



Aviation, Maritime, Freight & Canals Directorate

Clyde and Hebrides Ferry Services

**Competition for the
Contract for the Provision of Ferry Services
(with The Scottish Ministers)
And Harbour Operating Agreement
(with Caledonian Maritime Assets Ltd)**

**Volume 3: Version 3.1
Draft Contract and Schedules**

**15 FEBRUARY 2016
TS/MTRIPS/SER/2015/01**

Vol.3: Version Control		
Version	Date Issued	Change from previous version
2.0	02.11.15	Issue Version
2.1	26.11.15	<p>Drafting corrections or changes to ensure consistency;</p> <p>Changes to Clause 7 and Schedule 1 definitions and Schedule 13 para 2.2 in relation to the calculation of Tariff Index Linking and application to RET fares, and Schedule 1 definitions in relation to the calculation of Index Linking;</p> <p>Changes to Clause 12,18, 39 and Schedules 1 and 13 paras 6 to change provisions for Funded Assets to Transferring Assets;</p> <p>Change to Clause 16.5 and Schedule 1 to define period of Handover Assistance;</p> <p>Schedule 10, Revised MACS hyperlink;</p> <p>Schedule 11 Part B Stakeholder Engagement Manager included;</p> <p>Schedule 13 to provide for the redefinition of Varied Reward for clarification;</p> <p>Schedule 13 and Schedule 1 to provide for reconciliation of electrical fuel price.</p> <p>Schedule 15 Part 2 Section I quantification of Performance Deductions for failure to meet Schedule requirements</p>
2.2	20.01.16	<p>Clause 8.1 timetable publication date to align with Schedule 3;</p> <p>Clause 14.6 provision for the Operator to advise a Variation to be unviable;</p> <p>Clause 18.6 clarification on payment of mobilisation costs;</p> <p>Clause 20.2 amended to include relevant revenue changes;</p> <p>Schedule 1 definition of Tariff Index Linking changed to index against August indices;</p> <p>Schedule 3 Appendix 1 further advice on</p>

		<p>Unscheduled Services; Schedule 4 inclusion of 2017/18 Trade Tariff rates; Schedule 5 Part A list of Fleet Vessels clarified; Schedule 10 further advice on the preparation of an Accessibility Information System. Schedule 13 Para 2.1.1 amended to include for directly related Costs; and corrections to paras 5.15 and 5.16 to change reference to Punctuality (Timetable); Schedule 15 Part 2 Section E clarifications of Deductions to apply to classification; Section I deletion of wording error to clarify intent</p>
3.0	15.02.16	<p>Clause 24 clarification of application of Capital Supplements to IT systems; Clause 37.3 now requires honouring of bookings and provides a mechanism for payment of tickets sold by outgoing operator; Clause 48.4.2 clarification; Clause 54.2 amended to restrict Operator's liability to excess costs;</p> <p>Each Schedule, context and content of blue boxouts clarified; Schedule 1, revision to Tariff Index Linking for consistency; Schedule 4 clarification of application of Fares annually to Tariff Periods; Schedule 5 Part E clarification of context, and population of pink boxout; Schedule 8 removal of (blank) pink boxout; Schedule 10 population of pink boxout; Schedule 13 Part A section 3 two further cases added for base case recalculation and 3.1.7 has been clarified and extended in scope;</p>

		Schedule 13 Part B Para 2.1 note requires pre execution declaration of credit ratings agencies or alternative parameters; Addition of Appendix; Schedule 15 Part 1 heading 2 corrected; para ref in para 2.2 corrected; para 4.1 clarification of distribution of summary reports; Schedule 15 Part 2 Section G correction for clarification.
3.1	19.02.16	Clause 28.1.1 clarification; Schedule 10 removal of old MACS link.

**CLYDE AND HEBRIDES FERRY SERVICES
COMPETITION FOR THE
CONTRACT FOR THE PROVISION OF FERRY SERVICES
For the Scottish Ministers
AND HARBOUR OPERATING SERVICES
For Caledonian Maritime Assets Ltd**

VOLUME 3

DRAFT CONTRACT AND SCHEDULES

**15 FEBRUARY 2016
TS/MTRIPS/SER/2015/01**

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Public Service Contract

Between

The Scottish Ministers

And

<ENTER OPERATOR NAME HERE>

Dated: XX MONTH 2016

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PART A

PUBLIC SERVICE CONTRACT

BETWEEN:

THE SCOTTISH MINISTERS, Victoria Quay, Edinburgh, EH6 6QQ (who and whose successors are referred to as the **Scottish Ministers**)

and

<ENTER OPERATORS NAME> incorporated in England/Scotland (Company No. XXXX) and having its registered office at XXXX (who and whose permitted assignees are referred to as **the Operator**)

WHEREAS

- A. The Scottish Ministers wish to continue to support ferry links within the Clyde and Hebrides for the purpose of securing access to the Clyde and Hebrides by public transport links providing a continuing, safe, stable and affordable regime for users;
- B. The Scottish Ministers may in terms of section 70 of the Transport (Scotland) Act 2001 make grants on such conditions as they determine;
- C. Life-line ferry services in the Clyde and Hebrides are currently provided by CalMac Ferries Limited in accordance with a Grant Agreement dated 20 September 2007;
- D. CalMac Ferries Limited will cease to provide these ferry services when that Grant Agreement terminates at 00:00 hours on the 1 October 2016 and thereafter the Services will be provided by the Operator in accordance with this Contract;
- E. Following an open, transparent and non-discriminatory public tender process the Scottish Ministers have entrusted public service obligations in relation to the provision of ferry services in the Clyde and Hebrides to the Operator and agreed to compensate the Operator for the Services on the terms and conditions set out in this Contract.

SECTION A: INTRODUCTORY PROVISIONS

1 Definitions And Interpretation

1.1 In this Contract, words and expressions, except where the context otherwise requires, will have the meanings assigned to them in paragraph 1 of Schedule 1 and paragraph 2 of Schedule 1 applies to the interpretation of this Contract.

2 Principal Contracts And Conditions Precedent

2.1 The Operator will on the date of execution hereof execute the Principal Contracts and will within seven days of the date of execution hereof deliver to the Scottish Ministers two certified copies of each of the executed Principal Contracts (except the Tripartite Agreement).

2.2 The Operator shall perform all of its obligations under the Principal Contracts and shall not exercise any right to terminate the same without giving Scottish Ministers 30 days' notice.

2.3 The obligation of the Scottish Ministers to pay the Grant or any Monthly Instalment under this contract is subject to the condition that the Scottish Ministers have received all of the documents and other evidence of the completion of activities listed in schedule 2 all in the form and substance satisfactory to the Scottish Ministers.

3 Contract Period

3.1 The Contract takes effect on XX June 2016 (the "Mobilisation Date") and the Services will commence on 1 October 2016 at 00:00 hours (the "Commencement Date"). The Contract expires on 1 October 2024 at 00.00 hours (the "Expiry Date"), unless it is terminated earlier under Clause 55.

4 Due Diligence

4.1 The Operator acknowledges that it shall be deemed to have:

4.1.1 made its own enquiries to satisfy itself as to the accuracy and adequacy of any information or data supplied to it by or on behalf of the Scottish Ministers;

4.1.2 raised all relevant due diligence questions with the Scottish Ministers;

4.1.3 satisfied itself as to the nature and extent of the risks and obligations assumed by it under this Contract; and

4.1.4 entered into this Contract in reliance on its own due diligence alone.

4.2 Without prejudice to the foregoing generality Operator acknowledges that:

4.2.1 it has not entered into this Contract in reliance of the accuracy of any information or data provided by Scottish Ministers

4.2.2 the use of, or reliance upon, any of the information or data supplied by Scottish Ministers is entirely at the Operator's own risk; and

4.2.3 except where expressly provided in this Contract, the Operator shall have no entitlement, under this Contract or otherwise, to any relief from its obligations or to claim any additional expenses in relation to the performance of its obligations on grounds that it has used or relied upon any information or data supplied to it by or on behalf of the Scottish Ministers.

4.3 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure.

5 Mobilisation

5.1 Within [14 days] of the Mobilisation Date, the Operator shall develop and refine the draft Mobilisation Plan (annexed hereto as Schedule 6) and obtain the approval of Scottish Ministers, who shall be deemed to have approved the draft Mobilisation Plan unless they provide comments thereon to the Operator within 14 days of receipt of the draft Mobilisation Plan. If the Scottish Ministers and the Operator do not agree the draft Mobilisation Plan within 10 days of receipt by the Operator of the Scottish Ministers' comments then any such dispute shall be resolved through the Dispute Resolution Procedure. The finalised Mobilisation Plan, as approved by Scottish Ministers, or following resolution of any dispute, shall replace the draft Mobilisation Plan in Schedule 6.

5.2 Scottish Ministers shall be entitled to discuss the draft Mobilisation Plan with the Outgoing Operator and CMAL.

5.3 During the Mobilisation Period the Operator shall:

5.3.1 implement the Mobilisation Plan to the satisfaction of the Scottish Ministers;

5.3.2 co-operate fully with the Outgoing Operator to implement the Outgoing Operator's Handover Assistance Plan and ensure a smooth transition and uninterrupted provision of the Services;

5.3.3 acquire sufficient capacity to deliver the Services in accordance with the terms of this Contract including (without limitation) appointing the Key Personnel.

5.4 The Operator must provide the Scottish Ministers with weekly reports as to the performance of and progress under the Mobilisation Plan and notify the Scottish Ministers of, and permit them, or their representatives, to attend meetings with, third parties whose participation or cooperation is required to achieve completion of Mobilisation Plan.

5.5 Scottish Ministers shall authorise the commencement of the Services on the Commencement Date if the Operator has complied fully with the requirements of the Mobilisation Plan. If the Operator has not, in the reasonable opinion of Scottish Ministers, complied fully with such requirements then Scottish Ministers shall inform the Operator in writing of any faults and deficiencies and Scottish Ministers shall have the right, at its sole option, without prejudice to its other rights and remedies under the Contract and after taking into account all representations made by the Operator, to do any of the following: -

5.5.1 extend the Mobilisation Period for such period as shall be specified by the Scottish Ministers to allow the Operator to correct the fault or deficiency; or

5.5.2 terminate the employment of the Operator under the Contract, or terminate the provision of any part of the Services, if the fault or deficiency is material and has not been remedied (if capable of remedy) within [10] days of receipt by the Operator of the written notice specifying the fault or deficiency; or

5.5.3 authorise the commencement of the Services provided that the Operator shall use best endeavours to correct as soon as possible the fault or deficiency.

5.6 The Operator shall implement any Post Commencement Activities identified in the Mobilisation Plan in accordance with the timetable set out therein. If the Operator fails to implement the Post Commencement Activities in accordance with the Mobilisation Plan then the provisions of 5.5 shall apply *mutatis mutandis*.

SECTION B: SERVICES

6 Services

6.1 The Operator must employ the Vessels to provide the Services in accordance with the Timetable from the Commencement Date and throughout the Grant Period.

6.2 The Operator must ensure that the Services are provided throughout the Grant Period in accordance with:

6.2.1 The provisions of Schedule 3 (Services).

6.2.2 Applicable Law including but not limited to all Applicable Law relating to the Vessels, their registration, operation and maintenance, all vessel and crew safety requirements and all relevant health and safety requirements;

6.2.3 The Performance Measures;

6.2.4 The Plans;

6.2.5 All other provisions of Schedules 4-17.

6.3 The obligation on the Operator in this Clause 6 to provide the Services does not preclude the Operator (with the consent of CMAL in relation to the Fleet Vessels) from using the Vessels for any other purpose, provided that the obligation to provide the Services has been and continues to be satisfied in accordance with this Contract. The Operator must consult with the Scottish Ministers and obtain their consent to use the Vessels for any purpose other than the provision of the Services which has the potential to impact upon the Services or the Grant.

6.4 In providing the Services the Operator may at any time during the Grant Period Cascade such of the Vessels as it considers appropriate, providing that such Cascade does not, without the consent of the Scottish Ministers, result in a material or permanent change to the Scheduled Ferry Services. The Operator shall, as soon as practicable, inform the Scottish Ministers on each occasion that a vessel is Cascaded, including the reason for, and expected duration of, the Cascade.

6.5 If at any time any Vessel is unable to undertake or complete a voyage for any reason, the Operator shall if specifically directed by the Scottish Ministers and if the Scheduled Ferry Services cannot be provided by Cascading, use all reasonable

endeavours to provide the Services by employing a vessel or vessels other than the Vessels. Any such substitute vessel(s) shall meet all relevant regulatory requirements and shall be insured by the Operator to a level at least equivalent to that required for the Vessel which is being replaced (or such other level as may be appropriate having regard to the specification of the vessel in question). As soon as the need to employ a replacement or substitute vessel arises, the Operator must provide the Scottish Ministers with all of the following documents in relation to that substitute vessel, all in form and substance satisfactory to the Scottish Ministers:

6.5.1 a charterparty or other evidence of the Operator's entitlement to the employment of such vessel as contemplated;

6.5.2 evidence of insurance at least equivalent to that required for the Vessel which is being replaced;

6.5.3 all certificates required by the MCA or other relevant regulatory body; and

6.5.4 such other information as the Scottish Ministers may reasonably require to satisfy themselves that the proposed vessel is capable of providing the Services.

In the event of an emergency or if the need to employ a replacement or substitute Vessel (other than a Cascaded Vessel) is urgent then the Operator must provide Scottish Ministers with the foregoing documents as soon as reasonably practicable.

6.6 The Scottish Ministers may require the Operator to explain any default or failure (including any default or failure attributable to a Relief Event) in the provision of the Services and such explanation must be given in any manner, in such detail and within any reasonable timescale specified by the Scottish Ministers.

6.7 The Scottish Ministers may at any time contact any of the Ports to obtain information about or relating to the Services and the Operator must sign such documents and carry out such acts as required to facilitate the provision of such information by the relevant Port and will use its reasonable endeavours to procure that any relevant Port complies with such a request.

6.8 During periods of Scheduled Unavailability and/or in the event of a Relief Event the Operator must:

6.8.1 use all reasonable endeavours to minimise the disruption to the Services;
and

6.8.2 provide reasonable notice and reasonable assistance to users of the
Services to minimise the disruption suffered by them.

6.9 The Operator must advise the Scottish Ministers in writing of any events or
circumstances which it claims constitute a Relief Event and must do so as soon as
reasonably practicable after becoming aware of any such events or circumstances and, in
any event, within 5 Business Days after the end of the relevant month. Failure to so
advise the Scottish Ministers will prevent the Operator from claiming that the relevant
events or circumstances constitute a Relief Event.

6.10 During periods of Scheduled Unavailability, the Operator must comply with the
Scheduled Maintenance Programme and the Performance Regime.

7 Fares

7.1 The Operator must, throughout the Grant Period, publish the tariff for the Services
which will apply for each Tariff Period to passengers and vehicles (the RET Tariff),
coaches (the Trade Tariff), and commercial vehicles (the Commercial Vehicle Tariff)
(which tariffs are collectively referred to as the Published Tariff Scheme). The Operator
must not, without the consent of the Scottish Ministers, charge rates in excess of the
Published Tariff Scheme.

7.2 The Published Tariff Scheme for the period from the Commencement Date to the
commencement of the 2017/18 Tariff Period will be the tariff scheme set out in Schedule
4.

7.3 The Published Tariff Scheme for the 2017/18 Tariff Period and each successive
Tariff Period shall be produced by the Operator in accordance with the following
provisions:

7.3.1 The RET Formula shall be reviewed by Scottish Ministers on an annual
basis. Scottish Ministers shall provide the Operator with an updated RET Formula by
[] in each Service Year.

7.3.2 The Operator shall apply the updated RET Formula to the RET tariff and
the Trade Tariff.

7.3.3 The Operator shall increase the Commercial Vehicle Tariff by Tariff Index Linking the Commercial Vehicle Tariff for the immediately preceding Tariff Period.

7.4 The Operator must seek the consent of the Scottish Ministers (not to be unreasonably withheld or delayed) to the proposed Published Tariff Scheme for each Tariff Period no later than [6 Months] prior to the commencement of the relevant Tariff Period, excepting the Trade Tariff element of the Published Tariff Scheme where the Operator must seek the consent of the Scottish Ministers no later than 18 Months prior to the commencement of the relevant Tariff Period.

7.5 If the Operator wishes to adjust the Published Tariff Scheme by any amount other than by the RET Formula or Tariff Index Linking (as appropriate) the Operator must seek the consent of the Scottish Ministers (such consent or refusal not to be unreasonably delayed) to any proposed increase or decrease no later than the relevant date for application for consent to the proposed tariff scheme under Clause 7.4 above.

7.6 The Operator shall publish and implement any Discount Policy notified to the Operator by Scottish Ministers.

7.7 The Operator must not offer or vary preferential tariffs or discounts to achieve the effect of reducing the Published Tariff Scheme, except in accordance with the Discount Policy, without the consent of the Scottish Ministers (such consent or refusal not to be unreasonably delayed).

7.8 The Scottish Ministers are entitled to require the Operator to increase or reduce the Published Tariff Scheme or to amend or remove the Discount Policy in whole or in part at any time by issuing to the Operator a Revised Tariff Structure or a Discount Policy Variation. The Revised Tariff Structure and/or Discount Policy Variation will come into effect as the Published Tariff Scheme and/or Discount Policy for all purposes on the date or dates specified by the Scottish Ministers which date or dates must not be less than two months after the date of issue of the Revised Tariff Structure and/or Discount Policy Variation. The Scottish Ministers are entitled to specify that different parts of the Revised Tariff Structure and/or Discount Policy Variation will come into effect as the Published Tariff Scheme or Discount Policy on different dates.

7.9 Any adjustment by an amount other than Tariff Index Linking under Clause 7.3 including the setting of the RET Formula which departs from Tariff Index Linking or a

Revised Tariff Structure or Discount Policy Variation will be deemed to be a Contract Variation to which Clause 14 applies.

7.10 The amounts calculated by applying the RET Formula or Tariff Index Linking to the Published Tariff Scheme for the immediately preceding Tariff Period must be rounded up to the next £0.05.

7.11 Where the proposed tariff for any Unscheduled Ferry Services differs from that set out in the Published Tariff Scheme for the relevant sailing, the tariff for those Unscheduled Ferry Services shall be published by the Operator and prior notice of publication shall be given to the Scottish Ministers.

8 Timetable

8.1 The Operator must throughout the Grant Period publish the Timetable for the Services which will apply for each Service Year, in accordance with the provisions of Schedule 3. The Timetable for the period from the Commencement Date until the commencement of the 2017/18 Service Year shall be the Interim Timetable.

8.2 The Operator must provide the Services in accordance with the Timetable except during any period of Scheduled Unavailability, or in the event of a Relief Event, including where it is necessary to adjust the times as a direct and unavoidable consequence of tidal conditions.

8.3 The Operator may with the prior consent of the Scottish Ministers (such consent or refusal not to be unreasonably delayed) make permanent changes to the departure and arrival times of any sailing set out in the Timetable provided that all necessary consultation has been carried out pursuant to Clause 40 prior to the Operator seeking to make any such changes. The Operator must give the Scottish Ministers not less than 45 Business Days' notice of any proposed alterations to the Timetable. For the avoidance of doubt, any such proposal will not have the effect of reducing the number of sailings or otherwise materially altering the Services. Scottish Ministers shall not unreasonably withhold their consent if the proposed changes to the Timetable arise from a requirement to comply with Applicable Law, any harbour works affecting the Services, or the coming into service of a New Vessel or the permanent Cascade of a Vessel.

8.4 On making changes in accordance with this Clause 8, the Operator must publish a revised Timetable at least 20 Business Days prior to the revised Timetable coming into

effect and shall take all reasonable steps to publicise such changes to the public and the travel trade.

8.5 The Operator may with the consent of the Scottish Ministers (not to be unreasonably withheld or delayed) provide sailings additional to those specified in the Timetable on such occasions as the Operator considers to be appropriate and to meet seasonal demand in accordance with the Operator's proposals for demand management. The Operator must give the Scottish Ministers not less than [20] Business Days' notice of any proposed additional sailings. If the Scottish Ministers grant consent they will be entitled to impose such conditions as they in their sole discretion consider to be necessary or desirable. Operating Costs and Revenue arising out of or associated with any additional sailings shall be accounted for in accordance with Clause 20

8.6 The Operator shall provide the Unscheduled Ferry Services and the Associated Lifeline Services to meet seasonal or other demand. The Operator shall give Scottish Ministers reasonable notice of any Unscheduled Ferry Services and the Associated Lifeline Services and the Scottish Ministers will be entitled to impose such conditions as they in their sole discretion consider to be necessary or desirable. Operating Costs and Revenue arising out of or associated with Unscheduled Ferry Services and Associated Lifeline Services shall be accounted for in accordance with Clause 20.

9 Marketing Plan

9.1 The Operator must implement the Marketing Plan in accordance with Schedule 7, and to the satisfaction of the Scottish Ministers.

9.2 The Operator must market the Services in accordance with the Marketing Plan and review the Marketing Plan from time to time or when so requested by the Scottish Ministers, and must update the Marketing Plan as appropriate within such reasonable timescale as Scottish Ministers may specify.

10 Health And Safety Plan

10.1 The Operator must implement the Health & Safety Plan in accordance with Schedule 8 and to the satisfaction of the Scottish Ministers.

10.2 The Operator must provide the Services in accordance with the Health and Safety Plan and review the Health and Safety Plan from time to time or when so required by any change of circumstance or when so requested by the Scottish Ministers, and must update

the Health and Safety Plan as appropriate within such reasonable timescale as Scottish Ministers may specify.

11 Environmental Management Plan

11.1 The Operator must implement the Environmental Management Plan in accordance with Schedule 9 and to the satisfaction of the Scottish Ministers.

11.2 The Operator must provide the Services in accordance with the Environmental Management Plan and review the Environmental Management Plan from time to time or when so required by any change of circumstance or when so requested by the Scottish Ministers, and must update the Environmental Management Plan as appropriate within such reasonable timescale as Scottish Ministers may specify.

12 Register Of Transferring Assets And Subcontracts

12.1 The Operator shall keep and maintain a register of Transferring Assets (the Transferring Assets Register) which shall detail all Transferring Assets acquired or improved by the Operator (whether acquired from the Outgoing Operator on or after the Mobilisation Date or in accordance with Clause 24) together with their acquisition and/ or improvement costs, current condition and current value, and a register detailing all subcontracts and other relevant agreements required for the performance of the Services (the Subcontracts Register).

12.2 The Operator shall maintain the Transferring Assets Register in such format as is required by Scottish Ministers and shall update the Transferring Assets Register from time to time and in particular in the event that Transferring Assets are added to or removed from the Services.

12.3 The Operator shall ensure that all Transferring Assets are clearly marked to identify that they are the property of the Operator only for the purposes and duration of the Services and shall revert on the expiry of the services to the property of the Incoming Operator, or the Scottish Ministers in the event that there is no Incoming Operator, and shall ensure that they are exclusively used for the provision of the Services under this Contract.

12.4 The Operator shall (unless otherwise agreed by the Scottish Ministers in writing) procure that all sub-contracts and other agreements with third parties (other than CMAL), which are necessary to enable the Scottish Ministers (and/or its nominee) to perform the

Services in accordance with this Contract shall be assignable and/or capable of novation at the request of the Scottish Ministers to the Scottish Ministers (and/or its nominee) upon the Operator ceasing to provide the Services without restriction (including any need to obtain any consent or approval) or payment by the Scottish Ministers.

12.5 Where the Operator is unable to procure that any sub-contract or other agreement referred to in Clause 12.4 above which the Operator proposes to enter into after the Mobilisation Date is assignable and/or capable of novation to the Scottish Ministers (and/or its nominee) without restriction or payment, the Operator shall promptly notify the Scottish Ministers of this and the parties shall (acting reasonably and without undue delay) discuss the appropriate action to be taken which, where the Scottish Ministers so directs, may include the Operator seeking an alternative subcontractor, to be agreed with the Scottish Ministers.

13 Performance Management

13.1 The Operator shall comply with the Performance Regime and deliver the Service in accordance with the Performance Measures, all as is set out in Schedule 15 (Performance Regime).

14 Variations To The Services

14.1 For the avoidance of doubt the parties agree that no variation to the Services shall occur or be deemed to have occurred through course of conduct or otherwise but only through the application of the provisions of this Clause 14.

14.2 Operational Variations shall be processed in accordance with this Clause 14 below. If either Party is in doubt as to whether a variation falls within the definition of a Contract Variation or an Operational Variation it shall be processed as a Contract Variation. Urgent Variations shall be processed in accordance with this Clause 14 below.

Contract Variation

14.3 The Scottish Ministers may from time to time during the Grant Period issue a Contract Variation Notice to the Operator requiring a variation to the Services. A Contract Variation Notice may only be issued if:

14.3.1 the Scottish Ministers, acting reasonably, have concluded that the public transport links in the Clyde & Hebrides are, or are about to become, inadequate or inappropriate for any reason;

14.3.2 the Scottish Ministers wish to vary, add or remove any route in the Clyde and Hebrides;

14.3.3 a Harbour or Port is not available or has suffered operational restrictions or is scheduled to suffer operational restrictions;

14.3.4 a New Vessel is delivered to the Operator by CMAL for use in the Services or a Vessel is removed by CMAL and ceases to be available for the operation of the Services.

14.4 The Operator may request that the Scottish Ministers issue a Contract Variation Notice where it considers that the Services may be varied to improve economy efficiency and effectiveness.

14.5 The Contract Variation Notice must specify, in sufficient detail to allow the Operator to provide the Evaluation in accordance with Clause 14.6, the additional, reduced, or altered Services including, (without limitation) any changes to the routes or Timetable, that the Scottish Ministers, acting reasonably, consider to be necessary to restore or maintain adequate or appropriate transport links in the Clyde and Hebrides

Evaluation

14.6 On receipt of a Contract Variation Notice, the Operator shall notify the Scottish Ministers if it reasonably believes that the proposed Contract Variation would not be technically feasible or would infringe any law or be inconsistent with good industry practice. In the absence of such a notification or notwithstanding such a notification where the Scottish Ministers direct that further examination of the Contract Variation Notice should proceed, the Operator must deliver to the Scottish Ministers a written evaluation (the Evaluation) of the Contract Variation as soon as practicable and in any event within such reasonable time as the Contract Variation Notice may stipulate. The Evaluation must include at a minimum the following information (in so far as relevant):

14.6.1 details of any effects the Contract Variation may have on Operating Costs, Revenue, Operator's Return, the Fuel Management Programme or the provision of the Services;

14.6.2 a Revised Base Case incorporating changes to the Operating Costs, Revenue, Operator's Return, the Fuel Management Programme and any other changes to the Base Case as are appropriate and reasonable in the circumstances and will result in the Operator being in no better or worse a position than it was prior to the Variation being implemented other than in relation to any alteration to the Operator's Return which may be reasonable to compensate the Operator for any increased risk, effort or capital required in respect of the Contract Variation ;

14.6.3 any proposed changes to any of the Plans;

14.6.4 the proposed programme for the commencement and implementation of the Contract Variation, including any proposed amendment (and reason therefor) to any dates set out in the Contract Variation Notice;

14.6.5 any changes to the provisions of this Contract reasonably required as a consequence together with any matters on which implementation of the Contract Variation may be at any time conditional including if appropriate the consent of CMAL or any other third party.

14.7 As soon as reasonably practicable after the Scottish Ministers receive an Evaluation from the Operator, the Parties must discuss and identify the issues set out or inferred in the Evaluation.

14.8 In such discussions, the Scottish Ministers may modify the Contract Variation Notice and the Operator must, as soon as practicable after the receipt of such modification, and in any event within a timescale stipulated by the Scottish Ministers, provide a revised Evaluation with any consequential changes, including revisions to the estimated cost of the Contract Variation and any other relevant details.

14.9 If the Parties do not agree the contents of the Evaluation then the Dispute will be determined in accordance with the Dispute Resolution Procedure.

14.10 As soon as reasonably practicable after the contents of the Evaluation have been agreed or otherwise determined in accordance with the Dispute Resolution Procedure the Scottish Ministers must confirm in writing whether or not they wish (at their sole discretion) to accept the Contract Variation.

Operational Variation

14.11 Any change identified by the Operator to improve operational efficiency of the Services, whether through the Continuous Improvement Plan process or otherwise, (an Operational Variation) may be implemented by the Operator without following the Contract Variation Notice procedure, provided that it does not:

14.11.1 have a material impact on the users of the Services;

14.11.2 have a material impact on the Operational Costs, Revenue or the Fuel Management Programme;

14.11.3 require the consent of a third party, including CMAL;

14.11.4 require a variation to the Contract; or

14.11.5 involve the Scottish Ministers in paying any additional Grant and/or Monthly Instalments.

The Operator shall promptly notify the Scottish Ministers of the implementation of any such Operational Variation.

14.12 The Scottish Ministers may request an Operational Variation by issuing a written request for operational variation (RFOV) to the Operator, which shall include details of the proposed Operational Variation and the timescale for completion.

14.13 The Operator shall inform the Scottish Ministers of any impact on the Services which may arise from the Operational Variation

14.14 The Operator shall implement the Operational Variation within the timescale specified for completion in the RFOV, and shall promptly notify Scottish Ministers when the Operational Variation is implemented.

14.15 The Operator shall implement the Operational Variation within the timescale specified for completion in the RFOV, and shall promptly notify Scottish Ministers when the Operational Variation is implemented.

Urgent Variation

14.16 The parties acknowledge that there may be circumstances where a variation to the Services requires to be implemented urgently to protect the safety of passengers, crew, employees, livestock, cargo, the vessels and the ports or to ensure the continued

provision of the Services (an “Urgent Variation”). On the express verbal instructions of the Scottish Ministers’ Representative or Senior Scottish Ministers’ Representative an Urgent Variation shall be implemented by the Operator without delay, and shall be confirmed in writing by Scottish Ministers within 7 days and shall be ratified by the Parties in accordance with the applicable provision of this clause 14.

Implementation of a Variation

14.17 In the event that a Contract Variation has been confirmed by the Scottish Ministers in accordance with this Clause 14:

14.17.1 the Scottish Ministers must issue a Contract Variation Form to be signed by the Operator;

14.17.2 the Contract will be read and construed as varied by the Contract Variation Form; and

14.17.3 the Operator must implement the Variation in accordance with the Contract Variation Form,

except to the extent varied by a Contract Variation Form, the whole terms and conditions of the Contract shall remain in full force and effect.

14.18 The Operator will not be required to implement any Contract Variation which:

14.18.1 would cause the Operator to breach Applicable Law;

14.18.2 would materially and adversely affect the health and safety of any person;

14.18.3 would (if implemented) materially change the nature of the Services.

14.19 Subject to Clause 14.20 the Operator and the Scottish Ministers shall each meet their own expenses in connection with any Contract Variation.

14.20 Scottish Ministers may request from time to time that the Operator provides expertise and assistance in relation to the development and evaluation of proposals and/or feasibility assessments in connection with the Services including (without limitation) management, operational or financial advice. The Operator shall be entitled to reimbursement of any reasonable actually incurred and verifiable costs and expenses in connection with the provision of any such consultancy services. The Operator shall

provide the Scottish Ministers on request with an estimate of the costs prior to undertaking any consultancy services. Scottish Ministers shall decide whether a proposal is a request for consultancy services in accordance with this Clause or a Contract Variation. Any dispute as to whether a proposal is a request for consultancy services or a Contract Variation shall be resolved through the Dispute Resolution Procedure.

15 Continuous Improvement

15.1 The Operator shall have an ongoing obligation throughout the Grant Period to identify new or potential improvements to the Services pursuant to which it will regularly review the Services and the manner in which it is providing the Services with a view to reducing the operational costs and/or improving the quality and efficiency of the Services. The Operator shall produce and keep updated a Continuous Improvement Plan which it shall review with the Scottish Ministers on a regular basis and at least once in every Service Year.

15.2 Any variations to the Contract, required to implement or effect any improvements identified in the Continuous Improvement Plan, shall be subject to the Contract Variation procedure set out at Clause 14 and the Operator shall implement any improvement at no additional cost to the Scottish Ministers.

15.3 The Operator shall ensure that the information that it provides to the Scottish Ministers in the Continuous Improvement Plan shall be sufficient for the Scottish Ministers to decide whether any improvement to the Services should be implemented. The Operator shall provide any further information that the Scottish Ministers reasonably requests in connection with any improvements to the Services identified in the Continuous Improvement Plan.

16 Pre-Expiry

16.1 The Operator must throughout the Contract collect and preserve and upon the request of the Scottish Ministers made at any time during the last 18 Months of the Grant Period (or if the Scottish Ministers shall have given notice under Clause 57 at any time after the date of such notice), supply the Scottish Ministers with all such information regarding the Services including (without limitation) the Vessels and their operation, employees, passenger numbers and other matters (including the like information as regards key subcontractors) which the Scottish Ministers may require (of which the Scottish Ministers will be the sole judges) for all purposes connected with the inviting of

tenders from persons interested in becoming the Incoming Operator and for the purposes of evaluating any such tender. A non-exhaustive list of information which is likely to be sought under this Clause is set out at Schedule 14 Part B.

16.2 For the avoidance of doubt, any request made for the purposes described in Clause 12 must be complied with within any such timescale as the Scottish Ministers may specify in any such request, and may not only require the provision of data or information which is held by the Operator in the format requested, but also the collection and collation of that information or data where considered necessary by the Scottish Ministers.

16.3 The Operator shall provide, on reasonable notice, to the Scottish Ministers and/or (subject to any potential Incoming Operators entering into reasonable written confidentiality undertakings) to any potential Incoming Operator, access to the Vessels, and any other facilities employed in the provision of the Services, for the purposes of inspection and carrying out due diligence (including for the avoidance of doubt the carrying out by any potential Incoming Operator of passenger surveys) provided that such rights of access and inspection do not interfere with the performance by the Operator of its obligations under this Contract or any of the Principal Contracts.

16.4 Where the Scottish Ministers have appointed an Incoming Operator, the Operator must cooperate with the Scottish Ministers and the Incoming Operator to ensure smooth handover and uninterrupted provision of the Services. The Scottish Ministers will be entitled to require the Operator to transfer the trade mark or trade name under which the Services are operated or marketed and all association rights to an Incoming Operator for no consideration.

