

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: -

“**Agreed Form**” means in such form as the Customer and CMAL have confirmed in writing is the agreed form from time to time;

“**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;

“**Berthing**” means the controlled coming alongside of a Vessel to a Stationary Berth;

“**Berthing Dues**” means the aggregate of the berthing dues payable by a Customer who is a Ferry Operator for each of its Vessels calculated using the pier dues set out in the Schedule of Charges multiplied by the anticipated number of Callings for each vessels at each Harbour in the relevant Payment Month; ;

“**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;

“**Business Day**” means any weekday on which the Scottish clearing banks (or a majority of them) are open for business in the City of Glasgow;

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

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

“**Callings**” means, the callings in respect of each Harbour set out in the Schedule of Callings in the Agreed Form;

“**Caravan**” means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted;

“Carryings” means the passengers, vehicles, caravans, goods, freight and livestock carried by a Ferry Operator as part of a ferry service;

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

“CHFS Operator” means the Ferry Operator awarded the public service contract for the provision of the Clyde and Hebrides ferry services by the Scottish Ministers;

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

“Commercially Sensitive Information” means any information which relates to pricing or other methodologies of the relevant Party or which is agreed by the Parties at the time of the Contract or otherwise as being commercially sensitive;

“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, PA14 5EQ and including, where the context so admits, its holding, subsidiary and associated companies, and their successors and assignees from time to time;

“Competent Authority” means any competent authority from time to time exercising a regulatory role under, or for the purposes of, any Environmental Law, including (without limitation) all courts, tribunals and other judicial or quasi-judicial bodies;

“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 Condition 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 40 (*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;

“Environment” means the natural and manmade environment and all or any of the following media namely air (including air within buildings and air within other natural or manmade structures above or below ground), water (including water under or within land or in pipes, drains or sewers) and land and soil (including buildings and structures thereon) and any living organisms (including man) or ecological systems supported by any one or more of such media;

“Environmental Law” means all law, statutes and subordinate legislation, European Union treaties, regulations and directives, rules of common law and other international, European, national or local laws and all regulations, orders, guidance notes or awards, codes of conduct or practice, bylaws and directions and all judgements, decrees, notices or orders, instructions and other lawful statements of any Competent Authority in respect of a Harbour, the Facilities, and all amendments, re-enactments and consolidations of same but only insofar as enforced in Scots law from time to time and relating to the protection of the Environment or human health or safety and animal welfare and emissions, discharges, releases or escapes into the Environment of Hazardous Substances, or the production, processing, treatment, storage, transport or disposal of Hazardous Substances and having the force of law from time to time;

“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;

“Ferry Operator” means an operator who operates a timetabled passenger, vehicle and/or goods ferry service;

“Ferry Operator Dues” means the payment due by a Customer who is a Ferry Operator to CMAL in respect of its use of the Harbours, as calculated in accordance with Condition 8.2;

“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;

“FOISA” means the Freedom of Information (Scotland) Act 2002;

“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 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 Operator” means CalMac Ferries Limited, or such other party as shall be notified by CMAL from time to time;

“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;

“Hazardous Substance” means any natural or artificial substance, material, liquid, gas or other matter of whatsoever nature, (in whatsoever form) which is capable of causing harm or damage to the Environment or to human health or safety, without limitation, capable of causing a common law or statutory nuisance or which is subject to regulatory control as being hazardous;

“Heraldic Device” means the lion rampant heraldic device which the CHFS Operator has the right and obligation to display by virtue of an agreement entered in to between CMAL and the CHFS Operator;

“HMRC” means HM Revenue and Customs;

“Indemnified Parties” has the meaning given in Condition 25.13;

“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;

“Law” means (i) any applicable legislation, (ii) any applicable guidance, and (iii) any applicable judgment of a relevant court of law which is a binding precedent; in each case in force in Scotland;

“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;

“New Customer” shall have the meaning given at Condition 6.2;

“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;

“Parties” means CMAL and the Customer. The term **“Party”** shall be construed accordingly;

“Payment Month” means each full calendar month falling within a Payment Year;

“Payment Year” means each period of 12 months ending on 30 September;

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

“Personal Data” means personal data within the meaning of Section 1(1) of the Data Protection Act 1998 which is supplied to the Ferry Operator by CMAL or obtained by the Ferry Operator in connection with or pursuant to these Terms;

“Pilotage Plan” means the plan prepared by the Customer in accordance with Schedule 4;

“Pier Dues” means the payment for the relevant Payment Month due to CMAL by a Customer who is a Ferry Operator in respect of pier/traffic dues and all other charges in accordance with the Schedule of Charges;

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

“Required Insurances” means the insurances taken out and maintained by the Customer as set out in Schedules 2 and 3, as may be amended from time to time in accordance with these Terms;

“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;

“Services” means berthing, un-berthing, 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 Terms, including passenger facilities and/or amenities;

“Stationary Berth” means a designated location in a Harbour used for mooring Vessels alongside a dock or quay, being a structure attached to the land where a Vessel loads or discharges cargo.

