

Caledonian Maritime Assets Limited

Terms and Conditions of Harbour Use



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Caledonian Maritime Assets Limited

Terms and Conditions of Use

Part I – Definitions and Interpretation

1. Definitions and Interpretation

1.1. Within these Terms the following words and phrases shall have the following meanings: -

“**At Anchor**” when used in relation to a Vessel means that she is attached to the ground by one or more anchors;

“**Approaches**” means the approaches to the Harbour;

“**Berth**” means the space on water or land from time to time allocated to the Customer for the Vessel;

“**Berthed**” when used in relation to a Vessel means secured to Land or Harbour Premises or secured to any other Vessel so berthed;

“**Breach of Duty**” means breach: -

- (a) of obligation, arising from the express or implied terms of the Contract, to take reasonable care or exercise reasonable skill in the performance of the Contract;
- (b) of any common law duty to take reasonable care or exercise reasonable skill;
- (c) of the duty of care which as occupier of premises is reasonable in the circumstances to see that a person entering such premises will not suffer injury or damage; or
- (d) of any statutory duty to take reasonable care;

“**By Day**” means between the hours of sunrise and sunset;

“**By Night**” means between the hours of sunset and sunrise;

“**Charges**” means the charges which arise under or due pursuant to the Contract and shall include but not be limited to the fares, tolls, rates and dues of every description as specified in the Schedule of Charges;

“**Collisions Regulations**” means regulations for the prevention of collisions made under Section 85 of the Merchant Shipping Act 1995;

“**CMAL**” means Caledonian Maritime Assets Limited, incorporated under the Companies Acts (Registered Number SC001854) and having its Registered Office at Municipal Buildings, Fore Street, Port Glasgow, Renfrewshire, PA15 5EQ and including, where the context so admits, its holding, subsidiary and associated companies, and their successors and assignees from time to time;

“**Container**” means any container whatsoever in which Goods are or may be packed or conveyed and shall include but not be limited to any container designed to form part of a vehicle or of a trailer to a vehicle or any standard shipping container empty or loaded, including flats, reefers and tank containers;

“Contract” means the contract for the provision to the Customer of Services by CMAL including, without prejudice to the generality of the foregoing, as provided for in Clause 2.1;

“Customer” means any Person expressly contracting with CMAL for the Services and that Person’s agents, and shall absent such a Person mean the Owner;

“Day Mark” means any flag burgee, pennant, ball, shape, cone, cylinder, drum or any other object whatsoever of such colour, form, dimensions or character as are prescribed pursuant to the terms to be exhibited by day, whether singly or in combination by any Vessel as a visual signal;

“Directions” means the harbour directions as specified in the Schedule of Directions;

“Dispute Resolution Procedure” means the procedure for the resolution of any disputes or differences between the Parties as set out in Condition 31 (*Dispute Resolution*);

“Dredger” means any Vessel, whether self-propelled or not, engaged in dredging, excavating, raking, breaking, drilling, boring, screwing or eroding or dispersing sand or other material in the Harbour;

“Facilities” means such facilities as may be provided by CMAL from time to time pursuant to the Contract and shall include but not be limited to manpower, experience, advice, administration, management services, means of communication, power, plant, machinery and equipment of any description (including without prejudice to the foregoing generality vessels, vehicles, cranes, grabs, lifts, conveyors and fork-lift trucks), Harbour Premises or Containers;

“Floating Structure” means a non-propelled float, raft, pontoon, caisson, float elevator, float dock, floating crane, floating derrick, salvage lighter, pipe-laying barge, oil rig, pumping platform or house-boat;

“Goods” means any items which are the subject of the Contract (whether or not in the ownership of the Customer) and shall include but not be limited to cargo, wares, merchandise, any vehicle handled as cargo, any grain, fish, livestock and animals of all descriptions, any oils, liquids and bases and any other materials, property or any thing whatsoever including any part thereof, any package or Container;

“Group Company” means a subsidiary or holding company of CMAL or a subsidiary of such holding company (as the terms “subsidiary” and “holding company” are defined in Section 1159 of the Companies Act 2006) and “Group Companies” shall be construed accordingly;

“Harbour” means the area of the relevant harbour from the list of harbours set out in the Schedule together with including the Harbour Premises and Approaches;

“Harbour Master” means CMAL’s harbour master and includes that person’s deputies and assistants and any other employee of CMAL or other Person as may from time to time perform the role of harbour master for CMAL either generally or for a specific purpose;

“Harbour Premises” means the quays, berths, landing places and all other works, Land or buildings for the time being vest in or occupied or administered by CMAL as part of the Harbour Undertaking;

“Harbour Undertaking” means the harbour undertaking for the time being of CMAL;

“HMRC” means HM Revenue and Customs;

“International Code of Signals” means the code adopted by the Fourth Assembly of the Inter-Governmental Maritime Consultative Organisation (IMO) in 1965 and any subsequent amendments adopted thereafter;

“Land” includes land covered by water, any interest in the land and any servitude or right in, to or over the land;

“Lighter” means any dumb barge or other like Vessel without motor power which is used for the carriage of Goods;

“Lifeline Ferry Services” means any ferry services operated pursuant to a public service contract with the Scottish Ministers;

“Master” in relation to a Vessel means any person having or taking the command, charge or management of the Vessel for the time being;

“Moored” when used in relation to a Vessel means: -

- (a) made fast either ahead or astern or both at a mooring chain or buoy;
- (b) made fast both ahead and astern by anchors; or
- (c) secured alongside another Vessel so made fast;

