable to rectify the matter within a reasonable time and in any event before the accrual of the Buyer’s right to terminate in accordance with Clause 39 (Suspension and Termination), the Builder may nevertheless require the Buyer to take delivery of the Vessel, on condition that the Builder first:

(1) undertakes to remedy the Delivery Defects for its own cost and expense as soon as possible, in a manner and at a time that does not impact negatively on the scheduled operations of the Vessel; and

(2) agrees in writing to indemnify the Buyer for any loss incurred as a consequence thereof, including loss of time; and

(3) provides the Buyer with a guarantee issued by the party named in Box 32 (or if Box 32 is not filled in, a bank guarantee from a first class bank) substantially in the form and substance set out in Annex A(iv) for a sum which the Buyer reasonably requests to cover (1) and (2) above, failing agreement such sum to be resolved in accordance with Clause 42 (Dispute Resolution);
whereupon the Buyer shall accept delivery of the Vessel.

(v) If the Builder disputes the rejection of the Vessel by the Buyer, the dispute shall be resolved in accordance with Clause 42 (Dispute Resolution).
SECTION 4 – DELIVERY

28. Delivery

Subject to Clause 27(d) (Sea Trials – Method of Acceptance or Rejection) the Vessel shall be delivered to the Buyer on or after the Delivery Date at the Shipyard or at a safe place at the Robben Island Facilities in the port of Cape Town in the immediate vicinity thereof in a clean and orderly condition, ready for service, upon:

(a) exchange and acceptance by the Parties hereto of a Protocol of Delivery and Acceptance signed by each Party acknowledging delivery of the Vessel by the Builder and acceptance thereof by the Buyer; and

(b) the provision by the Builder of the other documents listed in Clause 29 (Documents on delivery); and

(c) payment by the Buyer of the Final Instalment in accordance with Clause 30 (Final Instalment).

29. Documents on Delivery

Upon exchange of the Protocols of Delivery and Acceptance the Builder shall provide at no cost to the Buyer the following additional documents:

(a) Protocol of Trials made pursuant to the Specification.

(b) Protocol of Inventory and Equipment of the Vessel, including spare parts, as detailed in the Specification.

(c) Protocol of Surplus Consumable Stores which are payable by the Buyer to the Builder.

(d) Plans and Drawings pertaining to the Vessel together with all necessary instruction manuals, as detailed in the Specification.

(e) All certificates including the documents required to be furnished on delivery pursuant to this Contract. All certificates shall be issued without qualification.

If, however, the Classification certificate and/or other required certificates are not available at the time of delivery, the Buyer shall accept interim certificates provided that the Builder, at its cost and expense, provides the Buyer with final certificates as promptly as possible.

The Builder warrants that:

(i) such interim certificates shall enable the Vessel to be registered and trade and operate without restriction; and

(ii) final certificates shall be provided as above.

If the Builder fails to perform (i) and/or (ii) above, the Builder shall compensate the Buyer for any loss incurred as a consequence thereof, including loss of time.

(f) Declaration of Warranty by the Builder that the Vessel is free and clear of any liens, claims, charges, mortgages and other encumbrances.

(g) Builder’s Certificate.
(h) Certificate of Non-Registration.

(i) Commercial invoices covering Final Instalment and modifications.

(j) Bill of Sale or other document that certifies that the title of the Vessel passes to the Buyer.

(k) IMO Hazardous Material Inventory Statement of Compliance in accordance with IMO Resolution A.962(23) (as referred to in Clause 4 (IMO Hazardous Materials Inventory)).

(l) Any other documents reasonably required by the Buyer.

The Buyer may require the Builder by giving reasonable notice, prior to delivery, to arrange for any documents listed above to be duly notarised and, if required, legalised at the Buyer’s cost and expense.

30. Final Instalment

(a) The Final Instalment shall be adjusted in accordance with this Contract and notified by the Builder to the Buyer not later than seven (7) Banking Days prior to the notified date of delivery (see Clause 27(d) (Sea Trials – Method of Acceptance or Rejection)). Not later than two (2) Banking Days prior to the notified date of delivery the amount of the Final Instalment, as adjusted, shall be deposited with the Builder's Bank as set out in Box 12, with irrevocable instructions that, subject to Sub-Clause (c) below, the amount shall be released to the Builder against presentation by the Builder of a copy of the Protocol of Delivery and Acceptance of the Vessel signed by the Builder and the Buyer. Interest, if any, accruing on such deposit shall be for the benefit of the Buyer.

(b) If the Buyer does not agree the amount of the Final Instalment as adjusted and notified by the Builder, the Buyer shall notify the Builder within five (5) running days. Thereafter the Buyer may take delivery of the Vessel on payment of the Final Instalment as adjusted (or such other amount as the Builder may agree) but without prejudice to the Buyer’s rights and remedies under this Contract and the dispute shall be resolved in accordance with Clause 42 (Dispute Resolution).

(c) If the Protocol of Delivery and Acceptance is not so presented within seven (7) days following the date for delivery of the Vessel as notified by the Builder in accordance with Clause 27(d) (Sea Trials – Method of Acceptance or Rejection), the Buyer shall have the right to withdraw the said deposit plus accrued interest. However, if and when a new date for delivery of the Vessel is notified to the Buyer by the Builder in accordance with Clause 27(d) (Sea Trials – Method of Acceptance or Rejection), the Buyer shall make a further cash deposit for the Final Instalment in accordance with the same terms and conditions as set out above.

31. Title and Risk

Title and risk of loss of or damage to the Vessel shall rest with the Builder until exchange of the Protocols of Delivery and Acceptance is effected, immediately upon which title and risk shall pass to the Buyer.

At the time of delivery the Vessel shall be free of all liens, claims, charges, mortgages and other encumbrances.

32. Possession and Removal of the Vessel

(a) The Buyer shall take physical possession of the Vessel immediately upon Delivery.
and Acceptance thereof.

(b) The Buyer shall remove the Vessel from the place of delivery within five (5) running days after Delivery and Acceptance as aforesaid. If the Buyer does not so remove the Vessel within the said period, the Buyer shall pay to the Builder reasonable mooring charges for the Vessel. The Builder shall also have the right to move the Vessel from the place of delivery to another safe place at its convenience at any time after the five (5) running days’ period has expired provided the Buyer is notified accordingly.

33. Vessel Registration
The Buyer shall register the Vessel at its own cost and expense. The Builder is to ensure that all documents and information reasonably required for registration of the Vessel, which the Builder can within its power produce or procure, are made available to enable the Vessel to be registered on the day of delivery.
34. Permissible Delays

(a) The Delivery Date shall be extended if any of the following events cause actual delay to the delivery of the Vessel:

(i) Force majeure events

(1) acts of God;
(2) any government requisition, control, intervention, requirement or interference;
(3) threat or act of war, warlike operations, terrorism or the consequences thereof;
(4) riots, civil commotions, blockades or embargoes;
(5) epidemics;
(6) earthquakes, landslides, floods, tidal waves or extraordinary weather conditions;
(7) strikes, lockouts or other industrial action, but only if of a general nature and not limited solely to the Builder and/or the Sub-contractors or their employees;
(8) fire, accident, explosion (whether in at the Shipyard or elsewhere);
(9) any interruption to the supply of public utilities to the Builder;
(10) any other cause of a similar nature to the above beyond the control of the Builder or its Sub-contractors;
(11) delays to sea trials in accordance with Clause 27(b) (Sea Trial – Weather Conditions).

(ii) Other events

(1) Late delivery of, or delivery of, any defective Buyer’s Supplies in accordance with Clause 21(a)(iv) (Buyer’s Supplies);
(2) Delays due to modifications and changes in accordance with Clause 24(b) or (e) (Modifications and Changes);
(3) Delays due to changes in rules and regulations in accordance with Clause 26 (Changes in Rules and Regulations);
(4) An actual or constructive total loss in accordance with Clause 38(b)(ii) (Insurances – Allocation of Insurance Proceeds);
(5) Suspension of work pursuant to Clause 39(c) (Suspension and Termination – Suspension of Work);

(iii) Provided that in respect of (i) and (ii) above:

(1) such events were not caused, directly or indirectly, by the error, neglect, act or omission of the Builder, its employees, agents or invitees or its Sub-contractors or their employees, agents or invitees, or by the breach of any
of the Builder’s obligations under the Contract; and

(2) were not, or could not reasonably have been, foreseen by the Builder at the date of the Contract; and

could not have been (including by reasonable anticipation) avoided or overcome by the Builder or its Sub-contractors acting reasonably and prudently; and

(3) the Builder shall have complied with Sub-Clause (b) hereunder; and

(4) the Builder shall have made all reasonable efforts to avoid and minimise the effects such events have on the delivery of the Vessel.

(b) The Builder shall notify the Buyer within ten three (103) running days of when the Builder becomes aware of the occurrence of any event of delay on account of which the Builder asserts that it may have the right to claim an extension of the Delivery Date. A failure to so notify shall bar the Builder from claiming an extension to the Delivery Date. The Builder shall also advise the Buyer in writing (A) within two (2) running days of the ending of any event notified under this Clause that the event has ended, and (B) as soon as reasonably possible after (A), the length of extension of the Delivery Date claimed by the Builder.

35. Builder’s Guarantee

(a) The Builder shall guarantee the Vessel against any Defects (see Definitions) provided such Defects are:

(i) discovered within the number of months stated in Box 20 (hereinafter “the Guarantee Period”) after delivery of the Vessel in accordance with Clause 28 (Delivery); and

(ii) notice thereof is given to the Builder as soon as reasonably possible after the discovery thereof and latest thirty (30) running days after the expiry of the Guarantee Period describing such Defects so far as reasonably practical

(35) Builder’s Guarantee

(b) The Builder shall make any necessary repairs or replacements to rectify any Guarantee Defects or damage to the Vessel caused as a direct and immediate consequence of such Guarantee Defects as soon as reasonably possible. Such repairs and replacements shall be made at the Shipyard at the Builder’s cost and expense.