“Trade Mark” means any of the trade marks that the CHFS Operator has the right and obligation to display by virtue of an agreement entered in to between CMAL and the CHFS Operator;

“Terms” means these Terms and Conditions of Harbour Use, 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;

“Un-berthing” means the controlled departure of a Vessel from alongside a Stationary Berth;

“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;

“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; and

“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, Caravans, 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.
 - 2.1.5. The Customer shall comply with the Terms and all applicable byelaws, regulations (including Environmental Law) and other reasonable requirements of CMAL in the exercise of its rights granted and obligations due pursuant to the Terms (as such requirements are notified to the Customer by CMAL from time to time) including any requirements of CMAL which arise as a result of rights granted to third parties or rights claimed by third parties.
- 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. a 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 a 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. Customer's Enquiries

4.1 The Customer shall be deemed to have:

- 4.1.1. satisfied itself as to the nature and extent of the risks assumed by it under these Terms;
- 4.1.2. gathered all information necessary to secure the performance of its obligations under these Terms; and
- 4.1.3. obtained for itself all necessary information as to the risks, contingencies and all other circumstances influencing and affecting the entering into of the Terms by the Customer.

4.2. A Customer who is a Ferry Operator shall be deemed to have inspected and examined the Harbours and their surrounds and to have satisfied itself as to the suitability of each Harbour for the provision of any ferry services operated by a Ferry Operator.

4.3 Without prejudice to the foregoing generality the Customer acknowledges that:

- 4.3.1. it has not agreed to the Terms in reliance on the accuracy of any information or data provided by CMAL;
- 4.3.2. the use of, or reliance upon, any of the information supplied by CMAL is entirely at the Customer's own risk; and
- 4.3.3. except where expressly provided in the Terms the Customer shall have no entitlement as against CMAL under the Terms or otherwise to any relief from its obligations or to claim any expenses in relation to the performance of its obligations or to any other payment or compensation from CMAL in respect of the Terms on grounds that it has used or relied upon any information or data to which Condition 4.1, 4.2, 4.2.1 and 4.3.2 (as the case may be) apply.

5. Risk & Insurance

All Goods within 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 undertakes to make appropriate comprehensive insurance arrangements in respect thereof. Subject to Condition 15.1, the Customer shall indemnify CMAL against all proceedings, claims, expenses and losses incidental thereto (including legal costs on a full indemnity basis) arising out of any loss of or damage to the Goods.

6. Ownership and Authority

- 6.1. 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.
- 6.2. 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.

- 6.3. 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

7. Maintenance

The Harbour Operator shall provide reasonable advanced notice to any Customer who is a Ferry Operator when maintenance works are to be carried out at any Harbour.

8. Charges

- 8.1. 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.
- 8.2. Any Customer who is a Ferry Operator shall pay to CMAL the Ferry Operator Dues each Payment Month. The Ferry Operator Dues shall be the aggregate of:
- 8.2.1. The Berthing Dues; and
- 8.2.2. The Pier Dues.
- 8.3. 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.
- 8.4. 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.
- 8.5. 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.
- 8.6. 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.
- 8.7. 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.
- 8.8. Notwithstanding any other provision of the Terms, all Charges shall be subject to annual review by CMAL from time to time.
- 8.9. 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.
- 8.10. 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.

9. Payment

- 9.1. Subject to Condition 9.4 or any written agreement between CMAL and the Customer and subject to Conditions 6 and 9.2, 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.

- 9.2. In the event that the Charges are not settled in full within the prescribed or otherwise agreed timescale pursuant to Condition 9.1, CMAL may: -
- 9.2.1. claim interest from a Business Customer on the unpaid Debt in accordance with the Late Payment of Commercial Debts (Interest) Act, 1998. For private customers 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
- 9.2.2. 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
- 9.2.3. recover from the Customer and/or the Owner all costs, expenses and losses (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
- 9.2.4. 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;
- and/or
- 9.2.5. the raising of Court proceedings; detention of a Vessel; refusal to berth a Vessel; the exercise of lien over a vessel; and sale of a Vessel in satisfaction of the debt.
- 9.3. The Customer and/or the Owner shall pay all Charges, interest and costs and expenses in full, without deduction, retention, or set-off.
- 9.4. 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.

10. **Annual Adjustment of Berthing Dues**

- 10.1. Where a Customer who is a Ferry Operator proposes to deliver ferry services from a Harbour, it shall provide CMAL with details of the projected Berthing Dues payable by it to CMAL for relevant Payment Year, or the remainder of the relevant Payment Year, calculated on the basis of its proposed Callings.
- 10.2. Not less than forty (40) Business Days prior to the commencement of each subsequent Payment Year, a Customer who is a Ferry Operator shall provide CMAL with details of any projected adjustments to the Berthing Dues for the subsequent Payment Year which may be required as a result of a change to the number of Callings, and/or the Ferry Operator Vessels for that Payment Year.
- 10.3. CMAL may make such adjustments to any of the information notified to CMAL by the Ferry Operator pursuant to Condition 10.1 or 10.2 where CMAL, acting reasonably, considers such information for the relevant Payment Year to be incorrect in which case CMAL shall notify the Ferry Operator of any revisions CMAL considers to be necessary together CMAL's revised calculation of the Berthing Dues based on the Schedule of Charges for

the relevant Payment Year. Such revised Berthing Dues shall apply until such time as otherwise agreed or determined.

