

**CALEDONIAN MARITIME ASSETS LTD PURCHASE ORDER/CONTRACT TERMS AND
CONDITIONS FOR MEDIUM VALUE WORKS AND WORKS RELATED SERVICES**

BETWEEN:

A. **CALEDONIAN MARITIME ASSETS LIMITED** a company incorporated in Scotland under Company Number SC001854 and having its registered office at Municipal Buildings, Fore Street, Port Glasgow PA14 5EQ (the **Buyer**);

and

(1) **[insert name]** (the **Supplier**).

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract, the following terms shall have the following meanings except where the context otherwise requires:

Bribery Act shall mean the UK Bribery Act 2010;

Business Day means [9.00am to 5.00pm/7:30am to 6pm] any day (other than a Saturday or Sunday or a public holiday) on which clearing banks in Edinburgh are open for the transaction of normal banking business in Glasgow;

CMAL means Caledonian Maritime Assets Limited or its affiliated company as named in the Order, its legal successors in title and assignees;

CMAL's Representative means any person appointed from time to time by CMAL to act as CMAL's Representative for the purpose of the Contract;

Commencement Date means the commencement date specified in the Specification;

Conditions means these conditions of contract, including the [Schedule] attached hereto;

Construction Act means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 as the same may be updated and amended from time to time;

Consumables means all items regularly required in the performance of the Services;

Contract means these Conditions, the Order(s) and the Specification. Unless the context otherwise requires, the other words and expressions used in this part of the Contract have the same meanings given to them in the CMAL's Terms and Conditions which form part of the Contract;

Contractor means the company named as Contractor in the Order;

Contractor Related Party means:

- (a) an officer, servant or agent of the Contractor or any affiliated company of the Contractor;
- (b) any sub-contractor or supplier of the Contractor of any tier and any of their officers, servants or agents; and
- (c) any person on or at any of the Buildings at the express or implied invitation of the Contractor or its sub-contractors;

Corruption means bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money-laundering, or any similar activity in each case in relation to the provision of the Services by the Contractor or the performance of the Contractor's obligations under this Contract;

Emergency Call-Out Service means the provision of Contractor Related Parties to attend the Site and effect emergency repairs at the request of the CMAL;

Equipment means [];

Hourly Rates means the hourly rates detailed in Schedule 2 of the Specification (Schedule of Requirements) which are payable by the CMAL to the Contractor in terms of Clause 20;

Intellectual Property Rights means any and all patents, copyright, registered designs, design rights, registered and unregistered trade-marks, database rights, know-how and any other intellectual property rights anywhere in the world including any and all applications for such rights and the right to make such applications;

Key Personnel has the meaning given to that term in Clause 26.2;

Necessary Consents means all planning permissions, building control consents, any relaxations thereof and all other necessary statutory or regulatory consents or requirements relevant to the Contract;

Order(s) means any authorised written order(s) on CMAL's prescribed purchase order or order number issued by the CMAL, given in accordance with Clause 6.2;

Planned Preventative Maintenance Schedule means a manpower schedule and task planning chart, or alternative system approved in advance by CMAL, which shall detail the predicted periodic performance tasks and timings of the planned preventive maintenance regime throughout the forthcoming Contract year in the form set out in Schedule 2 of the Specification (Schedule of Requirements);

Price/Fee has the meaning given in Clause 7;

Port/Ferry Operator means any ferry or port service operator providing their service in a CMAL owned location

Prohibited Act means any breach of sub-clause 32.1, 32.2 and/or 32.3;

Public Official means an individual who:

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory (or any subdivision of such a country or territory);
- (b) exercises a public function:
 - (i) for or on behalf of a country or territory (or any subdivision of such a country or territory); or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision); or
- (c) is an official or agent of a public international organisation;

[Relevant Laws] shall mean all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act;

[Relevant Policies] shall mean CMAL's anti-bribery and anti-corruption policies as CMAL may update them from time to time;]

Services means all things to be supplied and all services and/or works to be performed and the remedying of any defects by the Contractor as set out in or reasonably to be referred from the Specification or ratified under Clause 6.3;

Site means the site(s) stated in the Order, if any, or such other part, harbour or terminal building as otherwise formally intimated to the Contractor by CMAL in writing;

Specification means the [documentation with the heading Specification/technical information contained in the Contractor's tender] which describes the Services and the manner and timing of their execution which forms part of the Contract;

Statutory Requirements means any statutory provisions, any Act of Parliament, Act of the Scottish Parliament, any instrument, rule or order made under any Act of Parliament or Act of the Scottish Parliament, any European Legislation rule or order and/or decision regulation or byelaw of any local, national or European or other competent authority relevant or applicable to the Contract;

Strategic Spares means items other than Consumables which:

- (a) are vulnerable to damage or wear and tear;
- (b) are not normally available "off the shelf";
- (c) may be subject to problems with procurement and/or delivery periods;
- (d) are high value and "popular desirable items"; and/or
- (e) if damaged will cause maximum trouble, complaint or inconvenience until replacement;

Supplier means the Contractor unless expressly provided otherwise.

- 1.2 Any reference in these Conditions to a Clause or Sub-clause is to the relevant Clause or Sub-clause of these conditions unless expressly stated otherwise.
- 1.3 The Schedule which comprises several parts is incorporated into and forms part of these Conditions.
- 1.4 The use of the singular includes the plural and vice versa and use of any gender includes all genders.
- 1.5 Reference to any statute or statutory provision include references to any amendment, modification, extension or re-enactment of them from time to time and to any subordinate legislation from time to time in force thereafter.
- 1.6 Unless the context requires otherwise any reference to "person" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having legal personality).

2. **CONTRACT DOCUMENTS**

- 2.1 In the event of any conflict between the documentation forming the Contract then, unless otherwise set out in the Order, the order of precedence will be: (i) the Conditions; (ii) the Specification; (iii) the Order; (iv) remaining documentation.
- 2.2 The Contract constitutes the whole agreement between the parties and supersedes previous understandings, commitments or agreements relating to the Services.
- 2.3 No term or condition submitted by the Contractor whether in any quotation, invoice, acceptance, delivery note or other will form part of this Contract.

3. **SERVICES**

- 3.1 The Contractor shall carry out and complete the Services on the terms set out in the Contract. For the avoidance of doubt the parties hereto acknowledge that in terms of the Construction Act the carrying out of the Services are a construction operation or include the carrying out of a construction operation and accordingly payment shall be made in accordance with Clause 7 (Option B).
- 3.2 The Contractor warrants to the CMAL that in entering into the Contract and carrying out the Services it shall not be in breach of any contract or other binding obligation.
- 3.3 The Contractor will carry out the Services:
 - (a) in a good and workmanlike manner;
 - (b) in compliance with the Specification;

- (c) with all reasonable skill and care;
- (d) in compliance with all statutes and statutory requirements (including giving of all notices and obtain any licences or permits as may be required);
- (e) to the reasonable satisfaction of the CMAL representative; and
- (f) in accordance with good industry practice.

