

September ●, 2013

**PRIVATE AND CONFIDENTIAL**

Quest Navigation Inc.  
c/o President & CEO  
PO Box 582  
Eliot, Maine  
03903

ST Marine Ltd.  
c/o  
7 Benoi Road, Singapore  
629882

Dear \_\_\_\_\_ :

**Re: Financial Assistance to Yarmouth Ferry Project**

In response to your request for financial assistance, we confirm the approval of the Province of Nova Scotia (the "**Province**"), as represented by the Minister of Economic and Rural Development and Tourism (the "**Minister**"), of financial assistance pursuant to the *Nova Scotia Jobs Fund Act* by way of a forgivable loan in an amount not to exceed \$21,000,000 (the "**Forgivable Loan**") subject to the approval of the Governor in Council of the Province and the issuance of an Order in Council and further subject to the terms and conditions contained in this Letter of Offer and the Standard Terms and Conditions attached as Appendix "A" attached hereto as such terms may be amended from time to time (collectively, the "**Agreement**").

**PROGRAM AND FINANCING – START-UP COSTS**

<b>PROGRAM</b>	<b>\$</b>	<b>FINANCING</b>	<b>\$</b>
Start-up Costs	13,000,000	Loan - Forgivable	10,500,000
Marketing Costs	2,000,000	Company Investment-cash and in kind	11,700,000
Capital Upgrades	7,200,000		
<b>TOTAL PROGRAM:</b>	<b>22,200,000</b>	<b>TOTAL FINANCING:</b>	<b>22,200,000</b>

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**MARKETING ASSISTANCE - OPERATIONS (7 YEARS)**

<b>PROGRAM</b>	<b>\$</b>	<b>FINANCING</b>	<b>\$</b>
Marketing Costs	25,400,000	Loan - Forgivable	10,500,000
		Company working capital	14,900,000
<b>TOTAL PROGRAM:</b>	<b>25,400,000</b>	<b>TOTAL FINANCING:</b>	<b>25,400,000</b>

**PURPOSE**

The purpose of the Forgivable Loan, in conjunction with the investment by a joint venture to be established by Quest Navigation, Inc. and ST Marine Ltd. (the “**JV Company**”), is to establish a self sustainable ferry service between Yarmouth, Nova Scotia and Portland, Maine (the “**Ferry Service**”).

**LOAN PRINCIPAL**

The JV Company is eligible for the Forgivable Loan, in an amount not to exceed \$21,000,000.

**INTEREST**

The Forgivable Loan will not bear interest during the Term except as otherwise provided herein.

**TERM**

The term of the Forgivable Loan (the “**Term**”) shall be for seven (7) years from the date of the initial advance of the Forgivable Loan.

**DISBURSEMENT SCHEDULE**

<b>Time Period</b>	<b>Maximum Amount Available</b>
Start-up Costs (Year 1 and 2)	\$10,500,000
Year 1	\$1,500,000
Year 2	\$1,500,000
Year 3	\$1,500,000
Year 4	\$1,500,000
Year 5	\$1,500,000
Year 6	\$1,500,000

Year 7	\$1,500,000
Total Available	\$21,000,000

The JV Company may request that the schedule of disbursements be accelerated which shall be subject to the agreement of the Province.

The Forgivable Loan will be available for disbursement as follows:

#### Start-up Costs

The Forgivable Loan will be used, in part, to offset the start-up costs of the JV Company outlined in Appendix "B" attached hereto. The JV Company may submit written requests for funding of eligible start-up costs not more often than once every thirty days starting on the date outlined in Appendix "B" provided the Conditions Precedent herein applicable to such funding request have been satisfied as set out in Appendix "B" or otherwise waived by the Province. Each request for funding shall be accompanied by such receipts or other information as the Province may reasonably require to substantiate the payment of the start-up costs. The Province shall have the right not to fund any future request for funding while the requested documentation for any existing funding request has not been provided.

The JV Company shall provide a monthly report to the Province starting on October 1, 2013 setting out its progress with respect to the payment of its portion of the start-up costs and the completion of the work related thereto as outlined in the proposal submitted to the Province by the joint venture partners dated July 4, 2013 (the "**STM Proposal**").

#### Annual Funding

The Forgivable Loan will be used, in part, by the JV Company to offset the costs of its marketing expenses throughout the Term. The JV Company may submit written requests for funding of eligible marketing costs not more often than twice each year starting on April 1 in any year provided the Conditions Precedent set out herein have been satisfied. Each request for funding shall be accompanied by such receipts or other information as the Province may reasonably require to substantiate the payment of the marketing costs. The Province shall have the right not to fund any future request for funding while the requested documentation for any existing funding request has not been provided.