(c) The Buyer shall have the right to arrange for the necessary repairs to rectify any Guarantee Defects or damage to the Vessel caused as a direct and immediate consequence of such Guarantee Defects to be made elsewhere or obtain any necessary replacement parts and materials:

(i) if it is impractical to bring the Vessel to the Shipyard; or

(ii) if the Builder cannot supply necessary replacement parts and materials without impairing or delaying the operation or working of the Vessel.

(d) In the event that the Buyer makes the necessary repairs or replacements at any other shipyard or works other than the Shipyard, the Buyer shall first, but as soon as possible, give the Builder notice of the time and place such repairs will be made. The Builder shall have the right, without prejudice, to inspect through its own representative the nature and extent of the Guarantee Defects to be replaced or repaired. The Builder shall, in such
case, promptly advise the Buyer in writing, after such examination has been completed, of its acceptance or rejection of such Guarantee Defects as ones that are covered by the guarantee.

(i) The Builder shall pay the Buyer in the currency stated in Box 9 the reasonable cost and expenses of such repairs or replacements.

(ii) Where applicable, the Buyer shall return replaced parts to the Builder at the Builder’s request and cost and expense provided the Builder makes such request at the time of the replacement. In the event that they are the subject of a dispute under Clause 42 (Dispute Resolution), the Builder shall hold the replaced parts available for inspection by the Buyer. Upon their replacement, the ownership of replaced parts shall revert to the Builder.

(e) The Builder guarantees repairs or replacements to the Vessel made under sub-Clause (b) above for an additional Guarantee Period of the number of months stated in Box 21 from the date of completion of such repairs or replacements provided such work has been performed by the Builder or its Sub-contractors. The additional Guarantee Period shall, however, not end on a date earlier than the end of the original Guarantee Period for any such item.

(f) If, as a result of the guarantee works, the Vessel has been lying idle continuously for a period in excess of five (5) thirty (30) days, the Guarantee Period shall be extended by a period of two (2) days for every one (1) day lying idle that fall within the Guarantee Period, whether or not other work was carried out during such period.

(g) Without prejudice to any other rights the Buyer may have under this Contract, following the expiry of the Guarantee Period or in the event that the Builder is in breach of its obligation to rectify Guarantee Defects in accordance with this Clause, the Builder shall at the Buyer’s request assign (to the extent to which it may validly do so) to the Buyer, or as the Buyer may direct, the right, title and interest of the Builder in and to all guarantees or warranties given by the Sub-contractors or suppliers of any of the materials or equipment used in the construction of the Vessel.

(h) Post Guarantee Period Defects

Any Defects or failures of the Vessel, or any of its components, equipment, systems or sub-systems, which become apparent after the Guarantee Period has expired shall be addressed as follows:

(i) The Buyer may approach the Builder, and request the Builder (or any of the Builder’s relevant Subcontractors or accredited service providers) to urgently investigate, search, test and conduct an analysis to identify both the precise nature and scope of the Defects or failures concerned, and to identify the cause of the Defects or failures. The Builder (or any of the Builder’s relevant Subcontractors or accredited service providers) shall furthermore:

   (1) provide direction and advice in relation to the rectification of the Defects or failures;

   (2) where applicable, review and amend the Maintenance Schedule / Plan and/or Technical Manuals to ensure that the risk of re-occurrence of such Defects or is nullified;
(3) if required by the Buyer, prepare a rectification plan inclusive of any necessary Engineering Changes; and

(4) provide a market related quote for repairing the Defects or failures.

(ii) If the rectification plan and/or Engineering Changes, inclusive of the Builder or any of the Builders relevant Subcontractors or accredited service providers quote, as requested by the Buyer are accepted, the Builder or the relevant Subcontractors or accredited service providers shall commence with the rectification works at a mutually agreed time and place.

(iii) If, after receiving a rectification plan and/or Engineering Changes and a quotation from the the Builder, or any of the Builder’s relevant Subcontractors or accredited service providers, the Buyer elects to use a third party to repair the Defects or failures the Buyer shall keep all documentation and input received from the Builder or any of the Builder’s relevant Subcontractors or accredited service providers confidential and shall not disclose same to any third party contractor without prior written consent.

36. Guarantee Engineer

(a) The Builder shall The Buyer shall have the right to require the Builder to, or the Builder may, appoint a Guarantee Engineer to attend onboard the Vessel, as required by the Specification, for a period of 14 days after the delivery of the Vessel with the objective to assist in the daily operation and maintenance of the Vessel. During this period, start-up, operation and maintenance procedures shall be worked through with the crew. All costs incurred are to be borne by the Builder, for such portion of the Guarantee Period as the Buyer may reasonably require. The Buyer and its employees shall provide the Guarantee Engineer with full co-operation in carrying out his duties. The Guarantee Engineer shall act as the Builder’s representative on board and shall give the Buyer full co-operation to enable the Buyer to obtain the most efficient use of the Vessel’s machinery and equipment.

(b) The Buyer shall provide the Guarantee Engineer with accommodation and provisions to a standard comparable to the Vessel’s Chief Engineer, at no cost to the Builder. The Buyer shall pay the Builder the monthly lump sum stated in Box 24, or pro rata thereof for part of a month, as compensation for part of the cost and charges to be borne by the Builder in connection with the Guarantee Engineer. The Buyer shall also arrange and pay for the transportation of the Guarantee Engineer between the Vessel and his home country.

(c) The Guarantee Engineer shall, at all times and in all respects, be deemed to be the employee of the Builder.

(d) If the Buyer decides not to exercise its right to require the Builder to provide a Guarantee Engineer on board the Vessel, this shall not prejudice the Buyer’s rights under the provisions of Clause 35 (Builder’s Guarantee).

37. Responsibilities and exclusions from liabilities

Builder’s exclusion Clauses

(a) Liability for Defects discovered before or at the time of delivery

The Buyer’s remedy for delay in delivery of the Vessel, or for Defects discovered before or at the time of such delivery, are set out in Clauses 8 to 13 inclusive and Clause 27(d)
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(Sea Trials – Method of Acceptance or Rejection).

(b) Liability for Defects discovered after delivery
Except to the extent expressly provided in Clause 35 (Builder’s Guarantee), the Builder shall have no liability in contract, tort (including negligence), breach of statutory duty or otherwise for:

(i) any Defect discovered after delivery of the Vessel or

(ii) any loss, damage or expenses caused as a consequence of such Defect (which shall include, but not be limited to, loss of time, loss of profit or earnings or demurrage directly or indirectly incurred by the Buyer).

(c) Liability for third party replacement or repair
The Builder shall not be responsible for any Defects in any part of the Vessel which may, subsequent to delivery of the Vessel, have been replaced or in any way repaired by any contractor, other than the Builder or its Sub-contractors, or for any such Defects which have been caused in whole or part by omission or improper use or maintenance of the Vessel on the part of the Buyer or by ordinary wear and tear.

(d) Implied terms
The guarantee contained in Clause 35 (Builder’s Guarantee) replaces and excludes any other liability, guarantee, warranty and/or condition and/or inominate term imposed or implied by the law, customary, statutory or otherwise, by reason of the construction and sale of the Vessel by the Builder for and to the Buyer.

Mutual exclusion Clauses
(e) Liability following termination
In the event of termination in accordance with the provisions of Clause 39 (Suspension and Termination), neither Party shall have any liability to the other whatsoever or howsoever arising, except as expressly provided in that Clause.

In the event, however, that a Party fails to perform the Contract, or unequivocally indicates its intention not to perform it, in a way which thereby permits the other Party to treat the Contract as at an end other than under the terms of the Contract, any such claim that the other party may have shall not be limited or excluded by the terms of this Contract.

Responsibility Clauses
(f) Responsibility for death and personal injury
Each Party to this Contract shall accept responsibility and liability for the death and personal injury of its Personnel, unless the death or personal injury was inflicted by the other Party or its Sub-contractors with the intent to cause such death or injury, or recklessly and with knowledge that such death or injury would probably result.

Each Party further agrees to indemnify and hold harmless the other Party, as regards both liability and legal costs, in the event of claims relating to or resulting from death or personal injury of its Personnel against the Party who is not responsible for them under this Sub-Clause 37(f).

(g) Responsibility for damage to or loss of property
Unless otherwise provided in this Contract, each Party shall accept responsibility and liability for damage to or loss of its property and the property belonging to its Personnel unless such damage or loss was caused by the other Party or its Sub-contractors with the intent to cause such damage or loss, or recklessly and with knowledge that such...
Each Party further agrees to indemnify and hold harmless the other Party, as regards both liability and legal costs, in the event of claims relating to or resulting from damage to or loss of property against the Party who is not responsible for them under this Sub-Clause 37(g).

38. Insurances

(a) Builder’s Insurances
From the time of first steel cutting or equivalent (or delivery of the Buyer’s Supplies, whichever is earlier) until the Vessel is completed, delivered to and accepted by the Buyer, the Builder shall (in the joint names (as assureds) of the Builder and the Buyer) effect and maintain at no cost to the Buyer, Builder’s Risk Insurance for the Vessel, including machinery, parts and equipment to be installed thereon, and Buyer’s Supplies. Such Builder’s Risk Insurance shall:

(i) be provided by insurers reasonably acceptable to the Buyer; and

(ii) be on terms no less wide than Institute Clauses for Builder’s Risk terms (1/6/88) including Institute War and Institute Strike Clauses; and

(iii) be in an amount not less than the aggregate of the payments made by the Buyer to the Builder plus the value of the Buyer’s Supplies at the Shipyard.

If specifically requested by the Buyer, the Builder shall increase the amount insured under the policy to cover the rebuilding costs of the Vessel or such other amount as the Buyer may request. Any additional premium charged for this shall be paid by the Buyer.

The Builder shall provide the Buyer with copies of the insurance policy as placed.

The Buyer shall notify the Builder of the value of any subsequent changes in the value of the Buyer’s Supplies for insurance purposes. Upon receipt of notice of change in value the Builder shall amend the insured value for the Buyer’s Supplies accordingly.