3.4 If CMAL is not reasonably satisfied with the Services or believes that their provision, manufacturing or processing does not comply in all material respects with the Contract, the Contractor shall, without extra cost to CMAL, take all steps necessary to ensure prompt and due compliance to the satisfaction of CMAL's Representative.

3.5 CMAL shall be entitled, on such occasions as it sees fit, to inspect and assess the quality of the Contractor's materials, workmanship and his adherence to the Contract but no such inspection will release the Contractor from any obligation under the Contract.

3.6 The Contractor accepts that it has had the opportunity to inspect the physical and other conditions of or affecting the Site and/or the carrying out of the Services and warrants that it has fully satisfied itself that the same is in all respects suitable for the Services. The Contractor shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of CMAL. To the extent that any such survey, report or document is exhibited to the Contractor, CMAL does not make any representation or warranty as to its accuracy or the completeness of same.

4. **COMMENCEMENT AND COMPLETION**

4.1 The Contractor shall proceed with the Services expeditiously and regularly so as to carry out and complete the Services within the agreed timeframes.

4.2 When CMAL is of the opinion that the Services are practically complete, it shall notify the Contractor in writing (which includes email) that the Services are practically complete.

4.3 If it appears to CMAL that the progress of the Services is too slow to meet the agreed timescale for completion, it may notify the Contractor in writing to take such steps as necessary to expedite the Services at its own cost.

4.4 The Contractor shall make good any defects in the Services which CMAL notifies to it within 12 months of completion of the Services in accordance with Clause 4.2.

4.5 The Contractor is aware of the port/ferry operations and the scheduled ferry services on or adjacent to the Site and the Contractor will plan and co-ordinate the Services without disruption to the said operations and services and all costs associated with such are included within the Price unless expressly agreed with CMAL.

4.6 If the Contractor fails to complete:-

- (i) any specific portion of the Services by the date(s) specified in the Purchase Order;
- (ii) the provision of the Services by the agreed date for completion (or such revised date as may be agreed or awarded in accordance with these Conditions of Contract) the CMAL shall have the right exercisable by giving notice to the Contractor, at its sole discretion, either to:-
- cancel the Contract whereupon the CMAL's rights shall be as described in these conditions of contract, or
 - proceed with the fulfilment of the Contract whereupon CMAL shall have the right to recover from the Contractor any losses which they may have suffered as set out in point (iii) hereof.
- (iii) in the event that CMAL shall elect to proceed with the fulfilment of the Contract, and the CMAL shall have suffered a loss, then without prejudice to CMAL's rights as aforesaid CMAL shall have the right to deduct, as liquidated damages and not by way of a penalty, from the Price either:-
- the percentage stated in the Purchase Order and agreed at the time of awarding the Contract, of the total Price for each week or part thereof between the agreed date for completion and the Acceptance Date, [amounting in this contract to xx% of the total order price]; or
 - where no percentage is specified, a sum equivalent to 1% (one per cent) of the total Price for each week or part thereof between the agreed date for completion and the Acceptance Date. The Acceptance Date means the date CMAL accepts the product as fully meeting CMAL requirements in accordance with the terms of this Contract.

Such deductions so made shall be in full satisfaction for the failure of the Contractor as aforesaid and are a pre-estimate of the loss likely to be suffered by CMAL as a result.

- (iv) in any event the amount so deducted shall not exceed:
- the maximum percentage of the total Price stated in the Purchase Order where percentages have been agreed or where percentages have not been previously agreed
 - a maximum of ten per cent (10%) of the total Price as stated in the Purchase Order,

Such deductions so made shall be in full satisfaction for the failure of the Contractor as aforesaid and are a pre-estimate of the loss likely to be suffered by CMAL as a result.

4.7 When the Contractor considers that the occurrence of:

- (a) exceptional adverse weather conditions¹; or
- (b) any prevention or default by CMAL;

is the cause or causes of delay or likely delay to the completion of the Works he shall notify CMAL in accordance with Clause 4.8.

4.8 The Contractor shall within 28 days after the cause of delay has occurred notify the CMAL Representative [of the Contractor's claim for extension of time] specifying the cause of delay and the actual estimated affected on the date for completion. [If the Contractor does not notify a claim for extension of time within 28 days of becoming aware of the occurrence the Contractor is not entitled to an extension of time nor is the CMAL Representative under an obligation to grant an extension of time].

The Contractor is not entitled to an extension of time to the date for completion and CMAL will not consent to revise the date for completion to the extent that the Contractor has failed to use reasonable endeavours to avoid or reduce the cause and/or effects of any delay albeit it was not the sole or dominant cause of delay.

4.9 The CMAL Representative shall

- (a) if he considers that the delay suffered entitles the Contractor to an extension of time to the agreed date for completion notify the Contractor of his decision that the date for completion is to be changed; or
- (b) if he considers that the Contractor is not entitled to [an extension of time/a revised date for completion] he shall so inform the Contractor without delay.

4.10 [A claim for extension of time is not valid after the date for completion has occurred.]

¹ where in any one calendar day before completion of the Works (or as the case may be the last section of the Works) has occurred the local BBC meteorological weather station at [] records the following weather conditions at the Site for more than [5] consecutive hours:

- (a) continuous rainfall; and/or
- (b) continuous minimum temperature of less than zero Celsius; and/or
- (c) continuous snow with no opportunity for thawing; and/or
- (d) wind speeds greater than 10 m/s or 23 mph]

5. DURATION

The Contractor shall provide the Services during the [] or period specified in the Specification, with the option to extend for a period of [] on an annual basis subject to the mutual agreement of both parties and subject to termination in accordance with these Conditions.

6. PURCHASE ORDERS AND FEES

6.1 Subject to the provisions of this Clause, the Contractor shall only accept and act upon Orders given in accordance with Clause 6.2 from CMAL to buy Services from the Commencement Date. Notwithstanding that the parties have entered into the Contract CMAL shall have no commitment to purchase Services without an Order.

6.2 No instruction of the Contractor (whether written or oral) or purported order shall constitute an Order unless it shall:

- (a) specify the date upon which the provision of the Services requires to commence and the duration of the supply thereof;
- (b) specify by reference to the product numbers (if any) stipulated in the Contract, the Services which are to be supplied;
- (c) specify the price of the Services which are to be supplied;
- (d) specify where the provision of the Services is to be made and where invoices are to be sent;
- (e) if in writing be in CMAL's prescribed purchase order or be a written letter from CMAL referring the order number or be following a letter of award of appointment; or
- (f) if oral, include an order number issued by CMAL.