With each funding request, the JV Company shall provide a certificate of an officer of the JV Company certifying the JV Company's compliance with all conditions precedents applicable to such request and the covenants contained in this Agreement and confirming that there are no defaults under this Agreement.

In connection with any funding request, the JV Company shall supply such information as the Province may reasonably request in relation to the expenditures of the JV Company under consideration.

## **CONDITIONS OF FORGIVENESS**

The Province and the JV Company agree that the Province will, on the conditions contained in this Agreement and provided that the JV Company complies with all of the requirements set out in this Agreement, allow the JV Company to earn forgiveness for the Forgivable Loan on December 31 of each year for each year the Service remains in operation in accordance with the Sailing Schedule (as defined below) commencing on December 31, 2015 in accordance with the following schedule (the “**Earned Forgiveness**”):

<b>Year Ended</b>	<b>Maximum Amount Eligible for Forgiveness</b>
December 31, 2015	\$3,000,000
December 31, 2016	\$3,000,000
December 31, 2017	\$3,000,000
December 31, 2018	\$4,000,000
December 31, 2019	\$4,000,000
December 31, 2020	\$4,000,000
<b>Total:</b>	<b>\$21,000,000</b>

The JV Company will submit to the Province an officer’s certificate requesting the Earned Forgiveness together with such other reasonable supporting documentation as may be requested by the Province no later than December 1 in each year. Such certificate shall also certify that:

1. The Ferry Service has been operated throughout the immediately preceding year substantially in accordance with the Sailing Schedule; and
2. There are no defaults under this Agreement.

## **SECURITY**

The JV Company shall provide the following security to the Province in connection with the Forgivable Loan, (collectively, the “**Security**”):

1. a general security agreement granting the Province a first-ranking security interest in the JV Company’s present and after-acquired personal property except that the Province will consent to a first charge on the JV Company’s inventory and receivables in favour of an arm’s length recognized lending institution to support an operating line of credit to the extent of \$5,000,000.

2. an assignment of all risk insurance by the JV Company in favour of the Province, in an amount and form acceptable to the Minister;
3. an assignment of the bareboat charter agreement (the “**Bareboat Charter**”) between Quest Navigation, Inc. and ST Marine Ltd. (the “**Owner**”) in favour of the Province accompanied by the consent of the Owner which assignment shall include a waiver of any unpaid security deposit associated with the Bareboat Charter;
4. an assignment of all service agreements relating to the Ferry Service in favour of the Province, including but not limited to the operating agreement with any third party operator, any material agreement for the supply of goods or services to the JV Company, berthing agreements with the port authorities of Yarmouth, Nova Scotia and Portland, Maine, and agreements with Canada Border Services Agency (“**CBSA**”) and US Homeland Security together with any consents required under such agreements;
5. a postponement and assignment in favour of the Province of all shareholder or related party loans owed by the JV Company; and
6. a deferral of the management salaries payable to [names of 4 individuals] , , to 50% of proposed salaries (as disclosed to the Province in the STM Proposal) in any year during the Term where the JV Company incurs a loss. Any deferred salary may only be paid in a future year to the extent such payment would not place the JV Company in a loss position.

Without the prior written consent of the Minister, no purchase money or other type of security interest may be given by the JV Company to any third party upon any of the assets of the JV Company. Any such security interest, mortgage or charge purported to be granted by the JV Company shall constitute an Event of Default under this Agreement.

All Security shall be in form acceptable to the Province and its legal counsel, each acting reasonably, and shall be accompanied by such resolutions, certificates, legal opinions and other documentation as the Province and its legal counsel may request from time to time, each acting reasonably.

### **CONDITIONS PRECEDENT**

Prior to the disbursement of any portion of the Forgivable Loan, the following conditions must be fulfilled to the satisfaction of, and be acceptable to, the Minister (unless waived or modified by the Minister in writing):

1. satisfactory evidence that the proposed vessel (the *NOVA STAR* – the “**Vessel**”) can navigate and turn in the Yarmouth harbour;
2. marketing plan for Ferry Service;
3. evidence of the issuance of an operating line of credit for the JV Company’s operational use together with evidence of the agreement with the State of Maine for a guarantee thereof in the amount of \$5,000,000;
4. evidence that the Bareboat Charter has been extended for a duration consistent with the Term;