The Builder further warrants that it shall have comprehensive insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993, as may be amended, or in terms of any similar Workers Compensation and Unemployment Insurance enactments in the Shipyard or yards and facilities of any Subcontractors.

The Builder furthermore warrants that it shall have comprehensive Third Party Liability Insurance cover in place, on terms acceptable to the Buyer and from an underwriter acceptable to the Buyer, in an amount not less than R______________ in respect of each and every occurrence. The Builder shall procure that such Third Party Liability Insurance cover is in place no later than thirty days after the date of this Contract, and that it shall remain in effect until after the Vessel has been delivered to and accepted by the Buyer.

(b) Allocation of Insurance Proceeds

(i) In the event that the Vessel is at any time prior to or at delivery damaged by any insured cause and provided such damage does not constitute an actual or constructive total loss of the Vessel, the Builder shall make good such damage and shall apply any amounts recovered under the insurance referred to in Sub-Clause (a) to the costs of any repair or replacement, including repair or replacement of lost or damaged Buyer’s Supplies. Such damage shall be made good so as to comply with this Contract and all
(ii) Should the Vessel become an actual or constructive total loss from any insured cause:

(1) the Builder and the Buyer may agree that a new vessel is built or the Vessel reconstructed in accordance with the terms of this Contract provided agreement is reached in writing to an extension of the Delivery Date and/or any other necessary amendment to the Contract, in which case any amounts recovered under the insurance referred to in Sub-Clause (a) will be applied to the construction or reconstruction of the Vessel if appropriate; or

(2) If the Builder and Buyer are unable to agree within a reasonable time on an extension to the Delivery Date and/or any other necessary amendment to the Contract as provided for in Sub-Clause (b)(ii)(1) the Builder shall:

(i) promptly refund to the Buyer the full amount of sums paid by the Buyer to the Builder together with interest thereon at a rate per annum as stated in Box 30 from the date of payment to the date of refund; and

(ii) make payment to the Buyer of the insured value of the Buyer’s Supplies or alternatively, at the Builder’s cost, deliver the Buyer’s Supplies to the Buyer in undamaged condition.

Once all payments have been made by the Builder to the Buyer in accordance with Sub-Clause (b)(ii)(2) this Contract shall be deemed terminated and all future rights and obligations of each of the Parties to the other shall cease whereupon the guarantees provided under this Contract shall be returned.

39. Suspension and Termination

(a) Buyer’s Termination

The Buyer shall have the right to terminate this Contract forthwith upon giving notice in the event that:

(i) the guarantor providing the Refund Guarantee on behalf of the Builder in accordance with Clause 14(b) (Guarantees – Builder’s Refund Guarantee) is deemed insolvent pursuant to Sub-Clause (d) below, unless the Builder provides a replacement Refund Guarantee acceptable to the Buyer within 30 days of the Buyer’s notice requiring a replacement Refund Guarantee to be provided, during which period no further payments shall be made to the Builder by the Buyer and provided that notice of termination is given before an acceptable replacement Refund Guarantee is received by the Buyer, or

(ii) the Builder fails to perform any work relating to the construction of the Vessel for a running period of at least the number of days stated in Box 22(i), excluding Permissible Delays, provided that thereafter the Buyer gives the Builder at least the number of days’ written notice stated in Box 22(ii) of its intention to terminate this Contract under this Clause and within that period the Builder fails to remedy its breach and provided further that the notice of termination is given before the Builder has remedied its breach; or

(iii) (1) the delivery of the Vessel is delayed by more than 180 days by virtue of events that fall within Clause 34(a)(i) (Permissible Delays – Force Majeure events); or

(2) the delivery of the Vessel is delayed by more than 180 days by virtue of events
which do not fall within Clause 34(a)(i) or 34(a)(ii) (Permissible Delays); or
(3) the aggregate of delays to the delivery of the Vessel in (1) and (2) above is more
than 270 days.

The Builder may at any time after the right to terminate has occurred give notice
requesting that the Buyer either agrees to a new delivery date or terminates this
Contract. Such new delivery date shall be a reasonable estimate by the Builder of
the date when the Vessel will be ready for delivery. Within fifteen (15) days of the
Builder’s request, the Buyer shall notify the Builder of its decision. If the Buyer does
not terminate this Contract then the new delivery date shall be deemed to be the
Delivery Date provided it does not occur later than thirty (30) days prior to the expiry
of the Refund Guarantee (Clause 14(b) (Guarantees – Builder’s Refund Guarantee)).
Notwithstanding Clause 34(a)(i) (Permissible Delays – Force majeure events) and
this Clause 39(a)(iii)(1), (2) or (3) but subject to Clause 34(a)(ii) (Permissible Delays
- Other events), if the Vessel is not delivered by that date, the Buyer shall have the
right to terminate this Contract. The Builder’s right to request the Buyer to agree a
new delivery date shall operate on each and every occasion the events stated in this
Sub-Clause (a)(iii) give rise to the Buyer’s option to terminate.

(iv) The reduction in speed would entitle the Buyer to a reduction in the Contract Price
greater than the amount stated in Box 13(ii); or

(v) The Buyer rejects the main engine and terminates the Contract in accordance with
Clause 9(c)(ii)(2); or

(vi) The reduction in deadweight would entitle the Buyer to a reduction in the Contract
Price greater than the amount stated in Box 15(iii); or

(vii) The reduction in cubic capacity would entitle the Buyer to a reduction in the Contract
Price greater than the amount stated in Box 16(iii); or

(viii) The condition of the Vessel is deficient in the manner stated in Clause 12 (Other
Deficiencies) and Box 17; or

(ix) The Builder is in breach of Clause 14 (Guarantees); or

(x) The Builder, in the reasonable opinion of the Buyer, has engaged in corrupt or
fraudulent practices in competing for or in executing this contract; or

(xi) The Builder takes steps or has steps taken against it for its winding-up, business
rescue, deregistration, sequestration or liquidation (whether voluntary or otherwise)
or has entered into a compromise or any scheme of arrangement; or

(xii) The Builder commits any act of insolvency in terms of the Insolvency Act, 24 of
1936 or is, or deemed to be insolvent in terms of the Insolvency Act, 24 of 1936; or

(xiii) The Builder is unable to pay its debts in the normal and ordinary course of its
business operations or is financially distressed or becomes aware that it is in
financial distress (as that term is defined in section 128(1)(f) of the Companies Act);

(xiv) The Builder agrees or is subject to any business rescue (as that term is defined
in section 128(1)(b) of the Companies Act); or

(xv) The Builder has a writ of attachment or execution issued against it; or
(xvi) The Builder ceases to be a subsidiary company within the [INSERT]; or

(ix)(xvii) The Builder fails to contest or discharge any final judgment taken against it in any court of competent jurisdiction for a period of 10 (ten) days or longer, in circumstances where that judgment may have a material negative impact on the Builder’s ability to perform in terms of this Contract.

(b) Builder’s Termination
The Builder shall have the right to terminate this Contract forthwith upon giving notice to the Buyer in the event that:

(i) The guarantor providing the Instalment Guarantee or Performance Guarantee on behalf of the Buyer under Clause 14(a) (Buyer’s Instalment/Performance Guarantee) is deemed insolvent pursuant to Sub-Clause (d) below, unless the Buyer can provide a replacement Performance Guarantee acceptable to the Builder within 30 days and provided that notice of termination is given before an acceptable Buyer’s Instalment or Performance Guarantee is received by the Builder, or

(ii) The Buyer fails to pay any sums due under this Contract for a period of twenty-one (21) Banking Days provided that the Builder thereafter gives the Buyer at least 5 Banking Days notice of its intention to terminate under this Clause, and within that period the Buyer fails to remedy the breach and provided that notice of termination is given before the Buyer pays the outstanding sums due, or

(iii) The Buyer fails to take delivery of the Vessel tendered in accordance with this Contract, or

(iv) The Buyer is in breach of Clause 14 (Guarantees).

(c) Suspension of Work
Without prejudice to Sub-Clause (b) above the Builder shall have the right to suspend work under this Contract if the Buyer fails to pay any instalment stated in Box 11 due for a period of fifteen (15) Banking Days until payment of such outstanding sums.

(d) Deemed Insolvency
A Party or the guarantor providing the Refund Guarantee shall be deemed insolvent if proceedings are commenced against the insolvent Party or the guarantor for winding up, dissolution or reorganisation (otherwise than for the purpose of amalgamation or reconstruction), liquidation, the appointment of a receiver, trustee or similar officer, bankruptcy, suspension of payments or similar events.

A Party shall have the right to terminate this Contract forthwith upon giving notice if the other Party or the guarantor is deemed insolvent.

(e) Effect of Buyer’s Termination
If this Contract is terminated by the Buyer, the Builder shall refund all sums paid by the Buyer to the Builder under Clause 7 (Contract Price) and Clause 15 (Payments) hereof plus interest thereon at the rate stated in Box 30 per annum from the date of payment to the date of refund. The Builder shall also return the Buyer’s Supplies, or if they cannot be returned, the Builder shall pay to the Buyer an amount equal to the Buyer’s cost for such Buyer’s Supplies.

(f) Effect of Builder’s Termination
If this Contract is terminated by the Builder, the Builder shall have the right to retain the Buyer’s Supplies together with any instalments paid by the Buyer and shall have the right and power either to complete or not to complete the Vessel as it deems fit but in any event

shall sell the Vessel (either in its complete or incomplete form), including those Buyer’s Supplies which are installed or have been utilised on board the Vessel, at the best price reasonably obtainable at a public or private sale on reasonable terms and conditions.

(i) In the event of the sale of the Vessel in its complete form the proceeds of the sale received by the Builder shall be applied in the following order:

(1) to payment of all expenses incurred by the Builder in respect of the sale and otherwise incurred by the Builder as a result of the Buyer’s default;

(2) to payment of all unpaid instalments of the Contract Price including any which would have been payable after the date of termination and interest on such instalments at the rate of interest stated in Box 30 from the respective due dates thereof to the date of application.