6.3 Provision or installation of goods, services or works which are not included in the Specification but are necessary to provide the requirement at Schedule 2 effectively will be treated as follows:

- (a) Expenditure up to [] – The Service can be provided by the Contractor without further scrutiny provided it is ratified by an Order;
- (b) Expenditure [] to [] must be specifically approved by CMAL Contract Manager ratified by an Order;
- (c) Expenditure above [] is not permitted within this Contract;
- (d) Once the expenditure referred to in paragraphs (a) and (b) above is ratified the Services will be deemed to be Services to be provided in accordance with this Contract.

In the carrying out of Services under this Contract, the Contractor shall notify CMAL immediately it becomes aware of the need for any one repair or replacement costing in excess of []. The notification shall include the estimated cost of the repair or replacement(s). Where this is not practicable, ie for out of hours call outs the Contractor shall notify CMAL at the earliest opportunity and not later than 12 Noon on the first normal working day after work commences on a repair likely to exceed this limit.

- 6.4 The Contractor shall notify CMAL immediately if it becomes aware of the need for an increased likelihood of a need for works at the Site. The Contractor shall not proceed with such works and expenditure for such works is not permitted within this Contract. CMAL shall have the option to instruct the Contractor to proceed with such work using the CMAL minor works conditions.

7. PAYMENT OF THE PRICE

OPTION A – THE FOLLOWING CLAUSES 7.1 & 7.2 SHALL APPLY WHERE THE SERVICES DO NOT INVOLVE ANY CONSTRUCTION OPERATIONS FOR THE PURPOSES OF THE CONSTRUCTION ACT

- 7.1 CMAL shall pay to the Contractor a price at the rate specified in the Contract (the "Price"), which sum is exclusive of VAT, such VAT being payable by CMAL in accordance with legislation current from time to time. The Price stipulated in the Contract and fixed for the period of the period [DATES] shall be subject to review every twelve months (the "Review Date") commencing on the first anniversary of the Commencement Date. The Contractor shall supply CMAL with written proposals for any proposed price changes no later than three months prior to the Review Date, during which period the parties shall negotiate such proposals in good faith. In the event of the parties failing to reach agreement in respect of such proposals, CMAL shall be entitled to terminate the Contract by giving the Contractor not less than three months' prior written notice thereof at any time after the Review Date].

CMAL shall pay to the Contractor the price specified in the contract in the following 4 stages of total invoice cost subject to the discretion and authorisation of CMAL's Representative:

30% upon receipt of invoice

30% upon satisfactory commencement [of the service]

30% upon satisfactory continuous service for []

10% upon satisfactory completion of all provision requirements for the items stated at Schedule 2).

- 7.2 The Contractor shall issue invoices to CMAL monthly in arrears. CMAL shall settle approved invoices on the next monthly accounting date following receipt of said invoice.

[AND/OR (IF THE TENDER RELATES TO ACTIVITIES WHICH ALSO MAY INVOLVE ACTIVITIES FALLING UNDER THE CONSTRUCTION ACT)]

OPTION B – THE FOLLOWING CLAUSES 7.3 - 7.13 APPLY WHERE THE SERVICES DO INVOLVE ANY CONSTRUCTION OPERATIONS FOR THE PURPOSES OF THE CONSTRUCTION ACT.

7.3 [In consideration of the Contractor's due and proper performance of its obligations under the Contract, CMAL shall pay to the Contractor the Price stated in any Order in accordance with this Clause 7. The Price is deemed to be exclusive of VAT, such VAT being payable by CMAL in accordance with legislation current from time to time.

7.4 The Price shall be paid to the Contractor in accordance with this Clause 7.

The amount due to the Contractor shall be:

- The total value of the Services properly executed in accordance with the Contract as at the Due Date (as defined in Clause 7.6 below); (the "Gross Valuation")

less

- any sums due to CMAL from the Contractor under this Contract;
- any interim payments paid to the Contractor on account of the Price.

7.5 The final date for payment of the Price shall be the later of [] from the Due Date (as defined below) or [] from the issue of a valid VAT invoice in accordance with Clause 7.10 or 7.10 below (the "Final Date for Payment"). The Vat invoice must contain CMAL's relevant Order reference number).

7.6 The Contractor shall make applications for payment ("Applications") on the dates specified in the Order (or if none the 5th day of each month commencing in the month following the Start Date. Applications shall set out the Price the Contractor considers due to him as at the Due Date (as herein after defined) and the basis for that calculation and shall be accompanied by any information required as set out in the Schedule of Requirements. The Due Date shall be the later of the date stated in the Order (or if none the 5th of the month) or the date of receipt by CMAL of the Contractor's Application.

7.7 Applications may be submitted up to the [] following completion of the Services and/or the provision of the Goods in accordance with the Contract as determined by CMAL.

7.8 Within 5 days of receipt of the Application CMAL or CMAL's Representative shall issue a notice (a Payment Notice) setting out the amount CMAL considers due to the Contractor as at the Due Date and the basis of that calculation. Subject to the issue of any Pay Less Notice (as hereinafter defined), the amount to be paid by CMAL to the Contractor by the Final Date for Payment shall be the sum stated due in the Payment Notice.

- 7.9 If a Payment Notice is not given in accordance with Clause 7.6, the amount to be paid by the Final Date for Payment shall, subject to the issue of a Pay Less Notice (as below defined), be the amount stated due in the Application.
- 7.10 On the receipt of a Payment Notice the Contractor shall issue a VAT invoice for the amount stated due (such VAT invoice shall include CMAL's relevant Order reference number) in the Payment Notice together with a copy of the Payment Notice to CMAL.
- 7.11 If a Payment Notice is not given in accordance with Clause 7.6, immediately upon the expiry of the period for issue of a Payment Notice, the Contractor shall issue a VAT invoice for the amount stated due in the Application together with a copy of the Application (such VAT invoice shall include CMAL's relevant Order reference number). Failure to submit a copy of the relevant Application shall invalidate the invoice.
- 7.12 Not later than 5 days before the Final Date for Payment CMAL may give a written notice to the Contractor setting out the Price Instalment CMAL considers due to the Contractor as the date of the notice and the basis for calculation of that sum (a Pay Less Notice). Where a Pay Less Notice is given the amount if any to be paid by the Final Date for Payment shall be the amount stated due in the Pay Less Notice.
- 7.13 If CMAL fails to pay the amount due by the Final Date for Payment, CMAL shall pay to the Contractor in addition to the amount not properly paid simple interest thereon at the interest rate stated in the Schedule of Requirements for the period until payment is made.
- 7.14 CMAL or CMAL's Representative may in any Payment Notice or Pay Less Notice make any correction or modification that should properly be made in respect of any previous Payment Notice or Pay Less Notice.

8. DUTIES OF CONTRACTOR

- 8.1 The Contractor shall provide the Services in accordance with
- (i) this Contract;
 - (ii) the relevant Order(s);
 - (iii) [the Necessary Consents (including giving of all necessary notices and obtaining any licences or permits as may be required);]
 - (iv) Statutory Requirements.
- 8.2 The Contractor shall participate in regular management meetings required by CMAL's Representative and shall provide CMAL with such reports of its work in providing the Services at such intervals and in such form as CMAL may from time to time require.
- 8.3 The Contractor shall procure the compliance of any Contractor Related Party with the Contractor's undertakings and representations in the Contract.