5. evidence of all material authorizations, approvals, consents, licenses, permits, franchises qualifications and exceptions as may be required to enable the JV Company to observe and perform the obligations on its part to be observed or performed under this Agreement, including but not limited to all but permits and licenses required by the JV Company to provide the Ferry Service;
6. confirmation that ST Marine will inject at least \$3,000,000 in the JV Company, if needed to cover operating losses, and the terms thereof;
7. evidence that the JV Company has an operating agreement sufficient for the operation of the Ferry Service;
8. evidence that CBSA and US Homeland Security arrangements are in place sufficient for the operation of the Ferry Service;
9. evidence that berthing agreements with the port authorities in Yarmouth, Nova Scotia and Portland, Maine are in place sufficient for the operation of the Ferry Service;
10. a joint venture/shareholders' agreement has been executed between the shareholders of the JV Company in a form satisfactory to the Province, acting reasonably;
11. the delivery of the Security together with such supporting certificates, resolutions and legal opinions as may reasonably be required by the Province all in a form satisfactory to the Province and its legal counsel, each acting reasonably.

### **REPORTING REQUIREMENTS**

The JV Company shall provide audited financial statements to the Minister on an annual basis within 120 days of the JV Company's fiscal year end, which is currently December 31. At the same time, the JV Company shall also submit an annual auditor's report to the Province outlining for the completed fiscal year the following information with respect to the JV Company:

- (a) the number of employees;
- (b) the aggregate hours worked;
- (c) the aggregate salaries and wages;
- (d) the material suppliers; and
- (e) the material subcontractors.

The JV Company shall provide to the Province on a monthly basis (or as otherwise requested by the Province) details of passenger and vehicle counts and such other information as may reasonably be requested by the Province to measure tourism impacts of the Ferry Service.

### **AFFIRMATIVE/NEGATIVE COVENANTS OF JV COMPANY**

The JV covenants and agrees with the Province that so long as any Forgivable Loan remains outstanding under this Agreement:

- (a) it will duly and punctually pay all sums of money due and payable by it under the terms of this Agreement and all other agreements provided for or contemplated hereby at the times and places and in the manner provided herein and therein;
- (b) it will continuously operate the Ferry Service substantially in accordance with the schedule set out in Appendix "C" (the "**Sailing Schedule**"). No changes shall be made to the Sailing Schedule without the written consent of the Minister, which consent will not unreasonably be withheld;
- (c) the Vessel shall not, without the express written consent of the Minister, be used outside of the Sailing Schedule for any purpose which, in the opinion of the Minister, acting reasonably, may expose the Vessel to any exceptional risks which may threaten the Sailing Schedule;
- (d) it will do all acts and things necessary to maintain its existence in good standing and shall obtain, renew and maintain in full force and effect all such authorizations, approvals, consents, licenses, permits, franchises qualifications and exceptions as may be required to enable it to observe and perform the obligations on its part to be observed or performed under this Agreement and all other agreements provided for or contemplated hereby or required for the validity or enforceability of any provision thereof;
- (e) it will maintain all of its property and assets useful or necessary to its business in good working order and condition, normal wear and tear excepted, except to the extent that the failure to do so would not individually or in the aggregate reasonably be expected to have a material adverse effect on the Ferry Service;
- (f) it will do all acts and things necessary to maintain its material contracts, licenses, permits, franchises, leases and insurances in good standing;
- (g) it will do such acts and things as the Province may require in order to maintain the validity and enforceability of the Security;
- (h) except as otherwise specified in this Agreement, all transactions with the JV Company's related, associated or affiliated companies (including compensation for employees, directors and officers engaged in the Ferry Service) shall be at fair market value;
- (i) the JV Company shall comply with all of its obligations and covenants under any other agreement to provide financial assistance;
- (j) it will, at reasonable times during normal business hours, and upon reasonable notice, permit representatives of the Province (who need not be employees of the Province) at the Province's expense to examine its property and assets and to examine, copy and audit its books, accounts and records, including without limitation its computer databank and computer software records together with such other materials as they may deem appropriate;
- (k) it shall provide the Province with regular updates and timely information on all activities, communications, and announcements of the JV Company related to the operation of the Ferry Service and further it shall allow the Province to have

regular discussions with the operator of the Vessel (in conjunction with the JV Company) in connection with the status of the Ferry Service and all operating agreements;