16.5 The Operator will, within three months after the Commencement Date, deliver to Scottish Ministers a Handover Assistance Plan which sets out the Operator's proposed methodology during the Transfer Assistance Period for achieving an orderly transition of Services from the Operator to the Scottish Ministers and/or its proposed Incoming Operator on the expiry or termination of this Contract and which complies with the requirements set out Clause 16.6 below. Within 30 days after the submission of the Handover Assistance Plan, each Party will use their respective reasonable endeavours to agree the contents of the Handover Assistance Plan. If the parties are unable to agree the contents of the Handover Assistance Plan then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

16.6 The Handover Assistance Plan will contain, as a minimum:

16.6.1 separate mechanisms for dealing with expiry and early termination, the provisions relating to early termination being prepared on the assumption that the Operator may be unable to provide the full level of assistance which is required by the provisions relating to expiry, and in the case of, early termination provision for the supply by the Operator of all such reasonable assistance as the Scottish Ministers shall require to enable the Scottish Ministers or its subcontractors to provide the Services;

16.6.2 the management structure to be employed during both transfer and cessation of the Services, on expiry and early termination; and

16.6.3 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of expiry or an early termination procedures to deal with requests made by the Scottish Ministers and/or an Incoming Operator for Staffing Information pursuant to Schedule 11 (Staff Transfer).

16.7 The Operator will review and (if appropriate) update the Handover Assistance Plan in the first month of each Service Year (commencing with the second Service Year) to reflect any changes in the Services. Following such update the Operator will submit the revised Handover Assistance Plan to the Scottish Ministers for review. Within 30 days following submission of the revised Handover Assistance Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Handover Assistance Plan, based on the principles set out in this schedule and any changes that have occurred in the Services since the Handover Assistance Plan was last agreed. If the parties are unable to agree the contents of the revised Handover Assistance Plan within that 30 day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

16.8 The Operator shall implement the Handover Assistance Plan in accordance with its terms to the satisfaction of Scottish Ministers.

SECTION C: GRANT

17 Purpose Of Grant

17.1 The Scottish Ministers will make advances on receipt of a Grant Claim Form by way of grant (the Grant) to the Operator towards provision of the Services during the Grant Period calculated in accordance with Clauses 18 to 26 and Schedule 13.

17.2 The Grant must be used solely to meet part of the costs and expenses of provision of the Services including the Operator's Return in accordance with this Contract and for no other purpose whatsoever.

17.3 For the avoidance of doubt it is specifically declared that the Grant is a subsidy only and not a payment for services provided or to be provided to the Scottish Ministers. Accordingly, any payment made by the Scottish Ministers to the Operator under this Contract does not represent consideration for a taxable supply for VAT purposes and so VAT will not be payable in respect of any such payment.

17.4 If it is determined by HM Revenue and Customs that the Operator is liable to account for VAT in respect of any payment made by the Scottish Ministers to the Operator, the Scottish Ministers must pay VAT in addition to such payment within 14 days after delivery of:

17.4.1 written evidence of such determination;

17.4.2 a valid VAT invoice; and

17.4.3 an undertaking from the Operator:

17.4.3.1 promptly to refund to the Scottish Ministers such VAT if it is determined not to be chargeable; and

17.4.3.2 to make (at the expense of the Scottish Ministers) such representations and appeals as the Scottish Ministers may reasonably request in respect of such determination.

18 Calculation Of Grant

18.1 The Grant must not be revised except in accordance with Clauses 14, 18 to 26 and Schedule 13.

18.2 The Base Case will show the projected cumulative difference between Operating Costs (including the Operator's Return), and the Revenue for each Service Year. For the first Month of the Grant Period the Operating Costs shall include the Mobilisation Costs incurred prior to the Commencement Date. Any Mobilisation Costs due in respect of post Commencement Date activities shall be included in the Operating Costs which relate to the Month in which such costs are incurred in accordance with the Mobilisation Plan.

18.3 The Fuel Management Programme will be submitted by the Operator to the Scottish Ministers not less than 30 Business Days before the Commencement Date and not less than 30 Business Days before the commencement of each Service Year thereafter. The Fuel Management Programme will be based on the figures shown in the Base Case and show the Projected Fuel Liability for the next Service Year, by Month and by Vessel. If during the Service Year to which the Fuel Management Programme relates the price of fuel increases, then the Fuel Management Programme may be revised to reflect the higher price of fuel on a quarterly basis by the Operator submitting the revised Fuel Management Programme to the Scottish Ministers not less than 30 Business Days prior to the end of each 3 month period commencing at the start of each Service Year. A revised Fuel Management Programme must be submitted on a similar basis where the price of fuel reduces by 10% or more.

18.4 The Grant for each Service Year will be:

(a) the projected cumulative difference between Operating Costs (including the Operator's Return) and Revenue, for that Service Year as shown in the Base Case, or any Revised Base Case, together with;

(b) the Projected Fuel Liability, as shown in the Fuel Management Programme; and

(c) any Capital Supplement

18.5 the Grant will be paid by Monthly Instalments in accordance with Schedule 13;

18.6 the Monthly Instalment for any Month will be:

(a) one twelfth of the projected difference between Operating Costs (including for the avoidance of doubt Operator's Return plus any Mobilisation Costs due in accordance with Clause 18.2) and Revenue for the relevant Service Year, all as shown in the applicable Base Case; together with;

(b) the Projected Fuel Liability for that Month, as shown in the Fuel Management Programme; and

(c) any Capital Supplement due.

18.7 The Operator shall develop, implement and maintain a Grant management reporting system and shall collect, preserve and report on Data as indicated in Schedule 14 Part B.

19 Annual Grant Reconciliations

19.1 An annual reconciliation of the Grant paid by Monthly Instalments in respect of each Service Year (or part thereof if the initial and final service periods are less than 12 months) will be undertaken in accordance with the provisions of Schedule 13, Part A, Paragraphs 4 and 5.

20 Grant Adjustment: Revised Base Case Recalculation

20.1 If any of the events set out in Schedule 13, Part A, Paragraph 3, occur, either Party may require a Revised Base Case Recalculation.

20.2 The Operator shall submit in the 3 month period prior to 30 September 2020 a Revised Base Case Recalculation for the period 1 October 2022 to 30 September 2024 along with such evidence and explanations as may be required by the Scottish Ministers to justify any changes proposed. Operator shall at a minimum provide evidence in relation to the following:

- (a) a breakdown of the profit and cost components that comprise the relevant Operating Costs;
- (b) details of the movement in the different identified Operating Costs;
- (c) reasons for the movement in the different identified Operating Costs;
- (d) evidence that the Contractor has attempted to mitigate against the increase or exploited the decrease in the relevant Operating Costs; and
- (d) details of any relevant changes to Revenue

Scottish Ministers shall consider any Revised Base Case Recalculation submitted in accordance with this clause 20.2 and shall notify the Operator within a reasonable timescale if, in its sole discretion, the Scottish Ministers wish to accept the Revised Base Case Recalculation (or any parts thereof) including any increases or decreases in Operational Costs and Grant which the Scottish Ministers in their sole discretion consider are reasonably justifiable. For the avoidance of doubt, the Operator's Return shall not be subject to any increase or decrease

20.3 Any Revised Base Case Recalculation (or any parts therefore) accepted by Scottish Ministers in accordance with clause 20.2 shall come into effect as the Revised Base Case for Service Years 7 and 8.

21 Grant Adjustment: Changes In Applicable Law

21.1 The Operator shall neither be relieved of its obligations to provide the Services in accordance with the terms of this Contract nor be entitled to an increase in Grant as the result of:

21.1.1 a General Change in Applicable Law; or

21.1.2 a Specific Change in Applicable Law where the effect of that Specific Change in Applicable Law on the Services is known on or before the Contract Award Date.

21.2 In the event that there is a Specific Change in Applicable Law (other than as referred to in Clause 21.1.2) such that as a consequence of such change the Operator incurs an unavoidable material change in Operating Costs or is reasonably likely to suffer an unavoidable material change in Revenue then the Operator must advise the Scottish Ministers and either Party will be entitled to request a Revised Base Case Recalculation in accordance with Schedule 13 Part A, Paragraph 3.1.

22 Performance Deductions

22.1 Without prejudice to and in addition to the rights of the Scottish Ministers under any other provisions of this Contract, where the Operator has failed to meet any of the Performance Measures, the Scottish Ministers may make deductions (Performance Deductions) from Monthly Instalments in accordance with the provisions of Schedule 13, Part A, Paragraphs 5.12 - 5.16.

23 Resolution Of Grant Disputes

23.1 If there is any dispute between the parties arising out of or in connection with the Grant, a requested Grant adjustment, the Actual Outcome Statement, or Annual Fuel Statement, ("a Grant Dispute") then any such Grant Dispute shall be resolved through the Dispute Resolution Procedure. The Monthly Instalments will be adjusted by the net effects of such amounts as are not in dispute pending the resolution of the dispute.

24 Capital Supplements

24.1 The Scottish Ministers may, in accordance with Schedule 13, Paragraph 6 make advances by way of grant to the Operator towards the provision or improvement of Transferring Assets. Where the Transferring Asset is an IT system the Capital Supplement may be used subject to the agreement of the Scottish Ministers to pay for costs arising from procurement, project management, development work securing Intellectual Property Rights that will allow the Scottish Ministers to use the system and preparation for deployment, but shall not cover the costs of any managed services contract or staff for the operation or maintenance of the system.

25 Public Sector Contributions

25.1 If the Operator receives any contribution in connection with the Services (except the Grant) either in cash or in kind from any public sector body (including any government body, institution or fund of the European Union, local authority, statutory undertaking or other body wholly or substantially funded by public money) the Scottish Ministers are entitled to reduce the Grant by the amount of such contribution (Public Sector Contribution).

25.2 The Operator must notify the Scottish Ministers immediately if:

25.2.1 the Operator makes an application for any Public Sector Contribution in connection with the Services;

25.2.2 the Operator receives notification that it will receive, or will receive an offer of, any Public Sector Contribution in connection with the Services; or

25.2.3 the Operator receives any Public Sector Contribution in connection with the Services,

and any such notification must give full details of the Public Sector Contribution applied for, offered or received as the case may be.

26 State Aid Determinations: Recovery Of Grant

26.1 The Scottish Ministers may withhold payment of the Grant or any part of it or reclaim the Grant or any part of it) and the Operator must repay any such sum within 20 Business Days together with interest (as determined by the European Commission in accordance with Article 10 of Commission Regulation (EC) No 794/2004 (OJL 140,

30.4.2004, p.1) and the Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997 p. 3)) if required to do so by the European Commission, the European Court of Justice or any court in Scotland pursuant to Article 107 of the Treaty on the Functioning of the European Union and/or Applicable Law. The Scottish Ministers must use reasonable endeavours (subject to any objection of confidentiality imposed) to advise the Operator in the event that the Scottish Ministers receive any notification which will or may lead to a request to reclaim the Grant and, if so authorised by the European Commission, provide copies of any such notification and relevant communications.

26.2 In the event of any determination by the European Commission, European Court of Justice or any Scottish Court requires repayment of the Grant or any part of it then the provisions of Clause 55.2 will apply.

SECTION D: STAFF INVOLVED IN THE PROVISION OF THE SERVICES

27 Transfer Of Staff

27.1 The Parties acknowledge that the commencement and the expiry or termination of this Contract may constitute a relevant transfer for the purposes of the Employment Regulations. The provisions of Schedule 11 Part C (Staff Transfer - TUPE) will apply on such commencement, expiry or termination.

Key Personnel

27.2 Prior to the Commencement Date the Operator shall prepare and deliver to the Scottish Ministers a completed schedule of Key Personnel in accordance with Schedule 11.

27.3 The Operator shall obtain the prior written consent of the Scottish Ministers (which shall not be unreasonably withheld or delayed) before removing or replacing any member of the Key Personnel from their corresponding role during the Grant Period, and, where possible, at least one month's written notice must be provided by the Operator of its intention to replace any member of Key Personnel from their corresponding role.

27.4 The Operator acknowledges that the Key Personnel are essential to the proper provision of the Services and shall ensure that the role of any Key Personnel is not vacant for any longer than 10 Business Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to

carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.

HR Strategy

27.5 The Operator must implement the HR Strategy in accordance with Schedule 11 and to the reasonable satisfaction of the Scottish Ministers and review the strategy from time to time or when so required by any change of circumstance or when so requested by the Scottish Ministers, and must update or confirm the strategy at least once a year as appropriate.

28 Pensions

28.1 The Operator shall, and shall procure that any sub-contractor which is an Associated Company (“Relevant Sub-Contractor”) shall, in respect of each of the CalMac Pension Fund, the Merchant Navy Officers Pension Fund, the Merchant Navy Officers Pension Plan and the Merchant Navy Ratings Pension Plan (“the Pension Schemes”) apply to enter into a participation agreement in order to become a Scheme Employer in respect of each of the Pension Schemes with effect from the Commencement Date, and thereafter shall, and shall procure that any Relevant Sub-Contractor shall, ensure that, for the duration of the Grant Period:

28.1.1 each Outgoing Operator Employee who is an active member of (or was entitled to become a member of) a Pension Scheme at the Commencement Date will be entitled, during the whole period that such Outgoing Operator Employee is involved in the provision of the Services, to remain (or become) an active member of that Pension Scheme on substantially the same terms as those offered whilst employed by the Outgoing Operator and that service under the said Pension Scheme is where relevant treated as continuous; and

28.1.2 All Eligible Employees are offered membership of the CalMac Pension Fund, subject to the trustees of the CalMac Pension Fund consenting to the admission of new members to the CalMac Pension Fund who are employed by the Operator wholly or mainly in the provision of the Services.

28.2 The provisions of clause 28.1 shall be directly enforceable by an affected employee against the Operator or any Relevant Sub-Contractor and the parties agree that, notwithstanding the provisions of clause 46.1, such employees shall have a jus quaesitum

tertio to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Operator or any Relevant Sub-Contractor under clause 28.1.

28.3 In the event that:

28.3.1 any Pension Liability arises during the Grant Period or as a consequence of the expiry or earlier termination; and

28.3.2 the Operator becomes liable for the Pension Liability

then Scottish Ministers shall indemnify the Operator and any Relevant Sub-Contractor if and to the extent that the Operator or Relevant Sub-Contractor is required to make a contribution(s) to the CalMac Pension Fund in respect of that Pension Liability.

SECTION E: INFORMATION AND INTELLECTUAL PROPERTY

29 Data Protection

29.1 The Operator will be a Data Controller in respect of any Personal Data it obtains through the operation of this Contract.

29.2 The Operator must comply at all times with the requirements of the Data Protection Act 1998.

30 Freedom Of Information

30.1 The Operator must do all things necessary to facilitate the Scottish Ministers' compliance with the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information Regulations 2004 which will include but may not be limited to:

30.1.1 transferring all requests for information which it receives regarding the Services to the Scottish Ministers within 2 Business Days of receipt; and

30.1.2 where the Scottish Ministers receive a request for information in relation to Information that the Operator is holding on their behalf and which the Scottish Ministers do not hold themselves the Scottish Ministers shall refer to the Operator such request for information that they receive as soon as reasonably practicable and

in any event within 5 Business Days of receiving a request for information and the Operator must provide the Scottish Ministers with a copy of all such information in the form that the Scottish Ministers require as soon as practicable and in any event within 10 Business Days (or such other period as the Scottish Ministers acting reasonably may specify) of the Scottish Ministers' request.

30.2 The Operator may make representations to the Scottish Ministers as to whether or not or on what basis information requested should be disclosed.

31 Confidentiality

31.1 The Operator must keep secret and not disclose (and procure that the Operator's employees keep secret and do not disclose) any information of a confidential nature obtained by the Operator by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision. Notwithstanding the foregoing, the Operator must, unless otherwise directed by the Scottish Ministers, acknowledge in all promotional and publicity material relating to the Services the financial support given to the provision of the Services through the Grant.

31.2 The Scottish Ministers may publish or disclose this Contract or any part of it, any information concerning the Contract or matters arising out of or in connection with it, the performance of the Operator under the Contract and any other information as it may deem appropriate from time to time. The Scottish Ministers must use their best endeavours to notify the Operator prior to publishing or disclosing any such information directly relating to the Operator, and must take account of any representations which the Operator may make in connection herewith.

31.3 Notwithstanding any of the foregoing provisions of this Clause 31, or any other provision of this Contract either Party may disclose any information:

31.3.1 as required by law or judicial order to be disclosed;

31.3.2 to its professional advisers provided always that the recipient of the information is subject to the same obligation of confidentiality as that contained herein.

31.4 The Operator must not, and must ensure and procure that its agents, employees, representatives and subcontractors do not, except with the prior approval of the Scottish

Ministers (which may be granted subject to such conditions as the Scottish Ministers see fit):

31.4.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract; or

31.4.2 disclose to third parties any information obtained by it from the Scottish Ministers under or in connection with the Contract.

31.5 The provisions of this Clause 31 will not apply to any information which may reasonably be required to be disclosed to any party by the Scottish Ministers for the purposes of seeking an Incoming Operator, including any information requested by the Scottish Ministers in accordance with Clause 16.

31.6 The obligations imposed by this Clause 31 will continue to apply after the expiry or termination of this Contract.

32 Intellectual Property Rights

32.1 The Operator agrees that the ownership of and the right to exploit all forms and aspects of Intellectual Property Rights in any Transferring Assets, or created by the Operator wholly and exclusively in connection with the provision of the Services (including without limitation any IT systems, booking tools or website), shall belong to the Scottish Ministers and, accordingly, the Operator hereby assigns to the Scottish Ministers all property rights which it may have in such assets, including Intellectual Property Rights and that for the full term of such Intellectual Property Rights and all renewals and extensions thereof and waives such rights (including but not limited to moral rights) as are not capable of assignation.

32.2 The Operator shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Scottish Ministers or its licensors, including, without limitation any Intellectual Property Rights in IT systems, booking tools and websites.

32.3 The Scottish Ministers hereby grant to the Operator a royalty-free, non-exclusive, non-transferable licence during the Grant Period to use the Transferring Assets (including where applicable any IT systems, the booking tools and websites). The licence is granted solely to the extent necessary for performing the Services in accordance with this Contract. The Operator shall not use the licensed Transferring Assets for any other purpose or for the benefit of any person other than the Scottish Ministers

32.4 The Operator must ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Operator or anyone acting on its behalf nor the reproduction of such materials, constitutes an infringement of any third party copyright or intellectual property right and must indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

SECTION F: OPERATOR CONDUCT

33 Compliance With The Law

33.1 In providing the Services and otherwise when performing the Contract, the Operator must comply in all respects with the Applicable Law.

34 Bribery And Corruption

34.1 The Operator must not commit or attempt to commit any offence in its activities relating to the Contract:

34.1.1 under the Bribery Act 2010; or

34.1.2 of fraud, uttering, or embezzlement at common law.

34.2 Breach of Clause 34.1 will be treated as a material breach for the purposes of Clause 53.1.

35 Discrimination and Customer Care

35.1 The Operator must not unlawfully discriminate against any person in breach of the Equality Act 2010 in its activities relating to the Contract.

35.2 The Operator must prepare at least once a year an Equality Impact Assessment in accordance with Schedule 10 and to the satisfaction of the Scottish Ministers and review the Assessment from time to time or when so required by any change of circumstance or when so requested by the Scottish Ministers.

36 Operational Management and Customer Care and Accessibility Process

36.1 The Operator must provide the Services in accordance with the Operational Management Systems and the Customer Care and Accessibility Process. These must be reviewed from time to time and in the first instance before the Commencement Date or when so required by any change of circumstance or when so requested by the Scottish

Ministers, and must be updated as appropriate. Any amendment so requested by the Scottish Ministers will be a variation to which Clause 14 shall apply.

37 Bookings And Ticketing

37.1 The Operator must ensure that all bookings and reservations are dealt with on a first come first served basis.

37.2 There must be no discrimination between one ferry user and other.

37.3 The Operator must honour all pre-existing bookings and tickets (for all categories of passenger, vehicle and freight) sold by Outgoing Operator prior to the Commencement Date. The Operator shall retain all such honoured tickets and shall submit a claim to Calmac Ferries Ltd with such reasonable details of the number and values of tickets as may be required by Calmac Ferries Ltd. Calmac Ferries Ltd shall pay the claim to the Operator, which payment shall be regarded as Revenue for the purposes of reconciliation of the Grant. The Operator shall continue to sell tickets up to the Expiry Date and shall in pursuance of the Handover Assistance Plan pay to the successor operator the value of tickets sold for the provision of services following the expiry of the Contract.

SECTION G: GENERAL PROVISIONS

38 Operator's Status

38.1 At all times during the Grant Period the Operator will act as an independent Operator and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership, or a joint venture between the Parties. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

38.2 The Operator must not say or do anything that might lead any other person to believe that the Operator is acting as the agent of the Scottish Ministers.

39 Operational Undertakings

39.1 The Operator undertakes at all times during the Grant Period:

39.1.1 to furnish the Scottish Ministers promptly with all such information as they may from time to time require regarding the business and affairs of the Operator, the

Guarantor (and of any Associated Company of the Operator employed as a subcontractor in the provision of the Services), the provision of the Services, and any other matters connected with or affecting the foregoing or the performance by the Operator of its obligations under this Contract or the performance by the relevant parties of their obligations under the agreements set out in Schedule 2;

39.1.2 to keep a Transferring Asset Register and to maintain, repair or replace such Transferring Assets unless otherwise directed by the Scottish Ministers, and unless so directed the Transferring Assets must be presented in Good working Order and provided at no charge to an Incoming Operator as required at the Expiry Date for the purposes of providing ferry services on the Clyde and Hebrides on terms set out by a public service contract or failing that to the Scottish Ministers;

39.1.3 to publish and make available to ferry users a summary of performance statistics, and produce and publish a more detailed annual report;

39.1.4 to allow the Scottish Ministers and persons appointed by them access to the premises, the Vessels and the employees of the Operator and all records and books of account of the Operator and must procure that any Associated Company with which the Operator has contracted for purposes connected with this Contract or the Services must allow similar access;

39.1.5 immediately to notify the Scottish Ministers of the commencement of any Insolvency Event affecting the Operator or the Guarantor;

39.1.6 to send to the Scottish Ministers, at the same time as they are dispatched, copies of all communications that are dispatched to the Operator's shareholders to the extent that such communications are related to or relevant in the context of this Contract or the Services;

39.1.7 to provide to the Scottish Ministers details of any legal or regulatory action involving the Operator or the Vessels as soon as such action is instituted unless such legal or regulatory action is not material in the context of this Contract and the Services.

40 Consultation And Community Engagement

40.1 The Parties, acting reasonably, must consult with each other in good faith throughout the Grant Period in accordance with Schedule 15 Part 1 in relation to all

matters relevant to both the Services and this Contract, in order to facilitate the continued provision of the Services.

40.2 The Operator must take part in shipping services consultation meetings with the representatives of the relevant Regional Transport Partnerships, Western Isles Council, Highland Council, Argyll and Bute Council and North Ayrshire Council from time to time throughout the Grant Period as required by the Scottish Ministers and/or the relevant Regional Transport Partnership and/or Council.

40.3 As and when requested by the Scottish Ministers and as otherwise required under this Contract, the Operator must take part in local community liaison throughout the Grant Period with representatives of users of the Services and the public and must provide the Scottish Ministers with copies of minutes of such meetings. The Scottish Ministers are entitled to be represented at such meetings and their representatives entitled to speak at such meetings.

41 Notices

41.1 Any notice, or other communication, which is to be given by one Party to the other under this Contract must be:

41.1.1 given in writing;

41.1.2 addressed in accordance with Clause 41.3 below; and

41.1.3 Sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.

41.2 Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

41.2.1 2 Business Days after the day on which the letter was posted; or

41.2.2 4 Business Hours, in the case of a fax or an e-mail.

41.3 For the purposes of this Clause the address of each Party is:

The Scottish Ministers
Transport Scotland
Aviation, Maritime, Freight and Canals Division

**Victoria Quay
Edinburgh EH6 6QQ; and**

**<enter Operators name>
<enter Operators name> House
Wherever,
Whatever Town,
Some county and postcode**

41.4 Either Party may change its address details by serving a notice in accordance with this Clause.

41.5 Notices under Clause 57 may be sent to the Operator's trustee, receiver, liquidator or administrator, as appropriate.

42 Payment

42.1 Subject to Clause 26, each Party must pay all sums due to the other within 20 Business Days of receipt of a valid invoice.

42.2 The Operator must supply such other documentation as reasonably required by the Scottish Ministers to substantiate any invoice.

42.3 Interest is payable on the late payment of any undisputed sums of money at the rate of statutory interest (as set in accordance with section 6 of the Late Payment of Commercial Debts (Interest) Act 1998) applying during the period of non-payment.

43 Recovery Of Sums Due

43.1 Wherever under the Contract any sum of money is recoverable from or payable by the Operator, the Scottish Ministers may deduct that sum from any sum due to the Operator whether under the Contract or otherwise.

43.2 The Operator must make any payments due to the Scottish Ministers without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Operator has a valid court order requiring an amount equal to such deduction to be paid by the Scottish Ministers to the Operator.

43.3 If the payment or deduction of any amount referred to in Clause 43.2 above is disputed then any undisputed element of that amount must be paid and the disputed element must be dealt with in accordance with either Clause 23 or Clause 51 as appropriate in the circumstances.

44 Waiver

44.1 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 41.

44.2 No failure or delay by either Party to enforce any provision of the Contract, will prejudice or restrict the rights or remedies of that Party, nor will any waiver by any party of any of the requirements of this Contract, or any of its rights or remedies under this Contract or at law release either Party from full performance of their other obligations under this Contract.

44.3 No failure or delay by either Party to enforce any provision of the Contract will be deemed to result in that Party affirming this Contract (unless that Party makes such an affirmation in writing in accordance with Clause 41).

44.4 No single or partial exercise of any right or remedy under this Contract or at law will prevent any further exercise of the same right or remedy or any other right or remedy under this Contract or at law.

44.5 A waiver given pursuant to Clause 44.1 of a breach of any of the terms of this Contract will not constitute a waiver of any other breach and will not affect the other terms of this Contract.

44.6 A waiver given pursuant to Clause 44.1 of a breach of any of the terms of this Contract will only apply in the particular circumstances for which it is given and will not prevent the Party giving it from subsequently relying on the relevant provision in other circumstances or on another occasion.

44.7 A waiver in respect of any Event of Default is not a waiver of any subsequent Event of Default.

44.8 The rights and remedies provided by this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies. The rights and

remedies provided by this Contract are not exclusive of any rights or remedies provided by law.

45 Severability

45.1 If any provision of the Contract is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

46 Jus Quaesitum Tertio

46.1 It is expressly declared that no rights are conferred under or arising out of this Contract upon any person other than the Scottish Ministers and the Operator (and their permitted successors and assignees) and, without prejudice to the foregoing, there will not in any circumstances be created by this Contract a jus quaesitum tertio in favour of any other person whatsoever.

SECTION H: CONTRACT GOVERNANCE

47 Audit, Expenditure And Accountability

47.1 The Operator must ensure and procure that adequate internal expenditure controls are in place and that all resources are used economically, effectively and efficiently so as to comply with the terms of this Contract.

47.2 The Operator must ensure that there is no cross-subsidisation between the Services and any other service run by or activities of the Operator or between the Operator and any other Associated Company and that all transactions with any Associated Company are conducted on an arm's length basis and are so identified in all records and books of accounts.

47.3 The Operator must have clear, separate and transparent accounting systems for the financing and operating of the Services (in accordance with the Financial Transparency (EC Directive) Regulations 2009/2331) to ensure that the Grant is only used for the Services and not for any other activity of the Operator and shall deal with the Scottish Ministers on an open book basis.

47.4 The Operator must ensure that, in the event that it operates any other service or carries out any other activities, a cost allocation mechanism is in place such that costs

which are common to the Services and those other services and/or activities are correctly allocated and recorded in accordance with clearly established, consistently applied and objectively justifiable cost accounting principles.

47.5 The Operator must ensure that, in the event that it operates any other service or carries out any other activities, a revenue allocation mechanism is in place such that revenues which are common to the Services and those other services and/or activities are correctly allocated and recorded in accordance with clearly established, consistently applied and objectively justifiable cost accounting principles.

47.6 The Operator must keep and maintain throughout the Grant Period and thereafter, until 10 years after the final payment by the Scottish Ministers to the Operator pursuant to this Contract, adequate and proper records of and books of accounts recording the financial affairs of the Operator, the provision of the Services and all receipts and expenditures of monies advanced to the Operator by the Scottish Ministers by way of the Grant.

47.7 The Operator must throughout the duration of the Grant Period and for a period of 5 years after the final payment has been made to the Operator by the Scottish Ministers pursuant to this Contract provide the Auditor General for Scotland access at all reasonable times and on reasonable notice to its books and records for the purposes of carrying out any audit or examination which he is empowered to carry out pursuant to the Public Finance and Accountability (Scotland) Act 2000 or any other Legislation.

47.8 The Operator must throughout the Grant Period and at its own cost present to the Scottish Ministers:

47.8.1 not later than 6 Months after the end of every accounting reference period of the Operator, a copy of the audited financial statements of the Operator and the audited consolidated financial statements of any Group of which the Operator forms part for that accounting reference period;

47.8.2 as soon as reasonably practicable after the end of any period notified by the Scottish Ministers (but not more than once in any Service Year) a confirmation by the auditors of the Operator in such form as may be agreed between the Scottish Ministers, the Operator and the auditors containing information to confirm that the Grant paid to the Operator has been applied by the Operator in accordance with Clauses 17 to 26; and

47.8.3 the information required under the Performance Regime.

47.9 The Operator must provide to the Scottish Ministers (or any other person appointed by the Scottish Ministers) such information as they may reasonably require from time to time, including access to and/or copies of all records maintained by the Operator, concerning any of the Services and the Scottish Ministers must reimburse to the Operator its reasonable costs incurred in complying with this Clause 47.9.

48 Assignment And Sub-Contracting

48.1 The Operator must not assign any portion of the Contract or sub-contract any material portion of the Contract without the prior written consent of the Scottish Ministers. Sub-contracting any part of the Contract will not relieve the Operator of any obligation or duty (or part thereof) attributable to the Operator under the Contract.

48.2 The Operator must provide the Scottish Ministers with a copy of the deed or document formally recording any assignment of this Contract.

48.3 Where the Scottish Ministers have consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Operator to the Scottish Ministers immediately after they are issued.

48.4 Where the Operator enters a sub-contract with a subcontractor for the purpose of performing this Contract, the Operator must ensure a term is included in such sub-contract which:

48.4.1 requires payment to be made to the subcontractor within a specified period not exceeding 30 days from receipt of a valid invoice from subcontractor and provides that, where the Scottish Ministers have made payment to the Operator in respect of the Services and the contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Operator is not exercising a right of retention or set-off in respect of a breach of contract by subcontractor, or in respect of a sum otherwise due by the subcontractor to the Operator, payment must be made to subcontractor without deduction;

48.4.2 notifies subcontractor that the sub-contract forms part of a larger contract between the Operator and the Scottish Ministers and that should subcontractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the subcontractor to the Scottish Ministers; and

48.4.3 is in the same terms as that set out in this Clause 48.4 (including for the avoidance of doubt this Clause 48.4.3) subject only to modification to refer to the correct designation of the equivalent party as the Scottish Ministers and subcontractor, as the case may be.

49 Contract Amendments

49.1 Amendments to this Contract or variations of its terms will only be effective where constituted in writing and signed by or on behalf of each of the Parties.

49.2 Clause 14 will apply in relation to any proposed amendments which constitute a Variation to the Contract.

50 Benchmarking

50.1 The Operator must comply with Schedule 17 in respect of Benchmarking.

51 Dispute Resolution Procedure

51.1 If either Party has any dispute, issues, concerns or complaints (“a dispute”) in connection with, or arising from the Contract (with the exception of any Grant Dispute) then the relevant Party shall notify the other Party in writing setting out full particulars of the dispute and the Operator’s Representative and the Scottish Ministers’ Representative shall attempt in good faith to resolve the matter by a process of consultation within 20 days of either Party notifying the other of the dispute (or such other timescale as shall be agreed between the Parties). If the issue cannot be resolved within such timescale then the matter shall be escalated to the Senior Representatives’ Board, which will comprise the Senior Operator’s Representative and the Senior Scottish Ministers’ Representative, who shall attempt in good faith to resolve the matter.

51.2 If the Senior Representatives’ Board is unable to resolve any dispute within 20 days of the matter being referred to them then either Party may request by notice in writing to the other Party that any dispute be referred and resolved by arbitration in accordance with the following provisions:-

51.2.1 The arbitration shall be governed by the Arbitration (Scotland) Act 2010;

51.2.2 The Scottish arbitration rules (schedule one to the Arbitration (Scotland) Act 2010) in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this agreement, and

the decision of the arbitrator shall be binding on the parties in the absence of any material failure to comply with such rules;

51.2.3 The tribunal shall consist of a sole arbitrator. If the parties fail to agree the appointment of the arbitrator within 10 days of the written notification that the matter is being referred to arbitration, or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the president for the time being of the law society of Scotland.

51.3 Any Grant Dispute shall be referred for expert determination in accordance with the remaining provisions of this clause 51.

51.4 Either Party may refer a Grant Dispute to an independent chartered accountant (the "expert") by giving notice to the other Party of such referral, including the nature and brief details of the Grant Dispute.

51.5 Following the giving of the notice referred to in clause 51.4, and failing agreement between the parties as to the identity of the expert, the referring Party shall request that the president at the time of the institute of chartered accountants of Scotland appoint, within five business days of receipt of such notice, an expert in relation to the Grant Dispute,

51.6 Within five business days of receipt of confirmation from the expert that he/she is willing to act, the referring Party shall provide to the expert copies of all relevant documentation, including any documentation on which the referring Party intends to rely. Copies of all such documentation shall be provided to the other Party within the same timescale.

51.7 The expert shall have jurisdiction to determine the Grant Dispute which has been referred to him/ her.

51.8 The expert shall act as an expert and not as an arbitrator. The decision of the expert, (including as to how the associated costs are to be borne), shall be final and binding on the parties and not subject to any appeal or reference to the court on points of law.

51.9 If required in writing by the parties or by the expert within seven days of his appointment, the expert shall invite written submissions and written counter-submissions from the parties in respect of the Grant Dispute and shall take account of such

submissions and counter submissions, but only if submitted timeously (within fifteen business days of the expert's appointment in case of submissions and within twenty five business days of the expert's appointment in the case of counter-submissions).

51.10 Unless the expert decides otherwise, no oral submission shall be required.

51.11 The expert shall have power to determine liability for his own costs and those of the parties to the Grant Dispute.