- 8.4 The Contractor shall not assign or otherwise transfer or sub-contract or charge the whole or any part of its obligations under this Contract without the prior written consent of CMAL.
- 8.5 Should the provision of the Services involve the supply of goods to CMAL such goods shall be of satisfactory quality and fit for the purpose for which they are to be used by CMAL having regard to the provisions of the Contract.
- 8.6 The Contractor will not specify for use or authorise or approve the specification or use by others of:
- (i) products, goods or materials generally known at the time of specification to be deleterious to health and safety or to the durability of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; and/or
 - (ii) products, goods or materials which do not accord with British or European Union standards and/or codes of practice current at the time of specification; and/or
 - (iii) products, goods or materials which do not accord with the guidelines contained in the "Good Practice in the Selection of Construction Materials" publication as revised from time to time.
- 8.7 Unfixed materials and goods delivered to the Site by the Contractor intended for use in the Services shall become the property of CMAL and the title will transfer to CMAL on their delivery to the Site by the Contractor. Responsibility for any materials and goods delivered to the Site by the Contractor shall remain with the Contractor until the Services are practically complete in accordance with clause 4.2.

9. **CMAL'S RIGHT AND SET-OFF**

CMAL may set-off against any sums due to the Contractor whether under the Contract or otherwise any lawful set-off or counterclaim to which CMAL may at any time be entitled.

10. **GRATUITIES AND CODES OF CONDUCT**

- 10.1 The Contractor shall not directly or indirectly accept any commission, rebate, discount or gratuity, in cash or in kind, from any person who has or is likely to have a business relationship with CMAL.
- 10.2 The Contractor shall not offer to give, or agree to give, to any member, employee or representative of CMAL any gift or consideration of any kind as an inducement or reward for doing or for refraining from doing, or having done or refrained from doing any act in relation to the obtaining or execution of this or any other contract with CMAL or for showing or refraining from showing favour or disfavour in relation to this or any such Contract.
- 10.3 The Contractor shall comply with all codes of conduct from time to time adopted by CMAL.

11. CONTRACTOR RELATED PARTIES

- 11.1 The Contractor shall, within 30 days of the Commencement Date, provide CMAL with a list of the principal Contractor Related Parties who will be involved in the provision of the Services (the "Key Personnel"). Where applicable this shall include [].
- 11.2 The Contractor shall ensure that all Contractor Related Parties involved in the provision of the Services are suitably qualified [and in particular that []] to ensure that the Services are provided to the highest possible standard.
- 11.3 The Contractor shall provide any necessary training to the Contractor Related Parties at its own expense.
- 11.4 CMAL reserves the right to object to any member of Contractor Related Parties nominated by the Contractor to be involved in the provision of the Services. The Contractor shall remove from the Contract or from any particular Site any of the Contractor Related Parties to whom CMAL makes a reasonable objection. The Contractor shall provide Contractor Related Parties for interview by CMAL on request.
- 11.5 The Contractor shall ensure that during any period where any of the Contractor Related Parties are absent due to illness, holiday entitlement or failure to attend for any other reason, the Contractor shall provide replacement Contractor Related Parties of suitable skill and ability.
- 11.6 The Contractor shall designate, subject to approval by CMAL, a supervisor to be responsible for the efficient running of this Contract. The supervisor shall be employed by the Contractor and shall have been in the employ of the Contractor for a minimum period of 12 months prior to the Commencement Date. The supervisor shall have [suitable technical expertise and/or [] a sound basic knowledge of general management principles and shall be acceptable to and capable of satisfactory communication with CMAL. The Contractor shall supply to CMAL a copy of the supervisor's CV prior to the Commencement Date.
- 11.7 The Contractor shall notify in writing any intention to replace the supervisor giving an explanation for the change. No such supervisor shall be validly appointed in terms of this contract unless the requirements of Clause 11.6 have been complied with in respect of such supervisor.]

12. SUB-CONTRACTORS

- 12.1 The Contractor shall inform CMAL before entering into an agreement with any sub-contractor in relation to the Contract.
- 12.2 The Contractor shall, on CMAL's written demand at any time, provide such documentation and other evidence as CMAL may reasonably require in order to be satisfied that the sub-

contractor is suitably qualified and capable to undertake that part of the Contract which has been sub-contracted to it.

- 12.3 The Contractor shall remove any sub-contractor upon the reasonable request of CMAL to do so and replace such sub-contractor with another, subject to obtaining the prior written consent of CMAL. The cost of such removal and replacement shall be borne by the Contractor.
- 12.4 Notwithstanding any sub-contracting the Contractor shall remain responsible for carrying out sub-contracted services in all respects in accordance with the Contract.

13. **HOURS OF WORKING AND OPERATING CONDITIONS**

- 13.1 The Contract will operate a site Monday to Friday
- 13.2 A member of the Contractor's staff shall provide access for any sub-contractor on a site and shall otherwise attend the sites as required by CMAL, for example during statutory insurance inspections.

14. **ACCESS AND SECURITY**

- 14.1 The Contractor shall ensure all CMAL equipment and premises are left in a satisfactory condition after use. When requested by CMAL, the Contractor shall undertake or pay the costs and expenses of CMAL incurred in undertaking a dilapidation survey and carrying out the work identified therein.
- 14.2 The Contractor shall at his own expense be responsible for reinstatement of every item removed or damaged during the provision of the Services.
- 14.3 Vehicle parking at CMAL shall be restricted to one Contractor vehicle only at any time/by agreement with CMAL/Port Operator. No specific parking space is available but limited temporary parking may be made available with the prior approval of CMAL.
- 14.4 The Contractor shall comply with all security requirements of CMAL and the Port Ferry Operator and in particular shall:
- (a) ensure that the names of all Contractor Related Parties providing the Services are reported to the Port Ferry Operator's security staff on the way in and out of any Site;
 - (b) ensure that all sub-contractors observe CMAL's security requirements; and
 - (c) ensure that all keys and entrance cards issued to Contractor Related Parties by CMAL are signed for and returned to the appropriate place.
- 14.5 CMAL reserves the right to deny access to its premises to anyone not directly employed in connection with this Contract or for whom authorisation for access has not been obtained.
- 14.6 The Contractor shall be responsible for the safe-keeping of all keys and entrance cards whilst in the possession of a Contractor Related Party. In the event that a key is lost or stolen, the

Contractor shall notify CMAL immediately and shall be responsible for the cost of any necessary replacement as required by CMAL for the continued security of its premises and/or safety of staff and other persons for whom it has responsibilities regarding security or safety.

- 14.7 The Contractor shall ensure that all Contractor Related Parties behave in a manner that will not give offence to CMAL or the Port Operator, its building occupants or visitors.