- (l) it shall fulfil its obligations under the agreed marketing plan (including cooperation with the Nova Scotia Tourism Agency);
- (m) it shall use commercially reasonable efforts to:
  - (i) maximize job creation in Southwest Nova Scotia in accordance with page 55 of the STM Proposal;
  - (ii) employ Nova Scotia residents and purchase products and services from Nova Scotia businesses;
  - (iii) work cooperatively and actively in an open and transparent manner with the Province (or any of its Affiliates identified by the Province) in an effort to maximize the economic development opportunities for Nova Scotians;
- (n) it shall not change its name or change the location of its chief executive office without providing at least 30 days' prior written notice to the Minister;
- (o) it will furnish to the Province prompt written notice of any of the following:
  - (i) any material changes to the business of the JV Company;
  - (ii) the filing or commencement of any action, suit or proceeding by or before any court, arbitrator or Governmental Authority against or affecting the JV Company the potential outcome of which could result in a judgment for or against the JV Company regardless of the sum involved, which could reasonably be expected to have a material adverse effect on the Ferry Service or the JV Company;
  - (iii) the assertion of any material claim in respect of any environmental matter by any Person against, or with respect to the activities of, the JV Company or any alleged material violation of or non-compliance with any Environmental Laws (as defined in Appendix "A") or any permits, licenses or authorizations;
  - (iv) any uninsured loss, damage to or destruction of any property of the JV Company having a book value or a market value in excess of \$100,000 which could reasonably be expected to have a material adverse effect on the Ferry Service or the JV Company;
  - (v) any material change in (including lapse, expiration or termination of) any insurance policy held by the JV Company; and
  - (vi) any change in the senior management of the JV Company.



## **EVENT OF DEFAULT**

The following shall be events of default under this Agreement (each, an “**Event of Default**”):

- (a) the JV Company ceases to continuously operate the Ferry Service substantially in accordance with the Sailing Schedule;
- (b) the failure of the JV Company to comply with any of its other obligations and covenants set out herein, including any reporting requirements; and
- (c) any event of default as such term may be defined in any Security.

In the event of any Event of Default under paragraphs (a) or (b) above, the JV Company shall have the opportunity to cure or remedy any such Event of Default within 15 Business Days of receipt of written notice from the Province identifying an Event of Default. In the event any Event of Default or potential Event of Default cannot be cured or remedied within such 15 Business Day cure period, the JV Company shall deliver to the Province within such period its proposed plan to cure or remedy the Event of Default or potential Event of Default which proposed plan shall include a projected time-frame for cure or remedy. If the Province, acting reasonably, accepts such plan, the Event of Default or potential Event of Default shall be deemed to be cured or remedied provided the JV Company satisfies its obligations under the proposed plan.

Upon any Event of Default:

- (a) the JV Company shall not qualify for any further Earned Forgiveness;
- (b) all amounts owing under the Forgivable Loan shall become immediately become due and payable and shall bear interest at a rate equal to the Province’s Cost of Funds (as defined in Appendix “A”);
- (c) the Province may terminate this Agreement; and
- (d) the Province shall be entitled to exercise its rights under the Security.

For the purposes of this Agreement, a “Business Day” means a day other than a Saturday, Sunday or any statutory or civic holiday in the Province of Nova Scotia. If any act is required hereunder to be done, any notices required in order to be given, or any period of time is to expire hereunder on any day that is not a Business Day, any such act shall be required to be done or notice shall be required to be given or time shall expire on the next succeeding Business Day.

## **FORCE MAJEURE**

For the purposes of this Agreement, “**Force Majeure**” means an event, condition or circumstance beyond the reasonable control and without the fault or negligence of the party claiming the Force Majeure, which, despite all reasonable efforts, timely taken, of the party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation imposed on such party hereunder. Provided that the foregoing conditions are met, “Force Majeure” may include, (a) lightning, storm, flood or other unusually severe weather conditions; (b) earthquake, landslide, explosion, fire or falling

aircraft or other objects; (c) strikes and/or other work stoppages and/or slow-downs by hourly labour force; (d) acts of war (whether declared or undeclared), threat of war, mobilization or other unexpected call-ups of armed forces, actions of terrorists, blockade, riot, insurrection, civil commotion, public demonstrations, revolution, coup d'état, sabotage, vandalism or acts of public enemies; (e) an order, directive or restraint issued or imposed by an authorized authority; and (f) breakdown of public traffic, embargo, impossibility of obtaining or delay in obtaining equipment or transport (other than the transmission of power or the transportation of natural gas). "Force Majeure" shall not include lack of funds or other financial problems affecting the party claiming Force Majeure. Notwithstanding the foregoing, the settlement of any strike, work stoppage or other labour dispute is entirely within the discretion of the party concerned.