“Owner” in relation to a Vessel shall include the owner, agent, Master, charterer, consignee or other person in charge of the Vessel, and in relation to Goods includes the owner, agent, consignor, shipper, consignees or other person depositing, in charge of or holding title to the Goods and their respective agents in relation thereto;

“Person” shall include any individual, partnership, company, statutory or other body or association whether unincorporated or incorporated;

“Prolonged Blast” means a blast of from 4 seconds to 6 seconds;

“Services” means berthing, unberthing, shifting, loading, discharging, transportation, carriage, warehousing, marine services, pilotage and such other services as may be provided from time to time by CMAL pursuant to the Contract, including passenger facilities and/or amenities;

“Schedule” means the Schedule annexed and executed as relative hereto;

“Schedule of Charges” means the standard tariff of charges published under the title of Schedule of Berthing Charges and Harbour Charges at CMAL owned Piers and Slipways by CMAL as applied by CMAL to the Harbour from time to time;

“Schedule of Harbour Directions” means the Directions and Byelaws published by CMAL as applied by CMAL to the Harbour from time to time;

“Terms” means these Terms and Conditions of Trading, read together (subject to Condition 2.2) with the Schedule of Charges and Schedule of Harbour Directions as respectively in force from time to time;

“Underway” when used in relation to a Vessel means a Vessel that is not at anchor or moored or made fast or aground, and includes a Vessel drifting with her anchor on the ground; and

“Vehicle” means a vehicle, machine, plant and equipment (including any mobile crane or excavator), trailer or chassis (whether or not carrying or incorporating any Container).

“**Vessel**” means every description of vessel however propelled or moved, and includes anything (whether in, on, under or supported by a cushion of air over water) constructed or used to carry persons or Goods by water and a seaplane on or in the water, and will include floating production storage and offloading vessels.

1.2. In these Terms: -

- 1.2.1. the headings appearing in the Terms are for identification only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of the Terms;
- 1.2.2. a reference in the Terms to a statute, statutory provision or subordinated legislation is a reference to such as it is in force from time to time, taking account of any statute, statutory provision or subordinate legislation which it amends or re-enacts; and
- 1.2.3. in the event of a conflict between the Terms and Schedule of Charges, the Terms shall prevail.

Part II – Basis of Contract

2. Extent of the Contract

2.1. Unless specifically agreed in writing by the Harbour Master:

- 2.1.1. Save for statutory powers and obligations, the Terms shall be the sole conditions of the Contract and shall apply to the supply of the Facilities or Services by CMAL to the exclusion of any other conditions, whether put forward by the Customer or not and of any representations outside the Terms.
- 2.1.2. If the Customer’s acceptance document, purchase order or other documentation, whether received by CMAL before or after notification of the Terms, contains terms or conditions additional to or at variance with the Terms, then every such additional or varying term or condition shall be of no effect.
- 2.1.3. All Persons, Vessels, Vehicles, Containers and Goods entering the Harbour and all Persons entering into a contract with CMAL are subject to the Terms.
- 2.1.4. CMAL only accepts a Vessel or Goods for any purpose subject to the Terms and delivery of Goods to CMAL or arrival of a Vessel in the Harbour shall be deemed to be acceptance by the Customer of the Terms.

2.2. CMAL will review the Terms from time to time and upon publication of an update to the Terms, the Terms as so revised shall apply to all subsequent business subject to any future review of the Terms.

3. Provision of Services

3.1. CMAL may in its discretion provide the Services or procure that the Services are provided by: -

- 3.1.1. another Group Company; or
- 3.1.2. a successor or assignee or sub-contractor of CMAL.

3.2. Where CMAL procures that the Services are provided by another Group Company or a successor or assignee or sub-contractor of CMAL, references in the Terms to CMAL shall apply equally to such Group Company, successor, assignee or sub-contractor.

4. Risk & Insurance

All Goods within the Harbour, the Harbour Premises are the sole responsibility of the Customer in every respect and shall at all times remain at the entire risk of the Customer. The Customer is advised to make appropriate comprehensive insurance arrangements in respect thereof. Subject to Condition 11.1, the Customer will indemnify CMAL against all proceedings and claims and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of any loss of or damage to the Goods.

5. Ownership and Authority

- 5.1. The Customer warrants that it is either (a) the Owner of the Goods and/or the Vessel and has the full power to enter into the Contract and to accept the Terms; or (b) is unconditionally authorised by the Owner of the Goods and/or the Vessel to do so. The Customer shall indemnify CMAL against any loss or damage, including consequential loss, which CMAL may incur or suffer as a result of or arising from a breach of this warranty by the Customer.
- 5.2. The Customer may, subject to the prior written consent of the Harbour Master, give written authority for the Goods or any part thereof to be transferred by CMAL to the account of another party (the “**New Customer**”), but subject to the Customer procuring that before the effective date of such transfer the Customer notifies CMAL in writing of the transferee’s agreement to becoming the Customer in respect of the transferring of Goods and that subject to the Terms. The Customer from whose account any Goods or any part thereof are transferred shall guarantee payment by the New Customer of the cost of any transfer and of Charges accruing during the period of 14 days after such transfer. The Charges due by the New Customer shall not necessarily be at the same rate as the Charges to the transferring Customer.
- 5.3. The Owner and the Customer shall be joint and severally liable to CMAL for all Charges and other obligations due to CMAL.