51.12 The parties shall seek to secure that the expert undertakes to issue his decision within fourteen days of the later of (i) the date of his appointment and (ii) the date for submission of counter-submissions (should submissions and counter-submissions be required), unless a longer timescale is agreed by both parties.

51.13 The expert shall take full account of the relevant provisions of this contract in determining the Grant Dispute.

51.14 The expert shall act impartially in carrying out his/her duties and shall do so in accordance with any relevant terms of this contract, shall reach his/her decision in accordance with the law applicable to this contract, and shall avoid incurring unnecessary expense.

51.15 If the expert shall die, refuse to act or become incapacitated from acting prior to the making of his decision a further expert shall be appointed in accordance with Clauses 51.4 or 51.5 to replace him/her.

SECTION I: DEFAULT, CURE AND TERMINATION

52 Financial Distress

52.1 The Operator and the Scottish Ministers agree to comply with their respective obligations and may exercise their respective rights pursuant to Schedule 13 part B (financial distress).

53 Events Of Default

53.1 The occurrence of any of the following circumstances or events constitute an Event of Default:

53.1.1 the Operator knowingly and deliberately giving any fraudulent written information to the Scottish Ministers or giving any other written information to the Scottish Ministers which read as a whole is incorrect or misleading, in a material respect;

53.1.2 an Insolvency Event affecting the Operator; the Operator ceasing or threatening to cease to carry on business or to provide the Services or any part of them;

53.1.3 the occurrence of any event which allows or which with the lapse of time would allow any Party to any of the Principal Contracts to terminate a Principal Contract early before its expiry date;

53.1.4 the arrest or detention of any Vessel unless the Vessel or Vessels in question is free from arrest or detention within 7 days;

53.1.5 the Operator committing a material breach of any provision of this Contract which it has failed to remedy in accordance with the Cure Plan process;

53.1.6 the Operator committing a material breach of any provision of this Contract which is irremediable;

53.1.7 the Guarantor is in breach or anticipatory breach of the Guarantee (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Scottish Ministers) or the Guarantor suffers an Insolvency Event;

53.1.8 there is a Financial Distress Event and the provisions of paragraph 3 of Schedule 13 apply;

53.1.9 any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable the Operator to comply with any of its obligations hereunder which are material (as determined by the Scottish Ministers) and which the Operator is responsible for procuring and/or maintaining, being modified, revoked or withheld or ceasing to remain in full force and effect and not being reinstated in full force and effect or replaced by an equivalent, unless lack of the same does not affect the provision of the Services and said reinstatement or replacement is achieved with 7 Business Days;

53.1.10 there is any Change in Control to which the Scottish Ministers object except where the Scottish Ministers have given their prior written consent to the particular Change of Control, which subsequently takes place as proposed.

54 Remedies

54.1 If the Scottish Ministers become aware of the occurrence of an Event of Default, the Scottish Ministers may, without prejudice to any other rights, at any time exercise all or any of the following remedies:

54.1.1 by notice to the Operator terminate this Contract with immediate effect or on such date as the Scottish Ministers in their sole discretion stipulate in the notice; and/or

54.1.2 issue a Cure Notice; and/or

54.1.3 make a Performance Deduction in respect of failures by the Operator to which performance deductions apply.

54.2 In the event of this Contract being terminated as a consequence of an Event of Default, the Operator must pay to the Scottish Ministers the amount of any costs and expenses properly and reasonably incurred by the Scottish Ministers in connection with the Scottish Ministers undertaking or procuring the ongoing provision of the Services that exceed the Grant which would have otherwise been due under the Contract for the Services provided and/ or of re-tendering the Services.

55 Termination

This Contract may be terminated by the Scottish Ministers giving written notice of not less than 1 year to the Operator that the Contract will expire on 30 September 2022 in the event that the Scottish Ministers do not accept any Revised Base Case Recalculation (or any parts therefore) for Service Years 7 and 8 in accordance with clause 20.2. For the avoidance of doubt, the Operator shall not be entitled to any payment in respect of such termination.

55.1 This Contract may be terminated at any time by the Scottish Ministers giving written notice to the Operator. In the event of such termination other than on the grounds of an Event of Default, the Operator is entitled to all its proper and reasonable costs, losses or expenses (evidenced on an open book basis) arising as a direct result of such

termination. The amount of notice given shall affect the payments that the Scottish Ministers may be obliged to make as a consequence of termination under this Clause.

55.2 This Contract may be terminated by either the Scottish Ministers or the Operator in the event of a determination by the European Commission, European Court of Justice or any Scottish Court requiring either repayment of the Grant in full, or repayment of an amount equal to or exceeding the sum paid to the Operator as the Operator's Return (including any Varied Reward).

55.3 This contract may be terminated by the Scottish Ministers in the event of the termination of the Ship Charters for any reason.

55.4 The Operator may terminate this agreement only if the Scottish Ministers are in material breach of their obligation to pay undisputed grant by giving the Scottish Ministers 30 days written notice specifying the breach and requiring its remedy. The Operator's right of termination under this Clause 55.4 shall not apply to non-payment of the Grant by the Scottish Ministers where such non-payment is due to the Scottish Ministers exercising their rights under Clause 43 (recovery of sums due).

55.5 Notwithstanding the provisions of Clause 54.1.1 and this Clause 55, Clauses 1 (Definitions and Interpretations), 47 (Audit, Expenditure and Accountability), 34 (Bribery and Corruption), 59 (Indemnity), 31 (Confidentiality), 30 (Freedom of Information), 29 (Data Protection), 16 (pre-Expiry), 51 (Dispute Resolution Procedure), 63 (Governing Law), 27 and Schedule 11 Part C (Transfer of Staff), 44 (Waiver), and 45 (Severability) will survive termination of this Contract along with any other Clauses or Schedules necessary to give effect to those provisions. Termination will not prejudice or affect any right of action or remedy which has accrued or accrues to either Party.

56 Cure

56.1 The Scottish Ministers may at any time issue a Cure Notice if:

56.1.1 the Operator persistently fails to meet the Performance Measure for Reliability (on at least 3 or more occasions in any 3 month period);

56.1.2 the Operator persistently fails to meet the Performance Measure for Punctuality (on at least 3 or more occasions in any 3 month period);

56.1.3 the Operator fails to comply with any of its obligations under this Contract;

56.1.4 there is an Event of Default which is capable of remedy; or

56.1.5 a Material Reduction in Revenue has occurred, irrespective of whether either Party has exercised its rights under Clause 20;

56.2 The Cure Notice shall contain sufficient detail so that it is clear what the Operator is required to remedy. The Operator is required, within 14 days of receipt of a Cure Notice (or such other period agreed by the Parties) even if the Operator disputes that it is responsible for the matters complained of, to submit a draft Cure Plan which will, if performed, cure or remedy the matters referred to in the notice to the satisfaction of the Scottish Ministers within a period acceptable to the Scottish Ministers.

56.3 If the Scottish Ministers consider that the draft Cure Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Cure Plan or escalate any issues with the draft Cure Plan using the Escalation Process. If despite the foregoing measures a Cure Plan cannot be agreed then the Scottish Ministers may elect to end the Cure Plan process at the end of the Escalation Process.

56.4 When the Cure Plan has been approved by the Scottish Ministers the Operator will implement the Cure Plan in accordance with its terms to the satisfaction of the Scottish Ministers.

56.5 If at any time the Scottish Ministers are not satisfied with the progress being achieved by the Operator in relation to the Cure Plan, then the Scottish Ministers may by notice to the Operator declare that the payment of the Grant will be suspended whereupon the liability of the Scottish Ministers in respect of the Grant will be suspended immediately. The liability of the Scottish Ministers in respect of the Grant, if suspended, will be reinstated upon the implementation of the Cure Plan to the satisfaction of the Scottish Ministers.

56.6 If:

56.6.1 the terms of the Cure Plan have not been agreed;

56.6.2 the actions specified in the Cure Plan to be taken by the Operator or otherwise have not been taken; and/or

56.6.3 the matter(s) referred to in the Cure Notice have not otherwise been resolved to the satisfaction of the Scottish Ministers,

each or any within the periods specified in the Cure Plan, an Event of Default will be deemed to have occurred which shall entitle the Scottish Ministers to terminate the Contract in accordance with Clause 55

57 Step-In Rights

57.1 Scottish Ministers may take action under this Clause in the following circumstances:

57.1.1 there is an Event of Default entitling the Scottish Ministers to terminate the Contract;

57.1.2 there is a breach by the Operator of its obligations that will result in a material disruption in the performance of the Services or any part of the Services;

57.1.3 where the Operator is not in breach of its obligations under this Contract but the Scottish Ministers reasonably considers that the circumstances constitute an emergency;

57.1.4 because a serious risk exists to the health or safety of persons, property or the environment;

57.1.5 on the occurrence of an Insolvency Event in respect of the Operator and/or the Guarantor.

Action To Be Taken Prior To Exercise Of The Right Of Step-in

57.2 Before the Scottish Ministers exercises its right of step-in under this Clause 57 it shall permit the Operator the opportunity to demonstrate to the Scottish Ministers' reasonable satisfaction within 7 Business Days (or such shorter or longer period as Scottish Ministers shall deem appropriate in the circumstances) that the Operator is still able to provide the Services in accordance with the terms of this Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Scottish Ministers to take action.

57.3 If the Scottish Ministers are not satisfied with the Operator's demonstration pursuant to Clause 57.2, the Scottish Ministers may:

57.3.1 where the Scottish Ministers considers it expedient to do so, require the Operator by notice in writing to take those steps that the Scottish Ministers considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Scottish Ministers' right to step-in;

57.3.2 appoint any person to work with the Operator in performing all or a part of the Services (including those provided by any Associated Company or Subcontractor); or

57.3.3 take the steps that the Scottish Ministers considers appropriate to ensure the performance of all or part of the Services (including those provided by any Associated Company or Subcontractor).

57.4 The Operator shall co-operate fully and in good faith with the Scottish Ministers, or any other person appointed in respect of Clause 57.3.2, and shall adopt any reasonable methodology in providing the Services recommended by the Scottish Ministers or that person.

Exercise of the Right of Step-in

57.5 If the Operator:

57.5.1 fails to confirm within 10 Working Days of a notice served pursuant to Clause 57.3.1 that it is willing to comply with that notice; or

57.5.2 fails to work with a person appointed in accordance with Clause 57.3.2; or

57.5.3 fails to take the steps notified to it by the Scottish Ministers pursuant to Clause 57.3.3,

then the Scottish Ministers may take action under this Clause either itself or with the assistance of a third party (provided that the Operator may require any third parties to comply with a confidentiality undertaking equivalent to Clause 31 (Confidentiality)).

57.6 If the Scottish Ministers takes action pursuant to Clause 57.5 the Scottish Ministers shall serve notice ("Step-in Notice") on the Operator. The Step-in Notice shall set out the following:

57.6.1 the action the Scottish Ministers wishes to take and in particular the Services it wishes to control;

57.6.2 the reason for and the objective of taking the action;

57.6.3 the date it wishes to commence the action;

57.6.4 the time period which it believes will be necessary for the action;

57.6.5 whether and to what extent the Scottish Ministers will require access to the Operator's premises, the Vessels and the Transferring Assets;

57.6.6 to the extent practicable, the effect on the Operator and its obligations to provide the Services during the period the action is being taken.

57.7 Following service of a Step-in Notice, the Scottish Ministers shall:

57.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes are necessary (together, the "Required Action");

57.7.2 keep records of the Required Action taken and provide information about the Required Action to the Operator;

57.7.3 co-operate wherever reasonable with the Operator in order to enable the Operator to continue to provide any Services in relation to which the Scottish Ministers are not assuming control; and

57.7.4 act reasonably in mitigating the cost that the Operator will incur as a result of the exercise of the Scottish Ministers' rights under this Clause.

57.8 For so long as and to the extent that the Required Action is continuing, then:

57.8.1 the Operator shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

57.8.2 the Scottish Ministers shall pay any Grant due to the Operator only after the deduction of any applicable Performance Deductions and the Scottish Ministers costs of taking the Required Action.

57.9 In order that Scottish Ministers may take any Required Action, the Operator shall use all reasonable endeavours to ensure from the Commencement Date and throughout the Grant Period that the Scottish Ministers and its nominee will be entitled to access and use all the resources required to ensure the continuation of the Services including, without

limitation, access to vessels, premises, harbours and ports, employees and any relevant subcontractors.

57.10 Before ceasing to exercise its step in rights under this Clause the Scottish Ministers shall deliver a written notice to the Operator ("Step-Out Notice"), specifying:

57.10.1 the Required Action it has actually taken; and

57.10.2 the date on which the Scottish Ministers plans to end the Required Action ("Step-Out Date") subject to the Scottish Ministers being satisfied with the Operator's ability to resume the provision of the Services and the Operator's plan developed in accordance with Clause 57.11.

57.11 The Operator shall, following receipt of a Step-Out Notice and not less than 20 Business Days prior to the Step-Out Date, develop for the Scottish Ministers' approval a draft plan ("Step-Out Plan") relating to the resumption by Operator of the Services, including any action the Operator proposes to take to ensure that the affected Services satisfy the requirements of this Contract.

57.12 If the Scottish Ministers do not approve the draft Step-Out Plan, the Scottish Ministers shall inform the Operator of its reasons for not approving it. The Operator shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Scottish Ministers for the Scottish Ministers' approval. The Scottish Ministers shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

57.13 The Operator shall bear its own costs in connection with any step-in by the Scottish Ministers this Clause 57

SECTION J: FINAL PROVISIONS

58 Warranties

58.1 The Operator warrants and undertakes to the Scottish Ministers that as at the Mobilisation Date:

58.1.1 it is a limited liability company, duly incorporated and validly existing and not in liquidation or apparently insolvent under the laws of Scotland or any jurisdiction outside Scotland;

58.1.2 it has full power and authority to enter into, and to fulfil its obligations under, this Contract and the agreements set out in Schedule 2 (Conditions Precedent) and that the Contract is executed by a duly authorised individual;

58.1.3 all authorisations, approvals, consents, licences, registrations and other matters, official or otherwise, required or advisable in connection with the entry into, performance, validity and enforceability of this Contract and in connection with the operation of the Services have been obtained or effected and are in full force and effect and there are no circumstances which indicate that any of the same are likely to be revoked in whole or in part in the ordinary course of events;

58.1.4 in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law;

58.1.5 as at the Mobilisation Date, all information contained in the PQQ and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Scottish Ministers prior to execution of the Contract;

58.1.6 no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations;

58.1.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

58.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Operator or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Operator's assets or revenue;

58.1.9 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

58.1.10 in the 3 years prior to the Commencement Date:

58.1.10.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

58.1.10.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

58.1.11 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

58.1.12 there are no actual or potential conflicts between the interests of the Operator and the duties owed to the Scottish Ministers under the Contract, save as may have been specifically disclosed in writing to the Scottish Ministers prior to execution of the Contract.

59 Indemnity

59.1 Without prejudice to any rights or remedies of the Scottish Ministers, the Operator indemnifies the Scottish Ministers against all claims, proceedings, actions, damages, demands, losses, charges, costs, expenses and any other liabilities which the Scottish Ministers may suffer or incur as a result of or in connection with:

59.1.1 any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Operator; or

59.1.2 any breach of this Contract.

60 Force Majeure

60.1 Each Party is relieved from liability for performance of its obligations under this Contract to the extent that it is not able to perform such obligations due to a Force Majeure Event. If either Party is affected by a Force Majeure Event, it must immediately notify the other Party of the nature and extent of the circumstances in question.

60.2 If at any time the Operator claims a Force Majeure Event in respect of any of its obligations under this Contract, the Scottish Ministers are entitled at their own cost to procure one or more third parties to provide the Services in so far as the Operator is unable to provide the Services or part of them for so long as the Force Majeure Event or

its effect continues to prevent the Operator from performing all or any of its obligations under this Contract.

60.3 If the Force Majeure Event in question prevails for a continuous period in excess of 7 days, the Scottish Ministers and the Operator must without prejudice to the rights of the Scottish Ministers under Clause 60.2 enter into bona fide discussions with a view to alleviating the effects of the Force Majeure Event or to agreeing such alternative arrangements as may be fair and reasonable.

60.4 If no such terms are agreed within 6 Months of the commencement of the Force Majeure Event, and at that time such Force Majeure Event is continuing or its consequence remains such that the Operator is unable to comply with its obligations to any material extent, either Party may terminate this Contract by giving 30 Business Days' notice to the other Party.

60.5 The Parties must, at all times following the occurrence of a Force Majeure Event, use all reasonable endeavours to prevent and mitigate the effects of such Force Majeure Event on the Services and the Operator must at all times during which a Force Majeure Event is subsisting take all steps to overcome or minimise the consequences of the Force Majeure Event.

60.6 The Party affected by a Force Majeure Event must notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes such Party to be unable to comply with its obligations under this Contract. Following such notification this Contract must continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event, unless the Scottish Ministers have exercised their rights under Clause 14.

61 Euro Compliance

61.1 In the event that any currency in which any of the obligations under this Contract are denominated from time to time is changed or replaced at any time after the date of this Contract (whether as a result of the introduction of, changeover to or operation of a single or unified European currency or otherwise) this Contract will be amended to the extent that the Scottish Ministers (acting reasonably) consider to be required in order to reflect those circumstances.

62 Entire Agreement

62.1 Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in respect of all matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral regarding any matters dealt with in this Contract, except that this Clause does not exclude liability in respect of any misrepresentation (whether in the PQQ or Tender or otherwise).

62.2 The Operator acknowledges that it has entered into this Contract on the basis of its terms only and has not relied upon any statement or representation or warranty or other provision (in any case whether oral, written, express or implied) made or agreed by any person (whether a Party to this agreement or not) except those repeated or referred to in this Contract.

62.3 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, the Schedules and any document referred to in the Contract, the following order of precedence applies:

62.3.1 the Clauses of the Contract;

62.3.2 the Schedules;

62.3.3 any other document referred to in the Contract.

63 Governing Law

63.1 The Contract is governed by and interpreted in accordance with Scots Law and, subject to Clauses 23 and 51 the Parties irrevocably submit to the jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF this Public Service Contract and the Schedules which are contained in this Volume 1 and in the 5 parts and appendix of Volume 2 signed as being relative thereto have been duly executed by the parties as follows

SIGNED for and on behalf of **THE SCOTTISH MINISTERS**

Signature

Name

Position

Witness

Witness' full name

Witness' address

Date XX Month 2016

Place (town) Edinburgh

SIGNED for and on behalf of **<ENTER OPERATORS NAME>**

Signature

Name

Position

Witness

Witness' full name

Witness' address

Date XX Month 2016

Place (town) Edinburgh

Clyde and Hebrides Ferry Services Contract for Provision of Ferry Services and Harbour Operating Agreement	ITT Documents Volume 3: Contract for Provision of Ferry Services
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PART B

THE SCHEDULES

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This is Schedule 1 Referred to in the Foregoing Contract between The Scottish Ministers and <enter Operator's name> Ltd

SCHEDULE 1 – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Contract, words and expressions will, except where the context otherwise requires, have the following meanings assigned to them:

Actual Outcome Statement will be construed in accordance with Schedule 13 Part A, Paragraph 4;

AGRS means Average Grant Required per Sailing for Band A sailings, Band B sailings or Band C sailings as appropriate and shall be calculated as the total grant payable within a Service Year derived from the Base Case for that Service Year divided by the total number of sailings scheduled for that Service Year multiplied by the mean scheduled duration of Sailings within the relevant Band divided by the mean scheduled duration of Sailings within all Bands for that Service Year and will be construed in accordance with Schedule 15, Part 2.

Annual Fuel Reconciliation Payment will be construed in accordance with Schedule 13 Part A, Paragraphs 5.5-5.11 and **Annual Fuel Reconciliation** will be construed accordingly;

Annual Fuel Statement will be construed in accordance with Schedule 13 Part A, Paragraphs 5.8 and 5.9.

Applicable Law means regulation, Legislation, practice or concession or official directive, ruling, request, notice, guideline, statement of policy or practice by any relevant legislative authority, the European Union, any of the official institutions of the European Union, governmental, local, international, national or other competent authority or agency (whether or not having the force of law in respect of which compliance by ship owners and operators is generally customary);

Argyll and Bute Council means Argyll and Bute Council a local authority constituted and incorporated under the Local Government etc. (Scotland) Act 1994 and having its principle offices at Kilmory, Lochgilphead, Argyll, PA31 8RT;

Associated Company has the meaning attributed in Section 449 of the Corporation Tax Act 2010;

Associated Lifeline Services will be construed in accordance with Schedule 3;

Average Price means in relation to the Comparable Services provided by the Comparison Group, the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous 12 month period, or other period as agreed between the Employer and the Operator. (For the avoidance of doubt, the Average Price shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number of instances of Comparable Services);

Average Price per Litre and **Average price per KW Hour** shall have the meaning conferred in Schedule 13;

Band A sailing means those trips with a scheduled duration of 30 minutes or less as advertised on winter ferry timetables 27 October 2014-2 April 2015 and Summer Ferry Timetables 3 April – 25 October 2015 published by Calmac Ferries Ltd or of the time specified on introduction on reschedule at the time of introduction of a new service or the rescheduling of an existing sailing within a republished timetable;

Band B sailing means those trips with a scheduled duration of between 30 minutes and 90 minutes as advertised on winter ferry timetables 27 October 2014-2 April 2015 and Summer Ferry Timetables 3 April – 25 October 2015 published by Calmac Ferries Ltd or of the time specified on introduction on reschedule at the time of introduction of a new service or the rescheduling of an existing sailing within a republished timetable;

Band C sailing means those trips with a scheduled duration of 90 minutes or longer as advertised on winter ferry timetables 27 October 2014-2 April 2015 and Summer Ferry Timetables 3 April – 25 October 2015 published by Calmac Ferries Ltd or of the time specified on introduction on reschedule at the time of introduction of a new service or the rescheduling of an existing sailing within a republished timetable;

Bareboat Charterparty for MV Loch Seaforth means the bareboat charter for “LOCH SEAFORTH” to be signed between CMAL and the Operator;

Base Case means the financial model for the provision of the Services set out in Schedule 12 (the Initial Base Case) and/or any Revised Base Case as the context requires and as may be amended in accordance with the terms of this Contract and shall include a record of assumptions and operating manual;

Base Case Schedule means the completed output schedules within the Base Case which were specified by Transport Scotland as templates to be incorporated into the model;

Benchmarked Services the Services that the Scottish Minister selects to include in a Benchmark Review under paragraph 2.2 of Schedule 17;

Benchmark means the independent third party appointed under paragraph 3.1 of Schedule 17;

Benchmark Report means the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 5 of Schedule 17;

Benchmark Review means a review of the Services carried out in accordance with paragraph 4 of Schedule 17 to determine whether those Services represent Good Value;

Broadly Comparable means certified by the Government's Actuary Department as satisfying the condition that there are no identifiable Outgoing Operator Employees who would overall suffer material detriment in terms of their future accrual of Pension Benefits under the scheme compared with the Pension Schemes;

Business Day means any weekday during which the Scottish Clearing Banks (or a majority of them) are open for business;

Business Hour means any time between 9:00am and 5:00pm on any Business Day;

Caledonian MacBrayne Crewing (Guernsey) Ltd. Is a private limited company registered in Guernsey and wholly owned by Calmac Ferries Ltd;

Calmac Ferries Ltd is a Scottish private limited company (SC 302282) wholly owned by David MacBrayne Ltd;

Capital Supplement will be construed in accordance with Clause 24;

Cascade and **Cascaded** means the temporary or permanent replacement on any particular route of the Services, of any Vessel by any other Vessel;

Change in Control means a person or persons acting in concert (as that term is defined in The City Code on Take-overs and Mergers from time to time) having control of the relevant entity (not being a person having a shareholding in the relevant entity as at the date hereof) who did not have control of the relevant entity at the date hereof (and control is to be determined in accordance with Sections 450 and 451 of the Corporation Tax Act 2010);

Change in Applicable Law means any change in Applicable Law, (including any anticipated or prospective changes in Applicable Law of which the parties were, or ought to have been, aware of prior to the Contract Award Date) which impacts on the provision or performance of the Services and which comes into force after the Commencement Date;

Charter Documents means the Insurance Assignment, the Subordination Letter and the Charterer Account Charge, (each as defined in the MV Loch Seaforth Bareboat Charterparty), entered or to be entered into between CMAL and the Operator and Maritime Leasing (No 19) Limited of even date herewith;

Charter Portion means the instalments of Charterhire and all other amounts payable by the Operator to CMAL under the Ship Charters as shown in the Base Case;

CHFS means the Clyde and Hebrides Ferry Services;

CMAL means Caledonian Maritime Assets Ltd., a Scottish private limited company (SC001854) wholly owned by the Scottish Ministers;

Comhairle nan Eilean Siar means Comhairle nan Eilean Siar Council a local authority constituted and incorporated under the Local Government etc. (Scotland) Act 1994 and having its principle offices at Council Offices, Sandwick Road, Stornoway HS1 2BW;

Commencement Date means 1 October 2016;

Commercial Vehicle Rate means the fare structure applied to vehicles of length greater than 6m, weight greater than 3.5 Tons, height greater than 3m or width greater than 2.3m which are not subject to charges under RET;

Comparable Services means services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark;

Comparison Group means a sample group of organisations providing Comparable Services identified by the Benchmarker under paragraph 4.1.7 of Schedule 17 which consists of organisations which are either of similar size to the Operator or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Operator or which, in the professional opinion of the Benchmarker, are best practice organisations and that are carrying on at least a significant part of their business within the United Kingdom;

Consumer Prices Index or CPI means the Consumer Prices Index as published from time to time by the Office of National Statistics or such index as replaces the same provided always that if the CPI is rebased at any time in the period between the Mobilisation Date and the expiry or termination of this Contract, it shall nonetheless be determined as if such rebasing had not occurred. In the event of the abolition or a fundamental variation in the basis of the said Index (other than rebasing), the manner in which any sums referred to in this Contract which are to be varied by reference to CPI are to be varied will be as agreed between the Scottish Ministers and the Operator. In the event that such agreement has not been reached by the date on which the Grant next falls to be calculated (or re-calculated)

using CPI the manner in which any sums referred to in this Contract are to be varied must be determined in accordance with Clause 51;

Contract means this Contract between the Scottish Ministers and the Operator, including the Schedules, and any agreement which replaces or supersedes any of the foregoing or any part of the foregoing, all as amended, supplemented or varied from time to time;

Contract Variation means any variation to the Contract as set out in a Contract Variation Notice, other than an Operational Variation;

Contract Variation Form means the form set out in Schedule 16;

Contract Variation Notice will be construed in accordance with Clause 14 and Variation will be construed accordingly;

Credit Rating Thresholds means the credit rating thresholds as set out in the Appendix to Schedule 13 Part B;

Cure Notice means a notice by the Scottish Ministers to the Operator requiring the Operator to submit within 14 days a Cure Plan which will, if performed, cure or remedy the matters referred to in the notice to the satisfaction of the Scottish Ministers within a period acceptable to the Scottish Ministers;

Cure Plan means the programme of action referred to in the Cure Notice;

Customer Care and Accessibility Process will be construed in accordance with Schedule 10;

Dangerous Goods means those listed as such in the International Maritime Dangerous Goods (IMDG) Code as applicable at the time for adoption on a voluntary basis;

Data Controller has the meaning given in section 1(1) of the Data Protection Act 1998;

Discount Policy means any policy of the Scottish Ministers regarding discounting of the Commercial Vehicle Tariff and the passenger and vehicle tariff;

Discount Policy Variation means an amended Discount Policy to be issued to the Operator by Scottish Ministers in accordance with the provisions of clause 7.7;

Dispute means any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, or any matter where this Contract directs the parties to resolve an issue by reference to the Dispute Resolution Procedure;

Dispute Resolution Procedure will be construed in accordance with Clause 51;

Eligible Employee means any employee of the Operator or any Sub-contractor which is an Associated Company (other than an Outgoing Operator Employee), who is wholly or mainly assigned to the provision of the Services;

Eligible Costs means operational costs excluding vessel costs related to new, varied or terminated Ship Charters, harbour dues, fuel prices and all staff costs (including without limitation, any staff costs arising from any reduction in staff numbers as a result of redundancy).

Eligible Excess Payment will be construed in accordance with Schedule 13 Part A, Paragraph 5;

Eligible Revenue means any increase in Revenue in any Service Year that consists of an increase in fares receipts which derives directly from an increase in the volume of traffic and/or loose freight and parcels across the Services and/or an increase in the receipts for retailing or catering or other ancillary activities above the level stated in the Base Case for the relevant Service Year;

Employees means those employees of Calmac Ferries Ltd and or of Caledonian MacBrayne Crewing (Guernsey) Ltd. (the **Employing Entity**) who are in each case wholly or mainly assigned to the provision of services materially similar to the Services immediately prior to the Commencement Date (save for those who object to the transfer pursuant to regulation 4(7) of TUPE);

Environmental Management Plan will be construed in accordance with Schedule 9;

Escalation Process means the initial stages of the process for dealing with Disputes without the intervention of third parties as set out in the Dispute Resolution Procedure;

Evaluation will be construed in accordance with Clause 14;

Event of Default means the occurrence of any of the events set out in Clause 53.1;

Excess Payment will be construed in accordance with Schedule 13 Part A, Paragraph 5.1;

Expert means the expert appointed in accordance with Clause 51;

Expiry Date means 30 September 2024 and Expiry will be construed accordingly;

Equivalent Services Data means data derived from an analysis of the Comparable Services provided by the Comparison Group as adjusted in accordance with paragraph 4.9 of Schedule 17;

Financial Distress Event means the occurrence of one or more of the events listed in paragraph 3.1 of Schedule 13 Part B;

Financial Distress Service Continuity Plan means a plan setting out how the Operator (together with the Guarantor where appropriate) will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that the Operator and/or the Guarantor suffers a Financial Distress Event;

Fleet Bareboat Charterparty means the bareboat charter for the Vessels described in Schedule 5 (excluding "LOCH SEAFORTH"), to be signed between CMAL and the Operator.

Fleet Vessels means the vessels described in Schedule 5 Part A as such, and leased to the Operator under the Ship Charters;

Force Majeure Event means:

- (a) war, civil war (whether declared or undeclared) or armed conflict;
- (b) nuclear explosion, radioactive, biological or chemical contamination, ionising radiation (but not arising from any act of terrorism); or
- (c) substantial damage arising from the effect of sonic booms,

in each case occurring after the Mobilisation Date;

Freight Services means the services between Ullapool and Stornoway which operate Sunday to Friday, Depart Stornoway 2230, Arrival Ullapool 0100 and Depart Ullapool 0300, Arrival Stornoway 0530.