- 10.4. The Ferry Operator shall have ten (10) Business Days following receipt of the revised Berthing Dues pursuant to Condition 10.2 to accept or reject such revised Berthing Dues, following which such revised Berthing Dues shall be deemed to be accepted. If the Ferry Operator objects to such revised Berthing Dues within ten (10) Business Days, either Party may refer the matter to the Dispute Resolution Procedure.
- 10.5. If the Ferry Operator fails to provide such details as required by Condition 10.1 within the requisite time, either, the Berthing Dues shall continue to apply for the relevant Payment Year subject to adjustments required pursuant to the Schedule of Charges for the relevant Payment, or CMAL shall calculate the revised Berthing Dues for the subsequent Payment Year based on information from the Scottish Ministers relating to the number of Callings, and/or the Ferry Operator Vessels where the Berthing Dues will be greater than the previous Payment Year. Where CMAL calculate the revised Berthing Dues, CMAL shall charge an admin fee which shall be 1% of the revised Berthing Dues for the subsequent Payment Year.

11. **VAT**

- 11.1. All sums due to or by either Party under these Terms are exclusive of any VAT thereon, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be payable by the paying Party only against receipt from the other Party of a valid VAT invoice in respect thereof.
- 11.2. Where under this Contract one Party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, then the first Party shall also reimburse any VAT paid by the other which forms part of its payment or costs incurred to the extent that such VAT is not available for credit for the other under Sections 25 and 26 of the Value Added Tax Act 1964.

12. **Cancellation**

- 12.1. 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.
- 12.2. In the event of: -
 - 12.2.1. any default of the Customer in respect of the Terms;
 - 12.2.2. 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);
 - 12.2.3. the Customer becoming the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;
 - 12.2.4. the Customer becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 save that for the purposes of this Agreement the minimum amount referred to in section 123(1) shall be £10,000;

- 12.2.5. the Customer (being an individual or partnership) becoming apparently insolvent, bankrupt or granting a trust deed for its creditors;
- 12.2.6. the Customer making any composition with its creditors or ceasing or threatening to cease carrying on business or disposes of all of its assets (or any part of its business to which the Services relate); or
- 12.2.7. 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 13). 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.

13. Lien

- 13.1. CMAL shall have a general lien on Goods and/or Vessels for payment of all amounts due from the Customer on any account.
- 13.2. 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.
- 13.3. Charges for storage and other applicable Services and/or Facilities shall continue to accrue on Goods and/or Vessels detained under lien.

14. **Prohibition on Corruption**

- 14.1. 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;
- 14.2. 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

15. Indemnity and Insurance

- 15.1. The Owner or the Customer in respect of the Container, Vehicle, Caravan, Vessel or Goods as the case may be shall be responsible for insuring against all risks and

- contingencies including death or personal injury of any person or loss of or damage to any property or goods wheresoever, whatsoever or howsoever arising from the use of or presence of his Container, Vehicle, Caravan, Vessel or Goods at the Harbour.
- 15.2. The Customer shall indemnify CMAL, its officers, agents and employees (and shall keep CMAL fully indemnified) from and against any and all costs, liabilities, proceedings, losses, expenses, accidents, claims, demands, penalties, fines, forfeiture, damages, and any expenses incidental thereto (including legal costs properly incurred on a full indemnity basis) which CMAL may sustain, incur, become responsible for, or pay arising out of or in connection with:
- 15.2.1. the Owner or the Customer's negligent or wilful acts or negligence or wilful omissions in their performance of their obligations under these Terms, or, the negligent or wilful acts or negligence or wilful omissions of the Owner or Customer's contractors, agents or servants (other than CMAL);
 - 15.2.2. any inherent quality or defect of the Container, Vehicle, Caravan or Vessel, or of any Goods at the Harbour or on the Container, Vehicle, Caravan or Vessel;
 - 15.2.3. any claim against CMAL made by a third party as a result of any act or omission of the Customer;
 - 15.2.4. any claim for, or in respect of, death or personal injury by any employee of, or person engaged by the Customer;
 - 15.2.5. any claim for, or in respect of, death or personal injury of any third party arising out of, or in the course of, the performance of the Customer's obligations under these Terms, save to the extent caused (or contributed to) by any breach of any express provision of these Terms by CMAL or deliberate act or omission of CMAL;
 - 15.2.6. any loss of or damage to property or a Harbour arising by reason of any act of the Customer, save to the extent that such loss or damage arises out of the breach of any express provision of these Terms by CMAL or any deliberate act or omission of CMAL;
 - 15.2.7. any breach of statutory duty to the extent caused by an act or omission by the Customer in breach of its obligations under these Terms or the Law;
 - 15.2.8. any liability under Environmental Law; and
 - 15.2.9. any infringement or alleged infringement of a third party's intellectual property rights.
- 15.3. Owners and Customers shall maintain the Required Insurances in respect of Vehicles, Caravans, Vessels, Containers, Goods and employees in the Harbour.
- 15.4. Owners and Customers shall produce evidence of insurance referred to in Condition 15.3 within 7 days of a request to do so from the Harbour Master.
- 15.5. The Owner and the Customer shall neither take nor fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any of the insurance policies effected in terms of these Terms. Each Party shall assist and co-operate with the other Party in relation to bringing claims under such insurance policies.
- 15.6. The Owner and the Customer shall not knowingly do or permit to be done anything which may result in any policy or policies of insurance effected in terms of these Terms being restricted or becoming void or voidable in whole or in part.