(ii) In the event of the sale of the Vessel in its incomplete form the proceeds of sale received by the Builder shall be applied in the following order:

(1) to payment of all expenses incurred by the Builder in respect of the sale and otherwise incurred by the Builder as a result of the Buyer’s default;

(2) to payment of all unpaid instalments of the Contract Price to the extent due but not yet paid at the date of termination and interest on such instalments at the rate of interest stated in Box 30 from the respective due dates thereof to the date of application;

(3) to payment of all costs of part construction of the Vessel less any paid instalments and less any sums credited under (2) above;

(4) to payment of the Builder’s reasonable net loss of profit caused by the Buyer’s default.

(iii) In either of the above events if the proceeds of sale exceed the sums to which such proceeds are to be applied aforesaid the Builder shall promptly pay any such excess to the Buyer without interest thereon, provided that the amount of such payment to the Buyer shall in no event exceed the total amount of instalments paid by the Buyer. The Builder shall at the same time either permit the Buyer to remove the Buyer’s Supplies which are not installed or utilised onboard the Vessel (if any) from the Shipyard for the cost and expense of the Buyer, or give credit to the Buyer for the full value thereof.

(iv) If the proceeds of sale are insufficient to pay the Builder the total amounts due from the Buyer as aforesaid, the Builder may sell the Buyer’s Supplies which are not installed or utilised onboard the Vessel (if any) at a public auction or private sale on reasonable terms and conditions, applying the proceeds of such sale toward the unsatisfied amounts due from the Buyer, and giving credit to the Buyer for any excess.

(v) If the proceeds of sale are still insufficient to pay the Builder the total amounts due from the Buyer as aforesaid, the Buyer shall pay to the Builder the amount of such deficiency, plus interest at the rate stated in Box 30 to cover periods whenever payments from the Buyer became overdue.

40. Intellectual Property Rights

(a) For the purposes of this clause 40, IPRs means any and all current and future
intellectual property rights of any nature (and equivalent or similar forms of protection) recognised or arising anywhere in the world, whether registered, registerable or otherwise unregistered, including (but not limited to): all rights of copyright (and all associated moral rights); know-how, confidential information and trade secrets; invention rights, patents; designs; applications for registration of any of the foregoing and rights to apply for registrations; and rights to sue any person for any present and/or past violation, infringement or misappropriation of any of the foregoing.

(b) Each Party shall own the IPRs developed or contributed by them in connection with this Agreement.

(c) The Builder hereby grants to the Buyer a perpetual, irrevocable and royalty-free licence to use (i) the Vessel (including all components and materials forming part of the Vessel), (ii) the Specifications, Plans and Drawings, and (iii) all the IPRs subsisting in or relating to the foregoing which may be required for or incidental to the Buyer’s use of the Vessel (Buyer Licence).

(d) The Builder shall ensure that it obtains and maintains (and shall be financially and administratively responsible for obtaining and maintaining) all licences, approvals and consents from third parties required (i) for the lawful, valid, perpetual, irrevocable and effective use by the Buyer of the Vessel (and all components and materials forming part of the Vessel) and (ii) for the Builder to grant the licences and perform the obligations contemplated in this Agreement (Third Party Licences).

(e) The Builder warrants that:

i. it will not infringe or misappropriate the rights, including the IPRs, of any person or entity in the design and construction of the Vessel, the development of any Plans and Drawings, or the provision of any services contemplated in this Agreement;
ii. it is lawfully and validly entitled to grant the Buyer Licence and that it has (or will procure and maintain) all Third Party Licences; and
iii. the Buyer’s use, enjoyment and exploitation of the Vessel (and all materials and components forming part of the Vessel) will not infringe the rights, including the IPRs, of any person.

(f) The Builder hereby indemnifies and holds harmless the Buyer against any and all claims, losses, damages, expenses, penalties and fines (including consequential, indirect, punitive and special damages) that may directly or indirectly arise from a breach by the Builder of any warranties and undertakings contained in this clause 40.

Copyrights, Trade Marks and Patents

(a) Where they are owned and supplied by a Party, that Party shall retain all copyright, trade mark, patent or similar rights (hereinafter called “Intellectual Property Rights”) with respect to the Specification, Plans and Drawings, technical descriptions, calculations, test results and other data, and information and documents concerning the design and construction of the Vessel. The other Party undertakes not to disclose the same or divulge any information contained therein to any third parties without the prior written consent of the first Party, except where it is necessary for usual operation, repair and maintenance of the Vessel and to subsequent owners.

(b) Each Party shall ensure that any manufacture and/or supply according to specifications, drawings, models or other instructions supplied by it shall not infringe any Intellectual Property Rights of third parties. Should claims nevertheless be made against the other Party in respect of Intellectual Property Rights arising out of or in any way related to the performance of the Contract, the first Party shall keep the other Party indemnified against.
the cost of such claims, including any legal costs in connection therewith.

(c) For the purpose of this Sub-Clause (c), “Information” means technical information relating to the Vessel designated by one Party as confidential, except information which corresponds in substance to information which:

(i) was developed by and in possession of the other Party prior to first receipt from the first Party; and/or

(ii) at the date hereof or hereafter, through no wrongful act or failure to act on the part of the other Party, enters the public domain.

Where it is necessary during the performance of this Contract for the first Party to make information available to the other Party, the other Party shall hold all such Information in confidence and not disclose it to any third parties or use it for any purpose other than as provided herein without the prior written consent of the first Party, which shall not be unreasonably withheld.

41. Governing law and language

This Contract shall be subject to and governed by South African law. All correspondence and other documentation pertaining to the Contract that is exchanged between the parties shall be in the English language. English law unless another law is stated in Box 23(a) in which case the law stated in Box 23(a) shall apply.

42. Dispute Resolution

(a) Classification/Regulatory Authorities

Any dispute concerning the Vessel’s compliance or non compliance with the rules, regulations and requirements of the Classification Society or other Regulatory Authorities shall be referred to the Classification Society or other Regulatory Authorities, as the case may be, the final decision of which shall be final and binding upon the Parties hereto. All other disputes shall be referred to expert determination or arbitration in accordance with Sub-Clauses (b) through (e).

(b) Expert determination

Unless Sub-Clause (a) applies or Sub-Clauses (c) to (e) apply, in the event that a dispute arises under this Contract either Party may require by notice in writing to the other Party that such dispute be referred to an independent third party (an “Expert”) as the Parties jointly nominate in writing, subject to the following procedure:

(i) if the Parties fail to nominate an Expert within seven (7) days of the date of the notice referred to in this Sub-Clause (b), the dispute shall be resolved in accordance with Sub-Clauses (c) to (e) below;

(ii) the Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the Parties;

(iii) the Expert’s determination shall be conducted in accordance with the following rules, unless otherwise agreed by the Parties:

(1) the Parties may make written representations within seven (7) days of the Expert’s appointment and shall copy in full such written representations to the other Party within such time period;
(2) the Parties shall have a further seven (7) days to make written comments on each other’s representations and shall copy in full such written comments to the other Party within such time period;

(3) the Expert may call for such other documents and written evidence from the Parties as the Expert may reasonably require and the Parties shall provide such documents and written evidence within the period specified by the Expert. The Parties shall copy, in full, such documents and written evidence to the other Party within such time period provided that if either Party claims any such information is confidential to it then, provided in the reasonable opinion of the Expert that Party has properly claimed the same as confidential, the Expert shall not disclose the same to the other Party or to any third party;

(4) the Expert shall decide whether or not to take oral representations from or on behalf of either Party, but if he does so he shall give the other Party the opportunity to be present;

(5) the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and give full reasons for his decision; and

(6) the Expert shall use all reasonable endeavours to publish his decision within twenty-eight (28) days of his appointment.

(iv) Unless the Parties agree otherwise, each Party shall bear its own costs of a reference to the Expert, and fees and expenses of the Expert shall be borne equally between the Parties.

(v) Without prejudice to the rest of this Sub-Clause (b) the Parties shall consider on an ongoing basis whether or not it would be suitable to refer any dispute to an Expert or to enter into mediation in accordance with Sub-Clause (e).

(c) * Arbitration and Mediation

(i) Unless Sub-Clause (a) or (b) applies, and save as may be expressly provided for elsewhere in this Contract for the resolution of particular disputes, any other dispute arising out of or in connection with this Contract or the subject matter of this Contract, including without limitation, any dispute concerning:

(1) the existence of the Contract apart from this clause;
(2) the interpretation and effect of the Contract;
(3) the Parties’ respective rights or obligations under the Contract;
(4) the rectification of the Contract;
(5) the breach, termination or cancellation of the Contract or any matter arising out of the breach, termination or cancellation;
(6) damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the Contract apart from this clause is valid and enforceable,

shall be referred to arbitration as set out in Sub-Clause (c)(ii).

(ii) Appointment of arbitrator

(1) The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa (AFSA). If
agreement is not reached within 10 (ten) Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

(2) The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 (seven) days, submit written comments on the request to the addressee of the request with a copy to the first Party.

(iii) Venue and period for completion of arbitration

The arbitration shall be held in Cape Town and the Parties shall endeavour to ensure that it is completed within 90 (ninety) days after notice requiring the claim to be referred to arbitration is given.

(iv) Rules

The arbitration shall be governed by and shall take place in accordance with, the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa.

(v) Application to court for urgent interim relief or appeal

Nothing contained in this Clause 42 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief or pending determination of the dispute by arbitration or to appeal the decision of the arbitrator.

and unless Box 23(b) states a place other than London, any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement.

Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of US$100,000 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration is commenced.
(d) "Unless Sub-Clauses (a), (b) or (c) apply, any dispute arising out of or in connection with this Contract shall be referred to arbitration at the place stated in Box 23(b), subject to the procedures applicable there.

(e) Notwithstanding Sub-Clauses (c) and (d) above, the Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

In the case of a dispute in respect of which arbitration has been commenced under (c) or (d) above, the following shall apply:

(i) Either Party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other Party of a written notice (the “Mediation Notice”) calling on the other Party to agree to mediation.

(ii) The other Party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the Parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either Party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the Parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other Party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the Parties.