Fuel Cost will be construed in accordance with Schedule 13, Paragraphs 5.5 to 5.11;

Fuel Management Programme will be construed in accordance with Clause 18.3 and formatted as the draft Fuel Management programme set out in Schedule 12;

General Change in Applicable Law means a Change in Applicable Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Operator);

Good Working Order means fully fit to perform the functions for which the asset has been designed and having a residual life expectancy of at least one year or that pertaining when the asset was taken over less the effects of reasonable wear and tear, whichever is greater;

Good Value means the organisation and execution of the Services are efficient and effective in relation to the performance of the Benchmarked Service and Grant payments attributable to a Benchmarked Service, having taken into account the Service Levels, less than or equal to the Average Price;

Grant will be construed in accordance with Clauses 17 to 26 and Schedule 13, and references to "Grant" include where the context so requires or admits references to Monthly Instalments;

Grant Claim Form means the form referred to in Schedule 13 Part A paragraph 1;

Grant Period means the period commencing on the Commencement Date and finishing on the Expiry Date or in the event of early termination the Termination Date;

Group will be construed in accordance with the Companies Act 2006;

Guarantee means the Parent Company Guarantee in favour of the Scottish Ministers entered into by the Guarantor on or about the date of this Contract, or any guarantee acceptable to the Scottish Ministers that replaces it from time to time;

Handover Assistance Plan means the timetable and activity plan for handover assistance with respect to the Services, which must include details of all forward bookings and reservations made and deposits received;

Harbour means each and any of the harbours listed at Part D of Schedule 5;

Harbour Inoperability means that the Harbour is for any reason not capable of handling the Vessel serving the Harbour or any other vessel deployed by the Operator for the purposes of providing the Services;

Harbour Operating Agreement means the harbour operating agreement entered into by the Operator and CMAL;

Health & Safety Plan will be construed in accordance with Schedule 8;

Heraldic Device Agreement means the agreement for the licence of the heraldic device entered into by the Operator and CMAL;

Highland Council means Highland Council a local authority constituted and incorporated under the Local Government etc. (Scotland) Act 1994 and having its principle offices at Glenurquhart Road, Inverness IV3 5NX;

Incoming Operator means any person other than the Operator with whom the Scottish Ministers enter into a New Contract;

Index Linked to a succeeding Service Year in respect of a sum means that the sum is multiplied by the following factor:

$\frac{\text{CPI [x]c}}{\text{CPI [x]p}}$

Where:

CPI [x]c is the Consumer Price Index published for the Month of August in the Service Year immediately prior to that in which Index Linking is being applied; and

CPI [x]p is the Consumer Price Index published for the Month of August in the previous Service Year,

and cognate expressions will be construed accordingly;

(e.g. for an Index Linked change to be applied in the Service year 2017/18 then the indices CPI[x]c will be that for August 2017 and CPI[x]p that for August 2016);

Initial Timetable means the sailing departure and arrival times for sailings set out in the Winter Ferry Timetables 27 October 2014 – 2 April 2015 published by Calmac Ferries Ltd and the Summer Ferry timetables 3 April – 25 October 2015 published by Calmac Ferries Ltd.;

Insolvency Event means the occurrence of any of the following events (or any event analogous to any of the following in any jurisdiction) in relation to the relevant entity:

- (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the appointment of an administrator of, or the making of an administration order in relation to, the entity or the appointment of a receiver or administrative receiver over the whole or part of the entity's undertaking, assets, rights or revenue;
- (d) the entity being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

Insurances means all policies of insurance taken out from time to time in respect of any Vessel throughout the Grant Period, together with all variations, modifications, extensions, or other alterations thereof;

Intellectual Property Rights means (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

Interim Timetable means the timetable specified in Clause 8.1 and shall be the Initial Timetable, if expedient as varied by the Scottish Ministers as set out in Schedule 3, such a variation being deemed as a Variation under Clause 14;

Key Personnel means the Operator's employees identified as such in accordance with Schedule 11;

Legislation means any Act of Parliament, including any local, personal or private Act of Parliament, any subordinate legislation (as that expression is defined in section 21(1) of the Interpretation Act 1978), any exercise of the Royal Prerogative and any enforceable community right (as that expression is defined in section 2 of the European Communities Act 1972) and any bylaws, statutory instruments, orders, notices, directions, codes of practice, consents or permissions properly and lawfully made or given under any of the foregoing (including for the avoidance of doubt, any legislation enacted by any Scottish Parliament or assembly or similar body and any subordinate or delegated legislation made by the Scottish Ministers or other person deriving authority from such legislation);

Lessor means CMAL or Lloyds TSB Maritime Leasing (No 19) Ltd in respect of the MV Loch Seaforth and such other entity as may be notified from time to time;

Maritime Cabotage Regulations means Council Regulation (EEC) No 3577/92 of 7 December 1992 (applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage));

Marketing Plan will be construed in accordance with Schedule 7;

Material Reduction shall be construed as a reduction in Revenue in accordance with Schedule 13 Part A paragraph 3.1.9

MCA means the Maritime and Coastguard Agency and any successor body or bodies;

Mobilisation Costs means the costs specified as such in the Base Case model;

Mobilisation Date means XX MONTH 2016;

Mobilisation Period means the period starting from the Mobilisation Date and ending on the Commencement Date;

Mobilisation Plan means the mobilisation plan set out at Schedule 6;

Monitoring Procedures means the procedures set out in Schedule 15;

Month means each calendar month during the Grant Period, provided that where the Commencement Date does not fall on the first day of a calendar month that Month shall be deemed for the purposes of this Contract to commence on the Commencement Date and where the Termination Date does not fall on the last day of a calendar month that Month shall be deemed for the purposes of this Agreement to end on the Termination Date;

Monthly Fuel Statement will be construed in accordance with Schedule 13 Part A, Paragraph 5.6;

Monthly Instalments will be construed in accordance with Clauses 17 to 26 and Schedule 13 Part A;

New Contract means any arrangement or contract of whatsoever nature in relation to the provision by the Scottish Ministers of a grant in respect of public transport services by sea to the Clyde and Hebrides similar in scope to the Services commencing subsequent to the Expiry or Termination of this Contract;

Non Contributory Emergency means any threat to the safety of life or property at sea affecting any person or vessel but not including any threat to a Vessel arising from a failure by the Operator to perform its obligations under this Contract or the Principal Contracts;

Operating Costs means all proper and reasonable costs incurred during the relevant period by the Operator in order to allow it to provide the Services during that period excluding Fuel Costs;

Operational Management Systems will be construed in accordance with Schedule 14, Part A;

Operational Variation has the meaning ascribed in Clause 14;

Operator Employment Liabilities means costs, claims liabilities and expenses (including reasonable legal expenses) relating to or arising out of the employment of the Transferring Employees in the period from and including the Commencement Date including, without prejudice to the foregoing generality, negligence claims by any of such employees or any third party, unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay;

Operator's Representative means the suitably qualified and competent individual nominated by the Operator to be the main point of contact with the Scottish Ministers during the Contract Period and recorded in Schedule 11 Part B;

Operator's Return means the Operator's return shown in the Base Case;

Operator's Revenue A Account means the account identified as such and notified by the Operator and CMAL to the Scottish Ministers;

Operator's Revenue B Account means the account identified as such and notified by the Operator to the Scottish Ministers;

Operator's Vessel Obligations will be construed in accordance with Schedule 5, Part B;

Outcome Operator's Return means the Operator's Return plus the Varied Reward;

Outgoing Operator means CalMac Limited together with any of its Associated Companies and any subcontractors employed wholly or mainly in the provision of the Services;

Outgoing Operator Employee means any employee of the Outgoing Operator or any of its Associated Companies engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services to whom the Employment Regulations will apply on the Relevant Transfer Date;

Party means either of the parties to this Contract;

Passenger and Vehicle Tariff shall be construed in accordance with clause 7;

Pension Benefits means any benefits (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme;

Pension Liability means any increase in any deficit in the CalMac Pension Fund, from the Commencement Date until the expiry or earlier termination of the Contract which relates to Outgoing Operator Employees or Eligible Employees who are members of the CalMac Pension Fund;

Performance Deductions will be construed in accordance with Clause 22;

Performance Measures means all or any of the Performance Measures for the Services as set out in Schedule 15, Part 2;

Performance Regime will be construed in accordance with Schedule 15;

Personal Data has the meaning given in section 1(1) of the Data Protection Act 1998;

Plans shall include, the Marketing Plan including the Supplements, the Health and Safety Plan, The Environmental Management Plan, the Customer Care and Accessibility Process,

the Equalities Impact Assessment, the Human Resources Strategy, and as appropriate the Mobilisation Plan, the Cure Plan and the Financial Distress Service Continuity Plan;

Port means the port infrastructure at each or any of the ports or harbours set out in Schedule 5;

Port Dues means the dues payable by the Operator for the use of the Ports in connection with the provision of the Services as set out in the Base Case;

Principal Contracts means the following contracts entered or to be entered into between CMAL and the Operator (or the CMAL, the Operator and Maritime Leasing (No 19) Ltd as appropriate) of even date herewith: the Tripartite Agreement, Harbour Operating Agreement, [Harbour Access Agreement], Fleet Bareboat Charterparty, Property and Equipment Licence, Trade Mark Licence Agreement, Heraldic Device Agreement, MV Loch Seaforth Bareboat Charterparty, the Charter Documents;

Projected Fuel Costs means those costs for each grade of fuel the Operator will use in the provision of the Services, which is estimated in the Fuel Management Programme to be representative for the next Service Year until the Annual Fuel Reconciliation exercise is undertaken;

Projected Fuel Liability means the Projected Fuel Costs for each grade of fuel the Operator will use in that Service Year, multiplied by the Projected Volume for each grade of fuel;

Projected Volume – means the annual fuel Volume figure (Litres) split according to the volume of each grade as appears in the Fuel Management Programme;

Public Sector Contribution will be construed in accordance with Clause 25;

Published Tariff Scheme will be construed in accordance with Clause 7;

Quarter or Quarterly means each period of three months during the Grant Period where the first Quarter commences on the Commencement Date and ends on the preceding day in the third following calendar month or, if the third following calendar month has no numerically preceding day, on the last day of the appropriate calendar month and where the Termination Date does not fall on the last day of a Quarter that Quarter shall be deemed for the purposes of this Contract to have ended on the Termination Date;

Rating Agencies means the rating agencies listed in Schedule 13 Part B

Regional Transport Partnership means any such partnership created by the Scottish Ministers pursuant to the Transport (Scotland) Act 2005;

Relief Event means an event described in Schedule 15, Part 3: Relief event;

Rent Portion means the amount payable by the Operator under the charter for the MV Loch Seaforth;

RET means Road Equivalent Tariff as published by the Scottish Ministers from time to time;

RET Formula means a formula based methodology as modified or adjusted from time to time by the Scottish Ministers for the calculation of fares applying to the RET Tariff and the Trade Tariff provided to the Operator by the Scottish Ministers in accordance with clause 7;

Revenue means the Operator's income from the Services for the relevant period including but not limited to all Public Sector Contributions and reimbursements from Transport Scotland or any Regional Transport Partnership in relation to Concessionary Travel entitlements and all amounts received by the Operator as a result of actual or threatened litigation, arbitration or other proceedings but not including any amounts paid or payable to the Operator by the Scottish Ministers under Clauses 17 to 24;

Revised Base Case will be construed in accordance with Schedule 13 Part A;

Revised Base Case Recalculation will be construed in accordance with Schedule 13 Part A and Clause 20;

Revised Tariff Structure means a change to the opening tariff structure of RET, Trade Tariff and Commercial Vehicle Tariff or the methodology applied to derive any of these components;

Schedule means one of the Schedules to this Contract;

Scheduled Ferry Service shall have the meaning given to it in Schedule 3;

Scheduled Maintenance Programme means the programme for scheduled maintenance of the Vessels, set out in Schedule 5, Part C;

Scheduled Unavailability means, in respect of each of the Vessels a period during which the Vessel is scheduled to be unavailable to provide the Services whilst scheduled maintenance is taking place as specified in the Scheduled Maintenance Programme;

Scheme Employer means an employer which is a member of an occupational pension scheme;

Scottish Ministers means the Scottish Ministers and their successors to their interest under this Contract;

Scottish Ministers' Representative means the suitably qualified and competent individual nominated by the Scottish Ministers to be the main point of contact with the Operator during the Contract Period, and as specified in Schedule 11 Part B;

Senior Operator's Representative means the suitably qualified and competent individual nominated by the Operator and as specified in Schedule 11 Part B and to be responsible for resolving Disputes in accordance with Clause 51.1;

Senior Representative's Board will be construed in accordance with Clause 51.1;

Senior Scottish Ministers' Representative means the suitably qualified and competent individual nominated by the Scottish Ministers and as specified in Schedule 11 Part B and to be responsible for resolving Disputes in accordance with Clause 51.1;

Services means those public transport services as specified in Schedule 3;

Service Year means each period of twelve Months of the Grant Period, the first Service Year commencing on the Commencement Date and each subsequent Service Year commencing on each anniversary of the Commencement Date and in the last Service Year terminating on the Expiry Date or the Termination Date as the case may be;

Ship Charters means the charterparties by way of demise in respect of the Fleet Vessels between the Operator and CMAL or dated on or about the date hereof and shall include the Fleet Bareboat Charterparty and the Bareboat Charterparty for the MV Loch Seaforth and any subsequent amendment thereto either or further Charterparty entered into for the purposes of providing the Services;

Specific Change in Applicable Law means a Change in Applicable Law that relates specifically to the Operator and/or Services and which would not apply to the Operator if it was not a Party to the Contract;

Subcontracts Register means the register of all subcontracts for supplies and services on which the provision of the services depend and shall include the title of the subcontract, the contracting parties, the nature of the supplies or services, the dates of commencement and expiry of the contracts and the value of the contract;

Tariff Period means the period in any Calendar year from the earlier of (a) the commencement of the Easter holidays of the majority of the Scottish schools and (b) Good Friday until the commencement of the next Tariff Period;

Tariff Index Linking means in respect of a fare that the fare (excluding any element of the tariff which is set at nominal prices by a third party) is applied from the start of the Tariff Period after being multiplied by the following factor:-

CPI Jc
CPI Jp

Where **CPI Jc** is the Consumer Price Index published for the Month of August prior to the Summer Timetable Period in which Tariff Index Linking is being applied, and

CPI Jp is the Consumer Price Index published for the Month of August in the previous Service Year,

and cognate expressions will be construed accordingly;

(e.g. for a Tariff Index Linking change to be applied from the start of the Summer Timetable period 2018 then the indices CPI Jc will be that for August 2017 and CPI Jp that for August 2016)

Termination Date means the date of termination of this Contract prior to the Expiry Date;

Timetable means the timetable described in Schedule 3 as the same may be amended from time to time in accordance with this Contract;

Trade Mark Licence means the agreement for the licencing of various trade marks entered into between the Operator and CMAL;

Trade Tariff means shall be construed in accordance with clause 7;

Transfer Assistance Period means the period from 12 months prior to the Expiry Date, or if earlier the date that the Operator becomes aware that the provision of the Services is to cease prior to the Expiry Date, until the Expiry Date or Termination Date as appropriate;

Transfer Option means an option given to each Outgoing Operator Employee with accrued rights in the Pension Schemes as at the Date, to transfer those rights to the Operator's Broadly Comparable scheme, to be exercised by the Transfer Option Deadline, to secure year-for-year day-for-day service credits in the relevant scheme (or actuarial equivalent, where there are benefit differences between the two schemes);

Transfer Option Deadline means the first Business Day to fall at least 3 months after the notice detailing the Transfer Option has been sent to each Outgoing Operator Employee;

Transferring Assets means any assets to be or which have been acquired or improved by the Operator pursuant to Clause 24, or which were provided to the Operator by the Outgoing Operator at the Commencement Date, maintained by the Operator in accordance with Clause 39.1 and listed in the Transferring Asset Register;

Transferring Asset Register will be construed in accordance with Clause 12 and Schedule 5, Part E;

Tripartite Agreements means the tripartite agreement among the Operator, the Scottish Ministers and CMAL dated on or about the date hereof;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Urgent Variation means a variation undertaken in the circumstances referred to in Clause 14.16;

Unscheduled Ferry Service shall have the meaning given to it in Schedule 3;

Varied Reward will be construed in accordance with Schedule 13, Paragraphs 5.3 to 5.4;

Vessels means the Fleet Vessels and such other vessel employed from time to time by the Operator for the provision of all or any part of the Services as has been approved by the Scottish Ministers in accordance with Clause 6.

2. INTERPRETATION

In this Contract, except where the context otherwise requires:

- a) all references to Clauses and Schedules are references to Clauses of and Schedules to this Contract and all references to paragraphs are references to paragraphs contained in the Schedules;
- b) words importing the singular include the plural and vice versa;
- c) any reference to any enactment, order, regulation or other similar instrument will be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as from time to time amended, replaced, consolidated, extended or re-enacted;
- d) all references to agreements, documents, or other instruments include a reference to that agreement, document or instrument as amended or supplemented from time to time or to any replacement or superseding agreement, document or instrument;
- e) the headings to the Clauses are inserted for convenience only and shall not affect the interpretation of this Contract;
- f) any notice, instruction, notification, direction, request, consent or approval contemplated herein will be made or given in writing;

- g) anything which may be done by the Scottish Ministers may be done by any person duly authorised by the Scottish Ministers for that purpose;
- h) any reference to us, we or our, XXXX, or YYYY contained within boxed sections in Schedules 3 to 11, and 14 Part A means the Operator (XXXX Ltd); and
- i) any reference to numbering contained within boxed sections within the Schedules relates exclusively to the numbering within the box (unless expressly stated otherwise).

Signed for and on behalf of the Scottish
Ministers

Signed for and on behalf of XXXX Ltd

Signature.....

Signature.....

SCHEDULE 2 - CONDITIONS PRECEDENT (TO PAYMENT OF GRANT)

The completion of the following activities and execution of instruments shall be conditions precedent to the payment of Grant:

- a) Establishment as a Community Shipowner;
- b) Full implementation of Mobilisation Plan excluding any item which has been scheduled to occur after commencement of the Services;
- c) Copy of any Commercial/ Operational/Access Agreements with each other Port or Harbour operator to provide a guarantee of access for the purposes of the Services;
- d) All certificates required by MCA or other relevant regulatory body;
- e) Evidence of Insurance arrangements;

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SCHEDULE 3 – SERVICES

1. THE SERVICES

- 1.1. The Services shall be Scheduled Ferry Services and Unscheduled Ferry Services.
- 1.2. The Scheduled Ferry Services are public transport services by sea (including but not limited to the transport of passengers, accompanied vehicles, unaccompanied vehicles, loose freight and parcels, unaccompanied goods, livestock lorries and Dangerous Goods) between the Harbours and Ports and delivered from and onto quay and all as specified in accordance with the Timetable, which Timetable will be the Initial Timetable as developed and as may be varied in accordance with Clauses 6 and 8, and the Freight Services.
- 1.3. The Unscheduled Ferry Services are public transport services by sea (including but not limited to the transport of passengers, accompanied vehicles, unaccompanied vehicles, loose freight and parcels, unaccompanied goods, livestock lorries and Dangerous Goods) between the Harbours and Ports and delivered from and onto quay which are required to respond to circumstances and special events which temporarily create higher levels of demand. An illustrative but not exclusive list of such events is set out in Appendix 1 to this Schedule 3.
- 1.4. The Operator must comply with the Timetable, except:
- 1.4.1. during any period of Scheduled Unavailability of any vessel of up to 6 weeks in a Service Year (or 7 weeks in a Service Year in which Vessels are required to undergo a Special Survey drydocking) where or to the extent that the Timetable could not have been reasonably expected to be maintained by Cascade ;
 - 1.4.2. as the direct consequence of a Relief Event;
 - 1.4.3. where it is necessary to adjust the times as a direct and unavoidable consequence of tidal conditions.
- 1.5. The Services must include:
- 1.5.1. the manning of terminals and harbour facilities for the purposes of embarking and disembarking passengers, loading and discharging of accompanied

vehicles, unaccompanied vehicles, loose freight and parcels, unaccompanied goods, livestock lorries and Dangerous Goods;

1.5.2. facilities for accepting reservations, issuing tickets and other relevant documentation and marketing the operation of a common timetable, ticketing and fares database for [all routes] permitting reservation sales and credit card payments by telephone and internet as well as at the Operator's office and through travel agents;

1.5.3. the provision of a detailed internet website and smartphone "App" providing links to on-line information and reservation systems, seasonal timetables, a help-desk facility and an early warning notice board to flag any disruptions and changes to the Services caused by bad weather, and the provision of real time information to passengers (through the website, smartphone App, on vessels and in Harbour offices and waiting rooms) and to road and public transport information systems (e.g. Traveline) for travellers to and from the Ferry Services;

1.5.4. The Ferry Services include the operation and servicing of variable message boards at the following locations:

Barra

Claonaig

Cumbrae

Eriskay

Fishnish

Iona

Kilchoan

Leverburgh

Lochaline

Lochmaddy

Lochranza

Otternish

Portavadie

Rhubodach

Sconser

Tarbert (Harris)

Tarbert (Loch Fyne)

Tayinloan
Broadford
Fort William
Skye Bridge

- 1.5.5. the active participation (including the adoption of logos and use of hyper-text link) of the Operator in Traveline and Transport Direct (or any other public transport information and/or journey planning website specified by the Scottish Ministers in place of or in addition to either of them) and co-operation, to the reasonable satisfaction of the Scottish Ministers with relevant tourist organisations and the operators of train and local bus services and other ferry operators in the Clyde and Hebrides to achieve integrated timetables, facilitate integrated services, participate in marketing initiatives and promote linkage between the Services and other modes of transport in the Clyde and Hebrides;
- 1.5.6. the operation of a passenger recording system in accordance with applicable law;
- 1.5.7. the safe and efficient management and operation and maintenance of the Vessels so as to comply with Applicable Law including the provision of appropriate catering and all necessary administration facilities;
- 1.5.8. the provision of additional sailings for the transport of livestock or for special events, which temporarily create higher levels of demand;
- 1.6. The Services shall be operated employing the name Caledonian MacBrayne in accordance with the Trade Mark Licence and the Heraldic Device Agreement and no other service name shall be employed without the prior consent of the Scottish Ministers. Where, with the agreement of the Scottish Ministers, the Operator provides a vessel not being a Fleet Vessel then it will fly the house flag but will not require to be painted in the Caledonian MacBrayne livery.
- 1.7. The Ferry Services include the displaying the names of CMAL Vessels in both Gaelic and English as well as the provision of bi-lingual (Gaelic and English) announcements, literature and signage in passenger areas of Vessels serving the following routes:
- Stornoway - Ullapool
Uig - Lochmaddy & Tarbert (Harris)

Oban - Craignure
Oban - Colonsay
Oban – Colonsay – Port Askaig - Kennacraig
Oban – Castlebay - Lochboisdale
Oban – Coll & Tiree (including inter-island links to Barra)
Islay - Kennacraig
Berneray - Leverburgh
Sconser - Raasay
Oban - Lismore
Tobermory - Kilchoan
Portavadie - Tarbert (Loch Fyne)
Mallaig - Armadale, Run, Eigg & Muck

- 1.8. The Operator shall participate fully in any integrated ticketing initiatives which are judged by the Scottish Ministers to benefit the public.
- 1.9. The Operator must liaise with rail and bus operators to agree contingency arrangements in the event sailings are delayed.
- 1.10. The Services include lifeline support to the emergency services as required and the Operator will provide the emergency services with out of hours contact details for the purpose of providing this support.
- 1.11. The Timetable will comprise of a Winter timetable and a Summer timetable. The Summer timetable will apply for a minimum of 28 continuous weeks and must allow sufficient time for winter overhauls. The minimum duration of the Summer timetable is from the start of the majority of Scottish Easter school holidays or Good Friday of the Easter weekend, whichever is earlier until the end of the majority of Scottish schools' half term break in October (usually the third Sunday in October each year). The Summer timetable will start on a Friday and end on a Sunday. The Winter timetable will operate the remainder of the year.
- 1.12. The Operator shall produce and distribute either an annual brochure or bi-annual brochures in the form of booklets covering all routes covered by the Services. The brochure must advertise timetables and booking information for all routes and shall be published no later than October each year, setting out the impending Summer timetable and fares and in the case of an annual brochure the immediately following

Winter timetable as well as timetable information for connecting public transport services. Where bi-annual brochures are published, that showing the Winter timetable, etc. shall be published no later than the preceding April.

- 1.13. The brochure must include without charge timetables for other ferry services provided by local authorities and private operators in the Clyde and Hebrides. The Operator is also expected to work closely with local tourist boards and to participate in local initiatives. The Operator should permit other organisations to advertise the relevant ferry services information. Timetables should also be published on the Operators website and be available on board Vessels, and in Harbour offices and waiting rooms.
- 1.14. The Services include a requirement to attend and contribute to meetings with the Scottish Ministers in relation to route and vessel development where requested by the Scottish Ministers.
- 1.15. The Operator must allow time for intermodal transfers where timetable variations are being proposed. The Operator must also take account of the guidance on travel issued by the Guide Dogs for the Blind Association.
- 1.16. The Operator must comply with the requirements of Clause 6.2 to provide the Services as specified by the Operator and included in the Schedules.
- 1.17. The Operator undertakes that the following service offerings and contractual undertakings are additionally included within this Schedule 3

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Questions 1.2.1 to 1.2.5]

2. ASSOCIATED LIFELINE SERVICES

2.1. In addition to providing the Services, the Operator shall be required to respond to certain requirements for associated lifeline services in the Clyde & Hebrides which require to be supported by the Operator employing CMAL Vessels. An illustrative non-exhaustive list of such events is set out below:

sailings for the Ministry of Defence vehicles that cannot be accommodated by a standard sailing;

extra sailings from Oban to Craignure for Dangerous Goods;

vessel charters for relief purposes to local authorities providing ferry services in the Clyde & Hebrides;

vessel charters to film crews for the making of adverts or films;

special sailings to Kerrera for a fuel tanker;

special sailings to Easdale for a fuel tanker;

services in relation to children's play schemes in school holiday periods during Summer;

sailings to convey abnormal loads, contractor's plant, generators and similar items.

APPENDIX 1

Unscheduled Ferry Services referred to in paragraph 1.3 of this Schedule 3

1. Mull Rally
2. Islay Show
3. Isle of Bute Jazz Festival
4. Rothesay Regatta
5. Isle of Bute Folk Festival
6. Mountstuart Motor Classic
7. Bute Highland Games
8. Bute Motorcycle Rally
9. Cumbrae Country & Western Festival
10. Millport Illuminations
11. Tiree Wave Classic
12. Royal National Mod week
13. Heb Celt Festival
14. Livestock sailings between Oban and Tiree (usually one in August, one in October and two in February)
15. Livestock sailings from Islay to mainland (usually one in April and two between October and December)
16. Extra sailings on Largs-Cumbrae Slip to clear traffic¹ or accommodate Dangerous Goods
17. Colonsay Book Festival
18. Islay Whisky Festival
19. Tiree Music Festival

¹ Including the provision of a second vessel on Good Friday to Easter Monday inclusive and subsequent Saturday and Sundays up to the summer peak period (when two vessels are deployed throughout to provide a 15 minute timetable), and thereafter to the end of September, and three additional Sailings on the evening of the Glasgow September Holiday to accommodate visitors attending the Illuminations and Fireworks.

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SCHEDULE 4 - FARES

1 Fare structures

- 1.1 There are three fares structures applicable to the Services: The RET (Road Equivalent Tariff) structure, the Trade Tariff (which is applicable to coaches) and the Commercial Vehicle Tariff (which is applicable to commercial vehicles and, as appropriate, loose freight). Fare Structures are shown in the schedule imported into Para 1.4 below.
- 1.2 Passenger fares will be differentiated as adult fares, child fares for children of age between 5 and 15 years inclusive, which shall be 50% of the relevant adult fare, and infants of age less than 5 years which shall be zero.
- 1.3 Individual bicycles shall be carried free of charge when accompanied by a passenger.
- 1.4 Fares will be applied for the Tariff Period of a full year. Fares for the Tariff Periods 2016/17, and 2017/18 beginning with the introduction of the summer timetables are given below:

Fares 2016/2017



Fares Summer 2016
final draft.docx

Trade Tariff Fares 2017/18



Coach Rates
2017.docx

Fares 2017/2018

To be provided in August 2016

- 1.5 For the 2016/17 Tariff Period, the Published Tariff Scheme shall be that published by Calmac Ferries Limited in accordance with the grant agreement terminating on 30 September 2016.
- 1.6 For 2017/18 and subsequent Tariff Periods the fares tariff shall be adjusted in accordance with the RET Formula for fares based on RET or Tariff Index Linked for Commercial Vehicle Rate fares structure unless modified by the Scottish Ministers or the Scottish Ministers approval to an alternative structure proposed by the Operator.

2 Transaction charges

- 2.1 Booking supplements shall not be charged for the use of debit cards. A proportional booking supplement may be levied on credit card payments to the extent that their use results in the Operator incurring costs above those that would be incurred if payment had been made with a debit card.

- 2.2 Proportional charges may be recovered from customers in relation to cancellations or amendments to bookings. The Operator must not unfairly penalise passengers if bookings are amended or cancelled for reasons outwith the passenger's control.

3 Discounts and commissions

- 3.1 The Scottish Ministers may permit by specific agreement and without providing separate funding by direct revenue replacement contribution or may direct by the issue of a variation the provision of certain discount or commission schemes. These include:

- 3.1.1 Discount for groups/ special events
- 3.1.2 Integrated ticketing discounts
- 3.1.3 Commission for commercial travel agents

- 3.2 The Scottish Ministers require the provision of certain discount classes which are listed below and termed the mandatory discounts.

- 3.2.1 SPT concessions: ferry card holders will be holders of the national entitlement card for people who live in Strathclyde and who live permanently (or own and pay council tax in respect of a 2nd home) on one of the islands covered by the scheme or live on the Cowal or Rosneath Peninsulas. For ferry card holders journeys of 10 miles or less, a basic concessionary fare of 90p single and £1.30 will apply and for journeys of more than 10 miles the concessionary fare is £1.80 single and capped at £2.60 return. <http://www.spt.co.uk/cms/wp-content/uploads/2015/01/concessionary-travel-scheme-2015.pdf>

The following mandatory discount schemes are not separately funded by direct revenue replacement contribution.

- 3.2.2 Blind persons concession: holders of a national entitlement card which has the eye symbol are entitled to concessions on ferry journeys throughout Scotland.
- 3.2.3 Discounts for specified transport workers and former workers.
- 3.2.4 A 25% discount on the non-commercial vehicle fare for a blue badge holder. [Details of this scheme are being finalised, however it will be introduced in October 2015.]

3.2.5 Traders Rebate Scheme granted to commercial vehicle operators who have a history of frequent use. It is calculated on a route by route basis for all operators.

Route:

Ardrossan / Brodick
 Oban / Craignure
 Kennacraig / Islay
 Colintrave / Rhubodach
 Berneray / Leverburgh
 Ardmhor / Eriskay
 Wemyss Bay / Rothesay
 Largs / Cumbrae
 Fishnish / Lochaline

The rebate is calculated on the basis of a numeral which relates to the operator's annual estimated future turnover and proposed number of journeys.

$$\text{Numeral} = \frac{2 \times \text{Length of Vehicle} \times (\text{No. of journeys per year})^2}{1000} \text{ or}$$

$$\text{Numeral} = \frac{\text{Turnover} / 1000}{\text{Rate per half metre}} \times \text{No. of journeys per year}$$

The numeral is being used as a first screening for the rebate rate that should be offered to commercial vehicle operators. The larger the numeral the higher the rebate rate. The rebate rates that apply vary between 2.5% and 15%.

Therefore,

If numeral basis < 500 → 0 rebate

If numeral basis < 1,250 → 2.5% rebate

If numeral basis < 2,250 → 5% rebate

If numeral basis < 3,500 → 7.5% rebate

If numeral basis < 6,000 → 10% rebate

If numeral basis < 10,000 → 12.5% rebate

If numeral basis \geq 10,000 → 15% rebate

3.3 The terms of the following mandatory discount scheme are strictly controlled by Transport Scotland and this scheme is funded by re-imbursement by the concessionary travel unit, Transport Scotland.

- 3.3.1 National entitlement card holders, who are also resident on the western isles are eligible to receive vouchers for travel as foot passengers on up to 4 single journeys each year, which may be used on the following routes:
- 3.3.2 Castlebay (Barra) - Oban
Lochboisdale (South Uist) - Oban
Lochmaddy (North Uist) - Uig
Tarbert (Harris) - Uig
Stornoway (Lewis) – Ullapool
- 3.3.3 Young scot national entitlement card holders (for 16-18 year olds and full time volunteers under the age of 26), who are resident on the Scottish islands are eligible to receive vouchers for travel as foot passengers on up to 4 single journeys each year.

SCHEDULE 5 – VESSELS AND PORTS

PART A: SPECIFICATION OF VESSELS

1. The Vessels comprising the Fleet Vessels including their classification, are as follows:

no.	Vessel Name	Flag	Official Number	Class per Directive	When Built	Where Built
1	Argyle	UK	912821	Class IV	2007	Gdansk
2	Bute	UK	909888	Class IV	2005	Gdansk
3	Caledonian Isles	UK	720926	Euro B	1993	Lowestoft
4	Clansman	UK	901164	Euro B	1998	Appledore
5	Coruisk	UK	906856	Euro C	2003	Appledore
6	Eigg	UK	364967	Euro C	1974	Port Glasgow
7	Hebridean Isles	UK	711814	Euro B	1985	Selby
8	Hebrides	UK	904029	Euro B	2000	Port Glasgow
9	Isle of Arran	UK	701062	Euro B	1984	Port Glasgow
10	Isle of Cumbrae	UK	376982	Euro C	1977	Troon
11	Isle of Lewis	UK	727347	Euro B	1995	Port Glasgow
12	Isle of Mull	UK	711859	Euro B	1988	Port Glasgow
13	Loch Alainn	UK	900311	Euro C	1997	Buckie
14	Loch Bhrusda	UK	728822	Euro C	1996	Bromborough
15	Loch Buie	UK	720898	Euro C	1992	St Monans
16	Loch Dunvegan	UK	711909	Class V	1991	Port Glasgow
17	Loch Fyne	UK	720379	Euro C	1991	Port Glasgow
18	Loch Linnhe	UK	711828	Euro C	1986	Hessle
19	Loch Portain	UK	906672	Euro B	2003	Bromborough
20	Loch Ranza	UK	711837	Euro C	1987	Hessle
21	Loch Riddon	UK	711834	Euro C	1986	Hessle
22	Loch Shira	UK	912538	Class V	2007	Port Glasgow

23	Loch Striven	UK	711824	Euro C	1986	Hessle
24	Loch Tarbert	UK	720900	Euro C	1992	St Monans
25	Lochnevis	UK	903386	Euro B	2000	Troon
26	Lord of the Isles	UK	711885	Euro B	1989	Port Glasgow
27	Raasay	UK	365005	Euro C	1976	Port Glasgow
28	Finlaggan	UK	917348	Euro B	2011	Gdansk
29	Hallaig	UK	919377	Euro C	2013	Port Glasgow
30	Lochinvar	UK	919748	Euro C	2014	Port Glasgow
	Loch Seaforth	UK	919766	Euro B	2014	Flensburg

2. The following vessels are on order and will require to be included as Fleet Vessels when available for delivery.

31	TBN#1 (third hybrid) Under construction	UK	TBA	Euro C	2016	Port Glasgow
32	TBN#2 (LNG dual fuel) Under construction	UK	TBA	Euro B	2017	TBA
33	TBN#3 (LNG dual fuel) Under construction	UK	TBA	Euro B	2018	TBA

3. The Operator shall deploy the Fleet Vessels to provide the services as required by Clause 6.1, and without prejudice to that obligation undertakes:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.3.1]

4. The Operator undertakes to provide investment in the Fleet Vessels and proposes:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.3.2]

PART B: OPERATOR'S OBLIGATIONS IN RELATION TO THE VESSELS

1 Interpretation

1.1 References herein to the Vessel apply to each and/or all of the Vessels, as appropriate. References herein to the Ship Charters apply to the Ship Charter entered into in respect of the relevant Vessel and/or to all of the Ship Charters, as appropriate.

2 Information and Compliance Undertakings

2.1 The Operator must throughout the Grant Period and so long as any obligations are owing by the Operator in terms of the Contract:

2.1.1 comply with the provisions of the Ship Charters at all times;

2.1.2 comply with the terms of the Insurances at all times;

2.1.3 ensure that at all relevant times all licences, approvals, consents and permits required under Applicable Law which are (i) required for the use and operation of the Vessel, and (ii) the absence of which would either expose the Scottish Ministers to any risk of any liability or expose the Vessel to any material risk of arrest, detention or sale, are, in each case, obtained and maintained in full force and effect;

2.1.4 furnish the Scottish Ministers promptly with all such information as they may from time to time reasonably require regarding the Vessel, her insurance, condition, maintenance, particulars of all towages and salvages; and

2.1.5 comply with all undertakings given by it in the Ship Charters as if set out in full in this Schedule.

3 Protection of Scottish Ministers' Rights

3.1 The Operator must throughout the Grant Period and so long as any obligations are owing by the Operator in terms of the Contract:

3.1.1 not sell or attempt to sell, agree to sell, transfer or otherwise dispose of or (except to avoid loss of life or personal injury) abandon the Vessel, or any share or interest therein;

3.1.2 promptly pay and discharge or procure that there are paid or discharged all debts, damages, liabilities and outgoings whatsoever which have given or may give rise to statutory, possessory or maritime liens on, or claims enforceable against, the Vessel or the Insurances or any part thereof and, in

the event of the Vessel being arrested, seized or detained or the Insurances or any part thereof being arrested, attached or levied upon pursuant to legal process or purported legal process procure the release of the Vessel and the Insurances from such arrest, attachment or levy within 10 Business Days thereof; and

- 3.1.3 notify the Scottish Ministers promptly by facsimile or e-mail of any arrest, seizure or detention of the Vessel or any exercise or purported exercise of an arrest, attachment, lien or other claim on the Insurances or any part thereof.