If by reason of an event of Force Majeure, the JV Company is not reasonably able to fulfill an obligation in accordance with the terms of this Agreement, then the JV Company shall:

- (a) forthwith notify the Minister of such Force Majeure, or orally so notify the Minister (confirmed in writing), which notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
- (b) be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
- (c) employ all reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring the Company to accede to the demands of its opponents in any strike, lockout or other labour disturbance;
- (d) as soon as reasonably possible after such Force Majeure, fulfil or resume fulfilling its obligations hereunder;
- (e) provide the Minister with prompt notice of the cessation or partial cessation of such Force Majeure; and
- (f) not be responsible or liable to the other party for any loss or damage that the Minister may suffer or incur as a result of such Force Majeure.

### **TERMINATION**

This Agreement shall terminate on December 31, 2020 unless earlier terminated in accordance with the terms herein. Any portion of the Forgivable Loan which remains outstanding upon termination (and which is not eligible for Earned Forgiveness on such date) shall immediately be repaid to the Province and shall bear interest at the rate equal to the Province's Cost of Funds until repaid.

### **FURTHER AGREEMENTS**

The parties shall do, perform, execute and deliver all acts, deeds and documents as may be necessary from time to time to give full force and effect to this Agreement.

## **GENERAL**

1. This Agreement may not be assigned by the JV Company without the express written consent of the Minister and shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.
2. This Agreement may be executed in any number of counterparts by one or more of the parties to be bound hereby. Each executed counterpart shall be deemed to be an original and such counterparts shall together constitute one and the same agreement and shall be as valid and binding as if all parties had attended at the same place and at the same time and affixed their signatures to one instrument.
3. Time shall be of the essence of this Agreement and every part thereof.
4. All references to currency in this letter of offer shall refer to Canadian dollars.

## **APPLICATION OF STANDARD TERMS AND CONDITIONS**

The provision of the Forgivable Loan is subject to the Standard Terms and Conditions attached as Appendix "A" hereto, as amended as agreed between the parties, as follows:

1. Paragraph 2 of section 4 is deleted.
2. Paragraph 2 of section 8 is amended to allow for advances in funding in accordance with the conditions set out in the Disbursement Schedule section herein.
3. Section 13 is amended to delete the words "a director or".

To the extent there is any inconsistency between the Standard Terms and Conditions and the specific terms of this letter of offer, the specific terms of this letter of offer shall govern.

The account manager responsible for the administration of this financial assistance shall be Jeannie Chow. She will be happy to respond to any questions or concerns you may have from time to time.

Please signify your acceptance of this offer by signing and returning the duplicate copy of this letter. The offer shall remain open for acceptance until September ●, 2013. We are pleased the Province of Nova Scotia is able to offer this assistance and look forward to the JV Company's continued success.

Yours truly,

Simon d'Entremont  
Deputy Minister

**WE HEREBY ACCEPT THIS OFFER AND AGREE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN AND IN THE ATTACHED APPENDIX "A", "B" and "C" THIS \_\_\_ DAY OF SEPTEMBER, 2013.**

**QUEST NAVIGATION, INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**ST MARINE LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

**Appendix "A"**  
**Standard Terms and Conditions**

**STANDARD TERMS AND CONDITIONS  
RELATING TO INVESTMENT (THE "INVESTMENT"), EXCLUDING  
GUARANTEES, AUTHORIZED UNDER THE NOVA SCOTIA JOBS FUND ACT**

**1. Definitions:**

"Agreement" refers collectively to this Appendix "A" and the Letter of Offer to which it is attached.

"Cost of Funds" means the interest rate(s) payable by the Province on all amounts disbursed to the Company under the terms of this Agreement. The Cost of Funds will be determined by the Province and communicated to the Company on the date of each disbursement of the Investment as set out and described in the Letter of Offer.

"Corresponding Terms" means the term then being offered by the Province to its customers equal to the number of years, rounded to the nearest year (minimum of one year), from the date prepayment of received to the date of the expiry of the current term (or the maturity date if earlier)

"Minister" means the Minister of Economic and Rural Development and Tourism or the Minister's designate.

"Province" means Her Majesty the Queen in right of the Province of Nova Scotia.

Definitions set out in the Letter of Offer are incorporated herein to the extent they do not conflict with any provision of this Appendix "A".

**2. Inconsistency with Nova Scotia Jobs Fund Act and Regulations (if any)**

The Company hereby acknowledges and agrees that the *Nova Scotia Jobs Fund Act* (the "Act") and all regulations, if any, enacted pursuant to it (the "Regulations") are applicable to the Investment provided by the Province under the terms of this Agreement. In the event of inconsistency between the terms and conditions of this Agreement and the provisions of the Act or its Regulations, the Act and Regulations shall prevail.