(iv) The mediation shall not affect the right of either Party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either Party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each Party shall bear its own costs incurred in the mediation and the Parties shall share equally the mediator’s costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The Parties should be aware that the mediation process may not necessarily interrupt time limits.)

* Sub-Clauses (c) and (d) are alternatives; state place of dispute resolution in Box 23(b).

If Box 23(b) is not appropriately filled in, Sub-Clause (c) of this Clause shall apply.
SECTION 6 – SUNDRY

43. Notices

(a) All notices given by either Party or their agents to the other Party or their agents in accordance with the provisions of this Contract shall be in writing and shall, unless specifically provided in this Contract to the contrary, be sent to the address for that other Party as set out in Box 2 or Box 3 as appropriate or to such other address as the other Party may designate in writing.

(b) A notice may be sent by post, facsimile, electronically or delivered by hand in accordance with Sub-Clause (a).

(c) Any notice given under this Contract shall take effect on receipt by the other party and shall be deemed to have been received:

(i) if posted, on the seventh (7th) day after posting;

(ii) if sent by facsimile or electronically, on the day of transmission;

(iii) if delivered by hand, on the day of delivery.

And in each case proof of posting, transmission or handing in shall be proof that notice Has been given.

44. Effective date of Contract

(a) This Contract shall become effective when the conditions stated in Box 25 have been satisfied. If no conditions are stated in Box 25 then the effective date of the Contract shall be the date stated in Box 1. The Parties shall immediately notify each other when the conditions stated in Box 25 relevant to that Party have been satisfied.

(b) If any of the conditions referred to above have not been satisfied within the number of days stated in Box 26 after the date of this Contract stated in Box 1, this Contract shall be deemed null and void and both Parties shall immediately be relieved of any obligations or liabilities to the other Party under this Contract.

45. Assignment

(a) Builder’s assignment

The Builder shall have the right to assign the benefits of this Contract to the Builder’s financiers for the purpose of securing the Builder’s financing.

(b) Buyer’s assignment

(i) The Buyer shall have the right to assign the benefits of this Contract to the Buyer’s financiers for the purpose of securing the Buyer’s financing.

(ii) The Buyer shall have the right, subject to the Builder’s consent which shall not be unreasonably withheld, to assign, transfer or novate this Contract to any other third party.

46. Options

The Buyer shall have the option for the construction by the Builder of additional vessels as stated in Box 27 at the contract price and delivery dates stated in Box 28, but otherwise on the same terms and conditions as this Contract with logical amendments. Such option must be declared by the Buyer to the Builder within the number of months stated in Box 29 following the Effective date of this Contract referred to in Clause 44 (Effective date of
47. Entire Agreement

(a) This Contract constitutes the entire agreement between the Parties and no promise, undertaking, representation, warranty or statement by either Party prior to the date of this Contract stated in Box 1 shall affect this Contract. Any modification of this Contract shall not be of any effect unless in writing signed by or on behalf of the Parties.

(b) The terms and conditions contained in this Contract supercede the General Conditions of Contract.

48. Third party rights

Unless expressly identified in this Contract, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a stipulatio alteri) which, if accepted by the person, would bind any Party in favour of that person, and no third parties shall have the right to enforce any term of this Contract.

49. Health, Safety and Environmental Issues

The Builder undertakes that in undertaking the construction of the Vessel that is shall comply with all applicable legislation, its safety accreditation and that is shall use all reasonable endeavours to comply with Safety First principals to ensure safety at the Shipyard.

The Builder further undertakes that the construction of the Vessel shall comply with all applicable environmental legislation, its environmental accreditation and standards, with the Builder taking all reasonable measures to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations when constructing the Vessel.

50 Broad Based Black Economic Empowerment (“BBBEE”)

The Builder warrants that it has read, is familiar with, and fully understands the implications of, and will comply with the Broad Based Black Economic Empowerment Act, No. 53 of 2003 (the “BBBEE Act”), and any sector Charter generated in the manner contemplated in the BBBEE Act, which applies to the Parties or the Department of Trade and BBBEE Codes of Good Practice applicable at any time (“the Codes”).

The Builder will, for the duration of this Contract, ensure that it has a valid BBBEE Certificate and will upon written request from the Buyers, provide a BBBEE verification certificate issued by an accredited rating agency reflecting the Builder’s current BBBEE rating.

For the duration of this Contract the Builder shall:

(a) Maintain or improve its BBBEE rating as measured at the time of the submission of the bid which led to the conclusion of this Contract;

(b) Notify the Buyer within 14 days of any event that materially affects or may materially affect its BBBEE rating in a negative manner; and

(c) Notify the Buyer within 28 days of any such event as to the steps that have or will be
taken to restore its BBBEE rating, within the shortest possible period, such period, in all circumstances, shall not exceed six (6) months.

Any failure, refusal, or neglect by the Builders to comply with the requirements of this clause will constitute a material breach of this Contract, and the Buyer will be entitled to terminate the Contract with immediate effect and claim any damages suffered without prejudice to any other rights it may have under the Contract or law.

51. Warranties

(a) The Builder warrants and undertakes that:
   (i) it will carry out its obligations efficiently, speedily and in accordance with best industry practice;
   (ii) it has full legal rights, powers and authority to enter into this Contract, and to exercise its rights and perform its obligations under this Contract;
   (iii) the execution of this Contract and performance by the Builder of obligations hereunder, does not and shall not, contravene any law or regulation to which the Builder is subject;
   (iv) it will conduct itself in an honest manner, and has provided the Buyer with accurate details regarding its black economic empowerment status, which it will retain as a minimum status during this Contract, and has not and will not commit an act which would in any way be construed as a fronting practice as contemplated and defined in the Broad-Based Black Economic Empowerment Act 53 of 2003;
   (v) it has the necessary competence, qualification, skill, expertise, experience and ability to perform the in terms of teh Contract, and necessary general knowledge and experience in ship building, and in particular aluminium/steel passenger ferry building;
   (vi) it has sound knowledge of construction and production methodology of passenger ferries with steel and aluminium hulls;
   (vii) its employee/s and/or other personnel have degrees or diplomas in Mechanical Engineering, marine qualifications, any other appropriate qualifications related to ship building processes and the relevant industry experience related to ship building which is in accordance with their curricula vitae provided in the Bid Documents;
   (viii) it has sound knowledge of installing and commissioning of ship systems such as marine engines, propulsion systems, auxiliary systems; electrical and instrumentation systems, automation systems, navigation and communication systems, alarm and monitoring systems and all other systems related to the Ferry;
   (ix) it shall exercise the utmost care and skill in all aspects of the performance under this Contract;
   (x) it and its employees and/or other personnel, agents and sub-contractors have the necessary knowledge, competence, qualification, skill, expertise, experience and ability to perform in terms of the Contract, and the necessary general knowledge and experience in the optimisation of ship building;
   (xi) it shall comply with all applicable laws, ordinances, rules and regulations, in performing under the Contract;
   (xii) it shall exercise the utmost good faith in all of its dealings with the Buyer;
   (xiii) the execution of this Contract and the performance by the Builder of its obligations hereunder does not and shall not contravene any law or regulation to which the Buyer is subject;
   (xiv) it has the necessary infrastructure and equipment to perform under the Contract; and
   (xv) it shall act in accordance with the requirements of this Contract.

(b) The warranties and representations set out in (a) above are given as at the Signature Date, and every day for the duration of this Contract and are deemed to be material.
(c) Each warranty and each representation in this Contract is deemed a representation of fact inducing the Buyer to enter into this Contract.

52. Confidentiality

(a) Save as set out below and for the purposes of this Clause 52, each Party shall not use or disclose to any person the details of this Contract and all information relating to the business or the operations and affairs of the other Party (Confidential Information) unless the disclosing Party has received the prior written consent of the other Party.

(b) The provisions of this Clause 52 shall not prevent the Parties from disclosing Confidential Information to their shareholders, officers, directors, employees, consultants and professional advisers who:
   (i) have a need to know (and then only to the extent that each such person has a need to know);
   (ii) are aware that the Confidential Information should be kept confidential;
   (iii) are aware of the disclosing Party's undertaking in relation to such information in terms of this Contract; and
   (iv) have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to do so.

(c) The obligations of non-disclosure under this Contract do not extend to information that:
   (i) is disclosed to a receiving Party in terms of this Contract, but at the time of such disclosure such information is in the lawful possession and/or control of that Party and not subject to an obligation of confidentiality;
   (ii) is or becomes public knowledge, otherwise other than pursuant to a breach of this Contract by the Party who disclosed such Confidential Information;
   (iii) is required by the provisions of any law, or regulation, or during any proceedings to be disclosed, and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and has consulted with the other Party prior to making such disclosure.

53. Protection of Personal Information

Terms used in this clause shall have the same meaning as ascribed to them in the Protection of Personal Information Act 4 of 2013 (PPI).

(a) It is recorded that, pursuant to its obligations under this Contract, the Builder will process the personal information of data subjects in connection with and for the purposes of the contract for or on behalf of the Buyer and will act as the Buyer's operator for purposes of PPI.

(b) Unless required by law, the Builder shall process the personal information only:
   (i) on behalf of the Buyer and in compliance with the Buyer's instructions and this Contract; and
   (ii) for the purposes connected with performance under the Contract or as specifically otherwise instructed or authorised by the Buyer in writing.

(c) The Builder shall treat the personal information that comes to its knowledge or into its possession as confidential and shall not disclose it without the prior written consent of the Builder.

(d) The Builder warrants that it shall secure the integrity of the personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent:
(i) loss of, or damage to, or unauthorised destruction of the personal information;
(ii) unlawful access to, or processing of, the personal information.

(e) In order to give effect to sub-clause (d), the Builder shall take reasonable measures to:
   (i) identify all reasonable foreseeable internal and external risks to the personal information in its possession or under its control;
   (ii) establish and maintain appropriate safeguards against the risk identified;
   (iii) regularly verify that the safeguards are effectively implemented; and
   (iv) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards, and shall notify the Buyer of the risks identified and the safeguards established and implemented from time to time.