4 Possession

- 4.1 The Operator must not at any time without the prior consent of the Scottish Ministers and, if such consent is given, only subject to such conditions as the Scottish Ministers may impose, part with the possession or operational control of the Vessel (other than in accordance with the Ship Charters).

5 Title, Registration and Name

- 5.1 The Operator must during the Grant Period do all that may be necessary on its part to maintain in force the registration of the Vessel as a British ship. The Operator will not do, or knowingly or recklessly suffer to be done, anything whereby the registration of the Vessel will be forfeited or imperilled.
- 5.2 The Operator must not without the prior consent of the Scottish Ministers (and then only on and subject to such terms as the Scottish Ministers may agree) change the name of the Vessel.
- 5.3 Throughout the Grant Period the Operator must not create or agree or purport to create any encumbrance over the Vessel, any share or interest therein or in the Insurances or requisition compensation or any part thereof (other than with the prior consent of the Scottish Ministers and in respect of CMAL Vessels, CMAL).

6 Maintenance and Operation

- 6.1 Without prejudice to the provisions of the Ship Charters (where appropriate) the Operator must throughout the Grant Period:
- 6.1.1 at its sole cost and expense maintain the Vessel and every part of the Vessel (which includes any Transferring Assets on or fixed to the Vessel) and keep it in a good and efficient state of repair and safe operating condition, seaworthy in all respects and in accordance with good maintenance practice (fair wear

and tear excepted and having regard to the age and type of the Vessel) on a non-discriminatory basis with other vessels owned and/or operated by the Operator and in accordance with good industry practice for United Kingdom ferry operators and procure that all repairs to, or replacement of, any damaged, worn or lost parts or equipment are effected in such a manner (both as regards workmanship and quality of materials) as not to diminish the value of the Vessel and (without prejudice to the generality of the foregoing) the Operator must ensure that at all times:

6.1.1.1 the Vessel maintains the classification of the Vessel with the relevant Classification Society and to the extent any additional class notations are registered or proposed for registration with the Classification Society, the Operator must ensure that the Vessel maintains such additional class notations in compliance with the requirements of the Classification Society provided that any such additional class notations are consistent with the specification of the Vessel;

6.1.1.2 the Vessel complies with all other regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered in the Flag State or otherwise applicable to the Vessel, her Master, officers and crew (including in relation to the number of crew) wherever the Vessel may proceed or trade and (without prejudice to the generality of the foregoing) at its own expense maintain in force for the Vessel all safety, radio, loadline and other certificates whatsoever and all licences and permits which may from time to time be prescribed by any legislation in force in the Flag State, any relevant port state or other applicable jurisdiction;

6.1.1.3 ensure the Operator complies at all times with any terms of the Insurances relating to the condition or inspection of the Vessel;

6.1.2 permit the Scottish Ministers by surveyors or other persons appointed by them for such purpose to board the Vessel at all reasonable times (but no more than twice in any year during the Grant Period other than in circumstances where an Event of Default has occurred) for the purpose of inspecting her, including giving access to such persons to the Master's Log and afford all proper facilities for such inspections and for this purpose give the Scottish Ministers reasonable advance notice of at least 30 days of any intended drydocking (or other underwater inspection of the Vessel) of the

Vessel (whether for the purpose of classification, surveyor otherwise) and the Scottish Ministers will be entitled to be represented at such dry dock. The proper and reasonable costs of such inspections and surveys must be paid by the Operator. All inspections and surveys of the Vessel will be carried out at such times and in such places and in such manner as to minimise delaying the use and operation of the Vessel, but the Scottish Ministers will not be obliged to carry out such inspections only during periods of drydocking;

6.1.3 notify the Scottish Ministers forthwith upon becoming aware of the same by facsimile transmission thereafter confirmed by letter and in reasonable detail of:

6.1.3.1 the hijacking, confiscation, seizure, impounding, arrest, taking in execution, forfeiture or detention of the Vessel or any major part thereof or any requisition for hire at any time of the Vessel;

6.1.3.2 any requirement or recommendation made by the Classification Society or by any insurer or any competent authority which is not, or cannot be, complied with in accordance with its terms;

6.1.3.3 any death or serious or potentially serious injury to a third party or substantial damage to property, caused by, or in connection with, the Vessel;

6.1.3.4 any single casualty or other accident or damage to the Vessel which may be or become a Total Loss (as that expression is defined in the relevant Ship Charter or which may involve repairs or maintenance costing more than £100,000;

6.1.3.5 any assistance which has been given to the Vessel which has resulted or may result in a lien for salvage being acquired over the Vessel;

6.1.3.6 any collision or other accident or incident involving damage to the Vessel the repair cost of which is likely to exceed £100,000 (or the then equivalent in any other currency);

6.1.3.7 any other event which occurs in connection with the Vessel which affects or may reasonably be expected to affect the rights of the Scottish Ministers or involves or may reasonably be expected to involve any loss or liability;

6.1.3.8 the occurrence of any litigation involving, or criminal proceedings against, the Operator;

6.1.3.9 any notices, requirements or recommendations made by or on behalf of a governmental or statutory body or agency. This includes, but is not limited to, notices, requirements or recommendations made by or on behalf of:

- an Inspector under the Welfare of Animals (Transport) Order 1997 or the Animal Health Act 1981;
- the Health and Safety Executive (HSE) or any other agency of the Health and Safety Commission;
- the Scottish Environment Protection Agency (SEPA);
- Maritime and Coastguard Agency (MCA).

6.1.4 in the event of a casualty or maintenance referred to in paragraph 6.1.3.4 above, the Operator will notify the Scottish Ministers orally within 48 hours of discovery and in writing within 72 hours after the discovery of the event. The Operator must notify the Scottish Ministers of the plan and time frame for rectification (if applicable) as soon as possible thereafter;

6.1.5 maintain all such records, logs, manuals, technical data and other materials and documents which are required to be maintained in respect of the Vessel to comply with any Applicable Laws or the requirement of the Classification Society and, on reasonable advance notice from the Scottish Ministers, permit the Scottish Ministers or their representatives at any time to examine and take copies of such logs and other records;

6.1.6 procure that the Scottish Ministers are not at any time represented by the Operator, its contractors, agents, employees, representatives and/or subcontractors as carrying goods or passengers or providing any other service on or from the Vessel or as having any operational interest in, or responsibility for, the Vessel.

6.1.7 do or cause to be done all things necessary to comply with all national, international and state conventions and laws (and any rules and regulations thereunder) applicable to the Operator and/or the Vessel including, without limitation, the Merchant Shipping Act 1995, the International Convention for the Safety of Life at Sea (SOLAS) 1974 as amended from time to time the IMO document International Convention for the Prevention of Pollution from Ships (MARPOL) and to the extent applicable, the Oil Pollution Act of 1990 of

the United States of America (including, without limitation, the requirements thereunder relating to manning and the establishment of financial responsibility), the Comprehensive Environmental Response Compensation and Liability Act of the United States of America, other federal and state laws of the United States of America and international conventions, laws, rules and regulations relating to environmental matters, including those relating to discharges of oil, petroleum, petroleum products and distillates, chemicals, pollutants and other substances and the Terrorism Act 2000.

6.1.8 maintain an emergency response plan and undertake the appropriate exercises for training purposes.

7 Insurance Undertakings

- 7.1 The Operator hereby covenants and undertakes that throughout the Grant Period it will insure and keep every Vessel insured at its own cost and expense in respect of all matters of whatsoever nature and howsoever arising in respect of which insurance would be maintained by a prudent owner of the Vessel having regard to the situation, nature and method of operation of that Vessel.
- 7.2 The Operator hereby covenants that it will not do, consent to or permit any act or omission which might invalidate or render unenforceable the whole or any part of the Insurances and not (without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe) employ any Vessel or suffer any Vessel to be employed otherwise than in conformity with the terms of the Insurances (including any warranties expressed or implied therein).
- 7.3 Apply all sums receivable under the Insurances which are paid to the Operator in repairing all damage and/or in discharging the liability in respect of which such sums have been received.
- 7.4 In the event of a Vessel becoming a wreck or obstruction to navigation during the Grant Period the Operator must indemnify and hold harmless the Scottish Ministers against all costs, expenses, payments, charges, losses, demands, any liabilities, claims, actions, proceedings (whether civil or criminal) penalties, fines, damages, judgements, orders or other sanctions which may be made or asserted against the Scottish Ministers by reason that the Vessel becomes a wreck or obstruction to navigation -including, (without limitation), in respect of the removal or destruction of the wreck or obstruction under statutory powers.

PART C: SCHEDULED MAINTENANCE PROGRAMME FOR VESSELS

- 1 The Scheduled Maintenance programme for vessels will ensure that the operation of the Services shall be self-relieving by Cascade (i.e. maintained by the redeployment of Fleet Vessels otherwise surplus to the requirements of the Timetable) and the Operator shall carry the anticipated demand during periods of Scheduled Unavailability. If this cannot be achieved for any reason and the maintenance of the requirements of the Timetable requires the provision of a replacement vessel then the Operator shall provide an additional vessel during these periods and the suitability of any such vessel proposed will be subject to the approval of and at the discretion of Scottish Ministers.

2. Without prejudice to the requirements of paragraph 1 above, the Operator proposes to undertake the execution of the scheduled maintenance in the following manner:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.3.3]

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PART D: PORTS

1 Interpretation

- 1.1 For the purposes of this Contract the terms Port and Harbour shall be interchangeable but shall be interpreted as the situation requires.
- 1.2 References herein to the Harbour or Port apply to each and/or all of the Harbours and/or Ports, as appropriate.
- 1.3 The harbours shall be:

Harbours owned by	Other Harbours	Harbour Authority
CMAL		
Armadale	Ardrossan	PeelPorts - Clydeport
Brodick	Campbeltown	Argyll and Bute Council
Castlebay	Rothesay	
Claonaig	Port Askaig	
Colintraive	Craignure	
Coll	Fionphort	
Colonsay	Iona	
Cumbræ	Gigha	
Fishnish	Tayinloan	
Kennacraig	Lismore	
Kilchoan	Airdmhor	
Largs	Berneray	
Lochaline	Eriskay	
Lochboisdale	Leverburgh	
Lochranza	Lochmaddy	
Oban	Otternish	
Port Ellen	Eigg	
Portavadie	Muck	Highland Council
Rhubodach (Isle of Bute)	Raasay	
Tarbert (Harris)	Sconser	
Tiree	Uig	
Tobermory	Rum	
Wemyss Bay	Mallaig	

Harbours owned by CMAL	Other Harbours	Harbour Authority
	Canna	NTS
	TLF	T(LF)HA
	Ullapool	UHT
	Stornoway	SPA

2 Harbour Operations

- 2.1 The Operator will be required to undertake all harbour operations and port service activities in line with the requirements of the relevant Harbour Authorities' Operations and Safety management systems and in line with industry best practice.
- 2.2 Each Port is an integral part of the community it serves and there may be additional activities which the Operator shall provide in order to maintain the lifeline services to the affected communities irrespective of whether it shall receive remuneration for from a third party.

3 Specific Harbour Operations and Provided Facilities (CMAL Harbours)

- 3.1 The Operator shall ensure all obligations relating to and as defined in the Harbour Operating Agreement are met and shall perform or procure all port or harbour activities required.
- 3.2 The Operator shall procure the provision of all facilities to ensure that the Services can be delivered efficiently and effectively. The facilities are:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.3.5

4 Harbour Services (Non CMAL Harbours)

4.1 The Operator shall perform or procure all port or harbour activities required and provide facilities to ensure that the Services can be delivered efficiently and effectively. The Operator shall keep all such port facilities in a proper, neat and tidy order and condition and free of all litter.

4.2 The activities that the Operator shall perform are:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.3.4

4.3 The facilities that the Operator shall provide are:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.3.5

5 Information and Compliance Undertakings

5.1 The Operator shall throughout the Grant Period and so long as any obligations are owing by the Operator in terms of this Contract:

5.1.1 comply with the provisions of the Principal Contracts at all times;

5.1.2 comply with the terms of the Insurances at all times;

5.1.3 ensure that at all relevant times all licences, approvals, consents and permits required under Applicable Law which are (i) required for the use and operation of the Harbours and (ii) the absence of which would either expose the Scottish Ministers to any risk of any liability are, in each case, obtained and maintained in full force and effect;

- 5.1.4 furnish the Scottish Ministers promptly with all such information as they may from time to time reasonably require regarding the Harbour, the Insurances so far as appropriate to the Harbour, conditions and maintenance;
- 5.1.5 comply at all times with the Port Marine Security Code; and
- 5.1.6 appoint and maintain all key employees required for the provision of the Services, replace such employees as necessary within a reasonable time frame and develop and implement a retention policy.

6 Operational and maintenance obligations

6.1 The Operator shall throughout the Grant Period and so long as any obligations are owing by the Operator in terms of this Contract:

6.1.1 notify the Scottish Ministers forthwith upon becoming aware of the same by facsimile transmission thereafter confirmed by letter and in reasonable detail of:

6.1.1.1 any event which occurs in connection with the Harbour which affects or may reasonably be expected to materially affect the rights of the Scottish Ministers or involves or may reasonably be expected to involve any material loss or liability;

6.1.1.2 the occurrence of any litigation involving, or criminal proceedings against, the Operator;

6.1.1.3 the occurrence of any Event of Default;

6.1.1.4 any notices, requirements or recommendations made by or on behalf of a governmental or statutory body or agency. This includes, but is not limited to, notices, requirements or recommendations made by or on behalf of:

- an Inspector under the Welfare of Animals (Transport) Order 1997 or the Animal Health Act 1981;
- the Health and Safety Executive (HSE) or any other agency of the Health and Safety Commission;
- the Scottish Environment Protection Agency (SEPA);
- the Marine Accident Investigation Branch;
- the MCA;
- the Northern Lighthouse Board.

- 6.1.2 maintain an emergency response plan and undertake the appropriate exercises for training purposes;
 - 6.1.3 prior to the Commencement Date carry out a full risk assessment, clearly identifying the risks associated with the Contract;
 - 6.1.4 operate a procedure in accordance with the Customer Care and Accessibility Process, available for inspection by the Scottish Ministers, pursuant to which service users or other parties having an interest can make complaints; such complaints and any related rectification action or response to be recorded;
 - 6.1.5 procure that there are in place quality management systems in respect of all activities relating to the Harbour; and
 - 6.1.6 pay all sums payable to Harbour Authorities under their Terms and Conditions and immediately notify the Scottish Ministers upon becoming aware of any disputed amount under the Terms and Conditions.
- 6.2 The Operator shall throughout the Grant Period to the extent required and permitted in the Terms and Conditions of the Harbour Authorities and arising from the operation of the Fleet Vessels and the provision of the Services procure that:
- 6.2.1 the Harbour and berths are kept open and the piers free from obstruction;
 - 6.2.2 all lights, buoys and other aids to navigation are operated and maintained in accordance with the requirements of the MCA;
 - 6.2.3 the Harbour Areas at the Harbours are kept in proper, neat and tidy order and condition and free of litter;
 - 6.2.4 adequate records are kept of the numbers of passengers and vehicles (including vehicle lengths and, where required by law, vehicle weights) using the Harbour for the purposes of embarking on or disembarking from all vessels using the Harbour (whether operated by the Operator or not) and of the volume, nature and weight of all freight (including fish, livestock fuel and basic materials) carried on such vessels;
- 6.3 The Operator shall throughout the Grant Period:
- 6.3.1 operate, maintain, repair and replace the Transferring Assets at the Harbours as necessary;
 - 6.3.2 maintain full and accurate records relating to any transferred responsibilities so far as relating to the Harbours; and
 - 6.3.3 notify the Scottish Ministers as soon as it becomes aware of any Relief Event as listed in Schedule 15 so far as relating to the Harbours.

7 Provision of Ports of refuge and associated Port Facilities for Passengers.


7.1 When for emergency reasons including weather it would be unsafe for a Vessel to continue its journey to its destination Port, the availability of the following alternative safe harbours will be procured by the Operator and disembarking Passengers will have the following facilities made available:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.3.6]





PART E: TRANSFERRING ASSETS REGISTER

The following list of Transferring Asset classes will be developed jointly by the Operator in consultation with outgoing operator within the Mobilisation Period to provide a Transferring Asset Register:

Overall description of Asset Classes

 Classes of Asset V2.xlsx

List of Transferring Asset Classes

    **Project Valiant**

Copy of IS Asset Classes Draft...

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SCHEDULE 6 - MOBILISATION PLAN

1. The Mobilisation Plan must be developed in accordance with Clause 5 and shall include:
 - Operator's programme for achieving handover – vessel inspections , Harbours and all relevant equipment and property;
 - MCA Certificates;
 - key job descriptions;
 - programme for staff (onshore and seagoing) familiarisation and training ;
 - arrangements for taking over and honouring bookings for the Ferry Services made by the outgoing operator;
 - arrangements for obtaining customer data and complying with the Data Protection Act 1998;
 - project plan for delivery of the Mobilisation Plan;
 - arrangements for handling passengers, vehicles, freight, loose freight and parcels etc.;
 - identify training needs of sea-going and shore-based staff and produce a training plan;
 - arrangements providing for consultation with user groups, local authorities and CMAL;
 - contingency plans to deal with possible delays.

2. The Operator undertakes In accordance with clause 5 to develop and pursue the following draft Mobilisation Plan:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Questions 1.4.1 and 1.4.3]

3. The Operator undertakes to provide management reporting for the Mobilisation Plan in accordance with:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.4.3]

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SCHEDULE 7 - MARKETING PLAN

1. The Operator shall implement the following Marketing Plan:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.5.1

The Marketing Plan must be reviewed and updated in accordance with Clause 9 and shall include, but not be limited to:

Publication of service and tariff details;
Collaboration with travel agents;
Community engagement including co-operation in mutually relevant ventures and consultation/liaison;
Ticketing and booking;
Marketing targeted at managing demand;
Promotional activities and support of local events;
Introduction of IT;
Staff and resource requirements and cost effectiveness;
Introduction of SMART and Integrated ticketing;
Integration with other travel services – the Operator should discuss transport integration with other modes e.g. bus, rail and other ferry operators and in particular changes to the ferry or other timetables so that the ferry services align with other services or to allow the development of new services by other operators;
Development of connectivity between ferry ports and local communities.

2. The Operator shall develop his proposals below for a Smart and Integrated Ticketing and Booking System and following the approval of the Scottish Ministers shall procure its development and preparations for implementation.

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.5.2]

3. The Operator shall develop his proposals below for improving Access and Interchange .

**[Insert proposals specified by Successful Participant as Service Offerings
and Contractual Undertakings within his answers to Vol 2 Appendix 2
Question 1.5.3]**

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SCHEDULE 8 - HEALTH AND SAFETY PLAN

1. The Health and Safety Plan must be implemented to safeguard staff and customers and reviewed in accordance with Clause 10.
2. The Operator shall develop the Health and Safety Plan from the outline plan below prior to the introduction of the Services and to the Satisfaction of the Scottish Ministers :

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.6.1]

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SCHEDULE 9 - ENVIRONMENTAL MANAGEMENT PLAN

1. The Environmental Management Plan must be developed and reviewed in accordance with Clause 11 and shall comply with the following:

The Operator will be required to operate an environmental management system at least complying with or equivalent to BS EN ISO 14001: Environmental Management.

This system will be set out in an Environmental Management Plan (EMP) which will include:

- The Operator's environmental policy; and
- The procedures to be implemented to monitor compliance with environmental legislation.

The Environmental Management Plan (EMP) will provide arrangements for determining, managing and mitigating the environmental impact of the services both onshore and at sea. The EMP will include specific management plans, including, but not limited to the following:

- Pollution Incident Response Plan – to include details of controls to be adopted to manage the risk of pollution incidents and procedures to be followed in the event of any pollution incidents;
- Waste Management Plan (WMP) – to include regulatory and best practice requirements relating to the planning and delivery of waste management. The WMP will include targets to reduce, re-use and /or recycle waste;
- Sustainable Procurement – to include guidance in relation to supply chain management and to ensure, where practicable, that all materials and services are responsibly sourced;
- Green Travel Plan – to consider minimising the impacts of travel, including promotion of public transport and workforce travel;
- Energy Management – to include proposals for minimising the generation of greenhouse gasses and carbon release at the outset of operating the Services and for ongoing assessment and reduction. To include estimated targets for peak season daily carbon release during the operation of the services;
- Air Quality Management Plan – to include proposals associated with the introduction of low sulphur fuel in 2020;
- Ecology Management Plan – to include proposals to minimise the effect on marine life and to secure the health and protection of marine mammals. To include proposals for the management of ballast water;
- Proposals for reviewing and reporting on environmental performance.

2. The Operator shall develop the Environmental Management Plan from the outline plan below to the Satisfaction of the Scottish Ministers :

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.7.1]

SCHEDULE 10 - CUSTOMER CARE AND ACCESSIBILITY PROCESS

1 Customer Care and Accessibility Process

- 1.1 The Operator's Customer Care and Accessibility Process must be developed in accordance with Clauses 6, 35 and 36:

The Operator shall prepare and update the Customer Care and Accessibility Process as required in Clause 36.1 which shall include a forward look to consider relevant significant activities, and in particular how they impact on disabled people and propose proportionate proposals to avoid or mitigate any disadvantages, and for updates of the Process a backward look to the operation of the Contract to review the effectiveness of those measures which have been put in place and bring forward proposals to remedy any shortfall in the effectiveness of those measures.

The Operator must take into account the needs of disabled people when providing information, timetable and booking reservation systems. The general MACS website can be accessed at <http://www.macs-mobility.org/docs/pubs/valuable/index.htm>.

The Operator will put in place a service level agreement for disabled passengers and provide an Accessibility Information System in line with the recommendations of the Ferries Review Accessibility Work Package, which is available using the following link: <http://www.gov.scot/Resource/Doc/935/0099989.doc>. This should also take into account the advice given in the "Information and self-assessment tool for public authorities": <http://www.gov.scot/Publications/2011/09/14082209/0>

The Operator will prepare and update an Equalities Impact Assessment as required in Clause 35.2

- 1.2 The Operator may modify prior to the commencement date and thereafter from time to time and shall otherwise comply with the following Customer Care and Accessibility Process:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.8.1]

- 1.3 The Operator shall have regard to his following proposals in the annual preparation of an Equalities Impact Assessment:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.8.2]

Customer Complaints Process

- 1.4 The Operator's Customer Complaint Process shall for the purposes of Clause 36.1 and this Schedule be deemed to be part of the Customer Care and Accessibility Process. The process will include, but shall not be limited to, provisions for the following and shall be capable of the application of performance deductions provided for in Schedule 15, Part 2 section E:

- The receipt of complaints and feedback from customers by a reasonably comprehensive range of oral and written media;
- The provision of advice by reasonably comprehensive means as to the how (including to whom complaints should be addressed) complaints can be lodged;
- The methods by which complaints will be assessed and the Operators views and remedies communicated;
- An opportunity and process for appeals by a customer against the Operators views;
- Proportionate restitution.

- 1.5 The Operator shall review from time to time and in the first instance implement the following Customer Complaint Process:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.8.4]

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SCHEDULE 11 – HUMAN RESOURCES AND KEY PERSONNEL

PART A HUMAN RESOURCES STRATEGY

1 Human Resources

- 1.1 The Operator's Human Resources Strategy must be developed and implemented in accordance with Clause 27.

The HR Strategy shall ensure that the workforce is well motivated, well led and has appropriate opportunities for training and skill development and that this supports recruitment and retention of the workforce to ensure the continuity of the Services, including at the point transfer of the Services on expiry or termination of the Contract.

- 1.2 The Operator shall implement and review from time to time the following initial Human Resources Strategy:

[Insert proposals specified by Successful Participant as Service Offerings and Contractual Undertakings within his answers to Vol 2 Appendix 2 Question 1.9.1]

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PART B: KEY PERSONNEL

1 Key Personnel

1.1 The following table identifies the Representatives and Key Personnel that have been charged with the delivery of the Services. Any changes to the nominations by the Scottish Ministers or the Operator shall be notified to the other Party prior to such revised personnel becoming responsible for the Services.

Name	Designation	Qualifications and experience *	Role
Scottish Ministers' Representative : [Note: the Scottish Ministers to specify Representative]			
<input type="checkbox"/>	<input type="checkbox"/>		
Senior Scottish Ministers' Representative: [Note: the Scottish Ministers to specify Representative]			
<input type="checkbox"/>	<input type="checkbox"/>		
Operator's Representative:			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Senior Operator's Representative:			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Key Personnel:			
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Managing Director/Chief Executive;
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Operations Manager/Director;
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Finance Director;
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Technical Manager/Director;
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Environmental Manager
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Quality Manager/Director
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Health and Safety

			Manager/ Director
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The Designated Person Ashore;
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	HR Manager
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marketing Manager/ Director
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Responsible Person for Operator response in the event of accidents, significant incidents or emergencies
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Transport Integration Manager
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stakeholder Engagement Manager
			<input type="checkbox"/> [Other Personnel Roles regarded by the Participant to be Key to be included here]
			<input type="checkbox"/>
			<input type="checkbox"/>

1.2 In the table above, Qualification and Experience shall include:

- **Education:** Graduate and post-graduate qualifications – Including qualification(s), title, level, year of attainment, institution.
- **Relevant Qualifications:** Including qualification(s), title, level, year of attainment, regulating, awarding or professional body.
- **Employment History:** Brief description outlining career history, relevant specialism, number of years of remunerated experience.
- **Relevant experience:** Provide a description of relevant experience to date, including dates of relevant assignments and description of role undertaken.

PART C: STAFF COSTS AND TUPE

DEFINITIONS

The following definitions apply to this Schedule 11 Part C

Acquired Rights Directive means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;

Operator Provisional Staff List means a list prepared and updated by the Operator of all employees who are engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services as at the date of such list;

Operator Final Staff List has the meaning given to it in paragraph 2.1.2;

Outgoing Operator Employees means any employees of the Outgoing Operator engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services to whom the Employment Regulations will apply on the Relevant Transfer Date ;

Data Protection Legislation means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or in relation to such legislation;

Employee Liabilities means all claims actions, proceedings, orders, demands, complaints, investigations and any award, compensation, damages, tribunal awards, fine, loss, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unlawful deduction of wages;
- (c) unfair, wrongful or constructive dismissal compensation;
- (d) compensation claims for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay;
- (e) compensation for less favourable treatment of part time workers;

- (f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Scottish Ministers or the Incoming Operator to a Transferring Operator Employee which would have been payable by the Operator if such payment should have been made prior to the Service Transfer Date;
- (g) claims whether in delict, contract or statute or otherwise;
- (h) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);

Employment Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;

Relevant Transfer means a transfer of employment to which Employment Regulations applies or is treated as applying;

Relevant Transfer Date means the date upon which the Relevant Transfer takes place;

Incoming Operator means any person other than the Operator with whom the Scottish Ministers enter into a New Contract;

New Contract means any arrangement or contract of whatsoever nature in relation to the provision by the Scottish Ministers of a grant in respect of public transport services by sea to the Clyde and Hebrides similar in scope to the Services commencing subsequent to the Expiry or Termination of this Contract;

Service Transfer has the meaning given to it in paragraph 3.1;

Service Transfer Date means the date upon which the Service Transfer takes place;

Staffing Information means written information about each of the Operator's employees, (in such format as the Scottish Ministers may reasonably request including in tabular form in accordance with a template which may be provided to the Operator by Scottish Ministers) which shall include in particular: the percentage of working time spent by each of them in the provision of the services; job title; remuneration (meaning salary and benefits and any enhanced redundancy terms); age; length of service; notice period; particulars of employment in accordance with section 1 of the Employment Rights Act 1996;

the applicability of any collective agreement to such staff; any disciplinary action taken against any of them in the preceding two (2) years; details of any grievances raised by any of them in the preceding two (2) years; any Court or employment tribunal proceedings brought by any of them in the preceding two (2) years; any potential proceedings which the Operator or its Subcontractors reasonably considers may be raised by any of them; and information about any of them who have been absent from work for one (1) Month or more regardless of the reason at the time the staffing information is requested;

Transferring Operator Employees means those employees of the Operator or any Associated Company or Operator's subcontractors engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services to which the Employment Regulations will apply on the Service Transfer Date.

1. TRANSFER OF STAFF AT COMMENCEMENT

- 1.1 The Scottish Ministers and the Operator will proceed on the basis that the commencement of the provision of the Services by the Operator under the Contract will be a "Relevant Transfer". The Scottish Ministers and the Operator further agree that, as a result of the operation of the Employment Regulations, the contracts of employment between the Outgoing Operator and the Outgoing Operator Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Operator and each such Outgoing Operator Employee.
- 1.2 The Scottish Ministers will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Outgoing Operator will perform and discharge all their obligations in respect of all the Outgoing Operator's Employees, including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, prior to the Relevant Transfer Date and to make any necessary apportionments in respect of any periodic payments due to them.
- 1.3 The Operator shall comply with all of its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Outgoing Operator's Employees including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, from and after the Relevant Transfer Date. The Operator shall indemnify the Scottish Ministers

for itself and on behalf of the Outgoing Operator against all Employee Liabilities arising from the Operator's failure to comply with all of its obligations under the Employment Regulations and/or perform and discharge any such obligation in relation to the Outgoing Operator's Employees.

1.4 The Scottish Ministers will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Outgoing Operator will indemnify the Operator against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Outgoing Operator's Employee (or, where applicable, any trade union or employee representative of any Outgoing Operator's Employees) arising out of or in connection with:

1.4.1 any fact or matter concerning or arising from his/her employment, or the termination thereof, before the Relevant Transfer Date, including (but not limited to) any claims of unfair dismissal, wrongful dismissal, unlawful deduction, breach of contract, sex discrimination, race discrimination or disability discrimination, or any claim for a redundancy payment;

1.4.2 the breach or non-observance by the Outgoing Operator during the period prior to the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Outgoing Operator's Employees; and

1.4.3 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions

1.4.3.1 in relation to any Outgoing Operator Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

1.4.3.2 in relation to any employee who is not an Outgoing Operator Employee, and in respect of whom it is later alleged or determined that Employment Regulations applied so as to transfer his/her employment from the Outgoing Operator to the Operator, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

- 1.5 The Operator shall indemnify the Scottish Ministers on behalf of the Outgoing Operator against all Employee Liabilities arising from the Operator's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Outgoing Operator Employees arising from or as a result of any act or omission by the Operator or relating to a Outgoing Operator Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of an Outgoing Operator's Employee.
- 1.6 The Operator shall indemnify the Scottish Ministers for itself and on behalf of the Outgoing Operator against all Employee Liabilities (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Outgoing Operator Employee (or, where applicable, any trainee or employee representative of any Outgoing Operator's Employee) arising or in connection with:
- 1.6.1 his/her employment or its termination arising or occurring on or after the Relevant Transfer Date;
 - 1.6.2 a failure of the Operator to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Outgoing Operator Employee in respect of the period on or after the Relevant Transfer Date;
 - 1.6.3 any act or omission by the Operator occurring on or after the Relevant Transfer Date;
 - 1.6.4 any claim made by or in respect of an Outgoing Operator's Employee or any appropriate employee representative (as defined in Employment Regulations) of any Outgoing Operator's Employee relating to any act or omission of the Operator in relation to its obligations under the Employment Regulations whether occurring before, on or after the Relevant Transfer Date including any claim made by or in respect of an Outgoing Operator's Employee or any appropriate employee representative (as defined in Employment Regulations) of any Outgoings' Operator's Employee relating to any act or omission of the Operator in relation to its obligations under Regulation 13 of the Employment Regulations or in respect of an award of compensation under Regulation 15 of the Employment Regulations except to the extent that the liability arises from the Scottish Ministers' or any

Outgoing Operator's failure to comply with their obligations under the Employment Regulations;

1.6.5 any statement communicated to, or action undertaken by the Operator to, or in respect of, any Outgoing Operator Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Scottish Ministers or the Outgoing Operator in writing;

1.6.6 the breach or non-observance by the Operator during the period on or after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Outgoing Operator's Employee;

1.6.7 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

1.6.7.1. in relation to any Outgoing Operator Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

1.6.7.2. in relation to any employee who is not an Outgoing Operator Employee, and in respect of whom it is later alleged or determined that Employment Regulations applied so as to transfer his/her employment from the Outgoing Operator to the Operator, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date

1.7 The Operator shall notify the Scottish Ministers of any claims by any Outgoing Operator's Employee as soon as practicably possible to allow the Scottish Ministers and the Outgoing Operator to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Scottish Ministers and provide such co-operation as the Scottish Ministers may reasonably require in this respect.

2. **PRE-SERVICE TRANSFER OBLIGATIONS**

2.1 The Operator agrees that, subject to compliance with the Data Protection Legislation

2.1.1 within twenty (20) Working Days of the earliest of:

2.1.1.1. receipt of a notification from the Scottish Ministers of a Service Transfer or intended Service Transfer; or

2.1.1.2. receipt of the giving of notice of early termination of the Contract or any part thereof; or

2.1.1.3. the date which is twelve (12) Months before the due expiry date of the Agreement; or

2.1.1.4. receipt of a written request of the Scottish Ministers at any time, save that any such request may only be made once in any six (6) month period;

it shall provide the Operator's Provisional Staff List, together with Staffing Information in relation to such persons, to the Scottish Ministers (or, at the direction of the Scottish Ministers, to an actual or prospective Incoming Operator or prospective tenderer for a New Contract) and it will provide an updated Operator's Provisional Staff List at such intervals as are reasonably requested by the Scottish Ministers;

2.1.2 at least twenty (20) Working Days prior to the Service Transfer Date, the Operator shall provide to the Scottish Ministers and to any Incoming Operator a final list of Transferring Operator Employees which shall transfer under Employment Regulations (the "Operator 's Final Staff List"); and

2.1.3 the Scottish Ministers shall be permitted to use and disclose information provided by the Operator under this paragraph 2.1 for informing any tenderer or other prospective Incoming Operator.

2.2 The Operator's Final Staff List will identify which of the Operator's employees named are Transferring Operator Employees. The provision of personal data regarding those individuals detailed on the Operator's Final Staff List is subject to the consent of such individuals (which the Operator will use its reasonable endeavours to obtain) and being mindful that the Operator's Final Staff List can change up to the date of transfer, or in the absence of such individual's approval, the Operator's Final Staff List being suitably anonymised so as to comply with Data Protection Legislation.

2.3 The Operator warrants, for the benefit of the Scottish Ministers and any Incoming Operator, that the information provided under paragraphs 2.1 and 2.2 of this schedule shall be true and accurate in all material respects.