16. CMAL Claims Procedure in Respect of Insurance and Indemnities

- 16.1. If it appears to CMAL that it is or may become entitled to indemnification from the Customer under a provision of these Terms, CMAL shall notify the Customer in writing as soon as reasonably practicable.
- 16.2. Where it appears that CMAL is or may become entitled to indemnification under a policy of insurance, CMAL shall (subject to confirming in writing that the Customer will agree to indemnify CMAL and provide CMAL with such security in respect of the costs thereby involved as CMAL may reasonably require) be entitled to take over the conduct of the claim and having done so to defend, dispute, compromise or appeal the claim.
- 16.3. If CMAL takes over the conduct of the claim then the Customer will give CMAL all reasonable co-operation, access and assistance in considering and dealing with the claim. CMAL shall keep the Customer fully informed and consult with it about the conduct of the claim.
- 16.4. CMAL shall not pay or settle any claim without the prior consent of the Customer except as permitted by Condition 16.5 below.
- 16.5. CMAL shall be free to pay or settle any claim on such terms as it may think fit and without prejudice to any of its rights and remedies under these Terms in the event that the Customer fails to notify CMAL of its intention to dispute the claim within ten (10) Business Days of receiving the notice from CMAL in terms of Condition 16.1, if the Customer fails to comply with the terms of Condition 16.3 or if CMAL believes the dispute is having a material adverse impact on its business.
- 16.6. Both the Customer and CMAL shall, in the event of taking any of the steps envisaged by this Condition 16, comply with the requirements of any insurer who has an obligation in respect of any liability arising under these only to the extent that such requirements are contained in the policies of insurance.

17. Claims and Liability for Loss or Damage by CMAL

- 17.1. CMAL shall only be liable under these Terms for physical loss of, or damage to, any Container, Vehicle, Caravan 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 or Caravans – 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 five years 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 and/or Caravans under paragraphs (b) and (c) of this Condition – an aggregate amount of £150,000 per occurrence
- 17.2. CMAL shall have no liability to the Customer for any loss or damage caused by a breach of any Customer's warranties and undertakings.
- 17.3. 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, Caravan, Vessel and/or Goods on presentation to CMAL in breach of these Terms.
- 17.4. 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, 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.
- 17.5. CMAL shall be exempt from all liability for deficiency, loss, damage or delay to any Person, Vehicle, Caravan, 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, Caravan, Vessel, Container or Goods has been agreed by the Master of the Vessel, and in particular when the Vehicle, Caravan, Vessel, Container or Goods have been loaded in accordance with all relevant regulations.
- 17.6. CMAL shall be exempt from all liability for deficiency, loss, damage or delay to any Person, Vehicle, Caravan, 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, Caravan, Vessel, Container or Goods has been agreed by the driver of the Vehicle, and in particular when the Vehicle, Caravan, 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.
- 17.7. 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.
- 17.8. The Customer and the Owner of the Goods will not take any proceedings against any employee or sub-contractor of CMAL for a claim.
- 17.9. 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.

17.10. CMAL shall be freed and discharged from all liability in respect of any physical loss or damage to any Vehicle, Caravan, 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.

18. **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, Caravan, 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: -

- 18.1. act of God, inclement weather, epidemics, contamination, explosion, flood, tempest, fire or accident;
- 18.2. 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;
- 18.3. visits to or ceremonies at the Harbour or nearby premises involving civilian, military or diplomatic dignitaries or VIPs;
- 18.4. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 18.5. import or export regulations or embargoes;
- 18.6. strikes, lock-outs or other industrial action or trade dispute (whether involving employees of CMAL or of a third party);
- 18.7. difficulties in obtaining raw materials, labour, fuel, parts, machinery or equipment;
- 18.8. power failure or breakdown in machinery;
- 18.9. pests, insects or vermin; or
- 18.10. any other cause beyond CMAL's reasonable control.

Part V – General Contractual Matters

19. **Reservation of Rights**

- 19.1. 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 consider to be reasonably necessary.

19.2. 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.

19.3. 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.

20. **Notices**

20.1. 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.

20.2. 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.

20.3. 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.

21. **Provisions Severable**

If any provision of these Terms shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or other authority whose decisions shall be binding on either of the Parties, the same shall be deemed to be severable and the remainder of the Terms shall remain valid and enforceable to the fullest extent permitted by law.

22. **Provisions relating to Ferry Operators**

22.1. A Customer who is a Ferry Operator shall not erect any signage, including signage displaying the Heraldic Device or a Trade Mark, within the Harbours without the prior written consent of CMAL. CMAL consent shall be required as regards the location, appearance and content of such signage to assist in the efficient provision of the ferry services provided by the Ferry Operator.