(f) The Builder shall have due regard to generally accepted information security practices and processes which may apply to it.

(g) In addition to any other obligations set out in this clause 53, the Builder shall:
   (i) keep abreast and comply with PPI at all times, and shall ensure that it and its employees and/or other personnel comply fully with all applicable laws and regulations that are applicable to the Contract;
   (ii) take reasonable steps to ensure the reliability of any of its employees and/or other personnel who have access to the personal information, and employ suitably qualified and trained employees and/or other personnel to ensure the professional provision of the services in terms of this Contract and in terms of all applicable laws and regulations, including PPI;
   (iii) limit access to the personal information only to those employees and/or other personnel who need to know to enable the Builder to perform the services and ensure that employees and/or other personnel used by the Builder to provide the services have undergone training in the care and handling of the personal information;
   (iv) deal promptly and properly with all reasonable inquiries from the Buyer relating to its processing of the personal information and provide to the Buyer RIM copies of the personal information in the format reasonably specified by the Buyer;

(h) The Builder acknowledges and agrees that the Buyer retains all right, title and interest in and to the personal information.

(i) The Builder shall not possess or assert any lien or other right against or to such personal information and no such personal information shall be sold, assigned, leased or otherwise disposed of to third parties by the Builder or commercially exploited by or on behalf of the Builder or its employees and/or other personnel.

54. Marketing

The Builder may only market itself with reference to the Buyer and/or to Robben Island with the specific, informed, prior written consent of Buyer in each instance.

55. No representations

Save as is expressly provided for in this Contract, a Party may not rely on any representation which allegedly induced that Party to enter into this Contract, unless the representation is recorded in this Agreement.

56. Variation, cancellation and waiver

No contract varying, adding to, deleting from or cancelling this Contract, and no waiver of any right under this Contract, shall be effective unless reduced to writing and signed by or
57. Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Contract shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

58. Costs

(a) Each Party shall bear that Party’s own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Contract.

(b) Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

59. Signature in counterparts

This Contract be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

60. Independent advice

Each of the Parties hereby respectively agrees and acknowledges that:

(a) it has been free to secure independent legal advice as to the nature and effect of each provision of this Contract and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

(b) each provision of this Contract (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Contract.

61. Prohibition of restrictive practices

(a) In terms of section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, an agreement between or concerted practice by firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is/are or contractor(s) was/were involved in collusive bidding (or bid rigging).

(b) If the Builder, based on reasonable grounds or evidence obtained by the Buyer has engaged in a restrictive practice, the Buyer may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

(c) If the Builder is found guilty by the Competition Commission of a restrictive practice as referred to above, then the Buyer may, in addition and without prejudice to any other remedy provided for, terminate the Contract and claim a refund of all monies paid by the Buyer to or on behalf of the Builder and / or restrict the Builder from conducting business with the public sector for a period not exceeding ten (10) years and / or claims damages from the Builder.

62. Suspensive Conditions
62.1 The provisions of this Contract are subject to the fulfilment or written and signed waiver (if applicable) of the following Suspensive Conditions, by the respective date stipulated for fulfilment:

62.1.1 By no later than [INSERT DATE] the Builder shall deliver to the Buyer a certified copy of resolutions of the Builder's board of directors evidencing that:

62.1.1.1 the terms and conditions of the Contract are approved by the board of directors and that the board resolved that the Builder enter into the Contract;

62.1.1.2 the authority of the person signing the Contract to sign all documents and perform all acts on behalf of the Builder that may be required in respect of the execution by the Builder of the Contract, and that all acts already taken in this regard by are confirmed and ratified; and

62.1.1.3 the board of directors of the Builder confirms and accepts that the Builder is bound by all of the terms and conditions of the Contract;

62.1.2 By no later than [INSERT DATE] the Builder shall deliver to the Buyer a certified copy of resolutions of the Builder's parent company's board of directors evidencing that:

62.1.2.1 the terms and conditions of the Contract are approved by the board of directors of the Builder's parent company; and

62.1.2.2 that the parent company agrees to issues the Builder's Performance Guarantee required in terms of the Contract.

62.1.3 By no later than [INSERT DATE] the Buyer delivers to the Builder a certified copy of resolutions evidencing that the Council of the Buyer evidencing that:

62.1.3.1 the terms and conditions of the Contract are approved by the Council of the Buyer and that the Council resolved that the Buyer enter into the Contract;

62.1.3.2 the authority of the person signing the Contract to sign all documents and perform all acts on behalf of the Buyer that may be required in respect of the execution by the Buyer of the Contract, and that all acts already taken in this regard by are confirmed and ratified; and

62.1.3.3 the Council of the Buyer confirms and accepts that the Buyer is bound by all of the terms and conditions of the Contract.

62.2 The Parties shall use their respective reasonable commercial endeavours to procure the fulfilment of each of the Suspensive Conditions as soon as possible after the Signature Date, but in any event by no later than the dates stipulated in 62.1.1, 62.1.2 and 62.1.3.

62.3 The Parties shall be entitled, by written agreement prior to the dates set out in 62.1.1, 62.1.2 and 62.1.3, to waive the fulfilment of any of the Suspensive Conditions (if applicable) or to extend the period within which each of the Suspensive Conditions is to be fulfilled.

62.4 If any Suspensive Condition is not fulfilled or waived (if applicable) on or prior to the date stipulated for such fulfilment or waiver (if applicable):

62.4.1 the provisions of this Contract shall never become effective; and

62.4.2 neither Party shall have any claim against the other Party as a result of or in
connection with any such non-fulfilment or non-waiver (other than a claim for a breach by a Party of any of its obligations under 62.2.
ANNEX A(i)

BUYER’S IRREVOCABLE LETTER OF GUARANTEE FOR THE 2ND to 6TH & 3RD INSTALMENTS

BUYER’S IRREVOCABLE LETTER OF GUARANTEE
To: __________________________ (registration number ____________ ), whose registered office is situated at ________________________________ .

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

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

'Contract' means the contract dated [here insert date] made between the Buyer and you for the construction of the Vessel, as the same is amended at any time.

'Contractual Interest' means the sum payable on an Instalment at the Interest Rate in accordance with the terms of the Contract.

'Demand' means a written demand on your letterhead signed by your duly authorised representative under this Guarantee.

'Instalment' means the amount of each of the [here identify the instalments to be guaranteed] payments in respect of the contract price under the Contract (to the extent that it has not been paid) which is made on, before or after the date of this Guarantee to you by the Buyer.

'Interest Rate' means the rate of interest prescribed by the Contract as applicable to any part of an Instalment which the Buyer is obliged to pay under the terms of the Contract calculated from such date as is prescribed by the Contract to the date of your receipt of the payment.

'Maximum Liability' means our maximum liability under this Guarantee, including Contractual Interest and any Award of Interest which shall be R100,000,000.

'Buyer' means Robben Island Museum, a declared cultural institution established in terms of the Cultural Institutions Act, No.29 of 1969, whose registered office is situated at Nelson Mandela Gateway, Clock Tower Precinct, Waterfront, Cape Town, 8001.

'Vessel' means [a new Aluminum High Speed Passenger Ferry] [here insert technical description and/or name].

2. In consideration of you entering into the Contract, agreeing to construct the Vessel in accordance with the terms of the Contract, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Buyer we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that in the event that the Buyer fails punctually to pay to you any Instalment 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 Buyer for payment), pay to you or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you by way of the payment of any Instalment together with Contractual Interest and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

This Guarantee shall become effective in the amount corresponding to the amount of each Instalment with effect from the date when it becomes due to you under the Contract.

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

4. Subject to paragraph 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessel to, and acceptance of the Vessel by, the Buyer, (b) the payment to you by the Buyer or by us of all sums secured by this Guarantee, and (c) the Buyer's valid and lawful cancellation and/or rescission of the Contract pursuant to the terms of the Contract. You undertake to furnish us with written confirmation of any of the events...
listed in this clause 4 where after the Bank’s liability under this Guarantee shall cease and no further claims will be considered by us. However, notwithstanding the foregoing, if within twenty-eight (28) days of our receipt of a Demand we receive a written notice from you or the Buyer that your claim for payment of the sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract, the period of validity of this Guarantee shall be extended until thirty (30) days after the dispute has been finally determined in accordance with paragraph 5 below.

5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days of our receipt of a Demand we receive written notice from you or from the Buyer stating that your claim for payment of the 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 Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you under this Guarantee until thirty (30) days after the dispute has been finally determined or in the event of an appeal from an arbitration award, until thirty (30) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until thirty (30) days after the publication of the revised final award or in the event of an appeal from the award, until thirty (30) days after delivery of the final unappealable judgment.

6. Notwithstanding the provisions of clauses 4 and 5 above, we reserve the right to withdraw from this Guarantee, at our entire discretion, by giving you 3 (three) months' written notice of its intention to do so. You may, however, claim under this Guarantee during the mentioned notice period from the date that such notice is given. The Bank’s liability under this Guarantee shall cease on expiry of the notice period and no further claims will be considered by us.

7. All payments to be made under this Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct 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 or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.

8. This Guarantee is neither negotiable nor transferable and is restricted to the payment of a sum of money only.

9. All payments to be made under this Guarantee shall be made in South African Rands.

10. This Guarantee is governed by the laws of the Republic of South Africa and we hereby submit to the exclusive jurisdiction of the High Court of South Africa (Western Cape Division, Cape Town).

11. Any notice or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers (whose authority, qualification or appointment need not be proved). The written demand may be hand delivered to us at the address stated below or a copy scanned and emailed to us to the following email address <insert the applicable collateral centre email address>.

12. We will not determine the validity of the Demand made under this Guarantee or the correctness of the amount demanded, or become party to any claim or dispute of any nature which any party may allege.

13. We hereby warrant that we are permitted by any relevant law to which we are subject to:
13.1 issue a guarantee in this form,
13.2 make payment under this Guarantee in case of a Demand for payment under this Guarantee, and
13.3 designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.

