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2                   **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**  
3                   **BETWEEN STATE OF ALASKA, ALASKA MARINE HIGHWAY SYSTEM**  
4                   **AND MTU**

5                   **I. SETTLEMENT AND RELEASE OVERVIEW**

6                   (A) This Settlement Agreement (hereinafter “Agreement,” “Settlement,” or  
7 “Release”) memorializes the terms and conditions of the settlement and release of all  
8 claims asserted by plaintiff State of Alaska, Alaska Marine Highway System (“the  
9 State”) against defendants MTU Friedrichshafen GMBH and Tognum America Inc.  
10 f/k/a MTU Detroit Diesel, Inc. (jointly referred to as “MTU”) in *State of Alaska,*  
11 *Alaska Marine Highway System, Plaintiff v. Robert E. Derecktor, Inc., MTU*  
12 *Friedrichshafen GMBH and Tognum America, Inc. f/k/a MTU Detroit Diesel, Inc.,*  
13 *Court Case No. 1JU-10-00507 Civil, Superior Court for the State of Alaska, First*  
14 *Judicial District at Juneau (“the Litigation”).* This Agreement does not apply to and is  
15 without prejudice to the State’s claims against defendant Robert E. Derecktor, Inc.  
16 (“Derecktor”).

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19                   (B) For and in consideration of, and subject to, MTU’s agreement to take the  
20 actions set forth below in ¶ III of this Agreement, which actions include but are not  
21 limited to: the delivery and installment of new engines; providing warranties for the  
22 new engines; providing for the ongoing operation of the existing engines until the new  
23 engines are installed and ready for service; maintenance and service obligations with  
24 respect to the new engines upon installation; and other valuable consideration  
25 received; the State on its own behalf and on behalf of its agents, employees,  
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representatives, successors, assigns, and attorneys does hereby fully, completely, and forever release, discharge, and acquit MTU and all of its agents, employees, representatives, successors, assigns, and attorneys of and from all claims, demands, rights, actions, and causes of action which the State now has, claims to have, or could have asserted against MTU as alleged in the Litigation.

(C) To avoid protracted and costly litigation, the State and MTU (collectively “the Parties”) have agreed that all of the State’s claims against MTU as alleged in the Litigation shall be resolved through the terms of this Agreement.

(D) The Agreement set forth herein is the settlement and compromise of a disputed claim. No promises have been made to provide further or other consideration for this Settlement other than those set forth herein.

(E) This Settlement Agreement is entered into in good faith by both the State and MTU. Performance of all terms of this Agreement shall be undertaken in good faith. The Parties will apply and adhere to the principles of fair dealing, candor, the sharing of technical information, prompt notification and response, and cooperation.

(F) This Agreement, and all documents attached hereto or incorporated herein by reference, contain the entire Settlement Agreement between the Parties. The terms of this Agreement are contractual, and not a mere recital. The Parties declare and agree that they have carefully read each page of this Agreement, and that they understand the terms of the Settlement, which they voluntarily accept for the purpose of making a full and final compromise and settlement of all claims.

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2 (G) The Parties agree that no promise or inducement has been offered or  
3 made except as set forth herein, and that this Settlement and Release is executed  
4 without reliance upon any other statement or representation by the State, MTU, or any  
5 attorney, agent, servant, or employee of either party.

6 (H) Until the signing of this Agreement by the State and MTU, plus the  
7 dismissal with prejudice of the State's claims against MTU (which must be approved  
8 by the Court pursuant to Alaska R. Civ. P. 41) the State maintains and continues to  
9 maintain and reserve all of its claims against MTU as alleged in the Litigation.

10 (I) Nevertheless, the Parties are equally committed to the resolution and  
11 settlement of the State's claims pursuant to the terms, conditions, procedures, and  
12 enforcement mechanisms set forth in ¶ III, below.

## 13 II. BACKGROUND

14 (A) The State filed its original Complaint in the Litigation on or about  
15 March 26, 2010. The State filed a motion to amend its Complaint, and lodged a  
16 proposed Amended Complaint, on or about February 14, 2012. The Court granted the  
17 motion to amend on May 4, 2012, and the State filed its Amended Complaint on the  
18 same date.

19 (B) MTU answered the State's original Complaint on June 24, 2010. MTU  
20 answered the State's Amended Complaint on or about June 5, 2012, and filed an  
21 Amended Answer to the Amended Complaint on or about June 22, 2012.

22 (C) Derecktor answered the State's original Complaint on June 24, 2010.  
23 Derecktor did not answer the State's Amended Complaint. Derecktor declared  
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bankruptcy on February 27, 2012, whereupon the State's claims against Derecktor were stayed. By order dated June 27, 2012, the bankruptcy court, in the matter entitled *In re Robert E. Derecktor, Inc.*, Case No. 12-22393 (RDD), confirmed the stay of the State's claims against Derecktor, subject to exceptions including the participation of Derecktor witnesses during discovery and at trial.

(D) Because of the ongoing stay, Derecktor is not a party to this Settlement Agreement. The Agreement is without prejudice to the State's claims against Derecktor as alleged in the State's original Complaint and the Amended Complaint. No waiver of the State's claims against Derecktor, and no estoppel, may be inferred.

**III. SETTLEMENT AGREEMENT**

**(A) Replacement of Fast Ferry MTU Series 595 Engines with New MTU Series 4000 Engines at MTU's Sole Expense**

As set forth in the State's original Complaint and Amended Complaint and MTU's Answers thereto, the Parties dispute whether the MTU Series 595 engines (hereinafter "the 595 engines") originally installed in the FAIRWEATHER and CHENEGA (hereinafter "the vessels," unless the context otherwise requires) are defective, and whether the State is entitled to remedies against MTU for the alleged defects. In order to resolve, compromise, and settle the dispute, MTU shall provide, at no cost to the State, eight (8) new engines (four (4) per vessel), to be delivered, installed, and made suitable for operation in passenger service at MTU's sole cost, and at no expense to the State. MTU is not, however, obligated to reimburse the State for any internal overhead or any external costs the State may elect to incur in connection

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with the engine replacements. The new engines shall be either MTU Series 4000 20V M93 or MTU Series 4000 20v M73L engines (hereinafter “the 4000 engines”).

**(B) Delivery, Installation, and Readiness for Operation in Passenger Service**

At MTU’s sole cost, and at no expense to the State, the 4000 engines shall be delivered, installed, and made operational for passenger service subject to the following terms:

(1) MTU shall deliver the 4000 engines for installation at the Ketchikan Shipyard so long as the Ketchikan Shipyard is a commercially practicable installation facility for the 4000 engines based on considerations to include costs of delivery and installation, the sufficiency of facilities at the Ketchikan Shipyard, the scheduling and availability of the Ketchikan Shipyard to perform the installation under the conditions described herein, and the availability of sufficient manpower and other resources.

(2) In the event MTU believes it is not commercially practicable to use the Ketchikan Shipyard, MTU will consult with the State. Upon the State’s approval, which shall not be unreasonably withheld, the 4000 engines shall be delivered to another shipyard located on the west coast of the United States for installation and preparation for passenger operations. In that event, the State will pay operating costs for the transit of the vessels to and from the west coast shipyard, except that MTU will pay for fuel costs associated with the voyage or voyages.

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2 (3) MTU will pay for all costs associated with the retrofitting of the  
3 vessels to accommodate the new engines. All costs associated with removal of the  
4 595 engines, reconfiguration of the engine rooms, installation of the 4000 engines,  
5 mounting, alignment, reconfiguration of the hull space, retrofitting of the propulsion  
6 systems components to accommodate the 4000 engines, retrofitting and modification  
7 of the control systems, software, and related components, inspections, testings, and  
8 certifications shall be borne by MTU at no expense to the State. MTU is not,  
9 however, obligated to reimburse the State for any internal overhead or any external  
10 costs the State may elect to incur in connection with the engine replacements.  
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12 (4) MTU shall deliver four (4) 4000 engines to the shipyard by no  
13 later than October 31, 2013. The State shall deliver one of the fast ferry vessels to the  
14 shipyard on or before the same date in order to receive 4000 engine installations.  
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16 (5) MTU shall deliver the remaining four (4) 4000 engines to Pacific  
17 Power Products' (PPP) facility in Seattle, Washington by December 31, 2013. These  
18 four (4) 4000 engines shall be stored and transferred to the shipyard at MTU's sole  
19 cost and expense. The State shall deliver the second fast ferry vessel to the shipyard  
20 on or before October 31, 2014 in order to receive 4000 engine installation.  
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22 (6) MTU shall undertake to have the first four (4) 4000 engines  
23 installed and made operational for passenger service (including but not limited to DNV  
24 approval and State acceptance)<sup>1</sup> in one of the fast ferry vessels on or before  
25 February 15, 2014. In this regard, MTU and the State will together take all  
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<sup>1</sup> DNV stands for Vessel Classification Society Det Norske Veritas.

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2 commercially reasonable steps to meet the deadline. The State will not unreasonably  
3 withhold acceptance of the engines and/or the vessel for operation in passenger  
4 service. MTU will take ownership and control of, and responsibility for, the removed  
5 595 engines upon acceptance of the 4000 engines (and the vessel) for passenger  
6 service.

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8 (7) MTU shall undertake to have the remaining four (4) 4000 engines  
9 installed and made operational for passenger service (including but not limited to DNV  
10 approval and State acceptance) in the second fast ferry vessel on or before February 1,  
11 2015. MTU and the State will together take all commercially reasonable steps to meet  
12 the deadline. The State will not unreasonably withhold acceptance of the engines  
13 and/or the vessel for operation in passenger service. MTU will take ownership and  
14 control of, and responsibility for, the removed 595 engines upon acceptance of the  
15 4000 engines (and the vessel) for passenger service.  
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17 (C) **Installation Specifications, Technical Specifications, Scope of**  
18 **Supply, Engine Service Life, Estimated Maintenance Costs, Training**  
19 **and Tools**

20 In addition, and to ensure proper ship building, engine operation, and  
21 engine maintenance and service practices, the Parties agree to the following terms:

22 (1) On or before May 1, 2013, MTU, in consultation with the State,  
23 will prepare and publish engine installation specifications. Upon publication, copies  
24 will be provided to the State.

25 (2) On or before May 1, 2013, MTU, in consultation with the State,  
26 will prepare and publish a document entitled "Technical Specifications and Scope of

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2 Supply” (“Technical Specifications”) of the type provided by MTU to Derektor as  
3 part of its supply of the 595 series engines in 2002. Upon publication, copies will be  
4 provided to the State. The Technical Specifications will reflect that the 4000 engines  
5 are capable of meeting the State’s ferry service routes and schedules, and the following  
6 mean operation profile (hereinafter “the mean operation profile”):  
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| Power % | Time % |
|---------|--------|
| 100     | 2      |
| 85      | 22     |
| 80      | 36     |
| 75      | 15     |
| 50      | 10     |
| 35      | 15     |

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12 This mean operation profile is without prejudice to the State’s operation  
13 of the engines at different power settings as needed for safe operations and public  
14 welfare. Attached hereto as **EXHIBIT A**, and incorporated herein by reference, is the  
15 range of profiles at which the State can reasonably expect to operate the engines under  
16 reasonably foreseeable conditions.<sup>2</sup>  
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18 (3) MTU represents that the engines will meet at least the balance of  
19 each of vessels’ 25-year service life, subject to specified inspection, maintenance,  
20 servicing and overhaul of the 4000 engines, and subject to operation of the engines in  
21 accordance with the ferry routes, schedules, and the operation profile.  
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23 (4) On or before April 1, 2013, MTU will prepare and publish a cost  
24 estimate reflecting the estimated maintenance and service costs for the 4000 engines  
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26 <sup>2</sup> The **EXHIBIT A** profiles are reflected in the maintenance and service agreement described in ¶ III(F), below.



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over their estimated service life. Upon publication, copies will be provided to the State. Maintenance and service costs are contingent upon specified maintenance, servicing, and overhaul of the engines, and proper operation of the engines in accordance with the routes, schedules, and the operation profile. This estimate does not constitute a warranty, however it may be used by the State for planning and budgeting purposes. MTU further agrees to provide to the State actual maintenance costs figures for the 3<sup>rd</sup> and 4<sup>th</sup> years of maintenance of the 4000s installed in the vessels. This will include "QL3" cost data.

(5) Subject to commercial practicability, MTU will ensure, over the service life of the 4000 engines, a sufficient supply of parts, a sufficient delivery system and supply chain, and sufficient operational and manpower capabilities so as to provide necessary and/or requested maintenance servicing, and repair. MTU will ensure it charges no greater than market rates for service and parts supply.