22.2. Neither the grant nor the exercise of any rights under these Terms shall constitute a lease of the Harbours or any part thereof or create any relationship of landlord and tenant between CMAL and the Ferry Operator. These rights are non-exclusive and personal to the Ferry Operator. The Ferry Operator may not grant rights to any third party.

23. **No Partnership or Lease**

Save as expressly set out herein, 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) shall create or be deemed to create a partnership or joint venture between CMAL and the Customer or Owner or the relationship of principal and agent between CMAL and the Customer or the Owner and neither Party shall have any authority to act on behalf of or

otherwise to legally bind the other in any way, and further does not confer upon the Customer or Owner 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.

24. **Waiver**

24.1. 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.

24.2. 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

25. **General Compliance**

25.1. 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.

25.2. 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.

25.3. The Master of every registered Vessel shall, on demand, produce the certificate of registry/ measurement of such Vessel.

25.4. The Customer shall procure that every Vessel and her Master approaching or entering the Harbour pursuant to the Contract shall comply with the Directions.

25.5. 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.

25.6. Before CMAL accepts a Vessel, the Customer must provide in writing such details of it as CMAL may require.

25.7. 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.

25.8. 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, caravans, goods, freight and livestock.

25.9. The Customer shall keep the Harbour free from obstruction caused by any property under the Customer's control.

25.10. The Customer shall comply with all applicable Law and all requirements of CMAL and directions of the Harbour Master in the performance of its obligations pursuant to the other provisions of this Condition 25 (as such requirements and directions may be notified to the Customer by CMAL from time to time) including any requirements of CMAL which arise as a result of rights granted to or asserted by third parties.

25.11. 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, caravans, goods, freight and livestock using the Vessel and shall ensure that appropriate personnel are provided to marshal the passengers using the Vessel. CMAL shall not be liable for any loss or damage caused as a result of the Ferry Operator's failure to comply with this Condition 25.11.

25.12. The Customer may not make any alterations to the Harbours

26. **Port Waste Reception Facilities Regulations 2003**

26.1. 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. The Customer agrees and undertakes to comply with the requirements set out in the Regulations.

26.2. CMAL requires all Vessels to notify the Harbour Master by facsimile or e-mail at least 24 hours in advance of arrival.

27. **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.

28. **Berth Allocation**

28.1. 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 (section 33, Harbours, Docks and Piers Clauses Act 1847),

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

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

28.4. Any Customer operating a Vessel which exceeds 50 tonnes shall prepare and implement a Pilotage Plan identifying the risk management and mitigation measure for Berthing, Un-berthing or otherwise using a Harbour in accordance with the terms of Schedule 4, prior to entering the Harbour.

28.5. In addition to the obligations set out at this Part VI, any Customer who is a Ferry Operator shall also:

28.5.1. not bring any Ferry Operator Vessel to the Harbours without first providing a Pilotage Plan, where applicable, for that Ferry Operator Vessel to CMAL for approval and such a Pilotage Plan having been approved by CMAL;

28.5.2. procure that the operation of every Vessel brought to the Harbours by or on behalf of the Ferry Operator, is in compliance with the Pilotage Plan for that Vessel;

- 28.5.3. procure that the ferry services and all other operations carried out by it or under its authority at the Harbours are carried out in a manner that does not contravene any instruction or direction of the Harbour Master or breach or conflict with the Law;
- 28.5.4. keep adequate records, and, when required by CMAL, make the same available to CMAL or any representative nominated by CMAL for its inspection, of the numbers of passengers, vehicles and caravans (including vehicle, caravan and trailer lengths and, where required by law, vehicle weights) using the Harbours for the purposes of embarking on or disembarking from the ferry service and of the volume, nature and weight of all freight (including fish, livestock, fuel and basic materials) carried by the ferry service; and
- 28.5.5. if required to do so by CMAL, remove all signage erected and maintained by the Ferry Operator and make good to the satisfaction of CMAL all resulting damage to the Facilities and the Harbours.

29. **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.

30. **Stowage**

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

31. **Moorings and Winter Storage**

In respect of moorings and winter storage: -

- 31.1. All Vessels must be fully insured.
- 31.2. All storage of Vessels must be on cradles or trailers, unless otherwise agreed.
- 31.3. All lifting, movement and storage, including Vehicle, caravan and trailer storage, is entirely at the Owner's risk.
- 31.4. 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.
- 31.5. Multihull Vessels may be accommodated dependent on storage availability and will be subject to a surcharge.
- 31.6. 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.
- 31.7. CMAL reserves the right to meter all electricity usage.
- 31.8. A charge will be made for Vessels remaining ashore after the booked period.

- 31.9. Sub-contract labour is not permitted in the Harbour without CMAL's prior agreement and any such contractors must comply with CMAL's safe management system and carry appropriate indemnity insurance, including but not limited to, third party public liability insurance, products liability insurance, and employer's liability insurance.