**3. Expiration of Letter of Offer**

Should the Company fail to execute the Security required under this Agreement within six (6) months of the date of the Letter of Offer, the Letter of Offer shall expire, provided only that the Minister may at his sole discretion provide written agreement to extend the deadline. In the event of expiration of the Letter of Offer, any costs incurred by the Province prior to or following its expiration, for legal and other services, shall be the responsibility of the Company and the Guarantor(s), if any.

**4. Province's Rights to Terminate the Agreement and/or Withhold Further Disbursements**

Notwithstanding execution of this Agreement by the Company, the Province may refuse to disburse the Investment or any portion of it if, in its sole opinion, there has been a material and adverse alteration in risk since the Letter of Offer was issued.

Where the Company has not requested disbursement of the full amount of the Investment within 180 days following the advance by the Province of the first disbursement, the Company's right to request further disbursements expires and the Minister may at his or her sole discretion decline to make any further disbursements under this Agreement

This Agreement may, at the discretion of the Minister, be cancelled or withdrawn in the event the Company or its officers or directors are found to be involved in litigation or any proceeding before a government board, tribunal, or agency which has not been disclosed to the Province, or in the event the Company or any of its officers, directors, employees or agents

has intentionally made any material misstatement in any information provided to the Province for purposes of obtaining the Investment, whether before or after execution of the Letter of Offer by the Company.

The Province may terminate this Agreement if the Company is in default under other investment or financial assistance agreement(s), if any, with the Province of Nova Scotia or any of its agencies, including crown corporations or government business organizations, and a default in fulfillment and/or repayment of the obligations in any other assistance or investment shall be a default under this Agreement.

**5. Payment Method**

If applicable, payments to the Province contemplated under the Agreement will be made by pre-authorized debit. The Province's standard pre-authorized interbank debit form shall be completed by the Company and provided to the Province with the acceptance of this Agreement.

**6. Returned Items**

Where for any reason a financial institution fails to honour a cheque issued or interbank debit authorized by the Company, the Company shall pay to the Province on demand a Returned Item Fee, which Fee may be revised by the Province from time to time without notice to the Company. Any Fee remaining unpaid shall be added to the Principal Amount of the Investment.

**7. Additional Information**

The Company shall provide such other information as the Minister may from time to time reasonably request.

**8. Disbursement of the Investment**

Prior to disbursement of all or any portion of the Investment, the Security described in the Letter of Offer, in a form satisfactory to the Province, shall be executed and delivered to the Province or its solicitors.

The Investment will be disbursed by the Province against original receipted invoices and cancelled cheques or other documentation acceptable to the Province evidencing programmed expenditures. The Province reserves the right to request that the Company provide certification from a third party professional to confirm expenditures with the cost of same to be borne by the Company.

Cost overruns, if any, on the Program as described in the Letter of Offer are the responsibility of the Company.

**9. Legal Fees and Costs**

The Company shall pay all legal fees and costs relating to the Investment, including preparation, execution and registration of security documents, and legal fees and costs, if any, relating to administration of this Agreement. Legal fees may be deducted from disbursements under the Investment. The Company agrees this applies even if the Investment does not for any reason proceed and /or funds are not advanced.

**10. Insurance**

The Company shall purchase and maintain standard commercial insurance policies with respect to the real and personal property charged by the Security until such time as it has fully satisfied all of its obligations to the Province under this Agreement, which insurance policies shall be in a form satisfactory to the Province

and show the Province as loss payee as its interests may appear.

The Company shall also purchase and maintain standard commercial insurance policies in relation to its general operations until such time as it has fully satisfied all of its obligations to the Province, which insurance policies shall provide public and product liability coverage.

#### 11. Limitations on Company Activities and Actions

(a) This Agreement is not assignable by the Company without the prior written consent of the Province which consent shall not be unreasonably withheld, delayed or conditioned. An assignment is deemed to and shall include a change of control of the capital stock of the Company, or a change in control of the capital stock of any subsidiary or affiliated company through which control may be exercised. In the event of any dispute in this regard the decision of the Minister shall be final and binding.