(6) MTU shall consult with the State in forming its contract with the shipyard at which the 4000 engines will be installed. MTU's contract with the shipyard will allow for and provide for State participation, oversight, and inspection during the new engine installation processes, including but not limited to the removal of the 595 engines, reconfiguration of the engine rooms and hull space, installation of the new engines, remounting and alignment of the new engines, retrofitting and modification of the gear boxes and related propulsion system components, retrofitting and modification of the control systems, software, and related components, testing, trials, and inspections. MTU shall provide the State a copy of the contract with the

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2 shipyard with all attachments. MTU shall promptly respond to reasonable requests  
3 from the State for information regarding the progress of the installation of the 4000  
4 engines. MTU shall provide the State a copy of the project management plan (if any)  
5 as between MTU and its naval architect. The State may separately contract with the  
6 shipyard for contemporaneous work on the vessels, however any such  
7 contemporaneous work must not impede the shipyard's performance of its work under  
8 its contract with MTU regarding the 4000 engines.  
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10 (7) MTU will provide the State with tools and training relative to the  
11 4000 engines. At no cost to the State, MTU will provide, for each fast ferry vessel, a  
12 set of all specialized tools needed for QL1 – QL2 maintenance and servicing (total of  
13 two (2) sets).<sup>3</sup> In addition MTU will provide, at no cost to the State, one (1) set of  
14 QL3 tools that the State will store in Juneau or Cordova. The QL3 tools will be stored  
15 for easy access and use by MTU (or MTU trained) technicians, or by State technicians  
16 trained in their use. In addition MTU will provide, at no cost to the State, training  
17 courses for two crews (one crew for each vessel), up to 10 people per crew, except that  
18 the State will bear the cost of travel, per diem, and salary for the crew members. The  
19 training will take place in Novi, Michigan, Canton, Ohio, or another mutually agreed  
20 to place in the Lower 48 states.  
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23 **(D) New Swing Engines**

24 As additional consideration, on or before March 31, 2013 the State may  
25 order from MTU up to two MTU Series 4000 20V M93 or MTU Series 4000 20V  
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<sup>3</sup> Maintenance and servicing terms are more fully described in ¶ III(F), below.

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M73L replacement engines (“4000 swing engines”) at the cost of \$1.5 million per 4000 swing engine, inclusive of all delivery costs. The State’s purchase of the 4000 swing engines is subject to the following terms:

(1) The State will select the destination to which the 4000 swing engines shall be delivered. MTU shall not unreasonably withhold its consent to the destination. Upon delivery of the 4000 swing engines to the selected destination the State shall be responsible for storage and safekeeping of the 4000 swing engines, and for the cost of such storage and safekeeping.

(2) Except as stated in ¶ III(D)(3), immediately below, upon delivery to the selected destination, the State will assume responsibility for storage and safe keeping of the 4000 swing engines. MTU will not be responsible for damage to the 4000 swing engines while in State storage, including but not limited to damage due to improper un-packaging and repackaging by the State or its agents, improper maintenance by the State or its agents while the 4000 swing engines are in storage, and natural events such as earthquake, fire or flood.

(3) MTU shall be responsible for appropriate preparation and packaging of the swing engines prior to delivery. MTU shall be responsible for damage to the 4000 swing engines that develops or is discovered after delivery but during storage, to the extent the damage is the result of improper preparation, packaging, and delivery by MTU or its agents.

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2           **(E) Warranty**

3           As additional consideration MTU agrees to provide, at its sole cost and  
4 at no expense to the State, a 5-year warranty covering the 4000 engines and the 4000  
5 swing engine(s) (to the extent the State purchases the 4000 swing engine(s)). The  
6 terms and conditions of the MTU 5-year warranty are as follows:

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8           **(1) MTU Responsibilities.** MTU agrees and warrants as follows:

9           (a) With respect to the 4000 engines MTU warrants its  
10 materials and/or services for any deficiency, imperfection, fault, inferiority, or  
11 defect in workmanship, materials or design (“warranty deficiency”) for a period  
12 of five (5) years. For each vessel, the 5-year period will begin from the date of  
13 acceptance by the State of the vessel for operation in passenger service,  
14 subsequent to 4000 engine installation, vessel retrofitting, sea trials, and  
15 certifications.

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17           (b) All warranty deficiencies occurring within the 5-year  
18 warranty period shall be corrected by MTU in a timely manner. The warranty  
19 period shall be extended by the number of days that a vessel is out of service  
20 due to the repair or other correction of a warranty deficiency. If MTU repairs  
21 or replaces a part or component under this warranty, the repaired or replaced  
22 component assumes the remaining, unexpired warranty period original part or  
23 component. Repair or replacement will not extend the length of the original  
24 warranty period. The 5-year warranty may not be sold, transferred, or assigned.  
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2 (c) The 5-year warranty shall apply equally to the 4000 swing  
3 engine(s) (to the extent ordered by the State), except that the 5-year period shall  
4 begin from the date of delivery of the 4000 swing engines to the State facility as  
5 described in ¶ III(D)(1), above. With respect to the 4000 swing engines, the 5-  
6 year warranty shall be subject to ¶¶ III(D)(2) and III(D)(3), above. The 5-year  
7 warranty shall apply to and cover the 4000 swing engines only so long as the  
8 4000 swing engines are stored for and used by the State for fast ferry service in  
9 the vessels FAIRWEATHER and CHENEGA.  
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11 (2) **State Responsibilities.** During the 5-year warranty the State is  
12 responsible for, and MTU will not, reimburse:

13 (a) State employee labor costs, including overtime;  
14 (b) State material costs for product removal and reinstallation;  
15 (c) State transportation costs related to delivery of the vessels  
16 to the facility where warranty repairs are to be carried out, except that MTU  
17 will be responsible for fuel costs in the event of transportation to a Lower 48  
18 shipyard;

- 19 (d) State incidental or administrative expenses;  
20 (e) State repairs unrelated to the engines;  
21 (f) “down time” expenses;  
22 (g) State travel expenses.  
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25 (3) **Mutual Responsibilities.** During the 5-year warranty, both  
26 Parties will:

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2 (a) provide prompt notification to one another of any failure or  
3 defect subject to the 5-year warranty;

4 (b) comply with reasonable directions or requests from one  
5 another regarding the timing, sequence, and location of repairs;

6 (c) cooperate in engine inspections conducted for the purpose  
7 of assessing the extent of a failure or defect that is subject to, or may be subject  
8 to, the 5-year warranty;

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10 (d) use specified consumables such as fuel, oil, lubricants and  
11 coolant, contingent upon the prompt delivery of such consumables to the extent  
12 they are supplied by MTU or its agents;

13 (e) allow one another access to all electronic data stored in the  
14 electronic control system, and provide all summaries, evaluations or analyses of  
15 such electronic data;

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17 (f) cooperate in the prompt return to MTU of all parts  
18 replaced under the 5-year warranty.

19 (4) **Limitations.** During the 5-year warranty, MTU is not responsible  
20 for:

21 (a) failure caused by the State's negligent maintenance,  
22 service, repair, or inspection of components covered by the 5-year warranty;

23 (b) failure caused by service work performed by non-MTU  
24 authorized service providers and/or the use of parts not approved by MTU;  
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2 (c) failure resulting from negligent use, handling, treatment,  
3 storage, corrosion proofing, installation, or modification of components covered  
4 by the 5-year warranty;

5 (d) failure resulting from State's negligent engine or vessel  
6 operation, including but not limited to negligent: (i) use or application of  
7 coolants or lubricants; (ii) over-fueling; (iii) over-speeding; (iv) operation of  
8 cooling systems; (v) operation of lubricating or intake systems; (vi) storage;  
9 (vii) starting; (viii) warm-up; (ix) shut down; and (x) systems modification;

10 (e) failure caused by the State's negligent introduction of  
11 incorrect oil or fuel into the engines, or the State's negligent introduction of  
12 water, dirt, or other contaminants into the fuel or oil;

13 (f) failure resulting from the State's unreasonable delay in  
14 making the engines available for inspection or repair;

15 (g) damage to parts, fixtures, housings, attachments, and  
16 accessory items that are not subject to this 5-year warranty, except that MTU  
17 shall be responsible for such damage to the extent it is caused by MTU and/or  
18 its agents;

19 (h) repair of components sold by MTU to the State that are  
20 manufactured by another party and that are subject to warranty or warranties as  
21 between the manufacturer and the State, except that MTU shall be responsible  
22 for such repair to the extent the repair is necessitated by the actions of MTU  
23 and/or its agents.  
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2 (5) The liability of MTU under this paragraph (¶ III(E)) shall not  
3 extend beyond the correction of the warranty deficiency, the repair of any damage to  
4 the 4000 engines and their components resulting from the warranty deficiency, and the  
5 repair of any damage to the 4000 swing engines and their components resulting from  
6 the warranty deficiency.

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8 (6) **MTU WILL NOT BE LIABLE FOR ANY SPECIAL,**  
9 **INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM A**  
10 **WARRANTY DEFICIENCY. THIS WARRANTY PROVIDES THE**  
11 **EXCLUSIVE REMEDY FOR WARRANTY DEFICIENCIES. IN ADDITION,**  
12 **IT IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR**  
13 **IMPLIED, COVERING MTU EQUIPMENT, MACHINERY, GOODS, OR**  
14 **SERVICES, INCLUDING THE WARRANTIES OF MERCHANTABILITY**  
15 **AND FITNESS FOR A PARTICULAR PURPOSE.**

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17 (7) **THE LIABILITY, DAMAGES, AND WARRANTY**  
18 **DISCLAIMERS SET FORTH IN ¶ III(E)(6), IMMEDIATELY ABOVE, IN NO**  
19 **WAY DIMINISH MTU'S OBLIGATIONS OR DEROGATE THE STATE'S**  
20 **RIGHTS CONTAINED IN THE MTU SERVICES AGREEMENT, DISCUSSED**  
21 **IMMEDIATELY BELOW IN ¶ III(F). FURTHER, THE LIABILITY,**  
22 **DAMAGES, AND WARRANTY DISCLAIMERS SET FORTH IN ¶ III(E)(6),**  
23 **IMMEDIATELY ABOVE, IN NO WAY DIMINISH EITHER MTU'S**  
24 **OBLIGATION TO PERFORM THE TERMS OF THIS SETTLEMENT**  
25 **AGREEMENT OUTSIDE THE SCOPE OF THE 5-YEAR WARRANTY, OR**  
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2 MTU'S OBLIGATION TO PERFORM OTHER OBLIGATIONS THAT MAY  
3 ARISE OR EXIST AT LAW. IN THE EVENT OF MTU'S BREACH,  
4 NONPERFORMANCE, OR OTHER FAILURE TO FULFILL ITS AGREED  
5 TO OBLIGATIONS UNDER THIS AGREEMENT OUTSIDE THE SCOPE OF  
6 THE 5-YEAR WARRANTY, OR IN THE EVENT OF MTU'S BREACH OF  
7 OBLIGATIONS THAT MAY ARISE OR EXIST AT LAW, THE STATE MAY  
8 PURSUE ALL LEGAL REMEDIES. NO WAIVER OR ESTOPPEL MAY BE  
9  
10 INFERRED.

11 (8) All disputes regarding compliance with the terms and conditions  
12 of the 5-year warranty, compliance with the terms and conditions of this Settlement  
13 Agreement, or compliance with other obligations that may arise or exist at law will be  
14 resolved through the dispute resolution procedures set forth in ¶ III(H) of this  
15 Agreement, below.  
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17 (F) MTU Maintenance and Services Agreement

18 (1) As additional consideration for this Settlement Agreement MTU  
19 agrees to provide, at its own cost and at no expense to the State, a 5-year maintenance  
20 and service agreement covering the 4000 engines and the 4000 swing engines. The  
21 maintenance and services agreement is attached hereto as EXHIBIT B, and is  
22 incorporated herein by reference. The purpose for the maintenance service agreement  
23 is to provide the State prompt, professional, and technically superior maintenance and  
24 service up to and including scheduled "QL3 intermediate maintenance overhaul,"  
25 described in detail and with specificity in the services agreement.  
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2 (2) With respect to the 4000 engines to be initially installed on the  
3 vessels, the 5-year period shall begin to run upon acceptance of the vessels in  
4 passenger service. See ¶¶ III(B)(6) and III(B)(7), above. With respect to the 4000  
5 swing engines, the 5-year period shall begin to run upon delivery to the State as  
6 described in ¶ III(D)(1), above.

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8 **(G) Ongoing Operation, Maintenance, Repair, and Upkeep of the 595**  
9 **Engines for Passenger Services Until the New Engines are Installed**  
10 **and Made Serviceable – Liquidated Damages**

11 As additional consideration MTU will undertake to ensure operation of  
12 the 595 engines for both vessels in passenger service until installation and acceptance  
13 for service of the 4000 engines. MTU's obligation to ensure the operation of the 595  
14 engines is subject to the following terms:

15 (1) Should a 595 engine (or engines) or related component  
16 manufactured or supplied by MTU require maintenance, repair, servicing, or  
17 replacement such that the vessel in which the 595 engine or engines is installed  
18 become inoperable in passenger service, MTU will promptly, and at its sole cost and  
19 expense, undertake all necessary maintenance, repair, replacement, or other measures  
20 to return the vessel to passenger service.<sup>4</sup>

21 (2) In the event that the vessel in question is out of scheduled  
22 passenger service for more than five (5) days after the date of notification to MTU  
23 regarding the need for MTU servicing for the 595 engine or engines, MTU will  
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25 <sup>4</sup> However the State will pay (only) for 595 engine component parts replaced due  
26 to expiration or ordinary wear and tear. Such component parts, supplied by MTU, will  
be priced "at cost."

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2 additionally pay liquidated damages in the amount of \$10,000 per day (subsequent to  
3 the 5<sup>th</sup> day) for each day of lost scheduled passenger service.

4 (3) The \$10,000 per day liquidated damages payment is subject to a  
5 \$1 million cap. The cap is an aggregate, cumulative cap and applies to the combined  
6 lost scheduled passenger service days for both the FAIRWEATHER and the  
7 CHENEGA. The State is entitled to no more than 100 days in liquidated damages for  
8 lost scheduled passenger ferry service (100 days at \$10,000 per day equals  
9 \$1 million).