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

15. We renounce, to the extent permitted under applicable law, the benefits of each of the legal exceptions of excussion, division, revision of accounts, no value received, errore calculi, non causa debiti, non numeratae pecuniae and cession of action, and declares that we understand the meaning of each such legal exception and the effect of such renunciation.

16. We acknowledge that we have been free to secure independent legal and other advice as to the nature and effect of this Guarantee and that we have either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, we acknowledge that all of the provisions of this Guarantee and the restrictions herein contained have been negotiated between us and are part of the overall intention of us in connection with this Guarantee.

17. Any change to the terms and/or conditions of this Guarantee, must first be agreed to, in writing, by the Buyer, you and us.

Dated the day of 2017
In this Guarantee, the following terms have the following meanings:

‘Award Interest’ means any interest which may be awarded against the Buyer in connection with the final determination of any dispute notified to us in accordance with paragraph 5 below.

‘Contract’ means the contract dated [here insert date] made between the Buyer and you for the construction of the Vessel, as the same is amended at any time.

‘Contractual Interest’ means the sum payable on an Instalment at the Interest Rate in accordance with the terms of the Contract.

‘Demand’ means a written demand for payment under this Guarantee.

‘Instalment’ means the amount of each of the [here identify the instalments to be guaranteed] payments in respect of the contract price under the Contract (to the extent that it has not been paid) which is made on, before or after the date of this Guarantee to you by the Buyer.

‘Interest Rate’ means the rate of interest prescribed by the Contract as applicable to any part of an Instalment which the Buyer is obliged to pay under the terms of the Contract calculated from such date as is prescribed by the Contract to the date of your receipt of the payment.

‘Maximum Liability’ means our maximum liability under this Guarantee, including Contractual Interest which shall be [here insert amount] plus any Award Interest.

‘Buyer’ means [here insert name and address of Buyer]

‘Vessel’ means [here insert technical description and/or name]

2. In consideration of you entering into the Contract, agreeing to construct the Vessel in accordance with the terms of the Contract, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Buyer we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that in the event that the Buyer fails punctually to pay to you any Instalment 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 Buyer for payment), pay to you or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you by way of the payment of any Instalment together with Contractual Interest and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

This Guarantee shall become effective in the amount corresponding to the amount of each Instalment with effect from the date when it becomes due to you under the Contract together with Contractual Interest, if any.

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

4. Subject to paragraph 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessel to, and acceptance of the Vessel by, the Buyer, (b) the payment to you by the Buyer or by us of all sums secured by this Guarantee, and (c) the Buyer’s valid and lawful cancellation and/or rescission of the Contract pursuant to the terms of the Contract. However, notwithstanding the foregoing, if within twenty-eight (28) days of our receipt of a Demand we receive a written notice from you or the Buyer that your claim for payment of the sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract, the period of validity of this Guarantee shall be extended until thirty (30) days after the dispute has been finally determined in accordance with paragraph 5 below.

5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days of our receipt of a Demand we receive written notice from you or from the Buyer stating that your claim for payment of the 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 Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you under this Guarantee until thirty (30) days after the dispute has been finally determined or in the event of an appeal from an arbitration award, until thirty (30) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until thirty (30) days after the publication of the revised final award or in
6. All payments to be made under this Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct 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 or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.

7. All payments to be made under this Guarantee shall be made in [here insert currency].

8. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee. Upon assignment, all references in this Guarantee to “you” shall be read as references to the assignee or subsequent assignees.

9. This Guarantee is governed by the laws of [here state applicable law. In the absence of any statement the law of England and Wales shall apply] and we hereby submit to the exclusive jurisdiction of [here state place of dispute resolution. In the absence of any statement the High Court of England and Wales shall apply]. [We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: [here insert name and address.]]

10. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by tested telex/authorised SWIFT or equivalent, and if sent by post to [here insert address] (or such other address as we may notify to you in writing) and if by tested telex at [here insert number] or if by SWIFT or equivalent at [here 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 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 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 Guarantee, and
12.3 designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.

13. We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State 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 Guarantee.

Dated the ______ day of ______

_____________________________________________ (signature)

for and on behalf of [here insert name of Guarantor]
ANNEX A(ii)

IRREVOCABLE LETTER OF GUARANTEE FOR PERFORMANCE OF BUYER’S OBLIGATIONS

To: [here insert name and address of the Builder]

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

‘Contract’ means the contract dated [here insert date] made between the Buyer and you for the construction of the Vessel, as the same may be amended at any time.

‘Buyer’ means [here insert name and address of Buyer]

‘Vessel’ means [here insert technical description and/or name]

2. In consideration of you entering into the Contract, agreeing to construct the Vessel in accordance with the terms of the Contract, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Buyer we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) performance by the Buyer of all its liabilities and responsibilities under the Contract, including but not limited to due and punctual payment of any instalment of the contract price by the Buyer to you under the Contract, and we shall, upon receipt by us from you of a written demand for the same (together with a copy of a demand made by you against the Buyer for payment), pay to you or to your order upon the expiry of thirty (30) days from receipt of such written demand the sum demanded by you together with interest due under the Contract.

3. This Guarantee is governed by the laws of [here state applicable law. In the absence of any statement the law of England and Wales shall apply] and we hereby submit to the exclusive jurisdiction of [here state place of dispute resolution. In the absence of any statement the High Court of England and Wales shall apply]. [We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: [here insert name and address.]]

Dated the day of 2

__________________________________________ (signature)

for and on behalf of [here insert name of Guarantor]
ANNEX A(iii)

REFUND GUARANTEE

To: Nelson Mandela Gateway
Clock Tower Precinct
Waterfront
Cape Town
8001 [here insert name and address of the Buyer]

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

‘Award Interest’ means any interest which may be awarded against the Builder in connection with the final determination of any dispute notified to us in accordance with paragraph 5 below.

‘Contract’ means the contract dated [here insert date] made between the Builder and you for the construction of the Vessel, as the same is amended at any time.

‘Contractual Interest’ means the sum payable on an Instalment at the Interest Rate in accordance with the terms of the Contract.

‘Demand’ means a written demand for payment under this Guarantee.

‘Instalment’ means the amount of each payment in respect of the contract price under the Contract (to the extent that it has not been refunded) which is made on, before or after the date of this Guarantee to the Builder (or at the Builder’s direction) by you or on your behalf.

‘Interest Rate’ means the rate of interest prescribed by the Contract as applicable to any part of an Instalment which the Builder is obliged to repay under the terms of the Contract calculated from the date on which the Builder received the Instalment to the date of your receipt of the repayment.

‘Maximum Liability’ means our maximum liability under this Guarantee, including Contractual Interest which shall be [here insert amount] plus any Award Interest.

‘Builder’ means [here insert name and address of shipbuilder]

‘Vessel’ means [here insert technical description and/or name]

2. In consideration of you entering into the Contract, agreeing to pay an Instalment or Instalments to the Builder, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Builder we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that if the Builder becomes liable under the Contract to repay any part of any Instalment 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 Builder for repayment), pay to you or to your order upon the expiry of thirty (30) 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.

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

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

4. Subject to paragraph 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessel to, and acceptance of the Vessel by, you (b) the payment to you by the Builder or by us of all sums secured by this Guarantee, and (c) three-hundred (300) days after the Contractual Date of Delivery. However, notwithstanding the foregoing, if within twenty-eight (28) days after our receipt of a Demand we receive a written notice from you or the Builder that your claim for the repayment of any sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract, the period of validity of this Guarantee shall be extended until thirty (30) days after the dispute has been finally determined in accordance with paragraph 5 below.
5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days after our receipt of a Demand we receive a written notice from you or from the Builder 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 Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you under this Guarantee until thirty (30) days after the dispute has been finally determined or in the event of an appeal from an arbitration award, until thirty (30) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until thirty (30) days after the publication of the revised final award or in the event of an appeal from the award, until thirty (30) days after delivery of the final unappealable judgment.

6. All payments to be made under this Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct 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 or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.

7. All payments to be made under this Guarantee shall be made in South African Rands [here insert currency].

8. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee. Upon assignment, all references in this Guarantee to “you” shall be read as references to the assignee or subsequent assignees.

9. This Guarantee is governed by the laws of the Republic of South Africa [here state applicable law. In the absence of any statement the laws of England and Wales shall apply] and we hereby submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town. [here state place of dispute resolution. In the absence of any statement the High Court of England and Wales shall apply]. [We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: [here insert name and address.]]

10. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by tested telex/authorised SWIFT or equivalent, and if sent by post to [here insert address] (or such other address as we may notify to you in writing) and if by tested telex at [here insert number] or if by SWIFT or equivalent at [here 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 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 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 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 Guarantee, and

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

13. We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State 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 Guarantee.

Dated the day of 2

.................................................. (signature)

for and on behalf of [here insert name of Guarantor]
To: [here insert name and address of the Buyer]

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

   ‘Award Interest’ means any interest which may be awarded against the Builder in connection with the final determination of any dispute notified to us in accordance with paragraph 5 below.

   ‘Contract’ means the contract dated [here insert date] made between the Builder and you for the construction of the Vessel, as the same may be amended at any time.

   ‘Demand’ means a written demand for payment under this Guarantee.

   ‘Maximum Liability’ means our maximum liability under this Guarantee, including Award Interest which shall be [here insert amount].

   ‘Builder’ means [here insert name and address of shipbuilder]

   ‘Vessel’ means [here insert technical description and/or name]

2. In consideration of you entering into the Contract, agreeing to take delivery of the Vessel, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Builder we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that if the Builder becomes liable to pay any sum to you in accordance with the terms of Clause 27(d)(iv) of the Contract in respect of Delivery Defects, as defined in the Contract, 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 Builder for payment), pay to you or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

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

4. Subject to paragraph 5 below, this guarantee shall remain in force until the first to occur of (a) the repair of the Delivery Defects and (b) the payment to you by the Builder or by us of all sums secured by this Guarantee.

5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days after our receipt of a Demand we receive written notice from you or from the Builder stating that your claim to payment of the 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 Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you under this Guarantee until thirty (30) days after the dispute has been finally determined or in the event of an appeal from an arbitration award, until thirty (30) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until thirty (30) days after the publication of the revised final award.