Part III – Charges, Payment, Cancellation and Lien

6. Charges

- 6.1. The Charges for Services and Facilities shall be those quoted in writing to the Customer or, if no Charges have been quoted or a quote is no longer valid, the Schedule of Charges shall apply.
- 6.2. CMAL’s standard Charges are as set out or referred to in CMAL’s Schedule of Charges. CMAL is entitled to vary the Schedule of Charges at any time in respect of subsequent business.
- 6.3. All Charges are exclusive of VAT and all other statutory impositions which the Customer shall be liable to pay to CMAL in addition to the Charges.
- 6.4. Where based on volume, Charges may be subject to adjustment at any time for extraordinary items and/or significant increases or decreases in volume and/or significant changes in the delivery profile or storage characteristics.
- 6.5. CMAL may require a deposit or other financial security in respect of any Services and/or Facilities to be provided, having regard to the likely amount of Charges.
- 6.6. Any Vessel that remains at the Harbour following completion of loading or unloading may be charged on the basis of the Schedule of Charges, and the Customer shall be liable to pay such Charges.
- 6.7. Notwithstanding any other provision of the Contract, all Charges shall be subject to annual review by CMAL from time to time.

- 6.8. The Customer shall procure that the Harbour Master may, either alone or with any other Persons, enter into any Vessel or Container within the Harbour in order to ascertain the Charges payable in respect of such Vessel or any Goods therein.
- 6.9. If any Vessel for which the Charges have been paid be obliged from stress of weather or other sufficient cause after leaving the Harbour to return with the same cargo, the charges so applied shall not again be payable in respect of such Vessel.

7. Payment

- 7.1. Subject to Condition 7.4 or any written agreement between CMAL and the Customer and subject to Conditions 5 and 7.2, Charges shall be due and payable by the Customer to CMAL upon the date of issue of the invoice for Services, and CMAL shall require payment of the same within 30 days of that date or within such other period as may have been agreed in writing between CMAL and the Customer.
- 7.2. In the event that the Charges are not settled in full within the prescribed or otherwise agreed timescale pursuant to Condition 7.1, CMAL may: -
- 7.2.1. Charge the Customer and/or the Owner interest on the amount unpaid at the annual rate of 5% above the base lending rate from time to time of the Royal Bank of Scotland plc accruing on a daily basis (or such other period as CMAL may notify in writing to the Customer) and being compounded quarterly until payment is made, whether before or after any decree.
- and / or
- 7.2.2. appropriate any payment made by the Customer and/or the Owner to such Services as CMAL thinks fit (notwithstanding any purported appropriation by the Customer);
- and / or
- 7.2.3. recover from the Customer and/or the Owner all costs and expenses (including professional fees on an indemnity basis) incurred by CMAL in recovering the Charges and accrued interest due by the Customer to CMAL;
- and/or
- 7.2.4. suspend provision of the Services until all sums due and to become due to CMAL by the Customer have been paid with cleared funds in full to CMAL and/or require advance payment in respect of any future Services.
- 7.3. The Customer and/or the Owner shall pay all Charges, interest and costs and expenses in full, without deduction or set-off.
- 7.4. If an honesty box system is in operation at the Harbour, during the period of operation of the honesty box the Charges will be payable upon arrival at the Harbour in accordance with the tariff published at the quayside or harbour office.

8. Cancellation

- 8.1. In the event that the Customer cancels the Services at any time, CMAL may recover from the Customer the full Charges due to it by the Customer for Services provided prior to receipt of intimation of cancellation and for expenses incurred in anticipation of providing future Services.
- 8.2. In the event of: -

- 8.2.1. any default of the Customer in respect of the Terms;
- 8.2.2. the Customer (being a corporate body) having a petition presented for its liquidation or administration (otherwise than a voluntary liquidation for the purpose of amalgamation or reconstruction), having a receiver appointed over any of its assets or undertakings, or becoming subject to any other insolvency proceedings or process (formal or informal);
- 8.2.3. the Customer (being an individual or partnership) becoming apparently insolvent, bankrupt or granting a trust deed for its creditors;
- 8.2.4. the Customer making any composition with its creditors or ceasing or threatening to cease carrying on business (or any part of its business to which the Services relate); or
- 8.2.5. CMAL reasonably apprehending that any of the abovementioned events is about to occur in relation to the Customer and notifying the Customer accordingly;

then without prejudice to any other right or remedy available to CMAL, CMAL may by written notice to the Customer suspend any further Services or terminate the Contract without any liability to the Customer. If the Services have been provided but not paid for, the Charges in respect of those Services shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, and if the Customer fails to so pay the Charges, CMAL shall be entitled to exercise all or any of the remedies competent to it pursuant to the Terms (including the lien conferred in Condition 8). Any termination of the Contract shall not relieve the Customer of any obligations it has as a result of any antecedent breach of the Contract. This Condition shall apply equally against the Customer and any trustee, receiver, liquidator or administrator of the Customer.

9. Lien

- 9.1. CMAL shall have a general lien on Goods and/or Vessels for payment of all amounts due from the Customer on any account.
- 9.2. CMAL may exercise its lien at any time by giving written notice to the Customer, such notice to specify the amount of the debt due by the Customer to CMAL or particulars by which the Customer may calculate such amount. If the debt for which the lien has been exercised has not been settled, CMAL may sell or otherwise dispose of the Goods or any part of them at the Customer's entire risk and expense by the best method reasonably available. The proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all expenses and all amounts due to CMAL from the Customer on any account.
- 9.3. Charges for storage and other applicable Services and/or Facilities shall continue to accrue on Goods and/or Vessels detained under lien.