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11 (4) These liquidated damages requirements and conditions apply  
12 equally to any lost days of passenger service due to failure by MTU or its agents to  
13 install the 4000 engines and make them and the vessels they power acceptable for  
14 passenger service in accordance with the deadlines set forth in ¶ III(B)(6)-(7), above.  
15 Should the first vessel to receive the 4000 engines not be approved for passenger  
16 service by March 31, 2014 (45 days from the date set forth in ¶ III(B)(6), above)  
17 MTU will pay liquidated damages of \$10,000 per lost day of scheduled passenger  
18 service after March 31, 2014. Should the second vessel not be approved for  
19 passenger service by March 31, 2015 (60 days from the date set forth in ¶ III(B)(7),  
20 above) MTU will pay liquidated damages of \$10,000 per day per lost day of  
21 scheduled passenger service after March 31, 2015. The liquidated damages are  
22 subject to and subsumed within the \$1 million liquidated damages cap described in  
23 ¶ III(F)(4), immediately above.  
24  
25  
26

1  
2 (5) MTU's obligation to pay liquidated damages shall not apply in  
3 the event of lost scheduled passenger service due to the improper actions or  
4 misconduct of the State or its agents, the improper actions or misconduct of third  
5 parties not subject to MTU's control, or acts of god, war, or nature (such as, by way of  
6 illustration, the ingestion of a log into a vessel's propulsion jet).

7  
8 (6) MTU's obligation to repair, replace, and/or pay liquidated  
9 damages shall not apply in the event of lost scheduled passenger service days due to  
10 maintenance, servicing, or repairs unrelated to the 595 engines or related components  
11 manufactured or supplied by MTU.

12 (7) In order to fulfill its obligation to maintain the 595 engines until  
13 installation and acceptance of the 4000 engines in passenger service, MTU will make  
14 available a Series 595 swing engine. The 595 swing engine will be delivered to and  
15 stored at PPP's facility at or near Seattle, Washington. The delivery, storage, and  
16 maintenance of the 595 swing engine at the PPP facility will be at MTU's sole cost, at  
17 no expense to the State. In the event the 595 swing engine is needed to replace an  
18 installed 595 engine, further delivery, installation, testing, and inspection of the 595  
19 swing engine shall be at MTU's sole expense, at no cost to the State.

20  
21 (8) In order to help MTU fulfill its obligation to keep the 595 engines  
22 operational in passenger service, the State has agreed to provide to MTU a list of parts  
23 that are likely needed to keep the 595 engines operational. The list of parts is  
24 attached hereto as EXHIBIT C. The stockpiling of listed parts is at MTU's sole  
25

1  
2 discretion. The fact that a specific part is not listed does not relieve MTU of its repair  
3 obligations described in this paragraph (§ III(G)).

4 (9) The liquidated damages described in § III(G) of this Agreement  
5 are the State's sole remedy for lost scheduled days of passenger service until  
6 installation of the 4000 engines and acceptance of the vessels for passenger service.  
7 The liquidated damages terms do not apply to lost days of passenger service after  
8 installation of the 4000 engines and acceptance of the vessels for use in passenger  
9 service.  
10

11 (10) The availability of liquidated damages for loss of scheduled  
12 service days until installation of the 4000 engines and acceptance of the vessels for  
13 passenger service does not affect, supersede, or otherwise limit the State's right to  
14 pursue remedies for loss or damage in the event of MTU's non-performance of the  
15 terms of this Settlement Agreement, or MTU's breach of obligations that may  
16 otherwise or exist at law. In the event of material breach, nonperformance, or failure  
17 by MTU to perform its obligations, the State may pursue all available legal remedies.  
18 No waiver or estoppel may be inferred. Any claims for damages in addition to  
19 liquidated damages will be governed by the dispute resolution procedure set forth in  
20 § III(H), below.  
21

22 **(H) Dispute Resolution**

23 Based upon their mutual commitment to ensure swift resolution of  
24 disputes so as to minimize the impact on Alaska fast ferry vessel operations and  
25 passenger ferry service, the Parties agree that upon the signature of this Settlement  
26

1  
2 Agreement and the dismissal of the State's claims pursuant to ¶ I(H), above, all  
3 disputes arising out of this Settlement Agreement, and in addition all disputes arising  
4 out of the servicing, maintenance, repair, and operation of the 4000 engines or the  
5 4000 swing engine(s) subsequent to the performance of the terms and conditions of  
6 this Settlement Agreement, shall be resolved by alternative dispute resolution. Such  
7 disputes shall be resolved according to the following processes:

8  
9 (1) Upon notice by one party to the other of the existence of a dispute  
10 over engine or related propulsion system component servicing, maintenance, repair,  
11 breakdown, parts replacement, or mechanical operation ("technical dispute") involving  
12 an amount under \$200,000, the Parties shall have five (5) days to attempt and secure a  
13 joint resolution of the dispute. Efforts to achieve resolution shall be conducted by  
14 representatives acting on behalf of each party. The State's representative shall be the  
15 Project Manager for fast ferry maintenance, servicing, and repairs (or his/her  
16 designee). MTU's representative shall be a designee from the Tognum America After  
17 Sales Group for the State fast ferry engines.

18  
19 (2) In the event a resolution is not reached pursuant to ¶ III(H)(1),  
20 immediately above, the Parties shall have an additional five (5) days to resolve the  
21 technical dispute. During the additional five (5) days the State's representative for  
22 dispute resolution shall be the Alaska Marine Highway System (AMHS) Marine  
23 Engineering Manager (or his/her designee). MTU's designated representative shall be  
24 the Tognum America Director of After Sales Service (or his/her designee).  
25  
26

1  
2 (3) In the event a resolution is not reached pursuant to ¶ III(H)(2),  
3 immediately above, within an additional 10 days the technical dispute will be  
4 presented to and decided by a neutral third party. The Parties stipulate and agree that  
5 one or more representatives of Elliott Bay Design Group will serve as the neutral  
6 decision maker, unless the Parties agree otherwise in writing. The decision reached by  
7 the neutral third party will be binding and final, and will not be subject to further  
8 review, either by the decision maker or through judicial review, except in cases of  
9 mathematical miscalculation, corruption, fraud, or misconduct.  
10

11 (4) Notwithstanding ¶¶ III(H)(1)-(3), immediately above, technical  
12 disputes involving an amount over \$200,000 and all other disputes, including but not  
13 limited to those regarding the interpretation of this Settlement Agreement, what  
14 constitutes a material breach of this Settlement Agreement, or the extent of the Parties'  
15 obligations, rights, and remedies relative to one another subsequent to the performance  
16 of this Agreement, will be submitted to binding arbitration. Unless the Parties  
17 otherwise agree in writing, the arbitrator will be directed to render a decision within 60  
18 days from the date of notice by one party to the other of a dispute necessitating  
19 arbitration under this paragraph (¶ III(H)(4)).  
20

21 (5) The arbitration, and all proceedings related thereto (including  
22 depositions), shall be conducted in Alaska, unless the Parties mutually agree  
23 otherwise. The arbitrator shall apply Alaska law, which shall govern. Unless the  
24 Parties stipulate otherwise, the arbitration and the proceedings thereunder shall be  
25 governed by the Alaska Revised Uniform Arbitration Act, AS 09.43.300 – 09.43.595.  
26

1  
2 However, notwithstanding any provision of the Alaska Uniform Arbitration Act that  
3 may allow otherwise, any appeal or other judicial action taken to enforce, set aside,  
4 challenge or otherwise litigate an arbitration award or decision shall be subject solely  
5 to the jurisdiction of the Alaska Superior Court venued in the First Judicial District at  
6 Juneau, with the court to apply Alaska law. Enforcement, and/or collection on an  
7 Alaska Court judgment may occur in any Court having jurisdiction.  
8

#### 9 IV. RELEASE OF ALL CLAIMS

##### 10 (A) Mutual Release

11 (1) The Parties, in view of and subject to the settlement terms herein  
12 above described, hereby unequivocally release and discharge one another from any  
13 and all claims and potential claims arising out of the State's original Complaint and  
14 Amended Complaint, and MTU's answers thereto, and all claims and potential claims,  
15 defenses, and potential defenses, counterclaims, or allegations pertaining to the subject  
16 matter of the Litigation and the transactions, occurrences, and events, from which the  
17 Litigation arose. The Parties covenant and agree that they will not, either by  
18 themselves or in concert with others, or by virtue of other judicial proceedings of any  
19 kind whatsoever, make or cause to be made, acquiesce in, or assist in the bringing of  
20 any further claims, potential claims, or actions of any kind pertaining to the  
21 transactions, occurrences, or events from which the litigation arose, except as herein  
22 above-described.  
23  
24

25 (2) It is the intent of this release of all claims, and it is the express  
26 intent of both Parties to unequivocally release and discharge one another as described



1  
2 herein above, and thereby discharge one another from all liability for contribution,  
3 indemnity, equitable allocation, or subrogation. The Parties understand and agree that  
4 the Settlement reflected herein is the compromise of a disputed claim and that neither  
5 Party admits fault or liability.

6 (3) It is the purpose of this release of all claims to discharge  
7 absolutely the liability of the Parties to one another, except as herein above described.  
8 The Parties each release any rights they may have now or hereafter to reform, rescind,  
9 modify, or set aside this Release through mutual or unilateral mistake. The State  
10 acknowledges and assumes the risk, chance, or hazard that it may suffer damages  
11 greater or more extensive than now known, anticipated, or expected. MTU  
12 acknowledges and assumes all risk or chance that the damages suffered by the State  
13 may be different or less than is now known, anticipated, or expected. Nevertheless the  
14 Parties enter into this Settlement Agreement and Release recognizing that it comprises  
15 a full and final settlement.  
16  
17

18 (B) Dismissal

19 The Parties stipulate and agree that the Litigation as between the Parties  
20 shall be dismissed, with prejudice, pursuant to ¶ I(H), above. The Parties stipulate and  
21 agree that pursuant to said paragraph they will, within two business days of their  
22 complete signature of this Settlement Agreement, through their respective attorneys,  
23 sign, file, and seek Court approval of the Stipulation for Dismissal with Prejudice  
24 attached hereto as **EXHIBIT D**.  
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**(C) Attorney Fees and Costs**

As stated in the Dismissal with Prejudice EXHIBIT D, immediately above, the Parties agree that each Party shall bear its own costs and attorney fees.

**(D) Signing in Counterparts**

This Settlement Agreement and Release may be signed in counterparts. Signatures exchanged or sent via facsimile or electronic mail (PDF format showing hand signature) will be considered effective to bind the Parties. All original signature pages shall be provided to the State, whereupon the State will copy the same to MTU.

**(E) Authorization Regarding Signatures**

Each Party represents, agrees, and affirms that all persons signing on that Party's behalf are fully authorized to do so, and have full and complete authority to settle the Litigation under the terms and conditions described herein. Each Party represents that their respective signatories are fully empowered to bind the Party on whose behalf the signature or signatures is/are provided.

**(F) No Admission of Wrongdoing**

This Settlement Agreement is entered into as a good-faith compromise between the Parties for the complete and final settlement of the release of any all of all claims, disputes, defenses, and causes of action between the Parties that were brought or that could have been brought in the litigation. No Party admits liability or wrongdoing in any respect. Neither the Agreement nor any communication between the Parties relating to the Agreement shall be deemed or construed to be an admission as to factual or legal contentions. Neither the Agreement nor any communication

1  
2 between the Parties relating to the Agreement shall be deemed or construed to be  
3 evidence of a violation of the law.

4 **(G) Jointly Drafted**

5 This Settlement Agreement shall be treated as having been jointly  
6 drafted, and will not be construed against any Party as the drafter. Any uncertainty or  
7 ambiguity that may exist in this Agreement shall not be interpreted against any Party  
8 or in favor of the other Party. Each Party has experienced counsel who has contributed  
9 to the drafting of the Settlement Agreement, therefore the Agreement shall not be  
10 construed more strictly against one Party in comparison to the other.  
11

12 **(H) Modification and Waiver**

13 No supplement, modification, amendment, waiver, or termination of the  
14 Settlement Agreement shall be binding unless executed in writing and signed by the  
15 Parties. Waiver of one provision shall not be deemed to be a waiver of any other  
16 provision.  
17

18 \_\_\_\_\_  
19 Date

\_\_\_\_\_  
Mr. Thomas Koenig  
President and Chief Financial Officer,  
Tognum America Inc.  
On behalf of Defendant  
Tognum America Inc. f/k/a  
MTU Detroit Diesel, Inc.

22 \_\_\_\_\_  
23 Date

\_\_\_\_\_  
Mr. Christopher Koch  
General Counsel, Tognum America Inc.  
On behalf of Defendant  
Tognum America Inc. f/k/a  
MTU Detroit Diesel, Inc.