32. **Work on Vessels**

- 32.1. No work or services shall be carried out on any Vessel, Vehicle, Caravan or Trailer 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.
- 32.2. 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.
- 32.3. 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.
- 32.4. 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, Caravans and Trailers

33. **Vehicles, Caravans and Trailers**

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

Part VIII - Goods

34. **Handling of Goods**

34.1. Discharging

- 34.1.1. When a Customer requires Goods to be unloaded by CMAL, the Customer will ensure that: -
- 34.1.1.1. 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;
 - 34.1.1.2. an acceptable release note is provided to CMAL for Goods when application for collection of the Goods is being made; 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
 - 34.1.1.3. notification for acceptance in respect of all dangerous goods (as defined in the International Maritime Dangerous Goods Code) is given in advance to the Harbour Master in terms of the Dangerous Goods in Harbour Areas Regulations 2016, 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.

- 34.1.2. 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.

34.2. Loading

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

- 34.2.1.1. the Goods are deposited at a location previously agreed by CMAL;
- 34.2.1.2. 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);
- 34.2.1.3. the Goods are packed in a manner sufficient to protect them prior to and during loading;
- 34.2.1.4. 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;
- 34.2.1.5. all HMRC formalities are complied with and evidence of such compliance made available for scrutiny by CMAL if required;
- 34.2.1.6. 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
- 34.2.1.7. notification for acceptance in respect of all dangerous goods (as defined by the International Maritime Dangerous Goods Code) is given in advance to the Harbour Master in terms of the Dangerous Goods in Harbour Areas Regulations 2016, 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 goods.

- 34.2.2. 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.

34.3. Company's Rights – Goods Handling

- 34.3.1. 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.
- 34.3.2. 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.
- 34.3.3. If Goods unloaded by CMAL are not collected by the Customer or its agent within the 7-day period referred to in Condition 35.1.1 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 36 of these Terms, all at the Customer's expense.

- 34.3.4. 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.

35. **Storage of Goods**

35.1. Customer's Obligations and Rights

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

- 35.1.1.1. 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
- 35.1.1.2. 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.

- 35.1.2. 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.

- 35.1.3. The Customer shall indemnify CMAL in respect of all proceedings, claims, expenses and losses as a result of any breach of this Condition 36.1.

35.2. CMAL's Rights

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

- 35.2.1.1. refuse to accept Goods for storage;
- 35.2.1.2. 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;
- 35.2.1.3. 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 (e) serve notice on the Customer to remove such Goods, where necessary or desirable, within a given time.

- 35.2.2. Where the Customer, having received a notice in accordance with Condition 36.2.1.3(e), 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.

36. **Customer's Undertakings**

36.1. The Customer undertakes that: -

- 36.1.1. 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;
 - 36.1.2. 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;
 - 36.1.3. it will reimburse all duties and taxes that CMAL may be required to pay in respect of the Goods;
 - 36.1.4. 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
 - 36.1.5. 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.
- 36.2. Notwithstanding any notice under Condition 36, 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 36.1, it may demand the immediate removal of any Goods held for the Customer, or itself arrange their removal without notice, at the Customer's expense.

37. Termination

- 37.1. 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.
- 37.2. 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 37.1 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.
- 37.3. In the case of perishable Goods, notice under Condition 37.2 may be combined with a notice under Condition 37.1.

38. **Confidentiality, Freedom of Information and Data Protection**

Confidentiality

38.1. Subject to Condition 39.2, the Parties shall keep confidential all matters relating to these Terms and shall use all reasonable endeavours to prevent their employees, agents and sub-contractors from making any disclosure to any person of any matters relating to these Terms.

Permitted Disclosure

38.2. Condition 38.1 shall not apply to:

38.2.1. any disclosure of information that is reasonably required by any person engaged in the performance of their under these Terms for the performance of such obligations;

38.2.2. any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of breach of Condition 38.1;

38.2.3. any disclosure to enable a determination to be made under the Dispute Resolution Procedure;

38.2.4. any disclosure which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not, of having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

38.2.5. any disclosure of information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;

38.2.6. any provision of information to the Parties' own professional advisers or insurance advisers;

38.2.7. any disclosure of information by CMAL to any other department, office or agency of the Government or other respective advisers or to any person engaged in providing services to CMAL for any purposes related to or ancillary to these Terms;

38.2.8. any disclosure for the purpose of:

38.2.8.1. the examination and certification of CMAL's or the Customer's accounts;
or

38.2.8.2. complying with a proper request from either party's insurance advisers or insurer on placing or renewing any insurance policies;

38.2.8.3. subject always to the procedures set out in Condition 38.5 either Party responding to a request for information in compliance with its obligations under FOISA and the Parties acknowledge that no Condition of these Terms, whether express or implied, shall preclude a Party from disclosing, in accordance with FOISA and any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to these Terms unless such information is exempt from disclosure in accordance with the exemptions set out in FOISA.

38.3. Where disclosure is permitted under Condition 38.2 the disclosing Party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in these Terms.

- 38.4. Neither Party shall make use of these Terms or any information issued or provided by or on behalf of the other Party in connection with these Terms otherwise than for the purposes of and in accordance with these Terms, except with the written consent of the other.