(b) The Company shall refrain from doing any or all of the following without the prior written consent of the Minister, which consent will not be unreasonably withheld:

- (i) Redeem or purchase any shares of the Company or pay dividends thereon;
  - (ii) Issue shares of the Company if such issuance would result in a change of control;
  - (iii) Repay any shareholders' loans or pay interest thereon;
  - (iv) Make loans to, guarantee or assume liability for or make investments in other parties, including related, affiliated or associated companies;
  - (v) Incorporate, purchase, acquire, fund, sell or dispose of any subsidiary or affiliate, whether wholly or partially owned by the Company;
  - (vi) Sell, lease, exchange or otherwise dispose of the property of the Company other than in the ordinary course of business;
  - (vii) Institute proceedings for the winding-up, reorganization or dissolution of the Company; and
  - (viii) Change the nature of the Company's business.
- (c) The Company shall advise the Minister immediately if it registers a name change.
- (d) The Company covenants that all transactions with related, affiliated or associated companies, and with its shareholders, directors and employees are based on fair market values

#### 12. Compliance with Laws

The Company covenants and agrees that, until such time as the Company has fully satisfied all of its obligations under this Agreement, it will ensure that the business and assets of the Company and any subsidiaries of the Company are and will continue to be operated in compliance with all federal [, provincial and municipal statutes, regulations, ordinances, and by-laws (including, but not limited to the Nova Scotia *Environment Act, Occupational Health and Safety Act, Labour Standards Code and Human Rights Act, Income Tax Act, (Canada) and compliance with remittance of Payroll taxes*) and that no enforcement action is, or will be, pending with respect to any such statute, regulation, ordinance or by-law.

#### 13. Right to Appoint or Nominate a Director or Observer to Company's Board of Directors

So long as the Investment is in effect and until such time as all of the Company's obligations to the Province have been

discharged, the Minister shall be entitled to appoint or nominate a director or an observer to the Company's Board of Directors

#### 14. Requirement to Maintain and Enhance Investment in Nova Scotia

Where commercially reasonable, the Company shall employ and purchase Nova Scotia contractors, labour, products, materials and services in the operation of its business. Further, the Company shall make all commercially reasonable efforts to enhance its business operations in Nova Scotia by increasing the employment of Nova Scotia residents, and locating any new business premises in the Province.

Until the Investment is repaid in full, the Company is prohibited from transferring any existing business operations or premises from Nova Scotia to a location outside of the Province without the prior written approval of the Minister, which approval shall not be unreasonably withheld.

#### 15. Environmental

The Company hereby represents and warrants that its business and assets and those of any subsidiary companies are operated in compliance with applicable environmental legislation, regulations, rules and orders (collectively, "Environmental Laws") and that no enforcement action in respect thereof is threatened or pending. The Company further covenants to continue to operate in accordance with Environmental Laws, to cause its subsidiaries to do likewise, and to permit the Minister to conduct inspections and appraisals of all or any of its and its subsidiaries' records, businesses and assets at the Company's expense, at any time and from time to time, for purposes of ensuring the Company and its subsidiaries are in compliance with Environmental Laws. The Company shall indemnify the Province with respect to any failure by it or its subsidiaries to comply with Environmental Laws, and agrees that, in the event the Province incurs expenses because of the application of Environmental Laws to the Company or any of its subsidiaries, the amounts expended by the Province for such purpose shall be added to the indebtedness of the Company under the terms of this Agreement. The Company shall fully and accurately complete an environmental questionnaire annually upon the request of the Minister.

#### 16. Public Announcements

The Company consents to a public announcement by or on behalf of the Province or Minister advising that an Investment has been or will be provided by the Province pursuant to this Agreement. The Company shall be free to make its own public announcement with respect to the Investment any time after execution of this Agreement, provided that such public announcement is scheduled for a date and time acceptable to the Province or Minister. The Company hereby consents to the participation of a representative of the Province and the Minister responsible for the Province or his or her designate in any event held in conjunction with a public announcement by the Company.

#### 17. Exchange of Credit Information

The Company consents to the receipt and exchange of credit and/or other information from time to time by the Minister, including receipt from and exchange with any financial institution, credit bureau, credit reporting agency or any person, firm or corporation with which the Company has or proposes to have financial relations. The Company acknowledges and agrees that this information may be used for purposes of establishing and maintaining the Company's relationship with the Province. The Company hereby consents to the release of credit and other information to the Minister by any other person, firm or corporation with which it has or proposes to have financial relations.

#### 18. Agreement to Release of Financial Statements



By acceptance of the Letter of Offer, the Company authorizes its external accountants and auditors to provide copies of the Company's financial statements to the Minister as and when requested by the Minister.

#### **19. Confidentiality of Information**

Subject to Sections 15, 16 and 17 above, and to the provisions of the *Freedom of Information and Protection of Privacy Act*, or under any rules of the Legislature of the Province and any other applicable legislation or Court Order to the contrary, all documentation and information provided by the Company to the Province for purposes of obtaining an Investment shall be kept confidential provided, however, and notwithstanding any other agreement or non-disclosure agreement between the Province or Minister and the Company, the Province or Minister may release this Agreement, in whole or in part, without further consent of the Company.