10. Prohibition on Corruption

- 10.1 By accepting the Terms the Customer and/or Owner confirms that the Customer and/or Owner is aware that CMAL is bound by the laws of the United Kingdom, including the Bribery Act 2010 in relation to its activities in the UK and abroad. The Customer and/or Owner shall not, by act or omission, cause CMAL to be in breach of any national and international legislation, regulations, national standards and codes of practice, and in particular of the Bribery Act 2010;
- 10.2 Without limitation to Condition 10.1, the Customer and/or Owner will not offer to any person, including but not limited to a public official in a jurisdiction other than the UK, or holding a position in any international or multinational organisation, any financial or other

inducement or advantage of any kind in order to obtain or to retain business or other advantage for CMAL.

Part IV – Warranties, Claims and Performance

11. Indemnity and Insurance

- 11.1. The Owner or the Customer in respect of the Container, Vehicle, Vessel or Goods as the case may be shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever howsoever arising from the use of or presence of his Container, Vehicle, Vessel or Goods at the Harbour and will indemnify CMAL against all proceedings and claims and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or presence or of any act negligence or default of the Owner or the Customer as the case may be, their respective contractors agents or servants (other than CMAL) or of any inherent quality or defect of the Container, Vehicle or Vessel, or of any Goods at the Harbour or on the Container, Vehicle or Vessel.
- 11.2. The Owner or the Customer shall pay to CMAL full compensation for all damage done to or suffered by the Harbour and other property of CMAL and arising as aforesaid.
- 11.3. Owners and Customers shall maintain adequate insurance of Vehicles, Vessels, Containers, Goods and employees in the Harbour, including third party liability cover for not less than £2,000,000 and, where appropriate, Employers' Liability cover.
- 11.4. Owners and Customers shall produce evidence of insurance referred to in Condition 10.3 within 7 days of a request to do so from the Harbour Master.

12. Claims and Liability for Loss or Damage

- 12.1. CMAL shall only be liable under these Terms for physical loss of, or damage to, any Container, Vehicle or Vessel or Goods and such liability shall only apply to the extent that the loss or damage exceeds £500 per occurrence or incident, and is proved to be caused solely by the negligence of CMAL or its servants, agents, independent contractors or sub-contractors acting in the course of their employment during the performance or provision of the Services, proved that:

The liability of CMAL shall be limited to the following amounts:

- a) For loss of or damage to any Vessels - £1,500,000 per occurrence or incident.
- b) For loss of and/or damage to Containers or Vehicles – to the reasonable cost of repair or replacement (whichever is the lesser) thereof provided that such cost shall be reduced by the following percentages in respect of the age of such item which is more than one year old.

Age of Item	% Reduction of current replacement value
Within second year	10%
Within third year	20%
Within fourth year	30%
More than one year old	40%

- c) For any loss of and/or damage to Goods - £1,000 per tonne subject to a limit of £25,000 for all Goods lost or damaged.
 - d) For any loss of and/or damage to Goods and/or Containers and/or Vehicles under paragraphs (b) and (c) of this Condition – an aggregate amount of £150,000 per occurrence
- 12.2. CMAL shall have no liability to the Customer for any loss or damage caused by a breach of any Customer's warranties and undertakings.
- 12.3. CMAL shall not be liable for any loss or damage to the extent that the same is caused or contributed to by the condition of the Container, Vehicle, Vessel and/or Goods on presentation to CMAL in breach of these Terms.
- 12.4. CMAL shall in no circumstances be liable to the Customer or the Owner and the Customer and the Owner hereby waive any claims:
- a) for any indirect, consequential or economic loss or damage of any kind whatsoever, arising from any Breach of Duty by CMAL; or
 - b) for any loss of contract, profit, production, market, reputation, goodwill or opportunity, or for downtime or standing time costs, cost of hire of Vehicles or Vessels, charterparty costs, insurance costs, wages of crews or staff or accommodation costs, port dues and charges, towage, salvage, dry-docking, cost of capital, interest payments, financing or increased financing costs, liquidated damages or contract penalties;
- and shall have no liability for ex gratia payments or provision of goods, facilities or services without admission of liability and that whether such liability is based on or purported to be based upon any negligence or other act or omission on the part of CMAL in relation to any or all of the Services and or Facilities provided by CMAL to the Customer.
- 12.5. CMAL shall be exempt from all liability for deficiency, loss, damage or delay to any Person, Vehicle, Vessel, Container or Goods, including deficiency, damage, loss or delay caused by any Breach of Duty by CMAL, where acceptance of correct stowage and/or securing of such Vehicle, Vessel, Container or Goods has been agreed by the Master of the Vessel, and in particular when the Vehicle, Vessel, Container or Goods have been loaded in accordance with all relevant regulations.
- 12.6. CMAL shall be exempt from all liability for deficiency, loss, damage or delay to any Person, Vehicle, Vessel, Container or Goods, including deficiency, damage, loss or delay caused by any Breach of Duty by CMAL, where acceptance of correct stowage and/or securing of such Cargo, Vehicle, Vessel, Container or Goods has been agreed by the driver of the Vehicle, and in particular when the Vehicle, Vessel, Container or Goods have been loaded in accordance with all relevant regulations. No Facilities shall be provided by CMAL for the sheeting of loads.
- 12.7. The Owner shall be responsible for compliance with all statutory duties incumbent upon the Owner and the Owner shall indemnify CMAL for all loss or damage, including consequential loss that CMAL may incur or suffer as a result of or arising from the Owner's failure to perform such duties or any part thereof.
- 12.8. The Customer and the Owner of the Goods will not take any proceedings against any employee or sub-contractor of CMAL for a Claim.
- 12.9. Where CMAL suffers or incurs any damage to Harbour Premises or incurs any loss or expense, either directly or indirectly, owing to the absence, insufficiency or unsuitability of packing, or contamination or decay of food or other perishable Goods, or their infestation by insects, rats or vermin, or damage from insecticides or other such chemical applications, or due to the dangerous, toxic or obnoxious nature of Goods, or in complying