15. **DOCUMENTATION AND SITE LOG**

- 15.1 The Contractor in agreement with CMAL shall prepare and maintain a site log to record the Services provided. The site log shall provide a complete history of the Services provided under this Contract.

- 15.2 The Contractor shall, at least 60 days prior to each Review Date, submit a [Planned Preventative Maintenance Schedule] to CMAL. CMAL may, acting reasonably, require the Contractor to introduce reasonable re-scheduling so as to cause minimal disruption to a building's occupational patterns and CMAL's activities.

- 15.3 The Contractor shall implement the Planned Preventative Maintenance Schedule in accordance with its terms and shall not vary it without the prior written consent of CMAL.

- 15.4 All records, documents and other information related to the management or performance of this Contract shall become the property of CMAL and shall be passed to it in satisfactory condition when requested.] [Only to be included in contracts for services. Delete definition of Planned Preventative Maintenance Schedule if this Clause is not required.

16. **CONSUMABLES AND STRATEGIC SPARES**

16.1 **Consumables**

- (a) The Contractor shall provide, within the Fee, all Consumables necessary for the provision of the Services and shall keep a constant supply of the same to ensure down-time is kept to an absolute minimum.
- (b) The Contractor shall ensure that the Consumables are of adequate quantity.
- (c) The Contractor shall replace the Consumables in strict compliance with the manufacturer's recommendations.
- (d) The Contractor shall, unless the prior written consent of CMAL is obtained to store at Site, store Consumables off-site until such time as the Contractor reasonably requires the Consumables on Site for the timely and proper performance of the Works.

16.2 **Strategic Spares**

- (a) Prior to the Commencement Date, the Contractor shall submit electronically to CMAL a list of Strategic Spares included within its tendered costs. When considering the list of Strategic Spares the Contractor shall:
 - (i) take advice from the equipment manufacturer/supplier/agent with regard to those particular equipment component items which they consider vulnerable and not normally available "off the shelf".
 - (ii) take into account any limitations of procurement and delivery periods etc.
- (b) The Contractor shall institute a stores procedure to ensure that usage of Strategic Spares is monitored for economic purchasing and re-stocking. Such procedure shall include as a minimum checking the quantity and condition of all strategic spares at least three times a year. The Contractor shall comply with such procedure.
- (c) The Contractor shall store high value and "popular desirable items" at the local service office.]

16.3 The risk of Consumables and Spares will remain with the Contractor at all times.

17. MANUFACTURERS' HANDBOOKS ETC.

- 17.1 The Contractor shall have the opportunity of examining any original design, operating and maintenance documentation in respect of equipment which is in CMAL's possession and which is relevant to the provision of the Services,
- 17.2 Where the original design, operating and maintenance documentation is not available from CMAL, the Contractor shall request and obtain these from the original manufacturer/installer within 30 days of the Commencement Date.
- 17.3 Any claim by the Contractor regarding variation of, or addition to, the maintenance requirements based on lack of knowledge shall not be accepted.

18. HEALTH AND SAFETY

- 18.1 The Contractor shall ensure, when providing the Services, that the premises and any equipment shall be safe and without risk to the health and safety of any person.
- 18.2 The Contractor shall within 30 days of the Commencement Date provide CMAL with a copy of its safety policy and shall identify the person(s) responsible for matters of safety in respect of the Services and to whom reference can be made. The Contractor shall provide a 24 hour telephone number for such person(s).
- 18.3 The Contractor shall supply to all Contractor Related Parties [] compliant with health and safety regulations as appropriate and shall ensure that the Contractor Related Parties wear such clothing at all times whilst on site. All clothing shall display the Contractor's company

name and/or logo and all Contractor Related Parties involved in the provision of the Services shall carry clear and photographic proof of identify at all times.

19. CONTRACTOR'S EQUIPMENT

- 19.1 CMAL shall provide the Contractor with a suitable area to carry out the administration/storage requirements of this Contract.
- 19.2 The Contractor shall not remove any materials or equipment from the Site unless authorised to do so by CMAL.
- 19.3 The Contractor shall at his own expense provide, install and maintain as appropriate all necessary tools, mechanical and electrical equipment, vehicles etc. to enable him to provide the Services in a safe and proper manner complying with all legislation, relevant instructions, recommendations and health and safety regulations.
- 19.4 All equipment used by the Contractor shall be suppressed so as to cause no interference with any communication equipment on CMAL property.

20. PERMITS TO WORK

- 20.1 The Contractor shall set up a permit to work system which shall be approved by CMAL.
- 20.2 Prior to the provision of any Services requiring access to potentially hazardous areas or carrying out hazardous tasks the Contractor Related Parties shall obtain approval from CMAL via a signature on their permit.
- 20.3 The Contractor shall ensure that the Contractor Related Parties confine their activities to those areas specified in the access permits.

21. FIRE ESCAPES

- 21.1 Fire escapes shall be kept clear and accessible at all times unless CMAL agrees otherwise expressly in writing in advance to temporary restrictions.
- 21.2 Where temporary restrictions to a fire escape are agreed, the Contractor shall erect signs as directed by CMAL to indicate temporary escape routes and shall ensure that such signs remain in place for as long as such temporary measures exist.
- 21.3 The Contractor shall provide support to any fire specialists at bi-monthly meetings and fire assimilation tests as required by CMAL.

22. EMERGENCY CALL-OUT SERVICE

- 22.1 The Contractor shall provide an Emergency Call-Out Service which shall be available to CMAL 24 hours a day, 7 days a week at the request of CMAL or CMAL's nominated agent. The Contractor shall respond to call-outs in accordance with Schedule 2 of the Specification

(Schedule of Requirements). If the circumstances leading to an Emergency Call-Out fall within more than one of the categories listed in [] of the Schedule, the Contractor shall comply with the shortest response time applicable.

- 22.2 Within [days] of the Commencement Date, the Contractor shall provide CMAL with 24 hour contact details to be used when the Emergency Call-Out Service is required.
- 22.3 In the event that the Contractor is unable to make a permanent repair, the Contractor will endeavour to make an effective temporary repair, ensuring where possible that the equipment is left operating in a safe condition.
- 22.4 The Services shall include Emergency Call-Outs of [up to 8 hours] (in aggregate) of Contractor Related Party presence on-site. Any on-site presence beyond [8 hours] shall be charged at the Hourly Rates.
- 22.5 In the event that an Emergency Call-Out is requested by CMAL and subsequent appropriate and adequate inspection does not reveal any defect in the equipment, the Contractor may make a reasonable claim for costs based on the Hourly Rates.
- 22.6 In cases of extreme emergency where immediate action outside the scope of the Contract is required and the CMAL cannot be contacted, all reasonable work shall be carried out by the Contractor subject to an emergency work maximum of [£]. CMAL shall be notified of the action taken and the costs incurred at the earliest possible time.