- 2.4 From the date of the earliest event referred to in paragraph 2.1.1, the Operator agrees, for the benefit of the Scottish Ministers and any Incoming Operator, that it shall not, and agrees to procure that its subcontractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
- 2.4.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
 - 2.4.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
 - 2.4.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the employees save for fulfilling assignments and projects previously scheduled and agreed;
 - 2.4.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Operator's Provisional Staff List; and
 - 2.4.5 increase or reduce the total number of employees so engaged, replace any Operator employee listed on the Operator's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Operator's Provisional Staff List save for:
 - 2.4.5.1. the execution of assigned operations as detailed in 2.4.3; and/or
 - 2.4.5.2. replacing voluntary resignations or Operator employees terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces.
- 2.5 The Operator will promptly notify the Scottish Ministers or, at the direction of the Scottish Ministers, the Incoming Operator, of any notice to terminate employment given by the Operator or received from any persons listed on the Operator's Provisional Staff List regardless of when such notice takes effect.
- 2.6 During the Grant Period, the Operator will provide to the Scottish Ministers any information the Scottish Ministers may reasonably require relating to any individual

employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the Scottish Ministers and subject only to any limitation imposed by the Data Protection Legislation, the Operator will provide the Scottish Ministers or at the request of the Scottish Ministers, the Incoming Operator, with access (on reasonable notice and during normal working hours) to such employment records as the Scottish Ministers reasonably requests and will allow the Scottish Ministers or any Incoming Operator to have copies of any such documents.

2.7 Within seven (7) Working Days following the Service Transfer Date, the Operator will provide to the Scottish Ministers or any Incoming Operator, in respect of each person on the Operator's Final Staff List who is a Transferring Operator Employee:

- 2.7.1 the most recent Month's copy pay slip data;
- 2.7.2 details of cumulative pay for tax and pension purposes;
- 2.7.3 details of cumulative tax paid;
- 2.7.4 tax code;
- 2.7.5 details of any voluntary deductions from pay; and
- 2.7.6 bank/building society account details for payroll purposes.

3. **TRANSFER OF STAFF ON TERMINATION OR EXPIRY**

3.1 The Scottish Ministers and the Operator will proceed on the basis that the commencement of the provision of the Services by the Incoming Operator under a New Contract will be a "Service Transfer". The Scottish Ministers and the Operator further agree that, as a result of the operation of Employment Regulations, the Service Transfer will be a relevant transfer and the contracts of employment between the Operator and the Transferring Operator Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Service Transfer Date as if originally made between the Incoming Operator and each such Transferring Operator Employee.

3.2 The Operator shall, and shall procure that any subcontractor shall, perform and discharge all its obligations in respect of all the Transferring Operator Employees up to the Service Transfer Date and any necessary apportionments in respect of any

periodic payments due to them will be made. The Operator shall indemnify the Scottish Ministers for itself and on behalf of any Incoming Operator against all Employee Liabilities arising from the Operator's, or any Subcontractors', failure to perform and discharge any such obligation.

3.3 The Operator shall indemnify the Scottish Ministers for itself and on behalf of any Incoming Operator against any Employee Liabilities in respect of the Transferring Operator Employees arising from or as a result of:

3.3.1 any act or omission by the Operator or any Subcontractor occurring before the Service Transfer Date;

3.3.2 any claim made by or in respect of any person employed or formerly employed by the Operator or any Subcontractor other than a Transferring Operator Employee for which it is alleged that the Scottish Ministers or any Incoming Operator may be liable by virtue of this Contract and/or Employment Regulations and/or the Acquired Rights Directive;

3.3.3 any claim made by or in respect of a Transferring Operator Employee or any appropriate employee representative (as defined in Employment Regulations) of any Transferring Operator Employee relating to any act or omission of the Operator or any Subcontractor in relation to its or their obligations under Employment Regulations whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13 of the Employment Regulations or in respect of an award of compensation under Regulation 15 the Employment Regulations of except to the extent that the liability arises from the Scottish Ministers' or any Incoming Operator's failure to comply with Regulation 13(4) of the Employment Regulations;

3.3.4 any statement communicated to or action undertaken by the Operator to, or in respect of, any Transferring Operator Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Scottish Ministers in writing;

3.3.5 in relation to any proposed change by the Operator in the working conditions or terms of employment of any Transferring Operator Employees to take effect on or after the Service Transfer Date (including any claim for constructive dismissal), whether such change is proposed before, on or after the Service Transfer Date;

- 3.3.6 a failure of the Operator to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Operator Employees in respect of the period on or before the Service Transfer Date;
- 3.3.7 in respect of any fact or matter concerning or arising from the Transferring Operator Employees employment, or the termination thereof, before the Service Transfer Date including any claim for a redundancy payment;
- 3.3.8 in relation to the breach or non-observance by the Operator during the period prior to the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Operator Employees; and
- 3.3.9 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary National Insurance contributions:
- a in relation to any Transferring Operator Employees, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Service Transfer Date; and
- b in relation to any employee who is not a Transferring Operator Employees, and in respect of whom it is later alleged or determined that Employment Regulations applied so as to transfer his/her employment from the Operator to the Scottish Ministers or the Incoming Operator, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Service Transfer Date.
- 3.4 The Scottish Ministers shall indemnify the Operator against all Employee Liabilities arising from the Scottish Ministers, and shall procure that the Incoming Operator shall indemnify the Operator against all Employee Liabilities arising from the Incoming Operator's, failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Operator Employee arising from or as a result of any act or omission by the Scottish Ministers or an Incoming Operator (as appropriate) relating to a Transferring Operator Employee occurring before, on or after the Service Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Service Transfer Date which would give

rise to a substantial change in working conditions of a Transferring Operator Employee to the material detriment of a Transferring Operator Employee.

- 3.5 The Scottish Ministers shall procure that the Incoming Operator shall indemnify the Operator against any claim made by or in respect of a Transferring Operator Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Operator Employee relating to any act or omission of the Incoming Operator in relation to its obligations under the Employment Regulations whether occurring before, on or after the Service Transfer Date including any claim relating to its obligations under Regulation 13(4) of Employment Regulations except to the extent that the liability arises from any Operator's failure to comply with its obligations under Employment Regulations.
- 3.6 The Scottish Ministers shall indemnify the Operator against any claim made by or in respect of a Transferring Operator Employee or any appropriate employee representative (as defined in Employment Regulations) of any Transferring Operator Employee relating to any act or omission of the Scottish Ministers in relation to its obligations under the Employment Regulations whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13(4) of Employment Regulations except to the extent that the liability arises from the Operator's failure to comply with Regulation 13 of the Employment Regulations.
- 3.7 In the event of a Service Transfer to which Employment Regulations or the Acquired Rights Directive do not apply the following provisions shall apply:
- 3.7.1 The Scottish Ministers can, and shall advise the Incoming Operator that it can, in its discretion, make to any of the employees identified on the Operator's Provisional Staff List, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the cessation by the Operator of the provision of the Services (or the relevant part) in which such employee was employed.
- 3.7.2 When the offer has been made by the Scottish Ministers or Incoming Operator and accepted by any employee or worker, the Operator shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Operator, which could be without the employee or worker having worked his full notice period, if the employee so requests.

3.7.3 If the employee does not accept an offer of employment made by the Scottish Ministers or Incoming Operator, or no such offer is made, the employee shall remain employed by the Operator (and all Employee Liabilities in relation to the employee shall remain with the Operator and the Operator shall indemnify the Scottish Ministers for itself and on behalf of any Incoming Operator against any Employment Liabilities that either of them may incur in respect of any such employees of the Operator.

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SCHEDULE 12 - INITIAL BASE CASE

INITIAL BASE CASE SCHEDULE

[INSERT OPERATOR'S INITIAL BASE CASE SCHEDULE]

INITIAL BASE CASE

The Base Case shall be independently audited

[INSERT INDEPENDENT AUDIT CERTIFICATE]

Placing the Financial Model on Deposit

A certified copy of the full financial model (the Base Case) submitted with the final tender shall be provided in CD/DVD format in a secure container which is sealed and dated and shall be submitted within one week of the execution of the contract to Transport Scotland who will hold it securely for the Scottish Ministers until such time as a Revised Base Case Recalculation is to be undertaken, at which point it shall be jointly opened by the Scottish Ministers and the Operator.

Where the assumptions and inputs into the financial model require to be changed to update the model in accordance with the provisions in the contract for a Revised Base Case Recalculation, then a revised model shall be created and submitted to Transport Scotland within one week of agreement of the Revised Base Case by the Scottish Ministers under similar terms.

Draft Fuel Management Programme

The fuel Management Programme will retain the format of the Draft Fuel Management Programme below

[INSERT OPERATORS DRAFT FUEL MANAGEMENT PROGRAMME]

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SCHEDULE 13 – GRANT PAYMENT AND FINANCIAL DISTRESS

PART A: GRANT PAYMENT

1. Payment of Monthly Instalments

- 1.1 Following the completion of the first month's Services the Operator must submit to the Scottish Ministers a Grant Claim Form in a form to be agreed by the Scottish Ministers for the first monthly instalment of the Grant. Where the details of the Grant Claim Form are agreed by the Scottish Ministers, then payment will be made to the Operator within 10 Business Days of receipt. A Grant Claim Form must be submitted monthly in arrears thereafter.
- 1.2 Where parts of the Grant Claim Form are not agreed or the Scottish Ministers believe that a deduction should be made under the terms of the Contract then a notice specifying the elements not agreed or the deduction being applied will be issued to the Operator. Payment will be made of any undisputed amounts of the Grant within 10 Business Days of receipt of the Grant Claim Form whereas any disputed amount (or such amount as is adjudged or resolved to be payable) shall be paid within 10 Business Days after the date the dispute is resolved or determined.
- 1.3 If any parts of a monthly Grant Claim Form are not agreed then this will be resolved through the Disputes Resolution Procedure.
- 1.4 The Scottish Ministers will pay the Charter Portion into the Operator's Revenue A Account, the Rent Portion into the Vessel Account and the balance of the Monthly Instalment (if any) into the Operator's Revenue B Account. If in any Month the Charter Portion and the Rent Portion are greater than the Monthly Instalment the Charter Portion and Rent Portion will nonetheless be paid into the Operator's Revenue A Account and the Vessel Account respectively and Paragraph 1.7 will apply
- 1.5 Notwithstanding any other provision in this Contract the Scottish Ministers will pay all Charter Portions and Rent Portions in full and without any deduction or withholding in respect of set off, compensation, retention, counterclaim or any matter whatsoever (including without limitation and for the avoidance of doubt, the circumstances set out in Paragraph 1.6, Clauses 19, 22, and 54.1.3).

- 1.6 The Scottish Ministers are not obliged to pay any part of a Monthly Instalment due to be paid into the Operator's Revenue B Account where, as at the due date for payment, an Event of Default (or event which with the giving of notice, lapse of time or other condition may constitute an Event of Default) has occurred. The Scottish Ministers may at their discretion pay the Grant or any part of a Monthly Instalment due to be paid into the Operator's Revenue B Account or any part thereof notwithstanding, and without waiving, any such Event of Default and without prejudice to its rights and remedies in respect of any such Event of Default.
- 1.7 In the event that pursuant to Paragraph 1.4 the Scottish Ministers, in any Month, make payment of a Charter Portion and/or Rent Portion which exceeds the Monthly Instalment then so much of the Charter Portion and/or Rent Portion as exceeds the Monthly Instalment will be an advance payment of Grant and be compensated by the Scottish Ministers by adjusting any subsequent Monthly Instalment.
- 1.8 In the event that pursuant to the Tripartite Agreement the Scottish Ministers shall remit to CMAL the amount stated in a Notice of Non-Payment (as defined in the Tripartite Agreement) then the amount so remitted to CMAL by the Scottish Ministers shall be an advance payment of Grant and if not reimbursed to the Scottish Ministers on demand shall be compensated by the Scottish Ministers by adjusting any subsequent Monthly Instalment.

2. The Revised Base Case

- 2.1 The Base Case shall be revised following the first Service Year as follows:
- 2.1.1 Those volumes of passengers, vehicles and loose freight which were specified in the Initial Base Case by the Scottish Ministers will be replaced for the second and subsequent years by the actual volumes of passengers, vehicles and loose freight during the first Service Year and these actual volumes will be used in the calculation of the Revenue and costs which are determined by a fee multiplied by the number of passengers or vehicles.
- 2.2 The Base Case for the second and subsequent Service Years shall be revised. For the second and subsequent Service Years, the Operating Costs in the Base Case [with the exception of Charter Portion costs within the Vessel Spreadsheet which shall be deemed to have been included in the Initial Base Case at nominal prices] will be Index Linked along with the Revenue, with the exception of fares which shall be Tariff Index Linked. Any changes that arise from a prior Base Case Recalculation

under section 3 shall be included in the Revised Base Case for the second and subsequent years.

- 2.3 The Operator shall submit to Scottish Ministers a preliminary draft Revised Base Case as soon as possible and in any event no later than [two months] after the expiry of the relevant Service Year. The Operator must also submit such information and supporting documentation as the Scottish Ministers may request.
- 2.4 If the Scottish Ministers agree the finalised draft Revised Base Case as submitted by the Operator, or with variations agreed with the Operator, then the finalised draft Revised Base Case (with any relevant variations) will come into effect as the Revised Base Case. If the Scottish Ministers and the Operator do not agree any items in the finalised draft Revised Base Case within 10 Business Days of submission of the finalised draft Revised Base Case then the matter shall be referred by Scottish Ministers to be resolved in accordance with the Dispute Resolution Procedure. The finalised draft Revised Base Case will not come into effect as the Revised Base Case (with such amendments as are adjudged or resolved to be made) until any such dispute is resolved or determined.
- 2.5 Until such time as each Revised Base Case is agreed in accordance with paragraph 2.4 above, then provisional Monthly Instalments shall be paid to the Operator equivalent to the Monthly Instalments due in respect of the same Months during the preceding Service Year ascertained by reference to the Base Case or Revised Base Case in effect for that year. Once the Revised Base Case is agreed, any amount due to or from the Operator, being the difference (if any) between the Monthly Instalments paid and the Monthly Instalments due for that Service Year to date, shall be paid or recovered by an adjustment to the Monthly Instalment due for the next Month (or any subsequent Month, if and to the extent that paragraph 1.7 applies).

3. **Revised Base Case Recalculation**

- 3.1 In the event that at any time or from time to time during any Service Year:
- 3.1.1 the Scottish Ministers specify that a Revised Tariff Structure or part thereof shall become the Published Tariff during any Service Year or there shall be a Discount Policy Variation and such Revised Tariff Structure or Discount Policy has not been allowed for in the Base Case for that Service Year; or
- 3.1.2 the level of reimbursements received by the Operator in connection with the provision of the Services through the Scottish Government's Concessionary

- Travel scheme are reduced without an equivalent increase in the Published Tariff being authorised by the Scottish Ministers; or
- 3.1.3 pursuant to the terms of the Ship Charters, the sums payable under the Ship Charters are varied (whether on account of Tonnage Tax or otherwise) and such variation has not been allowed for in the relevant Base Case; or
- 3.1.4 the Operator receives notice that the dues payable at any of the Ports or Harbours shall increase during any Service Year and such increase has not been allowed for in the Base Case for that Service Year; or
- 3.1.5 a Fleet Vessel is removed or a New Vessel is delivered or scheduled to be delivered to the Operator by CMAL to be employed in the provision of the Services and the removal of the Fleet Vessel or coming into service of the New Vessel was not allowed for in the Base Case for the relevant Service Year or was allowed for but the Fleet Vessel was not removed or the New Vessel does not come into service within 30 days of the date assumed for the purposes of such Base Case, or at any time or from time to time within 12 months of the New Vessel coming into service the New Vessel is not performing according to specification; or
- 3.1.6 there is a change in Applicable Law such that as a consequence of such change the Operator incurs an unavoidable material change in its Operating Costs or is reasonably likely to experience an unavoidable material change in Revenue; or
- 3.1.7 additional, altered or removed sailings from the Scheduled Ferry Service have been authorised by the Scottish Ministers; or
- 3.1.8 the Scottish Ministers have approved changes to the Unscheduled Ferry Services or the scope of associated lifeline services within Schedule 3; or
- 3.1.9 A Material Reduction in Revenue has occurred: revenue for a relevant Service Year had fallen by at least 10% in real terms from the Revenue in the preceding Service Year; and Revenue can reasonably be forecast to continue at levels at least 10% in real terms below that in the preceding Service Year for subsequent Service Years; or
- 3.1.10 There are changes to the employers pension contribution rates; or
- 3.1.11 There are material changes to costs or revenues resulting from the operational deployment or use any new Transferring Asset,

then either Party shall be entitled to require a Revised Base Case Recalculation for the current and subsequent Service Years.

3.2 A Revised Base Case Recalculation shall be subject to the following provisions:

3.2.1 with regard to paragraph 3.1.2 ,the Operator (i) has not in any way contributed to such reduction in reimbursements and (ii) has taken all reasonable steps to mitigate the consequences of such reduction in reimbursements;

3.2.2 only the relevant Operating Costs and or Revenue assumptions in the current Base Case shall be adjusted to take account of the effect of the matters set out at paragraphs 3.1.1 to 3.1.11 or any of them;

3.2.3 with regard to paragraph 3.1.4, that the Operator (i) has not in any way contributed to such increase in Port or Harbour dues and (ii) has taken all reasonable steps to mitigate the consequences of such increase in Port or Harbour dues which shall include but not be limited to requesting from the Harbour authority the full justification for the increase and an explanation of any investment funded thereby and submitting any such justification and explanation to the Scottish Ministers and shall pursue any action reasonably requested by the Scottish Ministers until the Scottish Ministers are satisfied that the increases are reasonable and have been applied in good faith and that (iii) any increase in Port or Harbour dues does not relate to any reduction in the number of carryings;

3.2.4 with regard to paragraph 3.1.5, only actual information regarding costs directly associated with procuring and taking delivery of the New Vessel from the 30th day after the assumed date of delivery including inter alia all costs relating to pre-delivery surveys, inspections, superintendence, supernumeraries and delivery costs or the rearrangement of the same (so far as not allowed for in the Base Case), as the case may be, and variations in Operating Costs and Revenue consequent on the coming into service of the New Vessel and any deployment of a Cascaded Vessel shall, so far as known or reasonably foreseeable, be incorporated;

3.2.5 with regard to paragraph 3.1.9, the Operator (i) has not in any way contributed to such material difference in Revenue and (ii) has taken all reasonable steps to mitigate the consequences of such material difference in Revenue, including full consideration of all possible variations to the

Services (including but not limited to the Fares, Timetable and Vessel deployment).

- 3.3 If the Scottish Ministers agree the Revised Base Case Recalculation then the Revised Base Case Recalculation will come into effect as the Revised Base Case for the relevant Service Year. If the Scottish Ministers and the Operator do not agree any items in the Revised Base Case Recalculation within 10 Business Days of submission of the Revised Base Case Recalculation then the matter may be referred by either Party to be resolved in accordance with the Dispute Resolution Procedure.

4. Actual Outcome Statement

- 4.1 As soon as possible and in any event within 2 Months after the expiry of each Service Year, the Operator will submit a draft Actual Outcome Statement to the Scottish Ministers which must be prepared in accordance with this paragraph 4.

- 4.2 The draft Actual Outcome Statement will show:

4.2.1 the actual Operating Costs, actual Fuel Costs and actual Revenue for that Service Year set out in the same format as the Base Case Schedule for that Service Year;

4.2.2 the difference between Grant payments made in respect of that Service Year for the Operating Costs and Fuel Costs, less Revenue and the actual Operating Costs and Fuel Costs, less actual Revenue;

4.2.3 the amount the Operator considers he is entitled to be paid as Outcome Operator's Return; and

4.2.4 the difference between payments made in the Service Year for the Operator's Return and the entitlement to the Operator's Return under paragraphs 5.3 and 5.4.

- 4.3 The draft Actual Outcome Statement for each Service Year must be prepared using the actual Operating Costs, Fuel Costs, Revenue and the Outcome Operator's Return of the Operator for that Service Year except that:

4.3.1 no adjustment will be made to the Operating Costs or the Revenue in respect of any Performance Deductions or in respect of any fines or penalties incurred by the Operator;

4.3.2 no allowance will be made for any reduction in Revenue arising from the Operator allowing concessions or discounts which have not been provided

- for in the Base Case or consented to by the Scottish Ministers or otherwise reducing or not applying the Published Tariff;
- 4.3.3 no account will be taken of the costs of any reference to the Expert;
- 4.3.4 the Published Tariff will be assumed to have been adjusted by RET Formula or Tariff Index Linked as appropriate and rounded up on every applicable occasion unless agreed otherwise by the Scottish Ministers;
- 4.3.5 adjustments to the Operating Costs in respect of increased wages or salaries will be limited to the Index Linked increase of the wages and/or salaries allowed for in the applicable Service Year;
- 4.3.6 no adjustment will be made to any interest charges (except so far as reasonably arising from changes in interest rates during the relevant Service Year) made or provided;
- 4.3.7 if any reduction in the Operating Costs is attributable to the deferring of scheduled expenditure or arises from a breach by the Operator of his obligations under this Contract then the Grant must be reduced by an amount equal to such reduction;
- 4.3.8 no allowance shall be made for any Operator Employment Liabilities and
- 4.3.9 no provision will be made for the cost of acquisition or improvement of Transferring Assets or for Capital Supplements.
- 4.4 The draft Actual Outcome Statement must be submitted to the Scottish Ministers together with such supporting vouchers, reports and other documentation as the Scottish Ministers may reasonably require for the purpose of substantiating the Actual Outcome Statement. If the Scottish Ministers agree the draft Actual Outcome Statement as submitted or with variations agreed with the Operator then the Actual Outcome Statement will come into effect. If the Scottish Ministers and the Operator do not agree any item in the Actual Outcome Statement within 10 Business Days of submission of the draft Actual Outcome Statement the Scottish Ministers must refer such dispute to the Dispute Resolution Procedure.
- 4.5 The Actual Outcome Statement will be used only for the purpose of establishing the Excess Payment and the Varied Reward.

5. Annual Grant Reconciliations

Reconciliation of Operating Costs and Revenues

- 5.1 If, in the agreed Actual Outcome Statement the parts of Grant payments made in the relevant Service Year for the Operating Costs, less Revenue exceed the actual Operating Costs, less actual Revenue then the difference will be deemed to be the Excess Payment. (For the avoidance of doubt, if in any Service Year Grant payments made in the Service Year for the Operating Costs, less Revenue are less than the actual Operating Costs, less actual Revenue then the Excess Payment will be deemed to be nil.);
- 5.2 The Sum Due to the Scottish Ministers is the net Excess Payment minus the Varied Reward. Where this is positive, the Operator must repay the Sum Due to the Scottish Ministers within 20 Business Days of the Actual Outcome Statement being agreed or determined as the case may be and the Excess payment if not repaid as aforesaid may be deducted (in whole or in part) by the Scottish Ministers from any subsequent Monthly Instalment.

Calculation of Varied Reward

- 5.3 Where the Excess Payment has arisen as a result of reductions in Eligible Costs and/or an increase in Eligible Revenue then the Varied Reward shall be calculated as set out in paragraph 5.4. The Excess Payment to be taken into account for the purposes of calculating the Varied Award (“the Eligible Excess Payment” or “EEP”) is the value of the actual Eligible Cost savings and/or the value of any increase in Eligible Revenue.
- 5.4 The Varied Reward shall be the proportion of the Eligible Excess Payment as set out below:

If the Eligible Excess Payment is		Entitlement to Varied Reward as a proportion of the Eligible Excess Payment
More than	But not more than	
£0	£200,000	75%
£200,000	£400,000	$\text{£}(\text{EEP} - 200,000) \times 50\% + 150,000$
£400,000	£600,000	$\text{£}(\text{EEP} - 400,000) \times 25\% + 250,000$
£600,000		$\text{£}(\text{EEP} - 600,000) \times 10\% + 300,000$

Reconciliation of Fuel Costs

- 5.5 The Operator shall be under an obligation to take all reasonable steps to procure the fuel used for the Services on the best terms available to the Operator which shall not depart materially from the terms normally negotiated with the Operator's suppliers across the Operator's activities, and which may include where agreed by the Scottish Ministers entering into a fuel cap contract with a supplier whereby the Operator is assured that it will not have to pay more than more than a stated price for fuel. Where the procurement of fuel involves the receipt of a discount or payment of a commission to the Operator, then that discount or commission in relation to the fuel used for the services shall be deducted from the cost of the fuel submitted in the Monthly Fuel Statement and Annual Fuel Statement.
- 5.6 The Operator must submit to the Scottish Ministers within 14 days of the end of each Month a Monthly Fuel Statement accompanied by copies of relevant invoices and delivery notes. The Monthly Fuel Statement must show the Projected Fuel Liability for that month by grade and by vessel, and the actual cost incurred by the Operator in purchasing each grade of fuel used by each Vessel for that month.
- 5.7 The Operator must submit to the Scottish Ministers a draft Annual Fuel Statement within two Months after the expiry of each Service Year together with such supporting vouchers reports and other documentation as the Scottish Ministers may reasonably require , including the Monthly Fuel Statements, for the purpose of substantiating the Annual Fuel Statement. If the Scottish Ministers agree the draft Annual Fuel Statement as submitted or with variations agreed with the Operator then the Annual Fuel Statement will come into effect for the purpose of establishing the Annual Fuel Reconciliation Payment. If the Scottish Ministers do not agree any item in the Fuel Statement within 10 Business Days of submission of the draft Annual Fuel Statement then the Scottish Ministers shall refer such dispute to the Expert in accordance with Clause 23.
- 5.8 The Annual Fuel Statement must show the cost of purchasing the fuel used by applying the Average Price per Litre (or for electricity the Average Price per KW Hour) paid to the actual Volume (litres or KW Hours) used by the Operator for each grade of fuel used for the relevant Service Year (the Fuel Cost). The Average Price per Litre or KW Hour will be derived from the total quantity of each grade of fuel purchased by the Operator during that Service Year and the total delivered price paid by the Operator for each grade of fuel in that Service Year.

- 5.9 The Annual Fuel Reconciliation Payment will be itemised in the Annual Fuel Statement and shall be the multiple of the actual Volume (litres or KW Hours) used and the difference between the Average Price per Litre and the price per litre or the Average Price per KW Hour and the price per KW Hour stated in the Fuel Management Plan for each grade of fuel in that Service Year , or in a situation where there has been more than one Fuel Management Plan issued during a Service Year the calculation will be undertaken for each period during which each Fuel Management Plan was used to calculate the Monthly Instalment of the Grant and shall be the multiple of the actual Volume (litres or KW Hours) used during that period and the difference between the Average Price per Litre and the price per litre or the Average price per KW Hour and the price per KW Hour stated in the relevant Fuel Management Plan for each Fuel Management Plan in that Service Year applied for each grade of fuel.
- 5.10 The Annual Fuel Reconciliation Payment will be paid to or by the Scottish Ministers within 20 Business Days of the Annual Fuel Statement being agreed or determined as the case may be. If due by the Scottish Ministers will be paid to the Operators' Revenue B Account and if due by the Operator and not paid in accordance with Paragraph 5.9, may be deducted by the Ministers from any subsequent payment to the Operators Revenue B Account.
- 5.11 If during the Grant Period the Operator permanently replaces any of the Vessels in accordance with Clause 6 (with the consent of the Scottish Ministers), and/or if a Variation to the Services comes into effect, the Projected Volume must be amended to reflect any changes in fuel consumption.

Performance Deductions

- 5.12 Without prejudice to and in addition to the rights of the Scottish Ministers under any other provisions of this Agreement, where the Operator has failed to meet any of the Performance Measures, the Scottish Ministers may make deductions (Performance Deductions) in accordance with the Performance Regime. The Scottish Ministers must notify the Operator of its liability to Performance Deductions, but any delay or failure to notify shall not impair the right of the Scottish Ministers to make Performance Deductions.
- 5.13 The Scottish Ministers are entitled to recover Performance Deductions by way of deduction from the Monthly Instalment payable in any Month after the Quarter in respect of which the Performance Deductions arose. Any Performance Deductions

which remain unrecovered after the Termination Date or the Expiry Date (as the case may be) will be a debt due and owing to the Scottish Ministers.

- 5.14 No Performance Deductions under Paragraph 5.12 may be made where the failure to meet any Performance Measure is directly attributable to a Relief Event.
- 5.15 If the Scottish Ministers make a Performance Deduction for a failure to meet the Performance Measure for Reliability, they must not make a Performance Deduction for a failure to meet the Performance Measure for Punctuality (Connectivity) or the Performance Measure for Punctuality (Timetable) if all failures arise from the same circumstances and vice versa.
- 5.16 If the Scottish Ministers make a Performance Deduction for a failure to meet the Performance Measure for Punctuality (Connectivity), they must not make a Performance Deduction for a failure to meet the Performance Measure for Punctuality (Timetable) if both failures arise from the same circumstances and vice versa.

6. Capital Supplements

- 6.1 The Scottish Ministers may make advances by way of grant (a Capital Supplement) to the Operator towards the provision or improvement of Transferring Assets agreed to be acquired or improved by the Operator for the purposes of the Services calculated and paid in accordance with this Paragraph 6.
- 6.2 The Operator may submit to the Scottish Ministers at any time a proposal for the acquisition or improvement of Transferring Assets and such proposal will contain such detail of the assets, their purpose, cost and terms and conditions of acquisition or improvement as may be reasonably required to enable the Scottish Ministers to evaluate the proposal.
- 6.3 In the event that the Scottish Ministers approve the proposal for the acquisition or improvement of the Transferring Assets, and such approval may be subject to such conditions as the Scottish Ministers may reasonably determine, they must advise the Operator and the issue of such approval will oblige the Scottish Ministers to pay a Capital Supplement to the Operator in respect of the Transferring Assets equal to the approved cost to the Operator of the Transferring Assets.
- 6.4 Capital Supplements will be paid by instalments or in a lump sum according to the Operator's contract for the acquisition or improvement of the Transferring Assets. The Operator will include the Capital Supplement in the Monthly Instalment and

submit to the Scottish Ministers a certified copy of each receipt for payment in connection with Transferring Assets not less than 14 days before the due date for payment of the Monthly Statement and the Scottish Ministers will pay the Capital Supplement by way of lump sum or instalment (as the case may be) to the Operator as part of the Monthly Instalment. For the avoidance of doubt the Capital Supplement will not be a part of nor included in the Operating Costs.

6.5 Capital Supplements will be paid to the Operator's Revenue B Account.

7. TUPE

7.1 If it is found after the Commencement Date that TUPE does not (as a matter of law) apply the Grant will be reduced from what would otherwise be payable by the equivalent to any reductions in the Operator's costs as a consequence of that finding. Similarly, if it is found on termination of the PSC that TUPE does not (as a matter of law) apply, there will be an adjustment to the Base Case for the benefit of the Operator for the final Service Year to take into account any statutory redundancy payment costs incurred by it as a result and which exceed the sum of the greater of either (i) the Operator's Return for the final year of the PSC or (ii) £250,000.

PART B: FINANCIAL DISTRESS

1. BACKGROUND

1.1 This schedule provides for the assessment of the financial standing of the Operator and the Guarantor and the establishment of trigger events relating to changes in such financial standing which if breached will have specified consequences.

2. CREDIT RATING AND DUTY TO NOTIFY

2.1 The Operator warrants and represents to the Scottish Ministers for the benefit of the Scottish Ministers that as at the Mobilisation Date the long term credit ratings issued for the Operator and the Guarantor by the Rating Agencies are [insert, following the identification of the Successful Participant and prior to execution of the contract, the relevant long term ratings, or in the absence of existing Ratings Agency reporting set out alternative credit rating parameters acceptable to the Scottish Ministers].

2.2 The Operator shall (and shall procure that the Guarantor shall) maintain the credit ratings as set out in this schedule.

2.3 The Operator shall promptly notify (or shall procure that its auditors promptly notify) the Scottish Ministers in writing if it or the Guarantor cease to have their credit ratings (and in any event within ten (10) Business Days of ceasing to have such credit ratings).

2.4 The Operator shall:

2.4.1 regularly monitor the Operator's and the Guarantor's credit ratings with the Rating Agencies; and

2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Scottish Ministers in writing following the occurrence of a Financial Distress Event, or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Business Days of the date on which the Operator first becomes aware of the Financial Distress Event, or the fact, circumstance or matter which could cause a Financial Distress Event.

2.5 Where the Operator's or the Guarantor's credit ratings provided by the Rating Agencies listed above in Para 2.1 differ, for the purposes of the Financial Distress

Events, the relevant Credit Rating Threshold shall be determined by reference to the lower credit rating.

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

- 3.1.1 the Operator's or the Guarantor's credit ratings dropping one or more levels below the Credit Rating Threshold;
- 3.1.2 the Operator or the Guarantor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Operator or the Guarantor; or
- 3.1.4 the Operator or the Guarantor committing a material breach of covenants to its lenders;
- 3.1.5 a subcontractor notifying the Scottish Ministers that the Operator has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or
- 3.1.6 any of the following:
 - 3.1.7 commencement of any litigation against the Operator or the Guarantor with respect to financial indebtedness or obligation under a service contract;
 - 3.1.8 non-payment by the Operator or the Guarantor of any financial indebtedness;
 - 3.1.9 any financial indebtedness of the Operator or the Guarantor becoming due as a result of an event of default; or
 - 3.1.10 the cancellation or suspension of any financial indebtedness in respect of the Operator or the Guarantor,

which the Scottish Ministers reasonably believes could impact on the continued performance and delivery of the Services in accordance with this Contract;

then, immediately upon notification of the Financial Distress Event (or if the Scottish Ministers becomes aware of the Financial Distress Event without notification and

brings the event to the attention of the Operator), the Operator shall have the obligations and the Scottish Ministers shall have the rights and remedies as set out in paragraphs [3.3] – [3.6].

3.2 In the event of a late or non-payment of a subcontractor pursuant to paragraph [3.1.5], the Scottish Ministers shall not exercise any of its rights or remedies under paragraph [3.3] without first giving the Operator ten (10) Business Days to:

3.2.1 rectify such late or non-payment; or

3.2.2 demonstrate to the Scottish Ministers' reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Operator shall [(and shall procure that the Guarantor shall)]:

3.3.1 at the request of the Scottish Ministers meet with the Scottish Ministers as soon as reasonably practicable (and in any event within three (3) Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Scottish Ministers may permit and notify to the Operator in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and

3.3.2 where the Scottish Ministers reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract

submit to the Scottish Ministers for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Scottish Ministers may permit and notify to the Operator in writing); and

provide such financial information relating to the Operator or the Guarantor as the Scottish Ministers may reasonably require.