with the requirements of the provisions of the Prevention of Damage by Pests Act 1949 and the Weights and Measures Act 1985 or any other legislation of a similar nature which may impose obligations on CMAL arising out of Goods brought into the Harbour Premises, then any Person being the Owner of or any other Person interested in the Goods shall be jointly or severally liable to pay CMAL's reasonable charges and all other costs in respect of the expense so incurred.

12.10. CMAL shall be freed and discharged from all liability in respect of any physical loss or damage to any Vehicle, Vessel, Container or Goods or any other matter or thing unless notification of a claim in respect of such loss or damage be made in writing (otherwise than upon any of CMAL's documents) to CMAL within 21 days of the date when the Customer or Owner has or ought reasonably to have learned of the occurrence causing such loss or damage or from which such loss or damage arose (so as to enable CMAL to forthwith commence investigations into the alleged loss or damage) and the amount of the said loss or damage be submitted in writing to CMAL within three months after the said occurrence.

13. Force Majeure

CMAL shall be relieved of its obligations under the Contract to the extent that at any time whether before or after entry of any Person or acceptance of any Vehicle, Vessel, Container or Goods performance of such obligation is prevented by or non-performance arises wholly or partly, directly or indirectly from the act, neglect or default of the Customer (including but not limited to any breach or default by the Customer of its obligations under the Contract), or if any such obligation is or is in the reasonable opinion of CMAL likely to be rendered impossible or substantially more difficult as a result of any cause, event or occurrence which CMAL was either unable to prevent or could not reasonably be expected to prevent having due regard to the interests of CMAL, including, but without prejudice to the foregoing generality, any of the following causes, events or occurrences: -

- 13.1. act of God, inclement weather, epidemics, contamination, explosion, flood, tempest, fire or accident;
- 13.2. war (declared or undeclared) or threat of war, warlike actions, sabotage, terrorism, piracy, insurrection, civil disturbance or requisition or any act or omission in response to any notified or reasonably anticipated possibility of any of the same;
- 13.3. visits to or ceremonies at the Harbour or nearby premises involving civilian, military or diplomatic dignitaries or VIPs;
- 13.4. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 13.5. import or export regulations or embargoes;
- 13.6. strikes, lock-outs or other industrial action or trade dispute (whether involving employees of CMAL or of a third party);
- 13.7. difficulties in obtaining raw materials, labour, fuel, parts, machinery or equipment;
- 13.8. power failure or breakdown in machinery;
- 13.9. pests, insects or vermin; or
- 13.10. any other cause beyond CMAL's reasonable control.

Part V – General Contractual Matters

14. Reservation of Rights

- 14.1. CMAL reserves the right to refuse to provide the Services for any reason (including, without prejudice to the foregoing generality, weather conditions) or to provide the Services at such times and/or subject to such further conditions as CMAL may in its sole discretion impose.
- 14.2. In the event of any movement of a Vessel leading to a closure of the Harbour (or part thereof) to other Vessels, CMAL shall be entitled to impose an enhanced level of Charge on the Vessel whose movement has resulted in such closure.
- 14.3. When reasonably necessary and at the sole and unfettered discretion of CMAL, the Goods or any part of the same may be carried, stored or handled with other compatible goods or transferred between suitable elements of the Harbour Premises.

15. Notices

- 15.1. Any notice, invoice or statement of account required or permitted to be given by either party to the other under the Contract shall be in writing and delivered personally or sent by prepaid recorded delivery or registered post, facsimile or other generally accepted form of electronic communication as agreed between CMAL and the Customer, addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this Condition to the party giving the notice.
- 15.2. Any notice to CMAL shall be sufficiently served if sent by recorded delivery to The Harbour Master, Caledonian Maritime Assets Limited, Municipal Buildings, Fore Street, Port Glasgow, PA14 5EQ.
- 15.3. Any such notice, invoice or statement of account shall, unless the contrary is proved, be deemed to have been duly served (if given or made by facsimile) on the next following business day in the place of receipt or (if given or made by recorded or registered letter) 48 hours after posting, and in proving the same it shall be sufficient to show, in the case of a letter that the envelope containing the same was duly addressed, correctly stamped and posted, and in the case of a facsimile that such facsimile was duly dispatched to a current facsimile number of the addressee.

16. Provisions Severable

If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part, then such provision will be deemed to be deleted and the validity of the remainder of the provision in question (if any) and of the other provisions of these Terms shall continue in full force and effect.

17. No Partnership or Lease

Nothing in the relationship between CMAL and the Customer under the Terms or any agreement between the Customer and CMAL incorporating the Terms (in whole or in part) constitutes a partnership, and further does not confer upon the Customer any rights of property, occupation or security of tenure in respect of the equipment, Facilities or any other property of or under the control of CMAL.

18. Waiver

- 18.1. No failure, forbearance or delay by CMAL to enforce or otherwise require performance of any of the provisions of these Terms or of an agreement between the Customer and CMAL incorporating the Terms (in whole or in part) shall be or be construed as a waiver of CMAL's rights.
- 18.2. No actual, deemed or implied waiver by CMAL of any breach by the Customer of the Terms or of any such agreement between the Customer and CMAL shall be considered as a waiver of any prior, concurrent or subsequent breach of the same or any other provision.