23. INSURANCE

The Contractor shall arrange such insurance as are necessary to cover liability in respect of personal injury or death, or damage to the property, arising out of, or in the course of, or caused by carrying out the work. The limit of indemnity in respect of injury or death (other than Employees - which shall be unlimited) and loss of or damage to property should be not less than xxxx in any one event. Public Liability Insurance to the value of xxxx and Professional Indemnity insurance to the value of xxxx and Contractor's All Risk Insurance shall be in force for the duration of the contact.

The Contractor shall indemnify CMAL against any liability, loss, claim or proceedings that may arise under any statute or at common law in respect of injury or death to workmen or third parties, or damage to property arising out of or caused by undertaking the work.

Evidence of appropriate insurance cover must be available for inspection by CMAL's Representative (or his designate), before starting work.

24. IPR

All information created and collated as a result of this contract will be the property of CMAL and will be transferred to CMAL upon request.

All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, key codes, card readers, models or designs whether in writing or on magnetic or other media furnished to or made available to the Contractor by the CMAL shall remain vested in the CMAL absolutely. The Contractor will return such items to the CMAL immediately upon request but in any case no later than the termination or the expiry of the contract. Should an exit strategy be required it will be conducted in accordance with CMAL guidance.

25. DISCRIMINATION

25.1 The Contractor shall not unlawfully discriminate within the meaning of any relevant legislation or any statutory modification or re-enactment thereof relating to discrimination in employment or engagement whether by age, disability, gender re-assignment, marriage or civil partner status, pregnancy and maternity, race, religion or belief, sex, sexual orientation membership of or activities as part of a trade union, or any other ground not relevant to good practice (as outlined in the Equality Act 2010). The Contractor shall take all reasonable steps to ensure the observance of these provisions by all servants, employees and agents of the Contractor and any Contractor Related Party involved in the execution of the Contract.

25.2 Without prejudice to its remedies set out above, CMAL may terminate the Contract if notice has been given to the Contractor of a fundamental, substantial or persistent breach of this Clause provided that a reasonable period has been given for the breach to be rectified and the Contractor has failed to rectify the breach within that period.

26. TERMINATION OF CONTRACT

26.1

(a) The Contract may be terminated by CMAL giving the Contractor not less than [month] [period for CMAL to give advance notice of termination to be selected] prior written notice provided always that, subject to any provisions of the Contract to the contrary, the parties shall act in accordance with the terms of any Order outstanding as at the expiration of such period of notice.

(b) The Contract may be terminated by the Contractor giving CMAL prior written notice of not less than whichever is the greater of six months and such other period as CMAL requires to comply with the legal and other obligations to which it is subject.

26.2 If:

(a) any of the Key Personnel (being, for the purposes of the Contract, personnel of the Contractor deemed by CMAL to be essential to the proper performance by the Contractor of the Contract) cease to be employed or engaged by the Contractor;

- (b) the Contractor or any Key Personnel become of unsound mind or may be suffering from mental disorder;
- (c) the Contractor or any Key Personnel are unable properly to provide the Services by reason of ill health, accident or otherwise for a period or periods of at least 60 days in aggregate in any period of 12 consecutive months;
- (d) the Contractor or any Key Personnel fail or neglect efficiently and diligently to provide the Services, or are guilty of any breach of their obligations under the Contract or any other agreement with CMAL (including any consent granted under any of them);
- (e) the Contractor or any Key Personnel are guilty of serious misconduct or any other conduct which affects or is likely to affect prejudicially the interests of CMAL or are convicted of an arrestable offence (other than a road traffic offence for which a non-custodial penalty is imposed);
- (f) the Contractor or any Key Personnel cease to have any consent, authority or accreditation necessary to perform or deliver the Services; or
- (g) the Services have not achieved practical completion under Clause 4.2 by the [insert date occurring [3 months] after Completion Date under the Contract; or
- (h) the insolvency of the Contractor
- (i) breach by the Contractor, or its supplier or any sub-contractor of the terms of Clauses 33.3 and 33.5;

CMAL may by written notice to the Contractor stating the ground(s) of termination under the Contract, terminate the Contract with immediate effect PROVIDED THAT any such termination shall be without prejudice to any other rights of CMAL and a notice citing sub-clause 26.2 (b) may only be given by CMAL to the Contractor within 90 days after the end of the period or periods of disability referred to in that sub-clause.

26.3 The Contractor shall not, for a period of one year following termination of the Contract, directly or indirectly and whether on its behalf or for any other person, wholly or partly in competition with any business carried on by CMAL in relation to which the Contractor provided the Services to a material extent in the one year before termination, interfere with or attempt to interfere with the business relations subsisting between CMAL and any person who is a supplier, employee or other agent of CMAL.

26.4 Each of the parties hereby acknowledges that if the duration, extent or application of a restriction contained in sub-clause 26.3 is held to be void but would be valid if part of the wording thereof was deleted, such restriction shall apply with such deletion as may be necessary to make such restrictions valid and effective.

- 26.5 Any termination of the Contract shall be without prejudice to the rights and remedies of CMAL for any breach of the Contract and/or to the continuing nature of the Contractor's obligations and of CMAL's rights which are capable of surviving termination of the Contract including, without prejudice to the foregoing generality, in the circumstances contemplated by any of Clauses 3.4), 7, 27.1 (b) and 25.2, the right of CMAL to recover from the Contractor all additional costs incurred by CMAL in having the Services provided by a third party.
- 26.6 If the Contractor incurs any liability to CMAL, howsoever arising, including, without prejudice to the foregoing generality, pursuant to the Contract, the Contractor shall indemnify CMAL forthwith on demand in respect thereof including, without prejudice to the foregoing generality, the following amounts which the Contractor acknowledges represent a genuine attempt by CMAL to estimate its loss:
- (a) Fees plus VAT and all other monies paid by CMAL to the Contractor pursuant to the Contract;
 - (b) any additional costs paid by CMAL to the Contractor pursuant to the Contract;
 - (c) any other costs paid or losses incurred by CMAL as a result of the Contractor's breach of Contract.
- 26.7 The Contractor, either deliberately or otherwise, shall not during the Contract or at any time (without limit) after termination of the Contract:
- (a) divulge or communicate to any other person; or
 - (b) through any failure to exercise due care and diligence, cause any unauthorised disclosure of,
- any information of a confidential nature not being in the public domain (other than as a result of breach of this Clause) concerning CMAL (the "Confidential Information"). All Confidential Information (howsoever recorded) shall remain the property of CMAL and what is capable of delivery shall be delivered by the Contractor to CMAL on demand and in any event on the termination of the Contract.
- 26.8 The Contractor must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material defect which shall entitle CMAL to terminate the Contract with immediate effect.

27. STATUS OF THE PARTIES

- 27.1 Nothing contained in this Contract shall be construed or have effect as constituting any relationship of employer and employee between CMAL and (a) the Contractor and/or (b) any

of the Key Personnel. CMAL shall not be liable for any tax, national insurance or other contributions arising out of or in connection with the provision of the Services or otherwise and the Contractor shall indemnify CMAL in respect thereof.