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Date

\_\_\_\_\_  
Dr. Ulrich Dohle  
Member, Board of Management  
MTU Friedrichshafen, GMBH  
On behalf of Defendant  
MTU Friedrichshafen, GMBH

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mr. Georg Grosswein, LLM  
Prokurist, MTU Friedrichshafen, GMBH  
On behalf of Defendant  
MTU Friedrichshafen, GMBH

\_\_\_\_\_  
Date

\_\_\_\_\_  
Capt. John F. Falvey, Jr.  
General Manager - Alaska Marine  
Highway System  
On behalf of Plaintiff  
State of Alaska, Alaska Marine Highway  
System

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael C. Geraghty  
Attorney General  
On behalf of Plaintiff  
State of Alaska, Alaska Marine Highway  
System

## EXHIBIT A

### FVF MTU Load Profile Projection

#### 1. Juneau (Sitka, Angoon, Petersburg, Haines, and Skagway; Southeast AK [SE AK])

##### Low Load Condition

| Power % | Time % |
|---------|--------|
| 100     | 3      |
| 85      | 44     |
| 80      | 18     |
| 75      | 0      |
| 50      | 23     |
| 35      | 12     |

##### High Load Condition

| Power % | Time % |
|---------|--------|
| 100     | 7      |
| 85      | 60     |
| 80      | 0      |
| 75      | 0      |
| 50      | 21     |
| 35      | 12     |

#### 2. Cordova (Whittier and Valdez; Prince William Sound [PWS])

##### Low Load Condition

| Power % | Time % |
|---------|--------|
| 100     | 3      |
| 85      | 15     |
| 80      | 42     |
| 75      | 15     |
| 50      | 10     |
| 35      | 15     |

##### High Load Condition

| Power % | Time % |
|---------|--------|
| 100     | 7      |
| 85      | 50     |
| 80      | 13     |
| 75      | 5      |
| 50      | 10     |
| 35      | 15     |

## EXHIBIT B

### MTU ValueService - Customized Care Service & Maintenance Agreement

Between: **Tognum America Inc. ("MTU")**

and: **Alaska Marine Highway System ("AMHS")**

#### 1. Annexes

Attached to this Service & Maintenance Agreement, and incorporated into and made a part of this Agreement by reference are:

- Annex 1: Term, Covered Equipment & Key Parameters
- Annex 2: Pricing & Payment
- Annex 3: Detailed Scope of Services and Allocation of Responsibilities
- Annex 4: General Terms & Conditions

#### 2. Scope of work

a) MTU will provide service and support for the engines specified in Annex 1 (the "Covered Equipment"), as follows:

- Preventive Maintenance

MTU's Preventive Maintenance program is intended to maximize the availability of Covered Equipment by replacing components according to Maintenance Schedule in Annex 3. Any need for repair discovered during Preventive Maintenance activities will be undertaken as Corrective Maintenance, if applicable, or as Additional Work.

- Corrective Maintenance (QL2/CM2)

MTU's Corrective Maintenance covers diagnosis / troubleshooting, parts and labor for unscheduled maintenance and repairs for the Covered Equipment.

- Additional Work

Should services or repairs to the Covered Equipment be necessary that are not covered by this Agreement, MTU will, upon request, provide Additional Work as per Annex 2.

b) The Preventive & Corrective Maintenance Services of MTU under this Agreement include:

- Transport of personnel and parts to the Place of Performance as per Annex 3;
- Reports;
- Updated operation and maintenance instructions;
- Packing costs as per Annex 3; and
- Certificates of origin.

c) Preventive & Corrective Maintenance does not apply to repair or replacement of parts due to abnormal wear and tear or an Excluded Event such as those listed in Annex 4, Section 3.4.

d) The AMHS Marine Engineering Manager, or his designee, will be advised of maintenance to be performed and he or she may observe the work in progress. Upon work completion, written reports shall be provided to the Chief Engineer.



*DJR TWT*

*J*

# MTU ValueService - Customized Care Service & Maintenance Agreement

Between: **Tognum America Inc. ("MTU")**

and: **Alaska Marine Highway System ("AMHS")**

## 1. Annexes

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- Preventive Maintenance

MTU's Preventive Maintenance program is intended to maximize the availability of Covered Equipment by replacing components according to Maintenance Schedule in Annex 3. Any need for repair discovered during Preventive Maintenance activities will be undertaken as Corrective Maintenance, if applicable, or as Additional Work.

- Corrective Maintenance (QL2/CM2)

MTU's Corrective Maintenance covers diagnosis / troubleshooting, parts and labor for unscheduled maintenance and repairs for the Covered Equipment.

- Additional Work

Should services or repairs to the Covered Equipment be necessary that are not covered by this Agreement, MTU will, upon request, provide Additional Work as per **Annex 2**.

b) The Preventive & Corrective Maintenance Services of MTU under this Agreement include:

- Transport of personnel and parts to the Place of Performance as per Annex 3;
- Reports;
- Updated operation and maintenance instructions;
- Packing costs as per Annex 3; and
- Certificates of origin.

c) Preventive & Corrective Maintenance does not apply to repair or replacement of parts due to abnormal wear and tear or an Excluded Event such as those listed in Annex 4, Section 3.4.

d) The AMHS Marine Engineering Manager, or his designee, will be advised of maintenance to be performed and he or she may observe the work in progress. Upon work completion, written reports shall be provided to the Chief Engineer.



## SERVICE & MAINTENANCE AGREEMENT

### 3. Assistance of AMHS

MTU shall not be obliged to perform the subject Preventive & Corrective Maintenance Services until AMHS has complied with the following "Assistance of AMHS" obligations:

- a) AMHS agrees to make the Covered Equipment available for service and to clear the work site of impeding items, equipment and fixtures (removing and reinstalling such impeding items, including piping and cooling systems, as necessary).
- b) AMHS agrees to grant MTU access to all documentation and information reasonably necessary for MTU to perform this Preventive & Corrective Maintenance Services for the Covered Equipment.
- c) AMHS agrees to make its pool of spare parts available to MTU, including any spare engines, for the performance of the Preventive & Corrective Maintenance Services under this Contract. MTU will timely refill the Customer spare parts pool, at MTU's expense. Such replacements will be either new or remanufactured parts.
- d) AMHS agrees to provide MTU with monthly operation data including but not limited to the operating profile, operating hours, and the results of inspections.
- e) AMHS agrees to operate and maintain the Covered Equipment according to MTU Friedrichshafen's instructions for operation and maintenance.
- f) AMHS agrees to take reasonable precautions to protect MTU's personnel and equipment.
- g) AMHS agrees to allow MTU personnel to travel free of charge on the vessel(s) if such travel is required for the delivery of the subject Preventive & Corrective Maintenance Services.
- h) AMHS agrees to allow the use of a data recorder on the vessel(s).
- i) AMHS agrees to provide travel costs, accommodation and food to MTU's personnel, free of charge, should the subject Preventive & Corrective Maintenance Services be required in locations remote from the Vessel Home Port(s) designated in the Agreement.

### 4. Notification

- a) AMHS will notify MTU in writing:
  - three months before any request for "QL3 – Advanced Maintenance" service;
  - should corrective maintenance become necessary;
  - should the engine be damaged;
  - should there be an engine control systems alarm; or
  - should there be any other extraordinary engine condition or event which may have an impact on operation or maintenance of the engine.
- b) All Notices shall be sent to the representatives specified in Annex 3.





SERVICE & MAINTENANCE AGREEMENT

5. Payment

- a) Preventive & Corrective Maintenance as specified in this Agreement shall be rendered as part of the consideration of the settlement of litigation against MTU and others filed on March 26, 2010, in the Superior Court for the State of Alaska, First Judicial District at Juneau, Case No. 1JU-10-507CI.
- b) All specified maintenance tasks are based on standard conditions. If intervals must be reduced due to non-standard-conditions or other reasons not attributable to MTU, the related additional costs will be charged to AMHS (e.g. higher filter consumption due to environmental conditions or poor fuel quality, shorter injector life time due to poor fuel quality, usage of inappropriate oil category or oil quality, etc).
- c) Should the annual actual engine operation, based upon engine control module (ECM) data, exceed the scheduled operating hours specified in Annex 1 ¶3(e) or the integrated average of the Mean Contract Load Profile by more than 5% (see Annex 1 ¶ 2(l)), the State will be responsible for a share of the total QL1/QL3 preventative Maintenance or QL2 corrective maintenance expenses in accordance with the formulas appearing in Annex 1 ¶3(e) and ¶(2)(m).
- d) Because these differential maintenance expenses are difficult to calculate, the State and MTU agree that for the first year the Baseline Maintenance Expense will be that provided in MTU's estimates of maintenance expenses provided as per the Settlement Agreement. For future years the Baseline Maintenance Expense will be actual maintenance expense for the prior year adjusted up or down based upon the ratio of the integrated averages of the actual load profile for that year to the Contract Load Profile.
- e) Should the Vessel Home Port(s) be relocated, any related additional travel of transportation charges will be paid by AMHS.
- f) If not specified in MTU's invoices, payments shall be made without deduction, and free of expenses and costs, within 30 days after the date of the invoice to:

|                  |                     |
|------------------|---------------------|
| Bank:            | Deutsche Bank AG    |
| Name on Account: | Tognum America Inc. |
| Account Number:  | 00466468            |
| ABA Number:      | 021001033           |
| Swift Code:      | BKTRUS33            |
| Tax ID:          | 22-2209594          |

- g) Late payments will be subject to interest of 0.5 % per month. If the delay persists for more than 15 days after a written reminder, MTU may suspend further services.

6. Warranty

- a) The warranty provided by MTU for all parts fitted and services rendered by MTU within the subject Preventive & Corrective Maintenance Services is as set forth in the Settlement Agreement concerning the litigation against MTU and others filed on March 26, 2010, in the Superior Court for the State of Alaska, First Judicial District at Juneau, Case No. 1JU-10-507CI.
- b) AMHS agrees to inspect any MTU-provided services, parts and spare parts upon delivery and to notify MTU without delay in writing of any defects found. In the case of a suspected part defect, AMHS agrees to provide MTU with the serial number of the involved part (if any). Should a defect be detected later, MTU must also be notified without delay. In the absence of such notification, services and parts will be deemed accepted and approved.



SERVICE & MAINTENANCE AGREEMENT

**7. Additional Work & Changes**

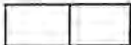
- a) MTU shall provide Additional Work to AMHS, exceeding the agreed scope of work, upon receipt of a specific written request by AMHS. The work will be carried out according to MTU's regular hourly rates and parts price lists. Costs for travel and accommodation will be charged on a case by case basis. If Additional Work occurs during the same site visit as Preventive or Corrective Maintenance, travel and related costs will be apportioned on a pro-rata or other equitable basis.
- b) MTU shall provide Additional Work to AMHS, exceeding the agreed scope of work, without a specific written request by AMHS and at AMHS's cost, if, in MTU's reasonable discretion, the Additional Work is deemed necessary to avoid engine or vessel downtime or damage to persons or property and if written approval cannot be obtained in a timely fashion. Best efforts will be made to obtain the oral approval of the AMHS Marine Engineering Manager or his designee. The work will be carried out according to MTU's regular hourly rates and parts price lists. Costs for travel and accommodation will be charged on a case by case basis.
- c) The scope of the subject Preventive & Corrective Maintenance Services may be modified by MTU to the extent necessary and reasonable to keep the Covered Equipment in a good operating condition. MTU shall inform AMHS of such changes as soon as reasonably possible. However, MTU may not increase the scope of Customer Responsibilities without the approval of AMHS. That approval will not be unreasonably withheld.

**8. Replacement of engines or parts**

- a) When performing the subject Preventive & Corrective Maintenance services, MTU may, at its sole and reasonable discretion, repair or replace parts in such a way that the condition before the incident is re-established. All replacements will be performed by using new or original MTU remanufactured Parts.
- b) MTU may, in its discretion, determine that an engine cannot be economically repaired and that it must be replaced. Should this happen, MTU will, at no cost to AMHS, replace the engine with one of AMHS's swing engines referenced in Annex 1. MTU will replace this swing engine with a new engine within 120 days.

**9. Disputes**

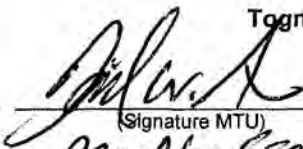

Any and all disputes concerning this Service & Maintenance Agreement will be resolved by means of the **Alternative Dispute Resolution Procedure** set forth in the Settlement Agreement concerning the litigation against MTU and others filed on March 26, 2010, in the Superior Court for the State of Alaska, First Judicial District at Juneau, Case No. 1JU-10-507CI.