Part VI - Vessels

19. General Compliance

- 19.1. The Customer shall ensure that every Vessel approaching, entering or leaving the Harbour shall be fit for purpose and shall be compliant with all national and international legislation, regulations, national standards and codes of practice.
- 19.2. The Customer will comply with all directions it receives from the Harbour Master, and will obtain and comply with all necessary licences, consents and permits for the marine Services.
- 19.3. The Master of every registered Vessel shall, on demand, produce the certificate of registry/ measurement of such Vessel.
- 19.4. The Customer shall procure that every Vessel and her Master approaching or entering the Harbour pursuant to the Contract shall comply with the Directions.
- 19.5. The Customer shall ensure that every Vessel is compatible with the Berth and linkspan and capable of entering the Harbour and manoeuvring into and out of the Berth without assistance from CMAL or any other person in normal operating conditions.
- 19.6. Before CMAL accepts a Vessel, the Customer must provide in writing such details of it as CMAL may require.
- 19.7. The Harbour Master shall be entitled to inspect such vessels, the results of such inspections being recorded and discussed with the Vessel's Owner and/or operator. The Customer shall fully comply and co-operate with the Harbour Master in respect to such inspections.
- 19.8. The Customer shall be responsible for the safety of every Vessel entering the Harbour and for complying with all safety requirements for the Vessel, passengers, crew, vehicles, goods, freight and livestock.
- 19.9. The Customer shall keep the Harbour free from obstruction caused by any property under the Customer's control.
- 19.10. The Customer shall be responsible for the upkeep, manning, operation, loading and discharge of the Vessel and the ticketing, embarkation, carriage and disembarkation of passengers, vehicles, goods, freight and livestock using the Vessel and shall ensure that appropriate personnel are provided to marshal the passengers using the Vessel.

20. Port Waste Reception Facilities Regulations 2003

- 20.1. These Regulations place new requirements on ships to notify the Harbour Master, in advance of their arrival, of the type and quantities of waste onboard, deliver waste to the reception facilities provided before leaving the Harbour, and pay a mandatory charge to contribute to the cost of providing waste reception facilities.
- 20.2. CMAL requires all Vessels to notify the Harbour Master by facsimile or e-mail at least 24 hours in advance of arrival.

21. Salvage

CMAL shall not be under any duty to salvage or preserve a Customer's Vessel or other property under any circumstances unless CMAL has been expressly engaged to do so by the Customer on commercial terms. Similarly CMAL shall not be under any duty to salvage or preserve a

Customer's Vessel or other property from the consequences of an accident which has not been caused by CMAL's negligence or some other Breach of Duty on CMAL's part. CMAL reserves the right to do so in any appropriate circumstances, particularly where a risk is posed to the safety of people, property, the environment or navigation. Where CMAL does so, CMAL shall be entitled to charge the Customer for the costs incurred by CMAL on a normal commercial basis.

22. Berth Allocation

22.1. The physical layout of every Harbour and the varying needs and obligations of CMAL and its Customers requires that CMAL retains absolute control of Berth allocation within the Harbour. Accordingly, the Customer shall not be entitled to the exclusive use of any particular Berth but shall use such Berth as is from time to time allocated to the Customer by CMAL,

22.2. CMAL may have the use of the Berth when it is left vacant by the Customer.

22.3. The Customer acknowledges and accepts that priority is to be given to Lifeline Ferry Services.

23. Fuelling

Owners shall refuel only at the designated fuelling Berth (if any) and are to vacate the berth when the fuelling operation is completed. Where fuel is required to be transferred in portable containers, CMAL reserves the right to refuse the use of any container deemed unfit for the purpose.

24. Stowage

Dinghies, tenders and rafts shall be stowed aboard the Vessel unless CMAL allocates a separate Berth for them.

25. Moorings and Winter Storage

In respect of moorings and winter storage: -

25.1. All Vessels must be fully insured.

25.2. All storage of Vessels must be on cradles or trailers, unless otherwise agreed.

25.3. All lifting, movement and storage, including Vehicle storage, is entirely at the Owner's risk.

25.4. Masts and Vessels must be suitably prepared by the Owner for hoisting or craning. The disconnecting and reconnecting of mast wiring and setting up the rigging will be charged as a separate item unless Owners carry out this work themselves. Prices do not include sail removal, et cetera. Removal of sails and loose gear will be charged. We advise that you remove any masthead instrumentation. Masts will be stored indoors.

25.5. Multihull Vessels may be accommodated dependent on storage availability and will be subject to a surcharge.

25.6. LOA (length overall) is maximum length of any Vessel and includes all overhangs such as pulpits, davits and bowsprits. Measurements are taken to the nearest tenth of a metre. Vessels over 15m and/or 15T will require negotiation and individual pricing.

25.7. CMAL reserves the right to meter all electricity usage.

25.8. A charge will be made for Vessels remaining ashore after the booked period.

- 25.9. Sub-contract labour is not permitted in the Harbour without prior agreement and any such contractors must comply with CMAL's safe management system and carry appropriate indemnity insurance.