- 27.2 Nothing contained in this Contract shall be construed or have effect as constituting the Contractor or any of the Key Personnel as an agent of CMAL. The Contractor and the Key Personnel shall not have any right or power whatsoever to contract on behalf of CMAL or bind it in any way in relation to third parties unless specifically authorised to do so. Nothing in the Contract shall constitute a partnership or joint venture between CMAL and the Contractor.
- 27.3 The Contractor shall be entitled to engage, hire or retain such persons as it deems appropriate to assist it in the provision of the Services, subject to other provisions of the Contract. Such persons, however, shall be employees of the Contractor and shall not be considered employees of CMAL. The Contractor shall be responsible for the payment of any wages, employees' national insurance contributions and other contributions required by law to be paid by it as employer in relation to such persons and shall make all appropriate deductions from such persons' wages in respect of income tax (PAYE) and employee's national insurance contributions and shall indemnify CMAL in respect thereof.
- 27.4 If, for any reason, CMAL shall become liable to pay, or shall pay, any such taxes as are referred to in sub-clauses 27.1 or 27.3 above, CMAL shall be entitled to deduct from any amounts payable to the Contractor all amounts so paid or required to be paid by it and, to the extent that any amount of taxes paid or required to be paid by CMAL shall exceed the amount payable by CMAL to the Contractor, the Contractor shall, upon demand, forthwith reimburse CMAL such excess.
- 27.5 The Contractor and the Key Personnel shall not, at any time after the termination of the Contract, for whatever reason, represent itself as being in any way connected with the business or activities of CMAL.
- 27.6 For the avoidance of doubt, the parties confirm their understanding that The Agency Workers Regulations 2010 ("the Agency Regulations") shall not apply to this Contract nor to the provision of the Services by the Contractor or any Contractor Related Party or any of its/their staff and the Contractor shall indemnify CMAL in respect of any costs incurred by CMAL were it to be determined that the Agency Regulations do in fact apply.

28. **NOTICES**

Any notice or other document to be served under the Contract shall be delivered or sent by first class post to the relevant address shown on the Contract or to such other address or by such means as the receiving party may by notice to the serving party have stipulated therefor. Any such notice or other document shall be deemed to have been served: (a) if delivered by hand, at the time of delivery, (b) if posted, at 10.00 am on the day after it was posted. In

proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such notice or other document was properly addressed and posted as a pre-paid first class letter was properly addressed and despatched as the case may be.

29. ETHICAL & SOCIAL REQUIREMENTS

29.1 It is an essential condition of this Contract that the Contractor and all Contractor Related Parties comply with any relevant Statutory Requirements in relation to the terms of employment and working conditions of their employees, workers and any other persons engaged to perform works and/or services on their behalf.

29.2 In the event that the Contractor and/or any Contractor Related Party breach the terms of Clauses 28(1) and/or (2) above; CMAL will be entitled to terminate this Contract without notice.

30. DISPUTE RESOLUTION

30.1 The determination of CMAL's Representative shall be final save that in the event of any dispute or difference in connection with the Contract the parties shall seek to resolve the dispute or difference amicably by further consultation and negotiation in good faith.

30.2 If the dispute or difference is not resolved to the satisfaction of both parties within [] days after it has arisen or such other period as the parties agree, either party shall be entitled to institute proceedings against the other or earlier if mutually agreed between both parties.

30.3 The parties acknowledge that where the Construction Act applies to this Contract either party can refer the dispute to adjudication proceedings and such adjudication proceedings shall be carried out in accordance with The Scheme for Construction Contracts (Scotland) Regulations 1998 as amended.

31. FREEDOM OF INFORMATION

31.1 In this clause 31:

31.1.1 "FOISA" means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;

31.1.2 "Environmental Information Regulations" means the Environmental Information Regulations (Scotland) 2004;

31.1.3 "Information" has the meaning given under section 73 of FOISA; and

- 31.1.4 "Requests for Information" shall have the meaning set out in FOISA or any apparent request for information under the FOISA or the Environmental Information Regulations.
- 31.2 The Contractor acknowledges that CMAL is subject to the requirements of FOISA and the Environmental Information Regulations and the Contractor shall assist and cooperate with CMAL (at the Contractor's expense) to enable CMAL to comply with these Information disclosure requirements.
- 31.3 The Contractor shall:
- 31.3.1 provide all necessary assistance as reasonably requested by CMAL to enable CMAL to respond to a Request for Information within the time for compliance set out in section 10 of the FOISA or regulation 5 of the Environmental Information Regulations.
- 31.3.2 provide the CMAL with a copy of all Information in its possession or power in the form that CMAL requires within five business days (or such other period as CMAL may specify) of CMAL requesting that Information; and
- 31.4 CMAL shall be responsible for determining at its absolute discretion whether Information:
- 31.4.1 is exempt from disclosure in accordance with the provisions of the FOISA or the Environmental Information Regulations; and
- 31.4.2 is to be disclosed in response to a Request for Information.
- 31.5 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by CMAL.
- 31.6 The Contractor acknowledges that CMAL may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under Section 60(5) of the FOISA, be obliged under FOISA or the Environmental Information Regulations to disclose Information:-
- 31.6.1 without consulting with the Contractor, or
- 31.6.2 following consultation with the Contractor and having taken its views into account.
- 31.7 The Contractor shall ensure that all Information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit CMAL to inspect such records as requested from time to time.
- 31.8 The Contractor agrees that notwithstanding the terms of this Contract any disclosure of Information by the CMAL in response to a Request for Information will not breach any confidentiality obligations imposed on CMAL by the Contractor whether in this Contract or otherwise.

31.9 All information related to the Contract which is held by the Contractor on behalf of CMAL shall be regarded as being held by CMAL and is subject to the provisions of the Legislation referred to in Clause 31.1 and CMAL's Freedom of Information policy at <http://www.cmassets.co.uk>.

32. **ANTI-CORRUPTION AND ANTI-BRIBERY**

32.1 The Contractor acknowledges and agrees that it is not expected by CMAL nor been authorised by CMAL to take any action on behalf of CMAL which would violate any Relevant Laws.

32.2 The Contractor further acknowledges and agrees that it shall comply with all Relevant Laws and Relevant Policies.

32.3 The Contractor declares and undertakes that in relation to the performance of its obligations under this Contract:

- (a) it has not offered or given, and will not offer or give, directly or indirectly, any bribe or other improper benefit or advantage, financial or otherwise, (including without limitation any facilitation payment) (each an "**Improper Payment**") to any individual or organisation for the purpose of influencing or rewarding the improper performance of any function or activity by such individual or organisation or, without limitation to the foregoing, otherwise has not bribed and will not bribe another person in connection with the performance or proposed performance of any function or activity; or
- (b) it has not demanded or accepted, and will not demand or accept, directly or indirectly, any Improper Payment for itself or any individual or organisation intending as a consequence to perform or procure the performance improperly of any function or activity or, without limitation to the foregoing, otherwise has not been and will not be bribed in connection with the performance or proposed performance of any function or activity; or
- (c) it has not offered or given and will not offer or give any Improper Payment or other advantage to any Public Official wherever located with the intention of obtaining or retaining business or an advantage in the conduct of business; or
- (d) it has not authorised or acquiesced in or turned a blind eye to, and will not authorise or acquiesce in or turn a blind eye to, any Corruption; or
- (e) it has not committed or omitted to commit any act that will cause or lead CMAL to be in breach of any of the Relevant Laws or Relevant Policies.