6. All payments to be made under this our Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct 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 or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.

7. All payments to be made under this Guarantee shall be made in South African Rands [here insert currency].

8. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee. Upon assignment, all references in this Guarantee to ‘you’ shall be read as references to the assignee or subsequent assignees.

9. This Guarantee is governed by the laws of the Republic of South Africa [here state applicable law. In the absence of any statement the laws of England and Wales shall apply] and we hereby submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town. [here state place of dispute]
resolution. In the absence of any statement the High Court of England and Wales shall apply. [We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: [here insert name and address.]]

10. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by tested telex/authorised SWIFT or equivalent, and if sent by post to [here insert address] (or such other address as we may notify to you in writing) and if by tested telex at [here insert number] or if by SWIFT or equivalent at [here 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 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 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 Guarantee, and
12.3 designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.

13. We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State 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 Guarantee.

Dated the day of 2
.................................................................(signature)

for and on behalf of [here insert name of Guarantor]
ANNEX “C” - (MAKER’S LIST)
BIMCO STANDARD NEWBUILDING CONTRACT
CODE NAME: NEWBUILDCON

Not applicable
7. Annexure C7: Certificate of Continued Validity of Returnable Documents
MANUFACTURE, DELIVER AND COMMISSION ONE NEW HIGH-SPEED PASSENGER FERRY OF PROVEN DESIGN, OPERATING IN THE TABLE BAY AREA BETWEEN THE NELSON MANDELA GATEWAY AT THE VICTORIA AND ALFRED WATERFRONT IN CAPE TOWN HARBOUR, AND MURRAY’S BAY HARBOUR AT ROBBEN ISLAND.

Annexure C7: CERTIFICATE OF CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

By signing this certificate, the Bidder is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, including, but not limited to, the documents stated below. Robben Island Museum will recognise no claim for relief based on an allegation that the Bidder overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.

Bidders furthermore agree that Robben Island Museum shall recognise no claim from the Bidder for relief based on an allegation that they have overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating their offered prices or otherwise.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid which they intend to respond on before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFP was unclear, but in respect of which he/she failed to obtain clarity.

The Bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents (Annexure C2) included in the RFP as a returnable document, is found not to be true and complete in every respect.

1. New Build Contract [Annexure C6]
2. Specifications and/or drawings included in this RFP

SIGNED at ___________________________ on this _____ day of ________________ 20___

SIGNATURE OF WITNESSES
1 _____________________ ____________________________________________
   Name _____________________ ____________________________________________

2 _____________________ ____________________________________________
   Name _____________________ ____________________________________________

SIGNATURE OF RESPONDENT’S AUTHORISED REPRESENTATIVE: ___________________________

NAME: ____________________________________________

DESIGNATION: ____________________________________________

[Signature]
8. Annexure C8: Acceptance and Handover Framework
# CONTENT

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1. INTRODUCTION

1.1. This document outlines the basic trial procedures, measurement procedures and standards proposed to be applied to the new build Robben Island Museum (RIM) Ferry as built by the Preferred Bidder. These measurements are required to determine Preferred Bidder’s compliance to the following RIM requirements as referenced in the BIMCO New Build Contract:

➢ Noise
➢ Air Conditioning / Temperature
➢ Generator Capacity
➢ Fuel Efficiency
➢ Speed

1.2. Meeting the requirements of each item listed above will ensure that the new build vessel can be duly accepted by RIM, and that the Preferred Bidder will incur no penalties due to deficiencies in requirements as specified by RIM.

1.3. It is paramount that all the SAMSA and Classification Society’s requirements for trials and tests be met. Where certain procedures are either unintentionally omitted from this document, or do not meet the requirements of the Classification Society, the document must be updated and amended accordingly as to not impede the Classification of the Ferry.

1.4. It must be noted that the drafting of the final Trial Measurement Report inclusive of Harbour Acceptance Trials (HATs) and Sea Acceptance Trials (SATs) shall be done in accordance with the requirements as specified in Annexure B1; Technical Specification; Par D1.1 of the Bid Documents as follows:

“D1.1. Tests and Trials will be carried out according to a program drawn-up and supplied by the Builder, based on this specification, and in accordance with the requirements of the required Authorities. The Tests and Trials will be affected in the presence of RIM and shall be at the expense and risk of the Bidder. The Bidder shall give RIM sufficient notice of the date of the Tests and Trials to enable RIM’s representative to attend.”

1.5. This document shall form part as an addition to the provision of Trial Measurement Report as described in Paragraph 1.4. above and shall be incorporated into the BIMCO New Build Contract to address areas where possible deficiencies may occur which are not addressed in the Bidder’s Trial Measurement Report.
2. TEST & TRIAL PROCEDURES

2.1. Noise Requirements

Noise levels, expressed in dB(A), as defined in the HSC Code:

- Public Spaces/Accommodation ≤ 75 dB(A)
- Operating Compartments ≤ 65 dB(A)

Measurements

Noise measuring equipment and the measurements of noise itself shall be in accordance with ISO 2923: 1996 – Measurement of Noise On-Board Vessels or similar, and the test procedure endorsed by the Classification Society. All noise measuring and data-logging equipment is to be accompanied with a suitable calibration certificate.

Measurement Conditions

Noise measurements, at each measurement location, are to be carried out at each condition specified as follows:

- 22 kn at Trial Load Conditions as stipulated in the Contract Specification, 043.2, Load Conditions table.
- Harbour conditions, whilst idling alongside.

Measurement Locations

Unless stated otherwise by the Classification Society and ISO 2923, noise measurements shall be taken in the following locations for the purposes of determining compliance to the requirements as stipulated in the BIMCO New Build Contract:

- All public spaces, including toilets.
- All operational spaces and locations.

2.2. Air Conditioning / Temperature Requirements

Ambient air temperature on-board the vessel, expressed in °C, as defined in the Vessel Specification:

- Public Spaces/Accommodation maintained at 20 °C.
- Crew Spaces/Bridge maintained at 20 °C.

Measurements

Temperature measuring equipment and the measurements of temperature itself shall be in accordance with ASTM Temperature Measurement Standards or similar. The temperature measuring device may be either a liquid-in-glass thermometer, thermocouple, resistance thermometer or thermistor sensor. Where possible, the temperature measurement procedure shall be endorsed by the Classification Society. The average of the measurements taken shall be verified with the temperature requirements as specified in the BIMCO New Build Contract. All measuring and data-logging equipment is to be accompanied with a suitable calibration certificate.
Measurement Conditions

Temperature measurements, at each measurement location, are to be carried out at the condition specified as follows:

➢ Harbour conditions, whilst idling alongside, in shaded on-board areas with no direct sunlight falling on the measurement device.

Measurement Locations

Temperature measurements shall be taken in the specified locations based on the Preferred Bidder’s design, for the purposes of determining compliance to the requirements as stipulated in the BIMCO New Build Contract:

➢ All public spaces.
➢ Vessel bridge and other crew spaces.

2.3. Generator Capacity

Requirement

Vessel electrical generation capacity, as defined in the Vessel Specification and BIMCO New Build Contract:

➢ Each Diesel Generator to carry 100% of all electrical load.

Measurements

Measurement or trials of generating capacity shall be in accordance with the rules and regulations of the Classification Society and the HSC Code. Auxiliary units to be supplied with a Class Type Approval Certificate (BV/LR).

Measurement Conditions

Trial conditions during measurement of generating capacity shall be in accordance with the prescripts of the Classification Society.

Measurement Locations

Both Diesel Generators are to be tested to determine compliance to the RIM Vessel Specification and the requirements of the Classification Society.

2.4. Fuel Efficiency

Requirement

Fuel Efficiency, as defined in the BIMCO New Build Contract:

➢ Specific Fuel Oil consumption (SFOC, g/kW.h), at 85% MCR, to be within a tolerance of ±5% of the value provided by the OEM fuel specification map.

Measurements

OEM will use the values generated by the engine’s ECU (electronic control units) to measure the fuel consumption and engine power output for the agreed operating points during sea trials.

Dyno data is to be closely matched, therefore in real-life operation, there are some assumptions to be made:
➢ Engine installation must be carried out as per OEM installation guidelines;

➢ OEM recommended fluids and lubricants must be used;

➢ The engines must be maintained as per the OEM maintenance schedule

If these conditions are met, the on-site fuel consumption should be within 5% of the values measured on the test bench (delta due to onsite conditions).

In case the sea conditions during sea trials differ substantially from the contractual conditions, a generally accepted and valid calculation method (equivalent to ISO1516), will be used to correct the sea trial results for these differences

Measurement Conditions

Trial conditions during measurement of fuel efficiency shall be in accordance with the prescripts of the Classification Society, and shall be at trial load condition in sea conditions not exceeding wind force Beaufort 4, SE wind direction, with a maximum wave height (swell) of 3.5 m.

Measurement Locations

Both Main Engines are to be tested to determine compliance to the RIM Vessel Specification and the requirements of the Classification Society.

2.5. Speed Requirement

Vessel speed, as defined in the Vessel Specification and the BIMCO New Build Contract:

➢ At least 22 knots, at 85% MCR; Trial Load Condition as per the Contract Specification, 043.2, Load Conditions table; Wind force Beaufort 4 in SE wind direction; Maximum wave height (swell) of 3.5 m

Measurements

General speed trials and measurements shall be done in accordance with the trial procedures endorsed by the Classification Society.

RIM’s requirement of proof indicating that the vessel (in sea trial loading condition) built by the Preferred Bidder can operate at the specified speed of 22 knots in sea conditions of wind force Beaufort 4 and wave height (swell) of 3.5m is required.

In case the sea conditions during sea trials differ substantially from the contractual conditions, a generally accepted and valid calculation method (equivalent to ISO1516), will be used to correct the sea trial results for these differences

Measurement Conditions

Speed trials shall be conducted with the vessel in a trial load condition in sea conditions of up to wind force Beaufort 4, with a maximum wave height (swell) of 3.5 m. A speed of at least 22 knots must be attainable at the maximum conditions specified.