26. Work on Vessels

- 26.1. No work or services shall be carried out on any Vessel, Vehicle or other property at the Harbour without CMAL's prior written consent except for minor running repairs or minor maintenance of a routine nature by the Customer or his regular crew.
- 26.2. It shall be an absolute condition that all work is carried out in full compliance with CMAL's safe management system and environmental and access policies and that it does not cause any nuisance or annoyance to CMAL, any other Customer or Person residing in the vicinity, and does not interfere with CMAL's schedule of work or the good management of the harbour or Lifeline Ferry Services.
- 26.3. CMAL shall not be responsible to Customers or third parties for the consequences of any Person's failure to respect any part of this condition but CMAL shall be entitled to demand the immediate cessation of any work which in its view breaks these requirements.
- 26.4. While CMAL's sub-contractors are working on a Customer's vessel or equipment, the Customer shall not have access to it except by prior arrangement.

Part VII – Vehicles

27. Vehicles

- 27.1. The Customer shall not use Vehicles or bring any Vehicles to the Harbour unless such is authorised in writing by CMAL;
- 27.2. The Customer shall indemnify and keep indemnified CMAL from and against all loss or damage caused by the use of Vehicles at the Harbour.

Part VIII - Goods

28. Handling of Goods

28.1. Discharging

28.1.1. When a Customer requires Goods to be unloaded by CMAL, the Customer will ensure that: -

- 28.1.1.1. it delivers to CMAL in writing details of the name of the Vessel, a cargo manifest showing the harbours of unloading, bills of lading numbers, the quantity and description of the Goods, a stowage plan and the Person to whom the Charges are to be made;
- 28.1.1.2. an acceptable release note is provided to CMAL for Goods when application for collection of the Goods is being made;
- 28.1.1.3. in the absence of prior agreement with CMAL it removes the Goods from the Harbour Premises within 7 days of completion of discharge from the Vessel; and
- 28.1.1.4. notification for acceptance in respect of all dangerous substances (as defined in the International Maritime Dangerous Goods Code) is given in advance to the Harbour Master in terms of the Dangerous Substances in Harbour Areas Regulations 1987, and that the Customer shall comply in all respects with the said Code and the directions of the Harbour Master, in respect of such Goods.

28.1.2. Unless otherwise agreed in writing between the parties, CMAL shall only be liable for the Goods while they are in the course of being unloaded. Prior to and upon completion of unloading, CMAL shall have no liability for the Goods.

28.2. Loading

28.2.1. When a Customer delivers Goods to CMAL for loading, the Customer will ensure that: -

- 28.2.1.1. the Goods are deposited at a location previously agreed by CMAL;
- 28.2.1.2. not less than 48 hours before the Goods require to be loaded CMAL is provided with a National Standard Shipping Note stating the verified gross weight of the Goods (which should not exceed 5 tonnes without prior consent of CMAL);
- 28.2.1.3. the Goods are packed in a manner sufficient to protect them prior to and during loading;
- 28.2.1.4. it has clearly identified, immediately below the shipping mark, each package of the consignment by marking on it the nature of the contents, the package number and the harbour of discharge;
- 28.2.1.5. all HMRC formalities are complied with and evidence of such compliance made available for scrutiny by CMAL if required;
- 28.2.1.6. unless otherwise agreed by CMAL in writing, such Goods are presented for loading no more than 7 days before the arrival of the Vessel; and

28.2.1.7. notification for acceptance in respect of all dangerous substances (as defined by the International Maritime Dangerous Goods Code) is given in advance to the Harbour Master in terms of the Dangerous Substances in Harbour Areas Regulations 1987, and that the Customer shall comply in all respects with the said Code and the directions of CMAL's Harbour Master, in respect of such substances.

28.2.2. Unless otherwise agreed in writing between the parties, CMAL shall only be liable for the Goods while they are in the course of being loaded. Prior to and upon completion of loading, CMAL shall have no liability for the Goods.

28.3. Company's Rights – Goods Handling

28.3.1. If the Customer fails to specify the gross weight of the Goods or if CMAL wishes to verify the weight or bulk of the Goods, CMAL may weigh or measure the Goods and the weights or bulk of the Goods determined by CMAL shall be deemed to be the true weight or bulk of them. In any event CMAL shall be entitled to invoice the Customer on the basis of the weight of the Goods passing over the weighbridge.

28.3.2. Unless otherwise agreed with the Customer, CMAL shall not be responsible to the Customer for the accuracy of the equipment used in the process of weighing or measuring the Goods.

28.3.3. If Goods unloaded by CMAL are not collected by the Customer or its agent within the 7-day period referred to in Condition 27.1.3 of these Terms, CMAL may (but shall not be bound to) remove them to and store them at another place of storage in accordance with Condition 28 of these Terms, all at the Customer's expense.

28.3.4. If the Customer is unable to provide CMAL with a document of title to the Goods or there is an irregularity of the title, CMAL may retain the Goods until it is satisfied as to the title of the Person claiming the Goods. CMAL may insist on that Person providing an indemnity satisfactory to CMAL prior to releasing the Goods.

29. Storage of Goods

29.1. Customer's Obligations and Rights

29.1.1. When a Customer presents Goods for storage (only upon having prior written agreement), it shall: -

29.1.1.1. present the Goods in a condition suitable for storage, having regard to the facilities available, and which complies with any relevant statute or other regulation; and

29.1.1.2. where the Goods require any special treatment, provide full instructions for treatment of them.

In the event the Customer fails to comply with the above directions, CMAL shall be relieved of all and any liability for the condition of the Goods.

29.1.2. The Customer may inspect the Goods from time to time, provided the Person sent to inspect provides written authority to CMAL of his authority to do so.