Freedom of Information

- 38.5. Where CMAL receives a request for information which is covered by FOISA and which relates to any Commercially Sensitive Information of any Customer who is a Ferry Operator (the “**Requested Information**”) the Parties shall comply with the procedure set out in this Condition 38.
- 38.6. Subject to Condition 38.5 CMAL shall, before making any disclosure of the Requested Information and as soon as reasonably practicable after receiving FOISA request, notify a Customer who is a Ferry Operator of the receipt of such request and of the nature and extent of the Requested Information.
- 38.7. Following notification under Condition 38.5 the Ferry Operator may make representations in writing to CMAL as to the basis on which the Requested Information is covered by an exemption in FOISA and should not, therefore, be disclosed, including, where relevant, any representations as to the balance of the public interests in disclosure and non-disclosure. Such representations must be provided to CMAL no later than five (5) Business Days following the notification under Condition 38.5.
- 38.8. CMAL shall reasonably consider any representations and recommendations made by the Ferry Operator under Condition 38.5 before reaching a decision on whether it must and will disclose the Requested Information. However, the Parties acknowledge that in all cases it is for CMAL (having full regard to any guidance or briefings issued by the Scottish Information Commissioner or the Scottish Ministers) to determine whether it is obliged to disclose the Requested Information under FOISA, including where the public interest lies in relation to disclosure.
- 38.9. If CMAL makes a decision to disclose the Requested Information, it shall notify the Ferry Operator of this decision not less than three (3) Business Days in advance of the disclosure being made.
- 38.10. The Ferry Operator shall to the extent that it is reasonably practicable for it to do so, cooperate, facilitate, support and assist CMAL to comply with FOISA and any codes of practice applicable from time to time relating to access to public authorities’ information.

Data Protection

- 38.11. In relation to all Personal Data, a Customer who is a Ferry Operator and CMAL shall at all times comply with the Data Protection Act 1998 as a data controller if necessary, including maintaining a valid and up to date registration or notification under the Data Protection Act 1998 covering the data processing to be performed in connection with these Terms.
- 38.12. A Customer who is a Ferry Operator, CMAL, and any sub-contractor shall only undertake processing of Personal Data in so far as reasonably required in connection with the ferry service or these Terms and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 38.13. Neither Party shall disclose Personal Data to any third parties other than:
- 38.13.1. to employees and sub-contractors to whom such disclosure is reasonably necessary in order for that Party to comply with its obligations under these Terms; or
 - 38.13.2. to the extent required under a court order,

provided that disclosure under Condition 38.13 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Condition 38.13 and that the relevant party shall give notice in writing to the other Party of any disclosure of Personal Data.

38.14. Each Party shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

38.15. Each Party may, at reasonable intervals, request a written description of the technical and organisational measures referred to in Condition 38.15 employed by the other Party and/or the sub-contractors. Within 30 days of such a request, the relevant Party shall supply or procure the supply of written particulars of all such measures detailed to a reasonable level such that the requesting Party can determine whether or not, in connection with the Personal Data, it is compliant with the Data Protection Act 1998.

39. **Dispute Resolution**

39.1. 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.

39.2. Any such dispute which is not resolved within twenty (20) Business Days of a written request issued pursuant to Condition 39.1 shall be referred to arbitration. The Arbitration (Scotland) Act 2010 will govern any dispute referred to arbitration pursuant to this Condition 39.

39.3. 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 39.2 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.

40. **Governing Law and Jurisdiction**

40.1. The Contract shall be governed by Scots Law.

40.2. The parties prorogate to the jurisdiction of the Scottish Courts.

41. **Entire Agreement**

These Terms and any documents referred to herein represent the entire understanding, and constitute the entire agreement between CMAL and the Ferry Operator in relation to the subject matter of the Terms and supersede all prior proposals, representations, agreements and negotiations relating thereto between the Parties or their respective advisers.

Schedule 1**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. Kerrera
15. Kilchoan;
16. Largs;
17. Lochaline;
18. Mull: Fishnish;
19. Mull: Tobermory;
20. Oban;
21. Oban: Gallanach
22. Portavadie;
23. Skye: Armadale;
24. South Uist: Lochboisdale;
25. Tiree: Gott Bay;
26. Wemyss Bay

Schedule 2

Insurances to be Effected by a Customer who is a Ferry Operator

1. Third Party (Public) Liability and Products Liability Insurance

Insured: The Ferry Operator and all subsidiary companies

Interest: Legal liability of the Insured for all sums (including claimants' costs and expenses) in respect of:-

- i) accidental death or bodily injury to or illness or disease contracted by any person;
- ii) accidental loss of or damage to property;
- iii) accidental interference to property or any easement right to air, light, water or way or the enjoyment or use thereof by obstruction, trespass, loss of amenities, nuisance or any like cause;

occurring during the Period of Insurance and arising out of or in connection with the operation and maintenance of the Ferry Operator's business whether arising under the terms of these Terms or otherwise.

Limit of Indemnity: Not less than £25,000,000 in respect of any one occurrence, the number of occurrences being unlimited but in the aggregate in respect of seepage, pollution, products liability and if applicable completed operations.

Territorial Limits: Anywhere in the World.

Insured Locations: The Harbours.