#### **20. Bankruptcy or Insolvency of the Company**

The Company hereby acknowledges and agrees that the Province's obligations with respect to the provision of the Investment, whether accrued, due, or to become due, under this Agreement shall immediately cease in the event the Company becomes insolvent or makes an assignment under the *Bankruptcy and Insolvency Act*, makes a proposal to creditors (whether voluntary or involuntary) under the *Bankruptcy and Insolvency Act*, has a petition filed or presented against it pursuant to the *Bankruptcy and Insolvency Act*, takes or proposes to take the benefit of any provision of the *Companies Winding Up Act* or the *Companies Creditors Arrangement Act* or similar legislation, is subject to or takes steps similar to any of the foregoing pursuant to any other legislation, or ceases to carry on business in the Province of Nova Scotia.

#### **21. No Contingency Fee Paid**

The Company warrants and represents that no contingency fee for the solicitation, negotiation, or obtaining of this Agreement has been or will be paid directly or indirectly to any person other than to an employee of the Company acting within the scope of his or her employment.

#### **22. Prepayment**

Partial prepayments shall be applied regressively on the then last maturing payment of principal. The outstanding principal of the Investment may be prepaid in full or in part provided the Company pay to the Province the interest owing to the time of payment together with an indemnity equal to an interest differential charge. This interest differential charge is applicable if, on the date prepayment is received, the Province's Cost of Funds for the Corresponding Term is lower than the Province's Cost of Funds in effect when the Company either entered or renewed the current term being prepaid, whichever is most recent. The interest differential is the difference between these two rates. The interest differential is multiplied by the principal that would have been outstanding at the first day of each month until the expiry of the current term (or the maturity of the principal if earlier). Then the present value of the amount or amounts obtained by such multiplication is calculated by discounting such amount or amounts using the Province's Cost of Funds for the Corresponding Term as the discount factor. The total of the present values is the interest differential charge.

#### **23. Waivers**

No delay or omission to exercise any right or remedy accruing to the Province upon any breach or default by the Company under this Agreement shall impair any such right or remedy or be construed as a waiver of the breach or default or of any similar breach or default occurring thereafter, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of a single breach or default shall operate or be construed as a waiver of any subsequent breach or default. All waivers hereunder must be in writing and signed by the waiving party.

#### **24. Forum and Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein, and shall be treated in all respects as a Nova Scotia contract.

The Company agrees that any suit, action or proceeding arising from or in relation to this Agreement, against it or its assets, may be brought to the Supreme Court of Nova Scotia, the Federal Court of Canada or any other Court in which, at its sole discretion, the Province chooses to bring such suit, action or proceeding, and the Company hereby generally, irrevocably and unconditionally submits to the non-exclusive jurisdiction of any or all such Courts over any such suit, action or proceeding. The Company further agrees that all judgments in such suits, actions or proceedings shall be conclusive and binding upon it and that such judgments may, at the sole election of the Province, be enforced in any jurisdiction or jurisdictions selected by the Province.

#### **25. Complete Agreement**

This Agreement constitutes the entire, full and complete agreement entered into by parties regarding the subject matter herein, and replaces all previous agreements with respect to the said subject matter. Neither party has been induced to execute this Agreement by any former representation, and as no representation, encouragement, promise or agreement, whether verbal or other, between the parties, other than as expressly provided for herein, is in force or has any effect in relation to this Agreement or otherwise.

#### **26. Amendments**

No changes to the Program and Financing described in the Letter of Offer may be made by the Company without the prior written consent of the Province or the Minister in accordance with the *Nova Scotia Jobs Fund Act* and Regulations.

#### **27. Joint Obligors**

If there are joint obligors each agrees that the Minister may advance disbursements to either obligor, or to the solicitor of either obligor. In such event, this shall be the Minister's absolute and irrevocable authority for all advances or payments made under this Agreement.

#### **28. Headings**

Headings are inserted only for convenience and are in no way to be construed as limiting the scope of any provision of the Agreement

**Appendix "B"**  
**Eligible Start-up Costs**





**Appendix "C"**  
**Approved Sailing Schedule**

Commencement of Ferry Service: May 1, 2014

Season for Ferry Service: May 1 to October 31 for each year

Operation: 7 days a week

Daily Departure Times: Depart Portland 20:00 EST arrive Yarmouth 07:00 AST  
Depart Yarmouth 09:00 AST arrive Portland 17:00 EST