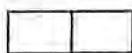


SERVICE & MAINTENANCE AGREEMENT

10. Term and Termination

This Agreement starts at the date specified in Annex 1. Services will not be provided to the Customer until MTU has received the signed Services & Maintenance Agreement from the Customer. It ends at the date as per Annex 1.

|                                     |   |   |
|-------------------------------------|---|---|
| <b>Alaska Marine Highway System</b> | <b>Tognum America, Inc.</b>   |   |
| _____<br>(Signature of Customer)    | <br>_____<br>(Signature MTU) | <br>_____<br>(Signature MTU) |
| _____<br>(Name)                     | DAVID W. SEARS<br>_____<br>(Name)   | KOERIG<br>_____<br>(Name)   |
| _____<br>(Title)                    | DIRECTOR ECN<br>_____<br>(Title)  | CFO<br>_____<br>(Title)   |
| _____<br>(Date - dd-mm-yyyy)        | 08 MAR 2013<br>_____<br>(Date - dd-mm-yyyy)   | 03/08/13<br>_____<br>(Date - dd-mm-yyyy)  |



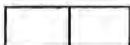
**SERVICE & MAINTENANCE AGREEMENT**

| <b>Annex 1: Term, Covered Equipment &amp; Key Parameters</b> |                                     |  |
|--|-------------------------------------|--|
| <b>1.</b>  | <b>Term</b>                         |  |
| a.   | This Agreement shall start on:      | January 1, 2014 (the "Effective Date")   |
| b.   | This Agreement shall expire on ...  | Five years after AMHS acceptance of the vessel into which the applicable engine was installed as a part of the settlement of the litigation against MTU and others filed on March 26, 2010, in the Superior Court for the State of Alaska, First Judicial District at Juneau, Case No. 1JU-10-507CI  |
| <b>2.</b>  | <b>Covered Equipment:</b>           |  |
| a.   | Manufacturer (of the Engines)       | MTU Friedrichshafen GmbH<br>Maybachplatz 1, 88045<br>Friedrichshafen, Germany  |
| b.   | Type:                               | 20V 4000 M93 or M73L   |
| c.   | Number of Engines:                  | 8  |
| d.   | Number of Customer's swing engines: | 2 (to be purchased by Customer). This Services & Maintenance Agreement will apply to these swing engines if and when one or more of these engines is installed in the Fairweather or Chenega. This Agreement does not apply to repair, parts replacement or any other remedial action required by damage or deterioration during the storage of these engines. |
| e.   | MTU Order Number:                   | <XXX>  |
| f.   | Engine Serial Numbers:              | 1. XXX XXX XXX<br>2. XXX XXX XXX<br>3. XXX XXX XXX<br>4. XXX XXX XXX<br>5. XXX XXX XXX<br>6. XXX XXX XXX<br>7. XXX XXX XXX<br>8. XXX XXX XXX   |
| g.   | Initial commissioning date          | Four engines expected to be commissioned in January or February of 2014.<br>Four engines expected to be commissioned in January of 2015.   |
| h.   | Application Group:                  | 1B (Fast Ferry)  |
| i.   | Type of Customer Unit:              | Fast Ferry   |
| j.   | Customer Vessel Name(s):            | 'Fairweather' and 'Chenega'  |
| k.   | Vessel Manufacturer:                | Robert E. Derecktor Inc.   |



**SERVICE & MAINTENANCE AGREEMENT**

| <b>Annex 1: Term, Covered Equipment &amp; Key Parameters</b> |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|--|--|--|----------------|---------------------|---------------------|-----|----|-------|----|----|-------|----|----|-------|----|----|-------|----|----|------|----|----|------|
| i.   | Contract Mean Load Profile, Flexibility Margin and Maintenance Agreement Threshold   | <table border="1"> <thead> <tr> <th><u>% Power</u></th> <th><u>% Time</u></th> <th><u>Power x Time</u></th> </tr> </thead> <tbody> <tr> <td>100</td> <td>2</td> <td>2.00</td> </tr> <tr> <td>85</td> <td>22</td> <td>18.70</td> </tr> <tr> <td>80</td> <td>36</td> <td>28.8</td> </tr> <tr> <td>75</td> <td>15</td> <td>11.25</td> </tr> <tr> <td>50</td> <td>10</td> <td>5.00</td> </tr> <tr> <td>35</td> <td>15</td> <td>5.25</td> </tr> </tbody> </table>   | <u>% Power</u> | <u>% Time</u>       | <u>Power x Time</u> | 100 | 2  | 2.00  | 85 | 22 | 18.70 | 80 | 36 | 28.8  | 75 | 15 | 11.25 | 50 | 10 | 5.00 | 35 | 15 | 5.25 |
|  |  | <u>% Power</u>   | <u>% Time</u>  | <u>Power x Time</u> |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 100  | 2              | 2.00                |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 85   | 22             | 18.70               |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 80   | 36             | 28.8                |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 75   | 15             | 11.25               |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 50   | 10             | 5.00                |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| 35   | 15   | 5.25   |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| Integrated Ave. Load Profile                                 | 71.00%   |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| Flexibility Margin   | 5.00%  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| Maintenance Agreement Threshold                              | 76.00%   |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| m.   | Formula for Calculating AMHS Maintenance Payment Due to Operation in Excess of Maintenance Agreement Threshold – Hypothetical State Payment Based Upon a Percentage by Which State Exceeds Threshold | <table border="1"> <thead> <tr> <th><u>% Power</u></th> <th><u>% Time</u></th> <th><u>Power x Time</u></th> </tr> </thead> <tbody> <tr> <td>100</td> <td>25</td> <td>25.00</td> </tr> <tr> <td>85</td> <td>30</td> <td>25.50</td> </tr> <tr> <td>80</td> <td>15</td> <td>12.00</td> </tr> <tr> <td>75</td> <td>10</td> <td>7.50</td> </tr> <tr> <td>50</td> <td>10</td> <td>5.00</td> </tr> <tr> <td>35</td> <td>10</td> <td>3.50</td> </tr> </tbody> </table> | <u>% Power</u> | <u>% Time</u>       | <u>Power x Time</u> | 100 | 25 | 25.00 | 85 | 30 | 25.50 | 80 | 15 | 12.00 | 75 | 10 | 7.50  | 50 | 10 | 5.00 | 35 | 10 | 3.50 |
|  |  | <u>% Power</u>   | <u>% Time</u>  | <u>Power x Time</u> |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 100  | 25             | 25.00               |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 85   | 30             | 25.50               |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 80   | 15             | 12.00               |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 75   | 10             | 7.50                |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  | 50   | 10             | 5.00                |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| 35   | 10   | 3.50   |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| Integrated Ave. Load Profile                                 | 79.00%   |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| Less Maint. Agreement Threshold                              | 76.00%   |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| AMHS Maintenance Payment                                     | 3.00%  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| <b>3.</b>  | <b>Key Parameter:</b>  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| a.   | Fairweather Home Port  | Juneau, Alaska   |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| b.   | Fairweather Location for Performance of Services   | AMHS Terminal in Auke Bay, Alaska  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| c.   | Chenega Home Port  | Cordova, Alaska  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| d.   | Chenega Location for Performance of Services   | AMHS Terminal in Cordova, Alaska   |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
| e.   | Annual Operating Hours per Engine:   | 2,000 hours<br>(If exceeded, and if this results in increased maintenance costs, State to pay a percentage share of the total costs equal to percentage of excess hours.)  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |
|  |  |  |                |                     |                     |     |    |       |    |    |       |    |    |       |    |    |       |    |    |      |    |    |      |



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SERVICE & MAINTENANCE AGREEMENT

| Annex 1: Term, Covered Equipment & Key Parameters |   |   |        |                            |        |
|---|---|---|--------|----------------------------|--------|
| f.  | Load Profile Ranges for Foreseeable High and Low Operating Conditions | For Juneau<br>(Southeast Alaska -- Sitka, Angoon, Petersburg, Haines & Skagway) |        |                            |        |
|   |   | <u>Low Load Condition</u>   |        | <u>High Load Condition</u> |        |
|   |   | Power %   | Time % | Power %                    | Time % |
|   |   | 100   | 3      | 100                        | 7      |
|   |   | 85  | 44     | 85                         | 60     |
|   |   | 80  | 18     | 80                         | 0      |
|   |   | 75  | 0      | 75                         | 0      |
|   |   | 50  | 23     | 50                         | 21     |
|   |   | 35  | 12     | 35                         | 12     |
|   |   | For Cordova<br>(Prince William Sound -- Whittier & Valdez)                      |        |                            |        |
|   |   | <u>Low Load Condition</u>   |        | <u>High Load Condition</u> |        |
|   |   | Power %   | Time % | Power %                    | Time % |
|   |   | 100   | 3      | 100                        | 7      |
|   |   | 85  | 15     | 85                         | 50     |
| 80  | 42  | 80  | 13     |                            |        |
| 75  | 15  | 75  | 5      |                            |        |
| 50  | 10  | 50  | 10     |                            |        |
| 35  | 15  | 35  | 15     |                            |        |



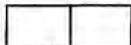
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**SERVICE & MAINTENANCE AGREEMENT**

| <b>Annex 2: Prices &amp; Payment</b> |  |  |
|--------------------------------------|--|--|
| 1.                                   | Periodic fixed fee:  | N/A  |
| 2.                                   | Hourly fee (per Engine per Operating Hour):  | N/A  |
| 3.                                   | Periodic variable fee (= Hourly fee x Periodic Operating Hours per Engine x No. of Engines):   | N/A  |
| 4.                                   | Minimum fee per fleet (= Periodic minimum Operating Hours per Engine x No of engines x Hourly fee):  | N/A  |
| 5.                                   | Minimum fee per engine (= Periodic minimum Operating Hours per Engine x Hourly fee, per engine):   | N/A  |
| 6.                                   | Period of payment  | N/A  |
| 7.                                   | Customer Tax (VAT) Identification No.  | N/A  |
| 8.                                   | Instalment per Period (Periodic fixed fee + Periodic variable fee)   | N/A  |
| 9.                                   | Deductible for Corrective Maintenance per repair visit per Engine  | N/A  |
| 10.                                  | Project Management and Support   | N/A  |
| 11.                                  | Transport cost to resp. place of performance from and to distributor's home base or the MTU Overhaul / Remanufacturing Center as applicable. | N/A  |
| 12.                                  | Express delivery   | Actual costs for transport                         |
| 13.                                  | Hourly rates for Additional Work:  | MTU's U.S. price list valid at the time of service |
| 14.                                  | Parts prices for Additional Work:  | MTU's U.S. price list valid at the time of service |

**Oil change intervals** have been set at 500 hours and are based on the use of an MTU approved Category 2 oil (please refer to MTU publication A001061/xxE Fluids & Lubricants Specifications). Should engine oil other than MTU Category 2 be used, oil and filter changes may be required on a more frequent basis.

**Fuel injector life** has been calculated to optimize maintenance intervals based on MTU's experience. Should fuel be used that does not meet the applicable MTU standard (See MTU publication A001061/xxE Fluids & Lubricants Specifications), more frequent injector changes may be required. If the replacement interval is shortened, the respective fees will be invoiced to ensure that such costs are covered.



**SERVICE & MAINTENANCE AGREEMENT**

| <b>Annex 3: Detailed Scope of Services and Allocation of Responsibilities</b> |   |   |  |
|---|---|---|--|
| <b>Marine Tasks for Engine Type 20V 4000M93 or 73L, As Listed in Annex 1</b>  |   |   |  |
| <b>1.</b>   | <b>General</b>  |   |  |
| a.  | Travel & Accommodations   | Included for the defined scope of supply - excluded for Additional Work                     |  |
| b.  | Packing costs   | Included for the defined scope of supply - excluded for Additional Work                     |  |
| c.  | Transportation costs  | Included for the defined scope of supply - excluded for Additional Work                     |  |
| d.  | Corrective Maintenance Engine Removal & Reinstallation  | Included for the defined scope of supply - excluded for Additional Work                     |  |
| e.  | Cost for covered services outside normal working hours or on public holidays, Saturdays and Sundays   | Included for the defined scope of supply - excluded for Additional Work                     |  |
| f.  | Adequate storage area on Customer's premises  | Customer Responsibility   |  |
| g.  | Adequate office and workshop space on Customer's premises   | Customer Responsibility   |  |
| <b>2.</b>   | <b>Maintenance</b>  | <b>Customer Responsibility</b>  | <b>Service Provider Responsibility</b> |
| a.  | Preventive Maintenance  |   |  |
| b.  | Daily checks:   | X   | —                                      |
| c.  | QL1: Basic Maintenance – parts and labour:<br>Fuel servicing plant<br>Engine oil and oil filters<br>Centrifugal oil filters<br>Fuel filters<br>Coolant and coolant filters<br>Air filters | X   | —                                      |
| d.  | QL1: Basic Maintenance parts and labor:<br>Other than specified above   | —   | X                                      |
| e.  | QL1: Place of performance / location(s)   | Fairweather: AMHS Terminal<br>Auke Bay, Alaska<br>Chenega: AMHS Terminal<br>Cordova, Alaska |  |
| f.  | QL1: Fuel pre-filtration system (NFV) parts and labor, if applicable  | X   | —                                      |

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**SERVICE & MAINTENANCE AGREEMENT**

| <b>Annex 3: Detailed Scope of Services and Allocation of Responsibilities</b> |  |   |    |
|---|--|---|----|
| <b>Marine Tasks for Engine Type 20V 4000M93 or 73L, As Listed in Annex 1</b>  |  |   |    |
| g.  | QL2: Corrective Maintenance (CM) – parts and labor | —   | X  |
| h.  | QL2: Place of performance                          | Fairweather: AMHS Terminal<br>Auke Bay, Alaska<br>Chenega: AMHS Terminal<br>Cordova, Alaska |    |
| i.  | QL3: Advanced Maintenance parts & labor:           | —   | X  |
| j.  | QL3: Place of performance                          | Fairweather: AMHS Terminal<br>Auke Bay, Alaska<br>Chenega: AMHS Terminal<br>Cordova, Alaska |    |
| k.  | QL4: Major Overhaul                                | Not Applicable  |    |
| <b>3.</b>   | <b>Ancillary Supplies and Services</b>             |   |    |
| a.  | Number of spare Engines for corrective maintenance | 2   | -- |
| <b>4.</b>   | <b>Additional Covered Equipment</b>                |   |    |
| a.  | Other Components                                   |   |    |
| b.  | Preheater  | —   | X  |
| c.  | Engine coupling                                    | —   | X  |
| d.  | NFV central fuel filtration system                 | X   | —  |
| e.  | Pre fuel pump system (booster pump)                | X   | —  |

\*Period of time between the Effective Date, commissioning of the respective task or order date and the start of performance. If contract signature occurs after Effective Date, all start-up periods shall be extended accordingly.