Main Exclusions:

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- Liability arising out of the use of mechanically propelled vehicles in circumstances regulated by the Road Traffic Acts.
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property owned by the Insured
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War Perils
- Nuclear Risks
- Date Recognition/Cyber Risks
- Asbestos
- Directors and Officers

Extensions and Conditions:

- Cross liability clause
- Contingent Motor Liability
- Worldwide Jurisdiction
- Territorial Limits Extension to world-wide (for business, training and inspection trips)

- Consumer Protection Act 1987 (Defence Costs)
- Data Protection Act 1998
- Indemnity to Principals clause
- Health and Safety at Work etc. Act 1974 (Defence Costs)
- Food Safety Act 1990 Prosecution (Defence Costs)
- Defective Premises Act
- Personal Injury to include libel, slander, defamation, false arrest, invasion of privacy, detention or any like cause.
- Including officers, directors and employees as Insured Parties
- Liability to Authorities in respect of fines and penalties as available but excluding criminal acts
- Occupiers legal liability cover
- Liabilities as Harbour Operators

Excess: Not to exceed £10,000 each occurrence unless otherwise agreed in writing with CMAL.

2. Employer's Liability Insurances

Insured: The Ferry Operator and all subsidiary companies.

Interest: Legal liability of the Insured for all sums (including claimants' costs and expenses) in respect of accidental death or bodily injury to or illness or disease contracted by any person employed arising out of and in the course of employment by the Insured in its business.

Limit of Indemnity: Not less than £25,000,000 in respect of any one event unlimited in the aggregate.

Territorial Limits: Anywhere in the World.

Insured Locations: The Harbours.

Main Exclusions:

- Motor Road Traffic Act liability
- War Perils
- Nuclear Risks
- Data Recognition/Cyber Risks
- Offshore Installations

Extensions and Conditions:

- Unsatisfied Court Judgements
- Compensation for Court Attendance
- Costs of legal representation at Coroner's Inquests etc
- Health and Safety at Work Act 1974 (Northern Ireland Order 1978)
- Temporary Work Overseas
- Indemnity to Principals Clause
- Including officers, directors and employees as Insured Parties

Excess: Preferably NIL unless otherwise agreed in writing.

3. Property Insurances

A Ferry Operator shall take out and maintain in full force and effect an insurance policy with a reputable insurance company, in relation to its assets and equipment for the duration of its use of the Harbours.

4. Protection and Indemnity Cover

A Ferry Operator shall take out and maintain in full force and effect Protection and Indemnity Cover with a P&I Club which is a member of the International Group of P&I Clubs or an acceptable fixed premium market with equivalent pollution limits of liability for the duration of its use of the Harbours.

5. Hull and Machinery Insurance

A Ferry Operator shall take out and maintain in full force and effect Hull and Machinery Insurance with a reputable insurance company, in relation to its Vessels for the duration of its use of the Harbours.

6. Vehicles

A Ferry Operator shall take out and maintain in full force and effect motor insurance with a reputable insurance company in relation to any of its Vehicles for the duration of its use of the Harbours to the extent required by Law.

Schedule 3**Insurances to be Effected by Customers (other than Ferry Operators)****1. Third Party (Public Liability)**

A Customer shall take out and maintain in full force and effect Public Liability Insurance with a reputable insurance company for the duration of its use of the Harbour.

2. Cargo Liability

To the extent that a Customer is carrying Goods in a Harbour Area or Harbour Facilities, that Customer shall take out and maintain in full force and effect Cargo Insurance with a reputable insurance company, in relation to those Goods for the duration of its use of the Harbour.

3. Employer's Liability

To the extent that a Customer has employees, the Customer shall maintain any insurance required to be taken out by the Operator under the Employers' Liability (Compulsory Insurance) Act 1969 and any succeeding Act of Parliament imposing similar obligations upon employers.

4. Vehicles

To the extent required by Law a Customer shall take out and maintain in full force and effect motor insurance with a reputable insurance company in relation to any of its Vehicles for the duration of its use of the Harbour.

Schedule 4**Pilotage Plan**

1. This Schedule 4 shall apply where the Customer is required to prepare a Pilotage Plan in compliance with Condition 28.4.
2. Prior to entering a Harbour, the Customer shall consider the risks associated with the following issues and shall produce a Pilotage Plan which shall consider and record how these issues can be managed and how the risks associated with them can be mitigated:
 - 2.1 The standard of navigation and seamanship to be expected of an operator of a commercial Vessel;
 - 2.2 The speed that would be reasonable for the operator of a commercial Vessel to approach the Harbour, considering all factors affecting the Vessel and the level of congestion at the Harbour;
 - 2.3 The weather and tidal conditions at the Harbour;
 - 2.4 The other vessel activity in the vicinity of the Harbour;
 - 2.5 The angle of approach to the Harbour;
 - 2.6 The mooring arrangements at the Harbour;
 - 2.7 Any bridge communications with other Vessels;
 - 2.8 Any communications between the Vessel and the Harbour Operator; and
 - 2.9 Any characteristics of the Vessel which relate to the way in which it manoeuvres.
3. Where requested to do so by CMAL, the Customer shall provide the Harbour Operator and CMAL with a copy of a Vessel's Pilotage Plan.
4. The Customer's Pilotage Plan shall be updated and reviewed regularly and shall be subject to regular audits by the Harbour Operator and CMAL.