3.4 The Scottish Ministers shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Scottish Ministers does not approve the draft Financial Distress Service Continuity Plan it shall inform the Operator of its reasons and the Operator shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted

to the Scottish Ministers within five (5) Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Scottish Ministers or referred to the Dispute Resolution Procedure under paragraph [3.5].

3.5 If the Scottish Ministers considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution procedure.

3.6 Following approval of the Financial Distress Service Continuity Plan by the Scottish Ministers, the Operator shall:

3.6.1 on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Contract;

3.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph [3.6.1], submit an updated Financial Distress Service Continuity Plan to the Scottish Ministers for its approval, and the provisions of paragraphs [3.4] and [3.5] shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

3.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Operator reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Scottish Ministers and the parties may agree that the Operator shall be relieved of its obligations under paragraph 3.6.

4. **TERMINATION RIGHTS**

4.1 The Scottish Ministers shall be entitled to terminate this Contract under clause 55 if:

4.1.1 the Operator fails to notify the Scottish Ministers of a Financial Distress Event in accordance with paragraph 2.4; and/or Clause 52.1

4.1.2 the parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 to 3.5 and/or Clause 53.1.8.

4.1.3 the Operator fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.6.3 and/or Clause 53.1.8.

5. PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the Operator's obligations and the Scottish Ministers' rights and remedies under paragraphs 3 or Clause 6.2, if, following the occurrence of a Financial Distress Event pursuant to paragraphs 3.1.2 to 3.1.6 the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

5.1.1 the Operator shall be relieved automatically of its obligations under paragraphs 3.3 to 3.6 and/or Clause 6.2; and

5.1.2 the Scottish Ministers shall not be entitled to require the Operator to provide financial information in accordance with paragraph 3.3 or Clause 6.2.

APPENDIX TO SCHEDULE 13 PART B: CREDIT RATING THRESHHOLDS

[TO BE COMPLETED FOLLOWING THE IDENTIFICATION OF THE SUCCESSFUL
PARTICIPANT AND PRIOR TO EXECUTION OF THE CONTRACT]

SCHEDULE 14 – OPERATIONAL MANAGEMENT

PART A: OPERATIONAL MANAGEMENT SYSTEMS

The Operator shall comply with the following Operational Management Systems:

**[Insert proposals specified by Successful Participant as his answers to Vol 2
Appendix 2 Questions 2.1 to 2.4]**

**The Operator shall, in addition to any other reporting requirements of the Contract,
monitor and report against the following Key Performance Indices.**

**[Insert proposals specified by Successful Participant as his answer to Vol 2
Appendix 2 Question 2.5]**

PART B: REPORTING REQUIREMENTS

1. A Grant management reporting systems shall include a methodology for procedures, format and scheduling for submitting reports on payment issues:

- 1.1 Base Case revisions
- 1.2 Revised Base Case Recalculation
- 1.3 Actual Outcome Statement
- 1.4 Annual Grant Reconciliation of Monthly Instalments
- 1.5 Fuel Cost reconciliation
- 1.6 Performance deductions

2. The following Data will be kept by the Operator as updated at the end of each month throughout the duration of the Services and archived for the duration of the Services in a form agreed by the Scottish Ministers and will be provided to and as directed by the Scottish Ministers on request:

2.1 Statistical Data

2.1.1. Traffic volumes by route by trip:

Passengers (including breakdown of adults, concessions, children, infants)

Cars (including breakdown of small CVs)

Coaches

Coach passengers (including breakdown of adults, concessions, children, infants)

Freight units

- Accompanied
- Unaccompanied – trailers
- Unaccompanied – containers
- Trade cars

Livestock

Other Freight

2.1.2. Vessel trips by route – analysis to include cancelled trips and reasons for cancellation i.e. weather, ship technical faults etc., delayed trips and turn-around times

2.1.3. Fuel consumption details by ship showing monthly consumption, and (where available from on board vessel monitoring equipment) consumption per trip for main fuel types (i.e. main engines / auxiliary engines)

2.2 Utilisation

- Car deck utilisation by route by trip
- Passenger utilisation by route by trip
- Vehicles left on Quay by route by trip

2.3 Financial Data – P&L Detail

(a)Revenues

Monthly revenues split into major streams

Revenues from transporting passengers and their vehicles – on each route

- Passengers
- Cars
- Coaches
- Coach passengers

Revenue from passengers from On-board Sales by route

- Food & Beverage Sales
- Retail/Gifts
- Gaming
- Recliner seats (if applicable)

Revenues (on each route) from Commercial Vehicles (by metered length) and Freight

- Accompanied CV
- Unaccompanied – trailers
- Trade cars(if applicable)
- Livestock

- Loose Freight and parcels
- Other Freight (on each route by relevant measure)

(b)Direct costs to generate revenues

Variable costs incurred to support these revenue streams , e.g.

- Port dues
- Commissions
- Cost of goods sold
- Damage Claims / Passenger claims including personal injury
- Other variable costs

Monthly Vessel cost details by ship

Crew costs – Deck & Technical

Split Basic Pay, Overtime, Other payments, NI and Pension costs

Crew costs – On-board services

Split Basic Pay, Overtime, Other payments, NI and Pension costs

Fuel costs by type, including lubricants

Any delivery charges and/or sludge disposal costs to be shown separately.

Impact of any financial instruments (e.g. hedges, caps, collars) to be shown separately

Vessel Port Expenses, i.e. ships dues, mooring costs, light dues etc.

Vessel maintenance costs

Vessel refit costs [A note on accounting treatment here would be useful to ascertain if any costs are/have been deferred over a calendar year]

Vessel insurance costs

Charter costs

Lease costs (if and when applicable)

Other vessel costs not covered by the above, e.g. consumables

Monthly Port costs by port and function

Staff costs - Split Basic Pay, Overtime, Other payments, NI and Pension costs

Property costs – rents, rates etc.

Utility costs – gas, electric, water

Repair & Maintenance costs

Port Equipment repairs & maintenance cost

Port Equipment Ownership costs split depreciation, leasing, rental costs

Weighbridge

**Overhead costs (Split by function if relevant, e.g. Executive, Finance, IT, HR,
Sales & Marketing)**

Staff costs - Split Basic Pay, Overtime, Other payments, NI and Pension costs

Equipment costs – depreciation, rentals, lease costs

Property costs

Advertising costs

Agency costs

Insurance costs

Bad Debt provisions / write-offs

Other Costs

Any exceptional items charged to the operation

2.4 Employee Data

Current Organisation Chart

Confirmation of total complement of all seafarers allocated to each vessel

Seafarers - Employees Terms and Conditions including pay rates and allowances

Shore Staff - Employees Terms and Conditions including pay rates and allowances

Bonus arrangements

Details of Seafarers roster e.g. time on/time off

Details of any shore rostering arrangements (e.g. Port / Call Centre operatives)

Sickness profiles / overall sickness levels and details of any long term sickness

Company Handbook

Company policies

Payroll – payment dates (monthly, weekly), payment requirements

Headcount (on a head and full time equivalent (FTE) basis

Age and Service profiles

Details of any Union agreements

Last 3 years pay deals / awards

Details of Agency Staff / Agency agreements

Details of any employee disputes / consultations / tribunals / grievances

Details of pension arrangements (if applicable)

2.5 Vessel Data / Audit requirements of Passengers

Full list of General Particulars for all Vessels

Asset List of items owned by Operator and values attributed to all items not part of Transferring Assets

Asset List of items of Transferring Assets associated with specific vessels including condition and estimated remaining lifespan.

Detailed spares lists by vessel with values attributed to all items, if not part of leased vessels

Full list of vessel trading / classification certificates (Detailed list of requirements to be developed)

Copy of latest Quarterly Listing from Class – Lloyds Register

Confirmation of any Conditions of Class and date when required to be resolved.

Access to the Lloyds Register system CD Live for the three passenger (leased) vessels.

Copies of General Arrangement, Capacity, Fire & Safety, Plans

Copies of Trim and Stability Booklets

Full profiles and plan views showing all dimensions of external ramps

Confirmation of external ramp fit to all linkspans in all ports served

Copies of manufacturers bulletins for major items of machinery e.g. main engines, generators, external ramps etc.

Copies of Muster Lists approved by MCA for the three passenger vessels

Vessel refit and dry-docking history including the refit cycle - periods out of service for annual/intermediate surveys

Vessel refit and dry-dock programme – future

Capital Investment programme (Capex) and projected future requirements

Copies of latest Vessel Operating Costs budget and spend against budget

2.6 Vessel Inspections.

(Full access to the following should also be available in situ during inspections of Passenger & Charter Vessels as applicable.)

All vessel certificates and Class and documentary records

All survey, maintenance, refit and dry-dock records

Inspection of all passenger areas, decks, cargo holds, engine rooms and spaces.

Confirmation of vessel consumptions per day and per leg of fuel oil, MGO, Lub Oil,

Fresh water & any variances by season

Inspection of a number of ballast tanks e.g. Fore Peak, Aft Peak and possibly two other ballast tanks

Confirmation of vessel compliance with SOLAS, MARPOL, ISPS, and Stockholm Agreement

Confirmation of IT systems installed and vessel communications systems

Inspection of all crew cabins

Confirmation of spare parts held on-board and ashore

Confirmation of any outstanding planned maintenance

Confirmation of any outstanding vessel repairs e.g. hull damage etc.

2.7 Vessel Procurement Contracts of Passenger & Charter Vessels.

Details (start date, contracting parties, value, synopsis of purpose and effect and end dates) of all current contracts including:

Charterparties for chartered vessels

Fuel Oil Contracts

Marine Gas Oil Contracts

Lub Oil Contracts

Chemicals Contracts

Paint Contracts

Refit & Dry-dock Contracts

GMDSS Maintenance Contracts

Any other substantive contracts in relation to the vessels

2.8 Other Contractual arrangements.

Port agreements

Security (by port)

Stevedoring (by port)

Ship management

Equipment leases

Insurance policies / risk coverage

Property Agreements (Rental agreements, Land leasing agreements)

Any other contracts/agreements requiring up front funding or Guarantees

2.9 Other Operational issues

Identify any exceptional issues around freight

- Pattern of Perishable Goods
- Pattern of Livestock carryings
- Pattern of Hazardous cargo carryings

2.10 Registers

Transferring Assets Register

Subcontracts register

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Clyde and Hebrides Ferry Services Contract for Provision of Ferry Services and Harbour Operating Agreement	ITT Documents Volume 3: Contract for Provision of Ferry Services : Schedule 14
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Appendix I: Vessel trading / Classification certificates

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SCHEDULE 15 - PERFORMANCE REGIME

1. Purpose of this Schedule

1.1. This Schedule sets out the Performance Measures to which the Operator must deliver the Services, the mechanism by which any failure to meet applicable Performance Measures will be managed, and the method by which the Operator's performance under this Contract will be monitored.

1.2. Performance Measures and Performance Deductions are intended to:

1.2.1. ensure that the Services are of a consistently high quality and meet the Scottish Ministers' requirements as to performance and reliability;

1.2.2. provide a mechanism whereby the Scottish Ministers can show meaningful recognition of any failure by the Operator to deliver the level of public services for which it has contracted and, where appropriate, which will be recognised by the service users as consequential to their inconvenience and/or loss; and

1.2.3. incentivise the Operator to meet the Performance Measures and to remedy any failure to meet the Performance Measures expeditiously.

SCHEDULE 15 – PERFORMANCE REGIME

PART 1: MONITORING PROCEDURES

1. Weekly Operational Issues Review

1.1. The Operator and the Scottish Ministers shall hold each week an Operation Issues Review to provide a weekly dialogue on current operational issues which should be shared to ensure that each party is informed over the conduct and impact of the Services on users and communities. The Operational Issues review may be conducted by telephone or other electronic media which gives at least voice broadcast and reception between all persons participating.

2. Monthly Performance Measure Report and Service Performance Review Meetings

2.1. The Operator shall supply separate reports to the Scottish Ministers for each route as follows:

2.1.1. Monthly Reports on Performance Measures for each of the following matters summarised in the relevant form of Annex Part A and where appropriate including for any Relief Events:

2.1.1.1. Reliability

2.1.1.2. Punctuality (connectivity) - Band C Sailings only

2.1.1.3. Punctuality (timetable)

2.1.1.4. Compliance

2.1.1.5. Customer Complaints

2.1.1.6. Relief Events and, if appropriate, the steps being taken to alleviate the consequences of Relief Events;

2.1.1.7. Harbour Inoperability (Third Party) including any relevant Relief Events;

2.1.1.8. Safety compromising events.

2.1.2. A monthly summary (in the form of Annex Part B, Part C or in a form to be agreed or otherwise specified by The Scottish Ministers as relevant) of:

2.1.2.1. Monthly carrying information relating to the Scheduled Ferry Services on a route and vessel specific basis summarised from its management systems (which information shall show a detailed breakdown of passengers, differentiated vehicle classes,

unaccompanied trailers Dangerous Goods, livestock and loose freight and parcel services;

2.1.2.2. Monthly carrying information relating to any Unscheduled Ferry Services undertaken by the Operator in accordance with Schedule 3 in the relevant quarter, including information relating to the date, time, carryings, route and purpose of such Unscheduled Ferry Services;

2.1.2.3. Monthly carrying information relating to any Associated Lifeline Services undertaken by the Operator in accordance with Schedule 3 in the relevant quarter, including information relating to the date, time, carryings, route and purpose of such Associated Lifeline Services;

2.1.2.4. Ports usage;

2.1.2.5. the position in relation to Performance Deductions due on Performance Measures before Relief Events are taken into account, and Performance Measures after Relief Events are taken into account in a format to be agreed with the Scottish Ministers;

2.1.2.6. Scheduled Maintenance carried out and compliance with the Scheduled Maintenance Programme in a format to be agreed with the Scottish Ministers;

2.1.3. Monthly detailed statements of both revenue, variable costs incurred to support those revenue streams and monthly vessel operating costs on a vessel specific basis differentiating between general shore costs, fuel costs, sea-going costs, marketing costs and other costs, including separate financing statements for Grant supported services, which clearly demonstrates that there is no cross subsidisation with any other of the Operator's activities or the activities of any Associated Company.

2.2. The Operator and the Scottish Ministers shall attend Monthly Service Performance Review Meetings on a monthly basis (unless otherwise agreed) and the Monthly Reports on Performance Measures and Monthly Summaries shall be reviewed and their contents acknowledged by the parties at the meeting(s) which immediately follows the issue of such reports in accordance with paragraph 2.1.

2.3. The Monthly Service Performance Review Meetings will be the forum for the review by the Operator and the Scottish Ministers of the Monthly Reports on

Performance Measures and Monthly Summaries. The Performance Review Meetings shall (unless otherwise agreed):

- 2.3.1. take place within four weeks of the Monthly Reports on Performance Measures and Monthly Summaries being issued by the Operator;
- 2.3.2. take place at such location and time (within normal business hours) at the Scottish Ministers' premises unless otherwise agreed in advance, no provision will be made by the Scottish Ministers for the expenses of the Operator's representatives to attend such meetings;
- 2.3.3. be attended in person by the Operator's Representative and the Scottish Ministers' Representative and relevant [Key Personnel]; and
- 2.3.4. be fully minuted by the Operator. The prepared minutes will be approved or corrected by the Scottish Ministers and thereafter circulated by the Operator to all attendees at the relevant meeting and also to the Senior Operator's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding Performance Review Meeting will be agreed and signed by both the Operator's Representative and the Scottish Ministers' Representative at each meeting.

3. Quarterly Performance Measure Report and Service Performance Review Meetings

- 3.1. A quarterly Performance Measure Report will be prepared by the Operator on a route specific basis to supplement the monthly, and annual reports and summarize the performance in such format as notified by the Scottish Ministers from time to time. As a minimum, the following information shall be provided in respect of that quarter and rolling year as appropriate:
 - 3.1.1. for each Performance Measure, the actual defined performance achieved over the quarter, and that achieved over the previous 12 months;
 - 3.1.2. a summary of all Performance Measure Failures, Incidents and Problems that occurred during the reported period the cause of the fault and action being taken to reduce the likelihood of recurrence;
 - 3.1.3. which Performance Measure Failures and Incidents remain outstanding and progress in resolving them;

- 3.1.4. for any repeat Incidents and Performance Measure Failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 3.1.5. for any Performance Measure Failures for which the Operator believes Relief Event will apply, the underlying cause of such Performance Measure Failure. The Operator shall ensure that each such Performance Measure Report will be accompanied by appropriate data and information which substantiate the circumstances or events giving rise to Relief Event;
 - 3.1.6. the value of Performance Deductions accruing in that reporting period;
 - 3.1.7. the Performance Deductions to be applied in respect of that reporting period indicating the Performance Measure Failure(s) to which the Performance Deductions relate;
 - 3.1.8. a rolling total of the number of Performance Measure Failures that have occurred and the amount of Performance Deductions that have been incurred by the Operator over the previous 12 months; and
 - 3.1.9. such other details as the Employer may reasonably require from time to time.
- 3.2. The Operator and the Scottish Ministers shall attend on a quarterly basis on the request of either the Operator or the Scottish Ministers a Quarterly Service Performance Review Meeting, which can be held either co-incidentally with or separate from the Monthly Service Performance Review Meeting which is scheduled to occur within the timescale of the relevant Quarterly Service Performance review Meeting.
- 3.3. The Service Performance Review Meetings will be the forum for the review by the Operator and the Scottish Ministers of the Performance Measure Reports. The Performance Review Meetings shall (where requested to take place and unless otherwise agreed):
- 3.3.1. take place within four weeks of the Performance Measure Report being issued by the Operator;
 - 3.3.2. take place at such location and time (within normal business hours) at the Scottish Ministers' premises unless otherwise agreed in advance, no provision will be made by the Scottish Ministers for the expenses of the Operator's representatives to attend such meetings;

- 3.3.3. be attended in person by the Operator's Representative and the Scottish Ministers' Representative and relevant [Key Personnel]; and
- 3.3.4. be fully minuted by the Operator. The prepared minutes will be approved or corrected by the Scottish Ministers and thereafter circulated by the Operator to all attendees at the relevant meeting and also to the Senior Operator's Representative and any other recipients agreed at the relevant meeting. The minutes of the preceding Performance Review Meeting will be agreed and signed by both the Operator's Representative and the Scottish Ministers' Representative at each meeting.

4. Six Monthly Summary and Annual Reports

- 4.1. A 6 monthly summary report shall be provided by the Operator in a form to be agreed or otherwise specified by the Scottish Ministers covering the 6 Month periods on the Performance Measures. This should be made available following approval by the Scottish Ministers for publication in the Operator's annual report, for use by the Scottish Ministers as necessary and to the members of the consultation meetings with users required under Clause 40;
- 4.2. Annual Reports shall be provided by the Operator on:
 - 4.2.1. the Customer Complaint Process;
 - 4.2.2. safety to include detailed information about any reportable accidents, including any serious injuries, fatalities, and any events hazardous to vessels; and
 - 4.2.3. environmental performance detailing the fuel efficiency characteristics achieved by the vessels compared to the baseline (tender) predictions and the energy efficiency measures introduced across the services and their impact on reducing Carbon release.

5. Annual review of Plans

- 5.1. The Scottish Ministers and the Operator shall meet annually to review each of:
- 5.1.1. The Health and Safety Plan;
 - 5.1.2. The Environmental Management Plan;
 - 5.1.3. The Marketing Plan;
 - 5.1.4. The Human Resources Plan;
 - 5.1.5. The Equalities Impact Assessment.

6. General reporting requirements

- 6.1. The Operator shall (except where in any instance it has been otherwise agreed by the Scottish Ministers) submit each report fully completed as required to the Scottish Ministers within 6 weeks after the end of the relevant Month/Quarter/Six monthly period or Year.
- 6.2. Where the Scottish Ministers considers that the Operator has failed to provide a Performance Measure Report which materially complies with paragraph 4.1, the Scottish Ministers will notify the Operator in writing of such non-compliance (which notice shall contain details of the alleged non-compliance) within five Business Days of the date of the Scottish Ministers' receipt of the Performance Measure Report or within five Business Days of the date on which the Performance Measure Report should have been provided in accordance with paragraph 4.1 and the Operator shall remedy such failure within ten (10) Business Days.
- 6.3. The Scottish Ministers are entitled to raise any additional questions and/or request any further information regarding any Performance Measure Failure.
- 6.4. The Operator shall provide to the Scottish Ministers such supporting documentation as they may reasonably require in order to verify the level of the performance by the Operator and the calculations of the amount of Performance Deductions for any specified period.
- 6.5. The Operator shall hold in electronic format and continue to hold for the duration of the contract copies of all information and reports (including initial and agreed versions where appropriate) for which he is responsible for providing and shall provide any such information to the Scottish Ministers at

any time on request and within two working days following the Termination Date or one month of the Expiry Date as appropriate.

- 6.6. The Scottish Ministers may, at their own expense, carry out such monitoring and/or audit of the Services as they determine may be required in order to measure the performance of the Operator against the Performance Measures, provided that such monitoring and/or audit does not have an adverse effect on the provision by the Operator of the Services or its ability to meet the Performance Measures.

7. Finance And Efficiency Information

- 7.1. The Operator shall submit either as part of the audited financial statements submitted pursuant to Clause 47.8 or separately:-
- 7.1.1. efficiency and financial information at the end of each Service Year;
 - 7.1.2. detailed statements of both revenue and expenditure on a route by route basis where appropriate differentiating between general seagoing and vessel maintenance costs, catering and other service costs, seagoing staff costs, marketing costs and other costs;
 - 7.1.3. detailed statements of both revenue and operating costs on a Harbour and Port basis where appropriate differentiating between general shore costs, stevedoring and security costs, catering and other service costs, shore staff costs, marketing costs and other costs;
 - 7.1.4. separate financing statements for Grant (including the Fuel Supplement and any Capital Supplements) supported services, which clearly demonstrate that there is no cross subsidisation with any other of the Operator's activities or the activities of any Associated Company;
 - 7.1.5. Grant and Fuel Supplement as a percentage of turnover; and
 - 7.1.6. separate accounting for the receipt and expenditure of Capital Supplements.

**This is the Annex A referred to in the foregoing Schedule 15 – Part 1 to the
 Contract Between the Scottish Ministers and XXXX**

**SCHEDULE 15 – PART 1
 ANNEX - MONITORING PROCEDURES – SAMPLE REPORTS**

PART A

MONTHLY REPORT ON PERFORMANCE MEASURES

Route	Time Period- Month/Year	

Reliability:

Vessel	In the relevant Month:			
	No. of scheduled sailings	No. of sailings completed	Sailings completed (%)	Applicable Relief Event(s) (if any)

Punctuality (Connectivity) – Band C Sailings only:

Vessel	Number of times in the relevant Month that the Vessel:		
	Met the Performance Measure	Did not meet the Performance Measure	Applicable Relief Event(s) (if any)

Punctuality (Timetable):

Vessel	Number of times in the relevant Month that the Vessel:		
	Met the Performance Measure	Did not meet the Performance Measure	Applicable Relief Event(s) (if any)

Compliance:

Enforcing Body (HSE, SEPA or other governmental or statutory body or agency)	Number of notices issued or criminal fines or convictions	Further details of notices / fines / convictions

Customer Complaints:

Quantity of customer complaints received IN THE PRECEDING MONTH in relation to the Services	Quantity of customer complaints not resolved by the Customer Complaints Process BY THE END OF THE CURRENT MONTH	Further details of customer complaints (including how complaint was escalated / resolved) in accordance with the Customer Complaint Process

Relief Events:

Description of relief event (including No of Days Timetable affected and No of Sailings Affected)	Measures taken to alleviate the event or to avoid similar events

Harbour inoperability:

Description of Harbour Inoperability (including No of Days Timetable affected and No of Sailings Affected)	Classified as relief Event (Yes/No)	Cause – including alleged responsible third party

Safety:

Description of Safety Compromising Event	Reportable event	Serious injury	Fatality	Event hazardous to vessel

Date of Submission of report	Signed on behalf of the Operator (Name and designation)

PART B

MONTHLY SUMMARY OF SERVICES

Time period Month/ Year	
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SCHEDULED FERRY SERVICES									
Route name	Vessel	Passenger	Vehicles						Loose freight & parcels
			Cars	Coaches	Unaccompanied vehicles	Commercial Vehicles (per lane metre)	Livestock (per lane metre)	Dangerous Goods	
Monthly total									
Cumulative total for Service Year to date									

UNSCHEDULED FERRY SERVICES									
Route name	Vessel	Passenger	Vehicles						Loose freight & parcels
			Cars	Coaches	Unaccompanied vehicles	Commercial Vehicles (per lane metre)	Livestock (per lane metre)	Dangerous Goods	
Monthly total									
Cumulative total for Service Year to date									
Route name	Vessel	Provide reasons for deploying Unscheduled Ferry Service							

ASSOCIATED LIFELINE SERVICES									
Route name	Vessel	Passenger	Vehicles						Loose freight & parcels
			Cars	Coaches	Unaccompanied vehicles	Commercial Vehicles (per lane metre)	Livestock (per lane metre)	Dangerous Goods	
Monthly total									
Cumulative total for Service Year to date									
Route name	Vessel	Provide reasons for deploying Associated Lifeline Service							

Date of Submission of report	Signed on behalf of the Operator (Name and designation)

PART C

MONTHLY SUMMARY OF PORT USAGE

Time period Month/ Year	
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	Route name	Harbour name	Vessel	Usage
Scheduled Ferry Services				
Unscheduled Ferry Services				
Additional Ferry Services				

Date of Submission of report	Signed on behalf of the Operator (Name and designation)

SCHEDULE 15 – PERFORMANCE REGIME

PART 2: PERFORMANCE MEASURES

1 Definitions

1.1 In this Part 2 of the Schedule 15 words and expressions shall, except where the context otherwise requires, have the following meanings assigned to them:

Connecting Public Transport Service means a service so indicated in the Timetable;

Day of Third Party Inoperability in respect of any Harbour means that the Harbour Inoperability (Third Party) applies to that Harbour for more than 3 hours in any 24 hour period;

Harbour Inoperability (Third Party) in respect of any Harbour means that a Harbour cannot be used by any third party entitled to access in accordance with the relevant Harbour Order because it is unsafe or otherwise unfit for use. A Harbour is unsafe or otherwise unfit for use in this context if its condition is such that the harbour manager or other responsible person decides that it is unsafe or otherwise unfit for use for operational or safety reasons provided always that a Harbour which suffers Harbour Inoperability (Third Party) as a direct consequence of a Performance Relief Event shall be deemed not to be inoperable for the purposes of this Section;

HOA means the Harbour Operating Agreement between the Operator and CMAL;

Harbour Operating Fee shall have the meaning given to it in the HOA;

Harbour Orders means Harbour Orders, Harbour Revision Orders or Harbour Empowerment Orders and shall have the meaning attributed to each in the HOA or any harbour access agreement or terms and conditions;

Lifeline Service Relief means the cancellation or late arrival of any sailing if the cause of the cancellation or lateness is attributable to the requirement for the provision of services of a lifeline nature, such services including but not limited to:

the transportation of exceptionally high, wide or long loads which require the

Operator to deviate from normal operating procedures for the relevant Vessel;
the spreading of ashes at sea or the accommodation of other funeral arrangements;

the transportation of coaches or buses to or from a Slip; and

cases of urgent medical need,

in all cases where, without prejudicing the provision of that lifeline service taken as a whole, such cancellation or lateness (or the effects thereof) could not have been avoided or mitigated by the exercise of due diligence by the Operator;

Performance Failure means a failure by the Operator to meet any Performance Measure which gives rise or should give rise to a deduction;

Performance Relief Event means:

- (a) any Relief Event;
- (b) any Upgrade Relief Event;
- (c) the late arrival of any sailing by a Vessel which has come into service within the preceding 9 months, where the cause of the lateness is adverse weather or tidal conditions which have not previously been encountered by that Vessel on that route and where such lateness could not have been avoided or mitigated by the exercise of due diligence by the Operator; and
- (d) VC Unavailability due to requirements of operational safety, exclusion zones, dangerous materials, abnormal loads, and maintenance and repair of the Vessels.

Relevant Sailings means the actual number of sailings to be made in any Service Year as set out in the relevant Published Timetable together with, in relation to those Scheduled Ferry Services which are described in the Published Timetable as being provided “frequently”, the actual number of sailings made as so described on those routes in the preceding Service Year;

Reporting Failure means a failure by the Operator to record a Performance Failure;

Sailing means Band A Sailings together with Band B Sailings and Band C Sailings;

Third Party Vessel means any vessel other than a Vessel;

Upgrade Relief Event means the unavailability of any part of a Vessel in accordance with an Owners Upgrade Programme or a Charterers' Upgrade Programme (as both those terms are defined in the FCA) where such unavailability could not have been avoided or mitigated by the exercise of due diligence by the Operator;

Vehicle Capacity (or VC) means the total area designed to accommodate vehicles on a Vessel; and

VC Unavailability means any Vehicle Capacity which is not made available by the Operator for the provision of vehicle accommodation on any Sailing.

2 Performance Measures For Part Of A Month:

- 2.1 In the event that part of a Month has to be measured for the purposes of this Part of the Schedule 15, Performance Measures and deductions will be pro-rated relative to the number of scheduled sailings in that Month and relevant part of a Month.

3. Performance Measures For Reporting Failure:

- 3.1 If in respect of any Month the Scottish Ministers notify the Operator that there has been a Reporting Failure, the Scottish Ministers shall be entitled to make the following deductions:

- a) the deduction which would have been made for that Performance Failure but was not, due to the Reporting Failure (the "Deduction"); and
- b) a sum equal to:
 - i. five times the Deduction; or
 - ii. in the event that it is agreed or determined that the Performance Failure was due to fraudulent or wilful default by the Operator, thirty times the Deduction;

provided that:

1. where the Operator has remedied the Reporting Failure prior to the earlier of (1) the Scottish Ministers issuing said notice and (2) the date

falling twelve (12) weeks after the date on which the relevant report should have been made, deductions equal to (a) and 50% of those set out at (b)(i) above shall be made in respect of that Reporting Failure; and

2. where, in respect of a series of Reporting Failures occurring on the same day, the Operator notifies the Scottish Ministers within 7 days of receipt of said notice that the later Reporting Failures are directly related to the initial Reporting Failure in that series then deductions pursuant to (b)(i) above may be made only in respect of the initial Reporting Failure.