| <b>Consumables</b>   |                        |     |
|----------------------|------------------------|-----|
| Type of consumable   | Customer               | MTU |
| Air filter           | Provision and Disposal | —   |
| Fuel filter          | Provision and Disposal | —   |
| Oil filter           | Provision and Disposal | —   |
| Fuel pre-filter      | Provision and Disposal | —   |
| Water filter         | Provision and Disposal | —   |
| Fuel                 | Provision and Disposal | —   |
| Oil (for oil change) | Provision and Disposal | —   |

|  |  |
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**SERVICE & MAINTENANCE AGREEMENT**

|   |                        |          |
|---|------------------------|----------|
| Coolant (for coolant change), grease, lubricant, antifreeze | Provision and Disposal | —        |
| Hoses   | Provision              | Disposal |

Please note that any sea water filter(s) are not taken into consideration because these are not MTU's scope of supply. Any topping up of oil and coolant in between the change intervals is under Customer's obligation and costs.

| <b>Technical Documentation</b>   |                            |
|--|----------------------------|
| <b>Document</b>  | <b>MTU Publication No.</b> |
| Operating Manual   | MA15071/01E                |
| Maintenance Schedule   | MA50075/01E                |
| Overhaul Manual  | MA25014/01E                |
| Parts Manual   | MA30188/00E                |
| Fluids and Lubricants Specification<br><a href="http://www.mtu-online.com/mtu/technical-info/fluids-and-lubricants-specifications/">http://www.mtu-online.com/mtu/technical-info/fluids-and-lubricants-specifications/</a> | A001061/xxE                |

**Representatives for Purpose of Notices**

**AMHS appoints:**

Cisco Flores  
 Marine Engineering Manager  
 AMHS, 7037 No. Tongass Highway  
 Ketchikan, Alaska 99901,  
 Office: 907-228-7285  
 Mobile: 907-254-2905

**MTU appoints:**

David Sears  
 Director, ECN Aftersales  
 Tognum America, Inc.  
 39525 MacKenzie Drive  
 Novi, MI 48377  
 Office: 248-560-8166  
 Mobile: 313-510-1789



## SERVICE & MAINTENANCE AGREEMENT

### Annex 4:

#### General Terms and Conditions to MTU Service and Maintenance Agreement

##### 1. General

The following General Terms and Conditions are part of the "MTU Service and Maintenance Agreement". Unless specified otherwise both together are referred to as "Agreement". In the event of inconsistencies between the "MTU Service and Maintenance Agreement" and these General Terms and Conditions, the "MTU Service and Maintenance Agreement" will prevail. In the event of inconsistencies between either document and the Settlement Agreement in the litigation against MTU and others filed on March 26, 2010 in the Superior Court for the State of Alaska, First Judicial district at Juneau, Case No 1JU-10-507CI, the Settlement Agreement will prevail.

##### 2. Definitions

**"Additional Work"** means the activities other than maintenance, and optional services, if any, the performance of which by MTU may become necessary.

**"Covered Equipment"** means the equipment specified in Annex 1 which MTU shall maintain in accordance with this Agreement, with the exception of equipments for which the Customer is responsible in accordance with Annex 3.

**"Confidential Information"** means all trade secret, proprietary, confidential and other non-public information of or concerning the Disclosing Party, the Disclosing Party's affiliates or the clients or business of the Disclosing Party or the Disclosing Party's affiliates, whether written or oral, including the specific terms of this Agreement.

**"Customer Unit"**: e.g. vessel, locomotive, power plant.

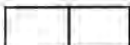
**"Engine"** means each of the engines forming part of the Covered Equipment as specified in Annex 1.

**"Event of Insolvency"** means a) any event where a party stops or suspends or threatens to stop or suspend all or a material part of its debts ("debts") or is unable to pay its debts or is reasonably deemed unable to pay its debts, b) any agreement for the deferral, rescheduling, moratorium or other readjustment of its debts is made, c) any step taken to enforce security over, or a distress, execution or similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, d) any step taken with a view to its winding-up (e.g. winding-up petition) which is not dismissed within 14 days, or e) any event occurs which, in the relevant jurisdiction, has an equivalent effect to the above events.

**"Intellectual Property Rights"** means all patents, trade marks, licenses, copyrights, design rights, database rights, rights in respect of know-how (and any similar or equivalent protection in any part of the world), in each case whether or not registered or registrable.

**"Operating Hour"** means the operating hour of an Engine as given by MTU engine control unit.

**"Part"** means any part, component, assembly, or sub-assembly which is supplied by MTU in the performance of the Services, including the consumables, for which MTU is responsible as per Annex 3 or in relation to which MTU performs the Services.



## SERVICE & MAINTENANCE AGREEMENT

**"Supply Agreement"** means the agreement between the Customer on the one side and the Customer Unit Manufacturer or Manufacturer on the other side on the sale and delivery of the Covered Equipment to the Customer.

**"System Components"** means the major units of a system in addition to the Engine e.g. gear box, alternator as specified in Annex 3.

**"Working Day"** means MTU's working days at the place of performance applicable to the relevant Services.

### 3. Performance

#### 3.1 Scope of Preventive Maintenance

The preventive MTU to promptly provide schedule maintenance shall be performed in accordance with the agreed time schedule and as per Annex 3, always provided that the Customer has notified MTU of the estimated due dates of the respective next QLI - Basic Maintenance, if performed by MTU, QL3 - Advanced Maintenance and QL4 - Major Overhaul in the respective lead times specified in this Agreement and has performed, in due time, all of its other obligations under this Agreement related to the relevant activities of preventive maintenance.

In the event corrective maintenance is covered and MTU, when performing preventive maintenance, discovers the necessity to perform corrective maintenance, it shall perform the corrective maintenance to the extent reasonably possible under the prevailing circumstances (availability of spare parts etc.) forthwith or, where this is not reasonably possible, within reasonable time. In the event that the Customer notifies MTU of the necessity to perform corrective maintenance, MTU shall start performance of the corrective maintenance A) if possible with respect to the information provided by the Customer, within a reasonable time after receipt of the notification, or B) where a prior inspection of the Covered Equipment by MTU is necessary, within reasonable time after such inspection.

In case the corrective maintenance is not covered under this Agreement such service may be performed as Additional Work upon Customer's order.

#### 3.2 Scope of Corrective Maintenance

The "QL2 - Corrective Maintenance", comprises unscheduled maintenance and repair services, to the extent necessary to rectify faults (including such faults which are subject to warranty under the Supply Agreement), and to reestablish readiness for operation to the extent reasonably achievable in respect of the useful life of the Covered Equipment at the respective point in time.

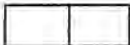
#### 3.3 Optional Services

If requested in writing by the Customer, MTU shall perform the optional services. MTU will start performance of the optional services after the lead-time specified in Annex 3 following the Customer's order.

#### 3.4 Exclusions

The preventive maintenance shall not include: the tasks for which the Customer is responsible in accordance with this Agreement and Annex 3; the repair and replacing of Parts which are worn or damaged as a result of either abnormal wear and tear or an Excluded Event; and the replacing of consumables other than those for which MTU is responsible as per Annex 3.

The QL2 - Corrective Maintenance shall not include: the tasks for which the Customer is responsible in accordance with this Agreement and Annex 3; the replacing of consumables other than those for which MTU is responsible as per Annex 3; the adaptation of the Covered



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## SERVICE & MAINTENANCE AGREEMENT

Equipment to changes of whatsoever kind which have an effect on the operation and maintenance of the Covered Equipment; and the rectification of faults resulting from Excluded Events which rectification may be performed by way of Additional Work; and the ancillary supplies and services specified in Annex 3.

The Services do not include "Excluded Events" such as external influences such as improper handling, storage or erection, use of undue force, damage by foreign objects, improper installation, improper labor (unless performed by MTU), electricity, chemical or other harmful substances not used in normal operation, sabotage, natural phenomena, such as blizzard and storm including external influences not solely attributable to MTU; any modification to the Covered Equipment which has not been made or approved by the Manufacturer or MTU; non-compliance by the Customer or third parties with the Instructions for operation and maintenance; non-compliance by the Customer or third parties with instructions and recognized industry standards for loading, unloading and transport; noncompliance by the Customer with its obligations under this Agreement; the use/operation of the Covered Equipment under extraordinary conditions which MTU has not approved in advance, in particular the use of the Covered Equipment for other than its intended purpose; or the operation of the Covered Equipment under an overload condition resulting in a damage to the Covered Equipment (an overload condition shall mean a load profile which is more demanding than the load profile defined in this Agreement and/or the Customer Unit's original engine sales contract for the Covered Equipment); wear and tear in excess of normal levels.

When performing the Services, MTU may, at its reasonable discretion repair or replace Parts in such a way that the condition before the incident is re-established; and in the event of replacement, generally use new or original MTU remanufactured Parts unless the use of such parts in MTU's discretion would be unreasonable with regard to the remaining value of the Covered Equipment.

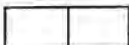
### Time of performance

Whenever the performance of the Services includes the replacement of a complete Engine, such replacement shall not be undertaken without the parties' prior written consent on the necessity, the date, and in the case of corrective maintenance, on the terms and conditions of replacement (including an adjustment for system upgrades).

### 3.5 Place of Performance

All Services are assumed and calculated to be performed at the designated place of performance. In the event services are performed at another place than the place of performance defined for the relevant services upon request of the Customer and after MTU's approval, the Customer shall arrange at its own cost suitable transportation for MTU's personnel and parts and shall be responsible for any additional costs and risks. MTU may make its approval dependent on reasonable advance payments in order to cover additional costs.

In the event of QL4 - Major Overhauls and other services the performance of which requires removal of the Covered Equipment or parts thereof from the Customer Unit and/or transportation of the Covered Equipment or parts thereof to another place than the place of performance, the Customer shall, at no cost to MTU and at its own risk, arrange the removal of the Covered Equipment or the relevant parts thereof from the Customer Unit/Application and transport it properly secured to the place where the Services shall be performed or (in case of QL4 - Major Overhauls) where the Engines will be made available for the QL4 - Major Overhaul, and their returning to the Customer Unit. In the event of QL4 - Major Overhauls, the Customer shall forward the Engine(s) to the Manufacturer overhaul center, such center to be named by MTU in due course.



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At the Customer's request, MTU shall insure the Covered Equipment or parts thereof which are located in MTU's workshop against loss and damage. The Customer shall reimburse the proven cost incurred by MTU in connection therewith.

### 3.6 Standard of performance and working conditions

MTU will employ reasonable efforts to perform the Services as soon as reasonably practicable so as not to interfere unnecessarily with the regular operation of the Customer Unit, however, always taking into due consideration the conditions at the work site, the weather conditions, the availability of the Customer Unit, Service personnel and materials as well as all other factors having an influence on the performance of the Services.

MTU shall perform the Services in accordance with the terms and conditions of this Agreement; the laws; the practices, safety, degree of diligence, care and skill, as the same may change from time to time, as are commonly used by and to be reasonably expected from a professional maintainer of equipment of the type and complexity similar to that of the Covered Equipment performing maintenance services similar in nature and extent to the Services in the exercise of reasonable judgment and in the light of the facts known at the time the respective Services are performed; and the Customer's safety guidelines and instructions, however, only to the extent they have, prior to the performance of the relevant services, been disclosed to and agreed by MTU and are consistent with the terms of this Agreement.

The personnel used by MTU and its subcontractors, if any, shall be qualified and experienced in the duties to which they have been assigned and shall be trained in the required qualification level (QL).

If any working conditions in the reasonable opinion of MTU are unhealthy, unsafe or, unacceptable for reasons which are not attributable to MTU, MTU may, with immediate effect, suspend further performance of the Services until the working conditions are healthy, safe and acceptable. The Customer shall reimburse all costs reasonably incurred by MTU by such a suspension.

## 4. Customer's assistance

### 4.1 Training and personnel

The personnel used by the Customer for the performance of its obligations under this Agreement shall be appropriately qualified and experienced in the duties to which they are assigned and shall be trained in the Qualification Level (QL) required for the respective activities.

If the Customer assigns the performance of any of its obligations under this Agreement to third parties, it shall be responsible to MTU for such performance to the same extent as if such obligations had been directly performed by the Customer.

### 4.2 Access to the Covered Equipment

The Customer shall, at no cost to MTU, make the Covered Equipment available to MTU for the performance of the Services at the times mutually agreed between the parties or in case of preventive maintenance, at the expiry of the respective maintenance interval specified in the Manufacturer's maintenance schedule at the latest. To make "available" means e.g. that: the work site is cleared of items which would otherwise impede the performance of the Services; where necessary, the removal and installation of an Engine or major parts thereof and/or other fixtures (piping, cooling system etc.) which otherwise would impede the performance of the Services; the Customer has taken all precautions to protect the personnel and the equipment of MTU against dangers and harm of whatever kind, and the personnel of MTU shall be entitled to travel free of charge on the vessel/vehicle, if applicable, to the extent this is required



## SERVICE & MAINTENANCE AGREEMENT

for the performance of the Services. The Customer shall grant MTU access to all documentation and other information reasonably requested by MTU to perform the Services.

### 4.3 Consumables, materials and utilities

The Customer shall, at no cost to MTU, at its own risk and in a timely manner as to allow due performance of the Services, make available to MTU in the quantities and qualities reasonably requested by MTU, and, where necessary, store and dispose of the consumables listed in Annex 3, the Customer's facilities and personnel including lifting facilities, and all media and utilities required for the performance of the Services, including fuel, oil, water, heating, compressed air, electric power and lighting, including the necessary connections to the place of installation.