29.2. Company's Rights

29.2.1. CMAL shall be entitled in its sole discretion to: -

29.2.1.1. refuse to accept Goods for storage;

- 29.2.1.2. open and reseal Containers and packages to ascertain the condition of Goods, either prior to accepting the Goods for warehousing or storage or during the course of warehousing or storage;
 - 29.2.1.3. inspect the Goods during warehousing or storage and where, in the reasonable opinion of CMAL, the Goods have: -
 - (a) deteriorated;
 - (b) ceased to be in a condition suitable for storage;
 - (c) ceased to meet the requirements of any relevant statute or other regulation; and/or
 - (d) are likely to cause damage to other Goods or property; and
 - 29.2.1.4. serve notice on the Customer to remove such Goods, where necessary or desirable, within a given time.
- 29.2.2. Where the Customer, having received a notice in accordance with Condition 28.2.1.4, fails to remove the Goods promptly or where removal is not practical, CMAL may destroy the Goods. The Customer shall be responsible for the cost of such removal or destruction.

30. Customer's Undertakings

30.1. The Customer undertakes that: -

- 30.1.1. when presented for warehousing, the Goods shall be securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of CMAL or to any other Goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever;
 - 30.1.2. before presentation of the Goods for warehousing, the Customer will inform CMAL in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods with which CMAL may need to comply;
 - 30.1.3. it will reimburse all duties and taxes that CMAL may be required to pay in respect of the Goods;
 - 30.1.4. unless prior to acceptance of the Goods by CMAL, CMAL receives written notice containing all appropriate information, none of the Goods constitutes "Waste" as defined in the Environment Protection Act 1990; and
 - 30.1.5. unless prior to acceptance of the Goods by CMAL, CMAL receives written notice containing all appropriate information, none of the Goods are or contain substances the storage of which would require the obtaining of any consent or licence or which, if they escaped from their packaging, would or may cause pollution of the environment or harm to human health.
- 30.2. Notwithstanding any notice under Condition 29, if there is a breach of contract by the Customer, the Customer will indemnify CMAL against any loss or damage it suffers which is related to the breach and will pay all costs and expenses (including professional fees) incurred in, and CMAL's reasonable Charges for, dealing with the breach and its consequences. The Customer will pay an extra storage Charge equal to the amount of any fine or penalty payable by CMAL wholly or partly as a result of a breach by the Customer of this Contract. If CMAL suspects a breach of any undertaking in Condition

29.1, it may demand the immediate removal of any Goods held for the Customer, or itself arrange their removal without notice, at the Customer' expense.

31. Termination

- 31.1. The Goods shall be removed by the Customer from the custody or control of CMAL at such date as may have been agreed between the parties. In the absence of such agreement, and otherwise where reasonably necessary, CMAL may at any time by notice in writing to the Customer require the removal of the Goods within 28 days from the date of such notice or, in the case of perishable Goods, within 3 days.
- 31.2. In the event of failure by the Customer to pay any amount due to CMAL or to remove any of the Goods from the custody or control of CMAL (notice in accordance with Condition 30.1 having been given) at the due time, CMAL may, without prejudice to its other rights and remedies against the Customer, give notice in writing to the Customer of CMAL's intention to sell or otherwise dispose of the Goods at the Customer's entire risk and expense if such amount is not paid and/or such Goods are not removed within 28 days, or in the case of perishable Goods within 3 days, from the date of such notice. On the expiry of such period, if such payment has not been made and/or the Goods have not been so removed, CMAL shall be entitled to sell or otherwise dispose of all or any part of the Goods at the Customer's entire risk and expense by the best method reasonably available, and the proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all expenses and all amounts due to CMAL from the Customer on any account.
- 31.3. In the case of perishable Goods, notice under Condition 30.2 may be combined with a notice under Condition 30.1.

32. Dispute Resolution

- 32.1. If any dispute arises out of or in connection with the Contract, directors or other senior representatives of CMAL and the Customer with authority to settle the dispute will, within ten (10) Business Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 32.2. Any such dispute which is not resolved within twenty (20) Business Days of a written request issued pursuant to Condition 31.1 shall be referred to arbitration. The Arbitration (Scotland) Act 2010 will govern any dispute referred to arbitration pursuant to this Condition 31.
- 32.3. If CMAL and the Customer fail to agree who should be appointed arbiter within ten (10) Business Days of the expiry of the period specified in Condition 31.2, either of the parties shall be entitled to request the Sheriff Principal of Grampian, Highlands and Islands to appoint an arbiter as soon as is practicably possible, such arbiter to be an individual with appropriate skill and experience having due regard to the particular facts and circumstances of the dispute.

33. Governing Law and Jurisdiction

- 33.1. The Contract shall be governed by Scots Law.
- 33.2. The parties prorogate to the jurisdiction of the Scottish Courts.

Schedule**Harbours**

1. Arran: Brodick;
2. Arran: Lochranza;
3. Barra: Castlebay;
4. Bute: Rhubodach;
5. Claonaig;
6. Colintraive;
7. Coll: Arinagour;
8. Colonsay: Scalasaig;
9. Cumbrae: Tattie Pier;
10. Gourock;
11. Harris: Tarbert;
12. Islay: Port Ellen;
13. Kennacraig;
14. Kilchoan;
15. Largs;
16. Lochaline;
17. Mull: Fishnish;
18. Mull: Tobermory;
19. Oban;
20. Portavadie;
21. Skye: Armadale;
22. South Uist: Lochboisdale;
23. Tiree: Gott Bay;
24. Wemyss Bay