SECTION A

PERFORMANCE MEASURE FOR RELIABILITY:

<p>Performance Measure for Reliability</p>	<p>The Performance Measure for Reliability is the completion of each Sailing referred to in the Published Timetable.</p> <p>A Sailing which either does not commence or does not complete in accordance with the Published Timetable as a direct consequence of a Performance Relief Event shall be deemed to have been completed for the purpose of the Performance Measure for Reliability.</p> <p>A Sailing which arrives at the same time as, or after, the next Sailing advertised in the Published Timetable is due to arrive for the same route will be regarded as not having been completed.</p> <p>For the purposes of this Performance Measure, Published Timetable shall mean:</p> <ol style="list-style-type: none"> a) the Published Timetable; b) the Published Timetable as the same may have been varied temporarily in accordance with Clauses 8.5 or 14; or
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	c) where a timetable has been published for an Unscheduled Ferry Service, that timetable.
Periods to be measured	The Month commencing on the Commencement Date and each successive Month thereafter
Classification of reliability over period:	Deduction to apply to classification:
1 For each of Band A Sailings, Band B Sailings or Band C Sailings, less than 100% of Sailings meet the Performance Measure for Reliability	Deduct 100% of the AGRS for Band A Sailings, Band B Sailings or Band C Sailings as appropriate for each affected Sailing

SECTION B

PERFORMANCE MEASURE FOR PUNCTUALITY (Connectivity) – Band C Sailings only:

Performance Measure for Punctuality (Connectivity)	<p>A Band C sailing meets the Performance Measure for Punctuality (Connectivity) if:-</p> <p>(c) in the case of a Band C Sailing, the sailing is Completed to provide sufficient time for passengers, including those with a disability to board a scheduled public transport vehicle or vessel which is operating what is defined by the Operator as a Connecting Public Transport Service</p> <p>For the purposes of this Performance Measure, the measure will be deemed to have been met if the Operator and connecting public service agree to delay the connecting service beyond its scheduled time so that passengers, including</p>
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		<p>any with a disability to board the connecting vehicle or vessel.</p> <p>A Vessel which does not meet the Performance Measure for Punctuality (Connectivity) for a Sailing either because it is late, or fails to run, as a direct consequence (in either case) of a Performance Relief Event shall be deemed to have met the Performance Measure for Punctuality (Connectivity) in respect of the relevant Sailing.</p>
	Periods to be measured	The Month commencing on the Commencement Date and each successive Month thereafter
	Classification of punctuality (connectivity) over period:	Deduction to apply to classification:
1	for Band C Sailings Less than 100% of Sailings meet the Performance Measure for Punctuality (connectivity)	<p>For every failure to meet the Performance measure</p> <p>Deduct 25% of the AGRS Band C Sailings as appropriate.</p> <p>This deduction is additional to any deduction made in respect of the same lateness for Punctuality (Timetable).</p>

SECTION C

PERFORMANCE MEASURE FOR PUNCTUALITY (Timetable):

Performance Measure for Punctuality (Timetable)	<p>A sailing meets the Performance Measure for Punctuality (Timetable) if:-</p> <p>(a) in the case of a Band A Sailing, the sailing is Completed within 5 minutes of the Published Timetable and</p> <p>(b) in the case of a Band B Sailing, the</p>
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	<p>sailing is Completed within 10 minutes of the Published Timetable.</p> <p>(c) in the case of a Band C Sailing, the sailing is Completed within 15 minutes of the Published Timetable.</p> <p>For the purposes of this Performance Measure, Published Timetable shall mean:</p> <ul style="list-style-type: none"> a) the Timetable, b) the Timetable as the same may have been varied temporarily in accordance with Clauses 8.5 or 14, or c) where a timetable has been published for an Unscheduled Ferry Service, that timetable. <p>Completed means (in relation to Piers) when the Vessel is all fast and secure alongside or (in relation to Slips) when the ramp stool has made contact with the concrete slip.</p> <p>Unpunctual arrivals are categorised as follows:</p> <p>Band A Sailings</p> <table style="width: 100%;"> <tr> <td style="width: 30%;">Level 1 Lateness</td> <td>arrives 5 -10 Minutes later than Published Timetable</td> </tr> <tr> <td>Level 2 Lateness</td> <td>arrives over 10 Minutes later than Published Timetable</td> </tr> </table> <p>Band B Sailings</p> <table style="width: 100%;"> <tr> <td style="width: 30%;">Level 1 Lateness</td> <td>arrives 10-20 minutes later than Published Timetable</td> </tr> <tr> <td>Level 2 Lateness</td> <td>arrives over 20 Minutes later than Published Timetable</td> </tr> </table>	Level 1 Lateness	arrives 5 -10 Minutes later than Published Timetable	Level 2 Lateness	arrives over 10 Minutes later than Published Timetable	Level 1 Lateness	arrives 10-20 minutes later than Published Timetable	Level 2 Lateness	arrives over 20 Minutes later than Published Timetable
Level 1 Lateness	arrives 5 -10 Minutes later than Published Timetable								
Level 2 Lateness	arrives over 10 Minutes later than Published Timetable								
Level 1 Lateness	arrives 10-20 minutes later than Published Timetable								
Level 2 Lateness	arrives over 20 Minutes later than Published Timetable								

	<p>Band C Sailings</p> <p>Level 1 Lateness arrives 15 – 30 minutes later than Published Timetable</p> <p>Level 2 Lateness arrives over 30 Minutes later than Published Timetable</p> <p>A Vessel which does not meet the Performance Measure for Punctuality for a Sailing either because it is late, or fails to run, as a direct consequence (in either case) of a Performance Relief Event shall be deemed to have met the Performance Measure for Punctuality in respect of the relevant Sailing.</p>
<p>Periods to be measured</p>	<p>The Month commencing on the Commencement Date and each successive Month thereafter.</p>
<p>Classification of punctuality (Timetable) over period:</p>	<p>Deduction to apply to classification:</p>
<p>1 for Band A Sailings, Band B Sailings or Band C Sailings as appropriate Less than 100% of Sailings meet the Performance Measure for Punctuality</p>	<p>For every Level 1 Lateness Deduct 25% of the AGRS for Band A Sailings, Band B Sailings or Band C Sailings as appropriate</p> <p>For every Level 2 Lateness Deduct 50% of the AGRS for Band A Sailings, Band B Sailings or Band C Sailings as appropriate</p>

SECTION D

PERFORMANCE MEASURES FOR COMPLIANCE

<p>Performance Measure for Compliance</p>	<p>The Performance Measure for Compliance is compliance by the Operator with all Applicable Law.</p> <p>This Performance Measure shall only apply to notices or convictions relating to the Approved Service or anything done pursuant to the Principal Contracts.</p> <p>This Performance Measure shall not apply to notices issued on or convictions of the Operator or any subcontractor thereof in respect of actions or incidences of non-compliance by a third party (not being an Associated Company).</p>
<p>Periods to be measured</p>	<p>The Month commencing on the Commencement Date and each successive Month thereafter.</p>
<p>Classification of service levels over period:</p>	<p>Deduction to apply to classification:</p>
<p>1 No notices as a result of non-compliance issued on the Operator or any subcontractor thereof by or on behalf of CMAL (acting in its capacity as statutory harbour authority) HSE, SEPA, Commissioner of Northern Lighthouses or any other governmental or statutory body or agency and no criminal convictions / fines</p>	<p>No Deduction (compliance).</p>
<p>2 1 – 2 notices as a result of non-compliance issued on the Operator or any subcontractor thereof by or on behalf of CMAL (acting in its capacity as statutory harbour authority) HSE, SEPA, Commissioner of</p>	<p>Deduct £1,500 for each notice, conviction or fine.</p>

	Northern Lighthouse or any other governmental or statutory body or agency or a conviction for a summary offence resulting in a Level 1 - 5 fine	
3	3 or more notices as a result of non-compliance issued on the Operator or any subcontractor thereof by or on behalf of CMAL (acting in its capacity as statutory harbour authority) HSE, SEPA, Commissioner of Northern Lighthouses or any other governmental or statutory body or agency or a conviction for an indictable offence	Deduct £3,000 for each notice, conviction or fine.

SECTION E

PERFORMANCE MEASURES FOR SERVICE LEVELS – CUSTOMER CARE AND ACCESSIBILITY PROCESS

Performance Measure for Services – Customer Care and Accessibility Process	<p>The Performance Measure for Service is compliance with the provisions of the Customer Care and Accessibility Process.</p> <p>Where more than one complaint arises out of a single failure by the Operator to comply with a matter addressed in the Customer Care and Accessibility Process, those complaints shall be treated as one complaint for the purposes of this Performance Measure for Customer Care and Accessibility Process.</p> <p>Complaints measured under this Performance Measure shall be limited to those received by the Operator in the period up to the end of the Month</p>
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		following the Month in which the incident giving rise to the complaint occurred.
Periods to be measured		The Month commencing on the Commencement Date and each successive Month thereafter.
Classification of service levels over period:		Deduction to apply to classification:
1	No instances of non-compliance with matters addressed in the Customer Care and Accessibility Process where a complaint has been made.	No Deduction (compliance).
2	1 instance of non-compliance with matters addressed in the Customer Care and Accessibility Process where a complaint has been made.	Deduct 10% of: <ul style="list-style-type: none"> ○ the AGRS for the relevant Sailing or where each incidence of non-compliance affects more than one Sailing the AGRS of the each of the relevant Sailings.
3	2 instances of non-compliance with matters addressed in the Customer Care and Accessibility Process where a complaint has been made.	Deduct 25% of: <ul style="list-style-type: none"> ○ the AGRS for the relevant Sailing or where each incidence of non-compliance affects more than one Sailing the AGRS of the each of the relevant Sailings.
4	3 or more instances of non-compliance with matters addressed in the Customer Care and Accessibility Process where a complaint has been made.	Deduct 50% of: <ul style="list-style-type: none"> ○ the AGRS for the relevant Sailing or where each incidence of non-compliance affects more than one Sailing the AGRS of the each of the relevant Sailings.

SECTION F.1

PERFORMANCE MEASURES FOR SERVICE LEVELS – VEHICLE ACCOMMODATION

Performance	The Performance Measure for Service Levels is the availability of
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<p>Measure for Services –Vehicle Accommodation</p>	<p>vehicle accommodation on any Vessel.</p> <p>This will be measured by reference to the percentage of VC which is not made available by the Operator for the provision of vehicle accommodation on any Sailing.</p> <p>A Vessel which does not meet the Performance Measure for Vehicle Accommodation for a Sailing as a result of that Sailing having been cancelled shall be deemed to have met the Performance Measure for Vehicle Accommodation in respect of the relevant Sailing.</p>
<p>Periods to be measured</p>	<p>The Month commencing on the Commencement Date and each successive Month thereafter.</p>
<p>Deductions to apply to VC Unavailability:</p>	
<p>0 – 10% of VC Unavailable.</p>	<p>No Deduction (compliance).</p>
<p>11 – 50% of VC Unavailable.</p>	<p>Deduct 25% of the AGRS for each affected Sailing.</p>
<p>Over 50% of VC Unavailable.</p>	<p>Deduct 50% of the AGRS for each affected Sailing.</p>

SECTION F.2

PERFORMANCE MEASURES FOR SERVICE LEVELS – CALL CENTRE

<p>Performance Measure for Services – Call Centre</p>	<p>The Performance Measure for Service is the answering of all calls personally by an employee of the Operator between the hours of 8am and 8pm Monday to Saturday (inclusive) and 9am and 7pm on Sundays and public holidays.</p> <p>Average call waiting time will be calculated by aggregating the caller waiting time for every call offered to the Operator and dividing that total by the total number of calls offered. All calls, including those abandoned by the caller before being answered by the Operator, shall be included in the calculation of average call waiting time, such calls to be deemed to have been answered by the Operator at the time of abandonment.</p> <p>The deductions to be applied in respect of the Performance Measure for Service Levels – Call Centre in the first Service Year are set out below. The Deduction to be applied in later Service Years shall be the Deduction applicable to the previous Service Year Index Linked.</p> <p>Deductions shall not be made in the event of:</p> <ul style="list-style-type: none">• failure by British Telecom or the relevant supplier of telephone lines to the Operator at the time to provide the relevant service to the normal required standard or capacity for reasons beyond the Operator's control;
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		<ul style="list-style-type: none"> • emergency or other operational requirement, requiring re-deployment of Call Centre staff; • failure of the Operator's information technology system as a result of action by a third party over whom the Operator has no control; or • increase in call volume caused by any person or group of people making hoax or malicious calls or using the service provided by the call centre other than in good faith.
Periods to be measured		The Month commencing on the Commencement Date and each successive Month thereafter.
Classification of service levels over period:		Deduction to apply to classification:
1	Average call waiting time of less than 30 seconds.	No Deduction (compliance)
2	Greater than 30 seconds but less than or equal to 40 seconds.	£500
3	Greater than 40 seconds but less than or equal to 50 seconds.	£1,000
4	Greater than 50 seconds but less than or equal to 60 seconds	£1,500
5	Greater than 60 seconds but less than or equal to 70 seconds	£2,000

6	Greater than 70 seconds but less than or equal to 80 seconds	£2,500
7	Greater than 80 seconds but less than or equal to 90 seconds.	£3,000
8	Greater than 90 seconds but less than or equal to 100 seconds.	£3,500
9	Greater than 100 seconds but less than or equal to 110 seconds	£4,000
10	Greater than 110 seconds but less than or equal to 120 seconds.	£4,500
11	Greater than 120 seconds	£5,000

SECTION F.3

PERFORMANCE MEASURES FOR SERVICE LEVELS – PORTSIDE SERVICES

Performance Measure for	The Operator shall meet the Performance Measure for Port Services if it provides the Port Services at all applicable times.
Periods to be measured	The Month commencing on the Commencement Date and each successive Month thereafter.
Classification of service levels over period:	Deduction to apply to classification:

1	Failure to provide any one Port Service at any of the Ports.	£310 for each incidence of non-performance.
2	Failure to provide between 2 and 4 Port Services at any of the Ports.	£620 for each incidence of non-performance.
3	Failure to provide between 5 and 7 Port Services at any of the Ports.	£930 for each incidence of non-performance.
4	Failure to provide more than 8 Port Services at any of the Ports.	£1250 for each incidence of non-performance.

SECTION G

PERFORMANCE MEASURE FOR REPORTING:

Performance Measure for Reporting	The Operator meets the Performance Measure for Reporting if it submits the Monthly/Quarterly reports required under Schedule 15 within 6 weeks after the end of the relevant Month/Quarter.
Periods to be measured	Quarterly
Classification of punctuality over period:	Deduction to apply to classification:
1	Failure to submit any of the reports required in accordance with Schedule 15 within 6 weeks after the end of the relevant Month/Quarter.
	Deduct 1% of the following Monthly Instalment.

SECTION H

PERFORMANCE MEASURES FOR SERVICE LEVELS – CUSTOMER COMPLAINTS

Performance Measure for Services	The Performance Measure for Service Levels is
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– Customer Complaints		<p>the quantity of customer complaints received in relation to the Services which, in the opinion of the Scottish Ministers, have not be managed in good faith in accordance with the Customer Complaint Process prior to submission to the Appeals process.</p> <p>Where more than one complaint arises out of a single act or omission by the Operator in relation to the Services, those complaints will be treated as one complaint for the purposes of this Performance Measure for Service Levels. Complaints measured under this Performance Measure will be limited to any complaint which the Scottish Ministers deems to be a valid complaint received by the Operator in the period up to the end of the Quarter following the Quarter in which the incident giving rise to the complaint occurred.</p> <p>For the avoidance of doubt, where a complaint directly relates to an incident in relation to which deductions have been applied pursuant to Sections A, B, C and/or D of this Schedule 15, Part 2, the complaint will be disregarded for the purposes of this Performance Measure for Service Levels.</p>
Periods to be measured		Quarterly
Classification of service levels over period:		Deduction to apply to classification:
1	All valid complaints managed in good faith in accordance with the Customer Complaints Process prior to submission to the Review process	No Deduction (compliance).
2	1 valid complaints failing to be managed in good faith in	Deduct 0.1% of the following Monthly Instalment.

	accordance with the Customer Complaints Process prior to submission to the Appeals process	
3	2 or 3 valid complaints failing to be managed in good faith in accordance with the Customer Complaints Process prior to submission to the Appeals process	Deduct 0.3% of the following Monthly Instalment per complaint.
4	3 or more valid complaints failing to be managed in good faith in accordance with the Customer Complaints Process prior to submission to the Appeals process	Deduct 0.5% of the following Monthly Instalment per complaint.

SECTION I

PERFORMANCE MEASURE FOR FAILURE TO MEET SCHEDULE REQUIREMENTS:

Performance Measure for Meeting the requirements of the Schedules	The Operator meets the Performance Measure if it meets the requirements in the Schedules or is expediently implementing or has implemented the requirements of a Cure Plan
Periods to be measured	Monthly
Classification of compliance over period:	Deduction to apply to classification:
1	Failure to meet the requirements of each Schedule A proportion of the percentages below of the Operator's Return in relation to each schedule where there has been a clear breach or shortfall of the requirements, which proportion shall be set by the Scottish Ministers' Representative following consultation with the Operator's Representative and having regard to the proportionality of any breach or shortfall , subject to an upper limit in aggregate

		of 50% of the Operator's Return and Varied Reward.	
		Schedule	Percentage of Operators Return
		Services (Schedule 3)	13
		Vessels and Ports (Schedule 5)	6
		Mobilisation Plan (Schedule 6)	6
		Marketing Plan (Schedule 7)	13
		Health and Safety Plan (Schedule 8)	6
		Environmental Management Plan (Schedule 9)	6
		Customer Care and Accessibly Process (Schedule 10)	6
		Human Resources and Key Personnel (Schedule 11)	17
		Operational management (Schedule 14)	25

SCHEDULE 15 – PERFORMANCE REGIME

PART 3: RELIEF EVENTS

1 Relief event situations

1.1 The cancellation of any sailing or the late arrival or departure of any sailing if the cause of the cancellation or Lateness (as that expression is used in this Schedule 15) is attributable to:

1.1.1 adverse weather;

1.1.2 tidal conditions;

1.1.3 volume of traffic on any sailing being greater than 70% of the passenger or the vehicle capacity of the relevant Vessel; or

1.1.4 any other safety factor (but not the non-attendance of suitably qualified and experienced staff) outwith the Operator's control which would in the Master's opinion have made the sailing or arrival in accordance with the Published Timetable unsafe or impractical;

and where, without prejudicing the provision of that lifeline service taken as a whole, such cancellation or Lateness (or the effects thereof) could not have been avoided or mitigated or the Lateness reduced by the exercise of due diligence by the Operator. For the purposes of paragraph c) above the passenger capacity shall be determined by the Passenger Safety Certificate and the vehicle capacity shall be the number of car spaces advertised.

1.2 The late departure/arrival of any sailing as a result of:

1.2.1 a departure being held back to await the arrival of a late running scheduled public transport service intended to connect with that sailing; or

1.2.2 the knock on effect of an earlier late arrival where the Lateness is (i) not greater than the Lateness of the earlier service; and (ii) taking that lifeline service as a whole, the Lateness could not have been avoided or mitigated by the exercise of due diligence by the Operator.

1.3 The unscheduled Unavailability of any of the Vessels unless such Unavailability results from the failure of the Operator to comply with its obligations under this Agreement or could have been avoided or mitigated by the exercise of due diligence provided that the Operator has used all

reasonable endeavours to obtain a substitute vessel.

- 1.4 The unavoidable substitution of a vessel of lower specification in the place of any of the Vessels during any period of Scheduled Maintenance including during periods of Scheduled Maintenance lasting less than 72 hours.
- 1.5 Non-availability of, or operational restrictions at, any of the Ports for any reason outwith the Operator's reasonable control including because any facilities at the Ports are being used by vessels other than the Vessels.
- 1.6 Fuel shortages outwith the Operator's reasonable control.
- 1.7 Terrorism, piracy or hijacking.
- 1.8 The occurrence of a Non Contributory Emergency in which a Vessel is or becomes involved.
- 1.9 A delay in a sailing, or the cancellation of any sailing, caused or necessitated by any actions of the emergency services or the British armed forces.
- 1.10 Inoperability unless such Inoperability results from the failure of the Operator to comply with its obligations under this Contract or could have been avoided or mitigated by the exercise of due diligence.
- 1.11 Lifeline Service Relief as defined in Schedule 15 part 2.
- 1.12 The non-availability of Transferring Assets at or, if required, before the Commencement Date: and/or
- 1.13 Any act or omission of the Scottish Ministers in breach of the Contract which causes or materially contributes towards the Operator failing to comply with the Performance Regime.

2 Reporting Relief events

2.1 Reporting of relief events shall be undertaken using the following scheme of codes:

Cause code	Cause description	Qualifying relief event
0	NO DELAY	yes
1	SOLAS DECISION	yes
2	BRIDGE INDUCTION	yes
5	ADVERSE WEATHER	yes
6	VERY HIGH TIDE	yes

7	VERY LOW TIDE	yes
8	BUNKERING ISSUES	no
9	BALLAST OPERATIONS	no
10	MECHANICAL PROBLEMS (SHIP)	no
11	MECHANICAL PROBLEMS (SHORE)	no
12	PIER WORK (Operator or under HOA)	no
13	PIER WORK (EXTERNAL)	yes
14	BROKEN DOWN VEHICLE	yes
15	VOLUME OF TRAFFIC	<70% no >=70% yes
16	CLEARING BACKLOG OF TRAFFIC	yes
17	UNUSUAL LOADING REQUIREMENTS	yes
18	CHARTERED SAILING	yes
19	LIVESTOCK SAILING	yes
20	LATE BUS	yes
21	LATE TRAIN	yes
22	LATE CAR TRAFFIC	yes
23	LATE COMMERCIAL TRAFFIC	yes
24	LATE COACH TRAFFIC	yes
25	LATE FOOT PASSENGER TRAFFIC	yes
26	LATE CONNECTING FERRY	yes
27	LATE FREIGHT	yes
28	LATE LIVESTOCK	yes
30	TIME ON PASSAGE	no
31	NAVIGATIONAL ISSUES	yes
32	DRILLS ON PASSAGE	yes
33	BEREAVEMENT ISSUES	yes
35	SHIP OUT OF POSITION	yes
36	VESSEL CHANGEOVER	no
37	SUBSTITUTE VESSEL (ANNUAL O/HAUL)	yes
38	SUBSTITUTE VESSEL (OTHER REASON)	no
40	INDUSTRIAL DISPUTE (Operator)	no
41	INDUSTRIAL DISPUTE (EXTERNAL)	yes
42	EMERGENCY SAILING	yes

43	MEDICAL EMERGENCY	yes
44	BERTH NOT FREE (EXTERNAL)	yes
45	BERTH NOT FREE (Operator)	no
46	SHIP INVOLVED IN EMERGENCY	yes
47	ACTIONS OF BLUE LIGHT SERVICES	yes
48	HAZARDOUS GOODS SAILING	yes
50	KNOCK-ON DELAY FROM PREV SAIL	yes
51	KNOCK-ON DELAY FROM EXTRA SAIL	yes
55	EXTRA SAILING FOR PREV. DISRUPTION	yes
60	NO CALL REQUIRED	yes
65	TERRORISM OR HIJACKING	yes
66	FORCE MAJEURE EVENT	yes
71	MECHANICAL PROBLEMS (SHIP)	yes
72	MECHANICAL PROBLEMS (SHORE)	yes
73	BUNKERING ISSUES	yes
74	VESSEL CHANGEOVER	yes
75	SCOT MINISTERS APPROVED	yes
76	SUBSTITUTE VESSEL (OTHER REASON)	yes
77	BERTH NOT FREE (Operator)	yes
78	AFFECTED BY PREVIOUS SAILING	yes
79	VESSEL REDEPLOYED	yes
99	ALL OTHERS	no

Advice on the use of these categories is outlined below:

0	No Delay
1	SOLAS decision. This is any decision by the vessel Master in the interest of protecting safety of life at sea. (*)
2	Bridge Induction. Any officer, when new to any particular vessel will require induction in bringing the vessel alongside. This will require due care and as a result take extra time. This code should be used as a cause of this extra time taken. It should only be used during the induction period on that vessel or during circumstances not encountered by that officer on that vessel.

	The officer's name should be noted on the Performance Return. (*)
5	Adverse weather. Used when the delay is directly cause by weather (ranges from high winds to fog). This also covers adverse tidal conditions. Use where the vessel's Master considers that sailing would compromise operational safety, or where these factors cause late arrival or departure.
6	Very High Tide. Use when this causes a delay in berthing.
7	Very Low Tide. As above.
8	Bunkering Issues. To be used if bunkering causes a delay. Details of why should be included. E.g. tanker delayed or slower pump. (*)
9	Ballast Operations. There may be occasion when shifting of ballast causes delay. This can be easily monitored when this cause is used. (*)
10	Mechanical Problems (ship). E.g. ramp failure. (*)
11	Mechanical Problems (shore). E.g. passenger gangway breakdown. Detail whether it is a company owned pier. (*)
12	Pier Work (Operator or under HOA). Use for work carried out at Operator piers. (*)
13	Pier Work (external) Use for work carried out at non-Operator piers. (*)
14	Broken Down Vehicle. This is any non-Operator vehicle breakdown be it on board or on a link-span when it causes delay in loading/unloading the vessel.
15	Volume of Traffic. Use during very busy periods when large loads are causing delay. Do not use a cause for additional sailings. If traffic is left behind and an additional sailing is required, cause code 16 should be used.
16	Clearing Backlog of Traffic. Use for delay code 20 "Additional Sailing" when extra siling is being used to clear traffic left from a previous sailing. See above.
17	Unusual Loading Requirements. Use for delays caused by extra wide or long loads. (*)
18	Chartered Sailing. Only to be used as a cause for an additional sailing where the sailing has been chartered. Details should be provided. (*)
19	Livestock Sailing. Only to be used as a cause for an additional

	sailing where the sailing carries livestock.
20	Late Bus. Use for late connection service buses.
21	Late Train. Use for late connecting trains.
30	Time on Passage. No longer used. Historically used when vessel takes longer during the crossing due to operational requirements. It has been removed from the list.
31	Navigational Issues. 'Preciously river traffic'. Use for delay caused by manoeuvring for other vessels.
32	Drills on Passage. Use when delay is cause by any necessary drill, carried out during passage. Brief detail should be given of the drill. E.g. launching of FRC, emergency steering frill etc. (*)
33	Bereavement Issues. This cause code should be used for scattering of ashes, transfer of remains or any other funeral arrangements. (*)
35	Ship out of Position. Used when a vessel is delayed because it is out of position, most commonly when it has sought shelter in a different harbour due to weather or has provided an extra sailing and needs to get back to the correct port.
36	Vessel Changeover. Most common on Upper Clyde vessels with weekly rotations and when vessels go to different routes to cover annual overhauls
37	Substitute Vessel (Annual Overhaul). Use when a vessel of lower specification is used during scheduled periods of planned maintenance (e.g. annual overhauls). This does not cover vessel breakdown or unscheduled maintenance other than where it is out with the Operator's control.
38	Substitute Vessel (Other Reason). Use when 37 is not appropriate. i.e. when substitute vessel of lower specification is used during periods of unscheduled maintenance. (*)
40	Industrial Dispute (Operator). Any delays or cancellations caused by strike action within the company.
41	Industrial Dispute (External). Any delays or cancellations caused by strike action by other companies.
42	Emergency Sailing. This should be used in conjunction with delay code 20 "additional sailing". Use when the additional sailing is put on for any of the blue light services. (*)
43	Medical Emergency. Use for any medical emergency on board. (This category has a very wide range). (*)

44	Berth Not Free (External). Another operator's vessel may be in the berth.
45	Berth Not Free (Operator). Use when a Vessel is in the berth.
46	Ship Involved in Emergency. This covers any emergency at sea, not caused by the ship i.e. out with the operator's control. (E.g. going to the aid of a stricken vessel). (*)
47	Actions of Blue Light Services. Any delay involving the blue light services. (E.g. awaiting the arrival of an ambulance). This cause should not be used for additional emergency sailings. In such cases cause code 42 should be used. (*)
48	Hazardous Goods Sailing. Use for additional or delayed sailings. Do not use if there is no delay in arrival.
50	Knock-on Delay from Previous Sailing. Only to be used if the sailing is not further late than the previous sailing. If the sailing is further late in arrival then the cause of the extra delay should be recorded. Knock-on delay should never be used for a vessel's first departure in any day. (This is especially important when a vessel sails overnight. i.e. if the next sailing is late a new cause should be used).
51	Knock-on Delay from Additional Sailing. As above yet after an additional sailing. This especially applies to routes where more than one vessel is operating and the vessel making an additional sailing causes a delay to the vessel making the scheduled sailing.
55	Extra Sailing for Previous Disruption. Additional sailings may be provided in remote areas when a previous sailing was cancelled. (E.g. due to adverse weather). In such cases this cause should be used in conjunction with cause code 51 above for subsequent delays. (*)
65	Terrorism or Hijacking.
66	Force Majeure Event
71	Mechanical Problems (ship). E.g. ramp failure. (*)
72	Mechanical Problems (shore). E.g. passenger gangway breakdown. Detail whether it is a company owned pier. (*)
73	Bunkering Issues. To be used if bunkering causes a delay. Details of why should be included. E.g. tanker delayed or slower pump. (*)
74	Vessel Changeover. Most common on Upper Clyde vessels with

	weekly rotation and when vessels go to different routes to cover annual overhauls.
75	Scot Gov Approved
76	Substitute Vessel (Other Reason). Use when 37 is not appropriate. i.e. when substitute vessel of lower specification is used during periods of unscheduled maintenance. (*)
77	Berth Not Free (Operator). Use when an Operator vessel is in the berth.
78	Affected by Precious Sailing
79	Vessel Redeployed
99	All Others. This cause code must only be used when there are no other appropriate codes. If code 99 is used a brief e-mail should be sent to the Performance manger detailing the unique circumstances of the delay.

Code Nos. 71-79 are for use of Performance Monitoring only and are applied to sailing that are excused deductions under the agreed Performance Regime.

SCHEDULE 16 - VARIATION TO SERVICES

Contract Variation Form

<p>This Contract Variation is entered into under and incorporates the provisions set out in the Contract between The Scottish Ministers [the Operator] dated [].</p> <p>The Contract Variation anticipated by this Contract Variation Form will commence on [] and expire (unless terminated earlier in accordance with the Contract) on [].</p>	
Title of Contract Variation	
Originator	Date
	Telephone
PART 1	
DESCRIPTION OF CONTRACT CHANGE: The Contract shall incorporate the following Contract Variation : [A Description of the Contract Variation should be inserted here]	
INTENDED PURPOSE OF THE CONTRACT CHANGE: The Operator and the Scottish Ministers jointly intend that the purpose of the Contract Variation will be: [A description of what it is intended that the provision of the Contract Variation will accomplish should be inserted here]	
COST VARIATIONS: In respect of the Contract Variation defined above, the Grant which the Scottish Ministers will pay to the Operator will be amended as follows: [All changes to the Grant payable by the Scottish Ministers and the duration of those changes in respect of the Contract Variation should be inserted here]	

MILESTONE DATES:

[The Parties should identify here any Milestone Dates (if any) in respect of the implementation of the Contract Variation]

SIGNED on behalf of the Scottish Ministers	SIGNED BY on behalf of [the Operator]
Name:	Name:
Title:	Title:
Signature:	Signature:
Date:	Date:

THIS CONTRACT VARIATION FORM WILL NOT BE VALID UNLESS SIGNED ON BEHALF OF THE SCOTTISH MINISTERS

SCHEDULE 17 - BENCHMARKING

1. FREQUENCY OF BENCHMARK REVIEW

- 1.1 The Scottish Ministers may, by written notice to the Operator, require a Benchmark Review of any or all of the Services.
- 1.2 The Scottish Ministers shall require a Benchmark review of all of the Services during third Service Year.
- 1.3 The Scottish Ministers will not be entitled to carry out a Benchmark Review during the first 2 year period from the Commencement Date, nor at intervals of less than 12 months after any previous Benchmark Review. The Scottish Ministers will not request more than 2 Benchmark Reviews of all the Services.

2. PURPOSE AND SCOPE OF BENCHMARK REVIEW

- 2.1 The purpose of a Benchmark Review will be to establish whether a Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The scope of the Benchmarked Services will be identified by the Scottish Ministers in the written request given under paragraph 1.

3. APPOINTMENT OF BENCHMARKER

- 3.1 The Employer must appoint the Benchmarker to carry out the Benchmark Review.
- 3.2 The costs and expenses of the Benchmarker and the Benchmark Review will be met by the Scottish Ministers. However, each Party must bear its own internal costs of the Benchmark Review.

4. BENCHMARKING PROCESS

- 4.1 The Scottish Ministers will require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker may reasonably request in all the circumstances. The plan must include:

- 4.1.1 a proposed timetable for the Benchmark Review;
 - 4.1.2 a description of the information that the Benchmarker requires each Party to provide;
 - 4.1.3 a description of the benchmarking methodology to be used;
 - 4.1.4 a description that demonstrates objectively and transparently that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives;
 - 4.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
 - 4.1.6 a description of how the Benchmarker will scope and identify the Comparison Group; and
 - 4.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group.
- 4.2 Each Party must give notice in writing to the Benchmarker and to the other Party within 10 days after receiving the draft plan, advising whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan. Neither Party will unreasonably withhold or delay its approval of the draft plan. Any suggested amendments must be reasonable.
- 4.3 Where a Party suggests amendments to the draft plan under paragraph 4.2, the Benchmarker must, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.2 will apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under paragraph 4.2 will be treated as approval of the draft plan by that Party.
- 4.5 Once the plan is approved by both Parties, the Benchmarker will carry out the Benchmark Review in accordance with the plan. Each Party must procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Operator fails to provide any

information requested from it by the Benchmarker and described in the plan such failure will constitute a material Default for the purposes of this Contract.

4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at all times reasonably requested by the Benchmarker, provided that the Benchmarker is instructed to minimise any disruption to the Services.

4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.

4.8 Once it has received the information it requires, the Benchmarker will:

4.8.1 finalise a sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The selection of the Comparison Group (both in terms of number and identity of entities) and Comparable Services will be a matter for the Benchmarker's professional judgment using:

4.8.1.1 information from other service providers to the Scottish Ministers;

4.8.1.2 survey information;

4.8.1.3 market intelligence;

4.8.1.4 the Benchmarker's own data and experience;

4.8.1.5 relevant published information;

4.8.1.6 information from consultancies and/ or other vendors or purchasers of Comparable Services; and

4.8.1.7 information from 'in-house' providers to the Scottish Ministers to the extent that Benchmarker considers that they are valid comparators;

4.8.2 by applying the adjustment factors listed in paragraph 4.9 and from an analysis of the Comparable Services derive the Equivalent Services Data;

- 4.8.3 using the Equivalent Services Data calculate the Average Price;
 - 4.8.4 compare the Operating Costs attributable to the Benchmarked Services (having regard in particular to the Performance Measures and Performance Deductions regime) with the Average Price using the Equivalent Services Data; and
 - 4.8.5 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are Good Value.
- 4.9 In carrying out the benchmarking analysis the Benchmarker will have regard to the following matters when performing a comparative assessment of the Benchmarked Services and the Comparable Services in order to derive Equivalent Services Data:
- 4.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - 4.9.2 any front-end investment and development costs of the Operator;
 - 4.9.3 the Operator's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
 - 4.9.4 the extent of the Operator's management and contract governance responsibilities; and
 - 4.9.5 any other factors reasonably identified by the Operator, which, if not taken into consideration, could unfairly cause the Operator's pricing to appear non-competitive (such as erroneous costing or over-aggressive pricing).

5. BENCHMARKER'S REPORT

- 5.1 The Benchmarker will be required to prepare a Benchmark report and deliver it simultaneously to the parties, at the time specified in the plan approved under paragraph 4 of this schedule, setting out its findings. Those findings will be required to:

- 5.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
- 5.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services; and
- 5.1.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Operating Costs to make that Benchmarked Service or those Benchmarked Services as a whole Good Value.
- 5.2 The Benchmarker will act as an expert and not as an arbitrator.
- 5.3 For the avoidance of doubt, Benchmark Reviews will not result in any increase to the Operating Costs or any decrease in the performance of any Services or Performance Measures.
- 5.4 If the Benchmark report states that any Benchmarked Service is not Good Value, or that the Benchmarked Services as a whole are not Good Value then the Operator must (subject to paragraphs 5.6 and 5.7) treat the changes set out in the Benchmark report as a deemed Cure Plan and implement them as soon as reasonably practicable within a timescale agreed with the Scottish Ministers but in any event within no more than one month.
- 5.5 Subject to the Operator's right to dispute or reject the Benchmark report under paragraphs 5.6 or 5.7 of this schedule, if the Benchmark report determines that any or all of the Benchmarked Services are not Good Value, any failure by the Operator to reduce the Operating Costs in accordance with such timescales agreed between the parties under paragraph 5.4 of this schedule will, without prejudice to any other rights or remedies of the Scottish Ministers, constitute an Event of Default for the purposes of this Contract.
- 5.6 The Operator is entitled to reject a Benchmark report if the Operator reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this schedule in any material respect.

- 5.7 The Operator will not be obliged to implement any Benchmark report to the extent this would cause the Operator to provide the Services at a loss, or to the extent the Operator cannot technically implement the recommended changes.
- 5.8 In the event of a dispute or rejection of the Benchmark report under paragraphs 5.6 and/or 5.7 of this schedule the matter will be settled in accordance with Clause 51 (Dispute Resolution Procedures) of the Contract. For the avoidance of doubt in the event of a dispute between the parties, the Operator must reduce the Grant in accordance with the Benchmark report and paragraph 5.4 (where applicable) pending the dispute resolution process.
- 5.9 On conclusion of the dispute resolution process, if it is determined that all or any part of the Benchmark report recommendations regarding any reduction in the Grant will not continue to be implemented by the Operator, the Scottish Ministers must repay to the Operator within 30 days the difference between the revised Grant paid by the Scottish Ministers up to and including the date of the settlement of the dispute and the date upon which the recommended reduction in Grant took effect.

INCORPORATION OF THE SCHEDULES

The foregoing Schedules 1-17 are those schedules referred to in the Clauses of the Contract and form part of the Contract.

Signed for and on behalf of the Scottish Ministers	Signed for and on behalf of XXXX
Signature.....	Signature.....