### 4.4 Inspections

Unless commissioned as a part of the optional services, the Customer shall be responsible for special inspections requested by the authorities, in particular, emission measurements, technical supervisory board acceptance, certifications, respective reports etc.

### 4.5 Remote Diagnosis System

The Customer shall install or allow to install MTU's Remote Diagnosis System on each Engine as per Annex 3. This system provides remote access to the status, values and recorded faults of the Covered Equipment ("Remote Diagnosis System"). If the Customer is responsible for the telecommunication as per Annex 3 it shall maintain at all times appropriate network communication and be responsible for any telecommunication costs. In such case Customer shall provide the respective on site equipment as needed such as the respective point to point data access including e.g. interface to the Customer's telecommunication system or secured Internet interface or modem for mobile communication with antenna and the SIM cards for the modems. Customer shall allow constant access for MTU and the defined parties to the status, values and recorded faults of the engines.

If Customer access to the Remote Services System is agreed upon an internet connection and a state of the art computer with a common internet browser is needed by the customer. All license and transmission charges shall be on the Customer's account.

MTU assumes no liability for any consequences resulting from insufficient, delayed or erroneous data transmission. If, for whatever reason, the application of the MTU Remote Diagnostic System is not possible Customer shall allow the application of a data recorder upon MTU's request.

### 4.6 First Aid

The Customer shall make all necessary arrangements for reasonable ambulance attention and transport to medical facilities for MTU's personnel. Unless the Customer was responsible for the relevant accident, MTU shall reimburse any reasonable expense incurred by the Customer.

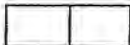
## 5. Payment

### 5.1 Scope of fees

The fees payable according to Annex 2 shall, if the respective services have been performed at the place of performance cover, subject to the provisions for additional fees, all costs for travel, accommodation, costs for packing and certificates of origin.

### 5.2 Exclusions

The prices are net and exclusive of all taxes, duties and charges due by law in the country of MTU, of the Customer or of the country in which the Service is actually performed. Such taxes,



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duties and charges are e.g. sales taxes, indirect taxes (e.g. value added tax); and the withholding taxes, if any, which the Customer shall pay to the local tax authorities (such payment to be proven by submission to MTU of the original certificate within ten (10) Working Days after payment).

Taxes, duties and charges are to be paid by the Customer in addition.

The prices are inclusive of taxes imposed on MTU in the country of MTU based on MTU's income derived from the performance of the Services.

Fees do not cover additional cost caused by increased security precautions in connection with events of Force Majeure, such as costs for transportation of personnel and material.

### 5.3 Other place of performance

If any of the services have been performed at a place other than the relevant place of performance or if an Engine has been made available for QL4 - Major Overhaul at a place other than the place of performance, the Customer shall reimburse all additional costs of whatsoever kind which MTU would not have incurred if the services had been performed at the relevant place of performance or if the Engine had been made available at the place of performance, such as additional costs for travel, transportation and taxes, including cost for increased security precautions in conflict areas.

### 5.4 Additional Fees

In consideration of Additional Work performed by MTU (including the Services and work performed in connection with Additional Work, such as investigations attributable to faults proven to be caused by an Excluded Event, including the time expenditure for such investigations), and as a compensation for waiting hours not attributable to MTU, the Customer shall pay the hourly rates specified in Annex 2 for the proven time expenditure plus, to the extent applicable:

- 1) all taxes and duties, including sales taxes, such as VAT, as payable at the date of payment;
- 2) the list prices applicable to the Parts and the consumables used in performance of the Additional Work in accordance with MTU's price valid for the year in which the Additional Work have been performed or the waiting hours have been incurred; and 3) any other cost reasonably incurred by MTU in connection with the Additional Work and the waiting hours.

As a compensation for the performance by MTU of Services outside the normal working hours the Customer shall pay the charges specified in Annex 2.

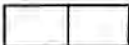
### 5.5 Payment term

All amounts to which MTU is entitled under this clause shall be paid against invoice within thirty (30) days after the date of the invoice.

### 5.6 Additional payments regarding Corrective Maintenance

When performing the Services, MTU may, at its sole and reasonable discretion, repair or replace Parts in such a way that the condition before the incident is re-established. All replacements will generally be performed by using new or original MTU remanufactured Parts.

- a) If Engines are covered by corrective maintenance and the remaining useful life, according to the QL4 interval of MTU's maintenance schedule, is 50 % or more, MTU will replace such Engines free of charge. If the remaining useful life is less than 50% the customer will pay a respective share and receives a discount on the list price. The discount will be calculated according to the useful life of the replaced Engine (e.g. if an Engine has consumed 75% of its





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anticipated life, the Customer pays 75% of the list price). An engine shall only be changed in case an economical repair is upon MTU's sole and reasonable discretion not possible.

b) The defined System Components, as far as covered under the contract (such as alternator or gearbox) are subject to new for old adjustment after the first 5 years after initial commissioning of the customer unit or when the remaining useful life is less than 50%, whatever occurs first. Thereafter, customer's share will be 10% of the list price per year calculated from initial commissioning.

c) Electronics and other parts, as far as covered under the contract, will be repaired without new for old adjustment during the first 10 years after initial commissioning of the customer unit. Thereafter, customer's share will be 20% of the list price per further year.

### 5.7 Price Adjustments

The prices/fees shall be adjusted regularly as follows: The Installment, the QL4 - Major Overhaul (if applicable) and the fees for optional services, are based on the cost level of the year in which the contract was concluded (Contract Year) and shall be adjusted annually with effect from January 1<sup>st</sup> of each following calendar year in accordance with Annex 2. The hourly labor rates are MTU's applicable rates as valid for the year in which the relevant services have been performed. Upon request MTU shall provide its hourly labor rates for the current year to the Customer.

If during the term of this Agreement new taxes, duties or charges are established or the basis for the calculation of taxes, duties or charges are amended or tax benefits of whatsoever kind are constituted, which increase the cost incurred by MTU in performance of the Services, MTU shall be entitled to an adjustment to the Installment so as to reflect such additional cost.

### 5.8 Securities

MTU shall acquire all statutory liens, pledges, encumbrances, and other security rights arising under the applicable law by virtue of the performance of the Services. In addition, MTU may make the performance of QL4 - Major Overhauls, if any, and Additional Work dependent on the receipt from the Customer of securities in a reasonable amount of not less than forty (40) percent of the estimated fee for the relevant activities which are valid and enforceable at the registered main office of the Customer, and which is in form and substance acceptable to MTU, such acceptance not to be unreasonably withheld. The securities shall be returned with in five (5) Working Days upon full payment by the Customer of the relevant fee.

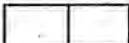
### 5.9 Counterclaims and rights of retention

The Customer shall only be entitled to set-off with counterclaims against claims of MTU and shall only have any right of retention if the counterclaim is verifiably uncontested or has become finally confirmed by a competent court or arbitrator.

## 6. Warranty / Liability

### 6.1 Remedy of defects

If the Customer notifies MTU in writing of MTU's failure: 1) to perform any of the Services in accordance with the standard of performance in a way which is likely to adversely affect the operation or maintenance of the Covered Equipment; or 2) to start performance of the preventive maintenance within the intervals stipulated in the Manufacturer's maintenance schedule; or 3) to start performance of any other services at the respective agreed dates for reasons MTU is responsible for according to this Agreement (hereinafter a "Default"), MTU shall, provided the Customer has complied with all its obligations, take all reasonable measures necessary to remedy the relevant Default at the place of performance at no cost to



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## SERVICE & MAINTENANCE AGREEMENT

the Customer within a reasonable period of time starting with the receipt of such notice. MTU may delegate the rectification of a Default to the technical staff of a third party, provided they are qualified for the performance of the required activities.

If MTU does not remedy the Default and fails to remedy such Default following a written reminder stating a reasonable grace period, the Customer may remedy the Default directly or through a third party. MTU shall reimburse to the Customer all proven costs reasonably incurred by the Customer in rectifying the default.

The Customer's warranty claims are subject to the Customer's giving of a written notice to MTU of any defect discovered and the serial number of any Part affected (if known) with in fifteen (15) days after such discovery. If a defective Part has to be repaired at a place other than the place of performance, the Customer shall, at no cost to MTU, forward the defective Part to the place of performance in accordance with MTU's instructions.

If rectification by way of repair or replacing of a Part is feasible but unreasonably burdensome, MTU may, with the Customer's prior approval, which approval shall not be unreasonably withheld, use an alternative product which in the reasonable assessment of MTU serves the purpose as well as the original Part and does not invalidate or otherwise prejudice the warranties in relation to the Engines.

### 6.2 Default

If the Customer does not fulfill any of its obligations under this Agreement, the Customer shall be liable for any additional costs incurred by MTU as a result of such non-fulfillment of the Customer's obligations, including reimbursement of waiting times at the hourly rates set out in Annex 2. Furthermore, the Customer shall be responsible for and MTU released from any liability for any damage to the Covered Equipment caused either by the non-fulfillment by the Customer of its obligations, or a nonperformance of the Services caused by the non-fulfillment of the Customer's obligations.

This clause shall not apply to the extent non-fulfillment by the Customer of its obligations under this clause was caused by either Force Majeure or non-fulfillment by MTU of its obligations under this Agreement.

### 6.3 Damage to the Customer's property

If the Covered Equipment or a part thereof is damaged through MTU's fault, MTU shall, subject to the Customer's compliance with its obligations and the limitations of liability, at its reasonable discretion, repair or replace the Covered Equipment or the damaged part thereof at the agreed place of performance. For damage to the Customer's property other than the Covered Equipment MTU shall, subject to the limitation of liability, only be liable in case of willful misconduct.

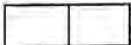
### 6.4 Limitations of liability

**a) MTU SHALL IN NO EVENT BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES SUCH AS BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFIT, TOWING, DEPOT/HARBOUR AND EQUIVALENT CHARGES, OR ADDITIONAL COSTS OF CONSUMABLES SUCH AS FUEL, COOLANT AND LUBRICANTS**

b) MTU shall compensate claims for damages to Customer's property in total with a maximum amount of 500,000 Euros per incident.

c) For all other damages which are not mentioned in a) above and which are not excluded in (b) the total cumulative liability of MTU be 2.0 Million Euros.

c) All other claims for damages and compensation shall be excluded. The obligations of MTU to remedy defects under warranty shall not be affected by the above limitation of liability.



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The Customer shall advise MTU in writing and without delay of any damage or loss to be borne by MTU, use best efforts to mitigate damages to the Covered Equipment and shall put it out of operation, if necessary.

### 6.5 Force Majeure

Whenever used in this Agreement, an event of "Force Majeure" shall mean any unforeseeable event which is beyond the reasonable control of the party affected, including fire, war, hostilities (whether or not war has been declared), invasion, act of foreign enemies, operation of forces of nature such as natural catastrophes (earthquake, landslide, flood, hurricane, lightning, tidal wave, tsunami, typhoon, volcanic activity, and the like), epidemic, embargo, sabotage, acts of vandalism, strike or governmental action or inactivity, and the denial of permits (provided the applicant has complied with all requirements applicable to the respective proceedings). A lack of funds shall never constitute an event of Force Majeure.

If either party is, due to an event of Force Majeure, rendered unable, in whole or in part, to perform its obligations under this Agreement, such party shall be freed from such obligations, so long as and to the extent they are necessarily and directly affected by Force Majeure. The date of delivery or performance of the affected obligation shall be extended by a period of time reasonably necessary to overcome the effects of such delay and, if necessary, the scheduled services shall be revised in respect of such delay. The parties shall cooperate in good faith to overcome and to mitigate the effects of an event of Force Majeure.

## 7. Parts

### 7.1 Supply and Management

MTU shall be responsible for the supply and the maintenance of all spare Parts necessary for the performance of the Services. MTU shall not be obligated to establish an on-site spare parts stock.

### 7.2 Price list

For Parts and consumables for Additional Work MTU's price list valid for the year in which the respective services are performed shall apply. For parts and consumables not included in the agreed Services the current price list of MTU applies.

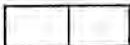
### 7.3 Risk and Title

Title to and possession of all Parts incorporated by MTU either to the Covered Equipment or in the Customer's spare part stock, if any, shall pass to and vest in the Customer upon complete payment of its outstanding amounts to be paid by the Customer.

Whenever MTU makes available spare Parts to the Customer or fits spare Parts into the Covered Equipment the risk of loss and damage shall pass to the Customer at the time when the respective Spare Part is taken over by the Customer or fitted into the Covered Equipment.

Title to and possession of all repairable or remanufacture compatible Parts which MTU has removed from the Covered Equipment and replaced shall pass to and vest in MTU upon the replacement. This shall not apply to consumables, such as filters.

In case of an early termination of this Agreement, title to the spare Parts shall remain with MTU unless such title has, at the date of effectiveness of the termination, already passed to the Customer.



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## SERVICE & MAINTENANCE AGREEMENT

### 8. Changes

#### 8.1 Definition

Each of the following events shall constitute a "Change": A change in/to:

- 1) the number of Engines;
- 2) the Place(s) of Performance;
- 3) the load profile; or
- 4) peripheral devices, such as alternators, hydraulics or gear boxes, having an influence on the operation and/or the maintenance of the Engines;
- 5) a change which becomes necessary as a result of an Excluded Event ; and
- 6) a change in the judicial or administrative interpretation of, or adoption of, any law, which is implemented after the signing of this Agreement and which, separately or cumulatively with other such changes, has an effect on either MTU's performance of the Services, or MTU's costs of performing services (each of the aforesaid events a "Change in Law").

The Instructions for operation and maintenance or any part thereof may, from time to time, be changed by MTU or the Manufacturer with the aim of optimizing the operation and maintenance of the Covered Equipment which will not constitute a Change.

MTU may, at its sole discretion, apply at any time general improvements to Covered Equipment which are not considered as changes. For the avoidance of doubt, improvements which do include new features such as better emissions, increased power output or improved fuel consumption etc. will be provided upon separate order.

#### 8.2 Change Procedure

If a party becomes aware of a Change, it shall, as soon as practicable, inform the respective other party thereof. Following such notification the parties shall in accordance with the procedure specified in this clause negotiate in good faith with the aim of adjusting those provisions of the Agreement which are affected by the relevant Change. The parties shall, in particular, adjust the fees to the extent necessary to cover the proven increase or decrease in costs resulting from the relevant Change plus a reasonable allowance for overheads and profit.

Whenever MTU has become aware of or has been notified by the Customer of a Change, it shall, with in reasonable time, provide the Customer with a written proposal setting out all necessary modifications to the scope of Services and the estimated effects of the relevant Change on the fees. The proposal for the adjustment to the fees shall be based on:

- A) where possible, the prices for comparable services as agreed in this Agreement, or
- B) where not possible, the list prices as usually applied by MTU, the proven increase or decrease in costs caused by the respective Change and a reasonable allowance for overheads and profit.

The Customer shall, as soon as practicable, but within fourteen (14) days after receiving such proposal at the latest, respond with approval, disapproval or comments.

### 9. Term and termination

#### 9.1 Effective Date, Equipment Test

This Agreement shall come into effect and be binding on the parties on the Effective Date.

#### 9.2 Term

The term shall start upon the Effective Date. Services will be provided to the Customer not before MTU has received the signed contract documents from the Customer. It ends after the expiry of the agreed period.



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The term may be extended by mutual agreement between the parties.

### 9.3 Effects of termination

Following any termination of this Agreement each party shall remain responsible for the performance of all its obligations under this Agreement up to and including the date of termination and the Customer shall pay to MTU the aggregate of all fees and other amounts payable under this Agreement.

If MTU terminates this Agreement for a default of the Customer or due to sale to a third party, MTU shall be entitled to reimbursement of the costs incurred by MTU by such termination in addition.

## 10. Other Terms and Conditions

### 10.1 Reporting and records

MTU will keep reasonable records of the Services. To the extent reasonably requested by the Customer, MTU shall grant access to such records.

### 10.2 Permits

MTU shall procure 1) all entry, exit import and export licenses for all Parts required for maintenance, and all working permits for its personnel necessary for the performance of the Services in the country, in which the place of performance is located. The Customer shall employ reasonable efforts to assist MTU in the obtaining of said permits and licenses.

The Customer shall procure all other licenses and permits in particular, licenses and permits, which are necessary specifically for performance of the Services at the relevant place of performance, such as site induction or personal (track/offshore) safety certification. MTU shall employ reasonable efforts to assist the Customer in the obtaining of said permits, trainings and licenses.

### 10.3 Delegation of Services

MTU may provide the Services itself or through MTU's affiliated companies, or accredited service dealers or with the Customer's prior approval other subcontractors appointed, which approval shall not be unreasonably withheld. MTU shall be responsible to the Customer for services performed by its affiliated companies or its subcontractors to the same extent as if such services had been performed by MTU directly.

### 10.4 Cooperation and Loyalty

The parties shall cooperate in good faith. They shall, in particular, perform their obligations and exercise their rights under this Agreement in such a manner as to minimize interference with the business activities of the respective other party.

### 10.5 Intellectual Property Rights

All Intellectual Property Rights originated by either party before the Effective Date shall remain unaffected. All Intellectual Property Rights originated by the Customer or MTU in connection with the subject matter of this Agreement shall vest in and be the property of the originating party.

MTU grants to the Customer the non-exclusive and non-assignable right to use the Intellectual Property Rights related to the Services which are in possession of MTU to the extent necessary to operate and maintain the Covered Equipment as intended and according to the guidelines issued by MTU, unless approval of the intended use cannot be reasonably expected from MTU and provided the Customer has fulfilled all of its contractual obligations.



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Any Intellectual Property Rights resulting from modifications or improvements made by MTU or other authorized persons under this contract, in particular resulting from application-specific or customized concepts and solutions, shall be owned exclusively by MTU. The Customer's Intellectual Property Rights previously owned by the Customer shall remain unaffected.

MTU shall grant to the Customer the non-exclusive and non-assignable right to use the Intellectual Property Rights resulting from modifications or improvements in the same way and under the same conditions as the Intellectual Property Rights described above related to the Services.

### 10.6 Confidentiality

A Party which receives Confidential Information ("Receiving Party") will keep strictly confidential and not disclose any Confidential information of the other Party ("Disclosing Party") to any third party or to employees who do not have a need to know, or use any Confidential information of the Disclosing Party for any purpose other than the purposes of this Agreement. Each Party shall oblige its employees, agents and sub-contractors to confidentiality accordingly in a reasonable way. A Party is entitled to disclose any confidential information only to the extent necessary to comply with mandatory laws or to persons, who have a need to know the confidential information in connection with the performance of the Agreement (affiliated companies, officers, directors, employees, solicitors, auditors, insurers, accountants or subcontractors).

The Receiving Party will not be in violation of its obligations under this clause if the Receiving Party can demonstrate that the Confidential information is information (i) which is in the public domain through no fault of the Receiving Party, (ii) which was already known to the Receiving Party, (iii) was independently developed by the Receiving Party, (iv) which the Receiving Party independently received from a third party without restrictions on use or confidentiality, or (v) which is required to be disclosed by court order, process or operation of law, in which event, the Receiving Party will promptly notify the Disclosing Party of the requirement of disclosure of a court order before making the disclosure. This clause will survive the termination of this Agreement.

### 10.7 Transfer of Agreement

Neither party may assign its rights and obligations hereunder or transfer this Agreement to a third party without the prior written approval of the other party, which approval shall not be unreasonably withheld. This shall not apply to an assignment or transfer by MTU to a company, a distributor or service dealer of the Tognum Group certified to provide the maintenance. MTU may make its approval dependent on the provision by the assignee of sufficient securities or an adaptation of the payment terms so as to reflect the financial status of the assignee as compared to the Customer's financial status.

### 10.8 No waiver

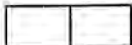
Any waiver of any right, power or privilege by any party shall be in writing. No failure or delay by any party to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of such right, power or privilege preclude any further exercise thereof or of any other right, power or privilege.

### 10.9 Dispute Resolution

The parties shall employ reasonable efforts to settle amicably any dispute of whatsoever kind arising out of or in connection with this Agreement.

### 10.10 Language and Interpretation

This Agreement is made in the English language and the English version shall prevail over any translation that may be made for the convenience of the parties. All communication



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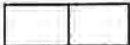
between the parties (written or otherwise) in connection with this Agreement shall be in English. In this Agreement "includes" or "including" shall mean "includes without limitation" or "including without limitation", as applicable, "in particular" shall mean "in particular but without limitation", and "comprising" shall indicate an exhaustive enumeration.

**10.11 Severability**

Should anyone or more provisions of this Agreement be or subsequently become partially or entirely void, illegal or unenforceable, this shall not affect the validity, enforceability or legality of the remaining provisions of the Agreement. Such a provision shall be replaced by a valid, enforceable and legal provision reflecting as close as possible the aim of this Agreement. If any provision of this Agreement is ambiguous or unclear, that provision shall be interpreted in a reasonable manner to effect the intent of the parties, and modification may be proposed by either party.

**10.12 Notices**

Any written notice or other communication in connection with this Agreement (each a "Notice") shall be in English and delivered by hand, fax, registered post or courier using an internationally recognized courier company. Notices shall be sent to the representatives named in the Agreement or such other person or address as notified to the respective other party. A Notice shall be effective upon receipt and shall be deemed to have been received at the time of delivery, if delivered by hand, registered post or courier or at the time of transmission in legible form, if delivered by fax.



## EXHIBIT C

List of parts that are likely needed through to keep the MTU 595's operational.

This priority list is based on past component failure and past parts procurement lead-time experience, but any part can be time critical if it has failed in service and a replacement is not readily available.

| <u>Name</u>                  | <u>Part Number</u> | <u>Comment</u>   |
|------------------------------|--------------------|--|
| HP Intercooler               | 0030982720         | Cracking failures  |
| LP Intercooler               | 0030985220         | Cracking failures  |
| Charge Air Cooling Retainers | Several Parts      | Retainers (brackets) that support components in the the charge air system. |
| Coolant Pump                 | 5762000901         | All parts: Volute, Impeller, Shaft, Seal, and Bearings                     |
| Seawater Pump                | 5762001001         | All parts: Volute, Impeller, Shaft, Seal, and Bearings                     |
| Plug-in Pipe                 | 735078100002       | And other pipes in coolant system (corrosion damage)                       |
| HT Thermostat                | 5762000705         | All overhaul parts, including bushing and slide valve                      |
| LT Thermostat                | 5762001215         | All overhaul parts, including bushing and slide valve                      |
| WILO Pump                    | 8692030031         | Coolant Pre-heater Pump  |
| FO Pump Diaphragm            | 0000911128         |  |
| IW2018 Solenoid              | 0005344832         | Fuel Rack Actuator   |
| Shut Down Air Flap Parts     |                    |  |
| Lever                        | 5840901021         |  |
| Pin                          | 5840980774         |  |
| Clevis                       | 711A08017/1        |  |
| Strap                        | 5840981826         |  |
| Bushing                      | 735036016000       |  |
| LP Turbocharger              | 5120203800         |  |
| HP Turbocharger              | 5110209309/33      |  |
| Air Pre-filters              | 0180944502         |  |
| 9156 Oil                     |                    | 2% solution for coolant  |



**EXHIBIT D**

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*Attorneys for Defendants MTU Friedrichshafen, GMBH  
and Tognum America Inc. f/k/a MTU Detroit Diesel, Inc.*

**IN THE SUPERIOR COURT OF THE STATE OF ALASKA**

**FIRST JUDICIAL DISTRICT AT JUNEAU**

STATE OF ALASKA,  
ALASKA MARINE HIGHWAY SYSTEM,

Plaintiff,

v.

ROBERT E. DERECKTOR, INC.,  
MTU FRIEDRICHSHAFEN, GMBH, and  
TOGNUM AMERICA INC. f/k/a MTU  
DETROIT DIESEL, INC.,

Defendants.

**Case No. 1JU-10-507 CI**

**STIPULATION FOR DISMISSAL WITH PREJUDICE AND  
AS 09.68.130 CERTIFICATION AND [PROPOSED] ORDER**

Pursuant to Civil Rule 41(a)(2) of the Alaska Rules of Civil Procedure,  
Plaintiff, the State of Alaska, Alaska Marine Highway System ("State"), and  
Defendants, MTU Friedrichshafen GmbH and Tognum America Inc. f/k/a MTU  
Detroit Diesel, Inc. ("MTU" or "MTU Defendants") hereby stipulate to the dismissal

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with prejudice of all claims as between the State and the MTU Defendants in this action, Case no. 1JU-10-507 CI, and to the dismissal with prejudice of the MTU Defendants from such action, with the State and the MTU Defendants each to bear their own costs and attorneys' fees. The State specifically reserves its claims against Defendant Robert E. Derecktor, Inc. ("Derecktor") in this action.

This Stipulation for dismissal is entered into by less than all parties to this action, and it does not apply to Defendant Derecktor. Therefore, in accordance with Civil Rule 41(a)(2) the State and the MTU defendants request that this court signify its approval by signing the proposed order, below. Counsel for the State and for the MTU Defendants shall provide the information described in AS 09.68.130 to the Alaska Judicial Counsel within thirty (30) days.

STATE OF ALASKA

DATED: \_\_\_\_\_

By: \_\_\_\_\_

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STIPULATION OF DISMISSAL AND AS 09.68.130 CERTIFICATION AND [PROPOSED] ORDER  
*State of Alaska, Alaska Marine Highway System v. Robert E. Derecktor, Inc., et al.,*  
Case No. 1JU-10-507CI  
Page 3 of 3  
4834-6010-5746.



PATTON BOGGS LLP

DATED: \_\_\_\_\_

By: \_\_\_\_\_

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STIPULATION OF DISMISSAL AND AS 09.68.130 CERTIFICATION AND [PROPOSED] ORDER  
*State of Alaska, Alaska Marine Highway System v. Robert E. Derecktor, Inc., et al.,*  
Case No. 1JU-10-507CI  
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**[PROPOSED] ORDER**

**IT IS HEREBY ORDERED** pursuant to Civil Rule 41(a)(2) that:

(1) Plaintiff State of Alaska's ("State") claims against Defendants MTU Friedrichshafen, GMBH and Tognum America Inc., f/k/a MTU Detroit Diesel, Inc. ("the MTU Defendants") are dismissed with prejudice and that the MTU Defendants are dismissed with prejudice from this action;

(2) The State and the MTU Defendants will bear their own costs and attorneys' fees; and

(3) This Order does not affect the State's claims against Defendant Robert E. Derecktor, Inc. ("Derecktor") or Derecktor's counter-claims against the State in this action.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Honorable Philip M. Pallenberg  
Superior Court Judge

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