32.4 The Contractor shall:

- (a) if requested, provide CMAL with any reasonable assistance, at CMAL's reasonable cost, to enable CMAL to perform any activity required by any relevant government or

agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Laws or Relevant Policies; and

- (b) within five (5) Business Days of the date of this Contract, and annually thereafter, certify to CMAL in writing signed by an officer of the Service Provider compliance with this clause by the Service Provider and all Service Provider Associated Persons (as defined below) or other persons who are performing services for the Service Provider or CMAL in connection with this Contract. The Service Provider shall provide such supporting evidence of compliance as CMAL may reasonably request.

32.5 If the Service Provider or any Service Provider Associated Person commits any Prohibited Act, then:

- (a) CMAL may terminate this Contract with immediate effect by giving written notice to the Service Provider; or
- (b) if the Prohibited Act is committed by a Service Provider Associated Person acting independently of the Service Provider, then, CMAL may at its absolute discretion either:
 - (i) terminate this Contract in accordance with Clause above; or
 - (ii) give written notice to the Service Provider of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Service Provider terminates such association (and if the relevant Service Provider Associated Person is an employee terminates the employee's employment), providing such evidence as CMAL may require of such termination and (if necessary) procures the performance of the relevant part of the [Services] by another person.

32.6 Any notice of termination under this Clause shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom CMAL believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate in accordance with the applicable provisions of this Clause.

32.7 The Service Provider shall put in place adequate procedures (including, without limitation, within the meaning of section 7 of the Bribery Act) to ensure that no person associated with the Service Provider within the meaning of section 8 of the Bribery Act (being any person providing services of any kind to the Service Provider) ("**Service Provider Associated Person**") commits a Prohibited Act.

- 32.8 The Service Provider shall at all times, during and after the term of this Contract, on written demand indemnify CMAL and its officers, staff, employees and students (“**Relevant Persons**”) and keep CMAL and all Relevant Persons indemnified against all losses, damages, costs or expenses and other liabilities (including, but not limited to, legal fees) incurred by, awarded against or agreed to be paid by CMAL or any Relevant Persons as a consequence of the Service Provider or any Service Provider Associated Person committing a Prohibited Act.
- 32.9 Any termination of this Contract or other actions of the Service Provider pursuant to Clause shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to CMAL.
- 32.10 If CMAL terminates this Contract for breach of this Clause or the Service Provider takes any action pursuant to Clause, the Service Provider shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before such termination.
- 32.11 Regardless of any other provision in this Contract, CMAL shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Relevant Laws.

33. **[COMMUNITY BENEFITS AND ETHICAL AND SOCIAL REQUIREMENTS**

- 33.1 The Contractor undertakes to CMAL that it is aware of CMAL's desire to secure economic and social benefit for local residents and businesses from the investments being made by CMAL in the Services (such economic and social benefits being hereafter referred to as Community Benefits).
- 33.2 The Contractor shall therefore use reasonable endeavours to identify to CMAL and thereafter discuss with CMAL possible ways in which delivery of Community Benefits under the Contract could be achieved by the Contractor by means of;
- 33.2.1 targeted recruitment & training, and
- 33.2.2 an approach to procurement of contracts from sub-contractors and suppliers that gives small and medium-sized enterprises and social enterprises opportunities to bid for such contracts.
- 33.3 The Contractor shall maintain all records and information concerning delivery of Community Benefits on an open-book basis, making it freely available to CMAL (without charge) (including giving copies of documents reasonably requested by the Contractor) at all times both during and after the term of the Contract.
- 33.4 The Contractor, its suppliers and any sub-contractor shall comply with any relevant statutory requirements in relation to the terms of employment and working conditions of its employees,

workers and any other persons engaged to perform works and/or services on its behalf. This includes complying with:

- 33.4.1 health and safety requirements;
- 33.4.2 national minimum wage requirements; and
- 33.4.3 any relevant social security requirements.

33.5 The Contractor, its supplier and any sub-contractor shall not engage in any form of child or forced labour.

33.6 In the event that the Contractor, its suppliers or any sub-contractor breach the terms of Clauses 33.4 and/or 33.5 above; CMAL will be entitled to terminate this Contract immediately on written notice pursuant to Clause 26.2(i).

34. **MISCELLANEOUS**

34.1 **Variation**

Any variation of this Contract shall be binding only if it is recorded in a document signed by an authorised signatory of the Contractor and an authorised signatory or a director of CMAL.

34.2 **Invalidity**

If any provision of this Contract is or becomes invalid or unenforceable, in whole or in part, in any jurisdiction, the validity and enforceability of the other provisions of this Contract and its validity and enforceability in any other jurisdiction shall not be affected and the parties shall enter into good faith discussions to find a suitable replacement provision of equivalent effect.

34.3 **Costs**

Save to the extent otherwise set out in this Contract, CMAL and the Contractor shall each pay their own costs, charges and expenses in relation to the negotiation, preparation, execution and implementation of this Contract and all other documents in the agreed form referred to in this Contract.

34.4 **Waiver**

34.4.1 Failure by CMAL to exercise any of its rights under this Contract shall not constitute or be deemed a waiver or forfeiture of such rights. Any express or implied waiver by CMAL of any provisions of this Contract or of any breach by the Contractor may be terminated by CMAL at any time. No such waiver shall constitute a continuing waiver nor shall it prevent CMAL from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Contract.

34.4.2 Failure by the Contractor to exercise any of its rights under this Contract shall not constitute or be deemed a waiver or forfeiture of such rights. Any express or implied

waiver by the Contractor of any provisions of this Contract or of any breach by CMAL may be terminated by the Contractor at any time. No such waiver shall constitute a continuing waiver nor shall it prevent the Contractor from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Contract.

34.5 No Partnership

The Contractor is an independent contractor and nothing in this Contract shall render it an agent, joint venture or partner of CMAL and the Contractor shall not hold itself out as such. The Contractor shall not have any right or power to bind CMAL to any obligation. The Contractor shall not incur any liability on behalf of CMAL.

34.6 Joint & Several Liability

Where the Contractor consists of two or more parties or persons, obligations in this Contract which are expressed to be made by the Contractor shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order; in the case where the Contractor is a firm or partnership the obligations of the Contractor hereunder shall be binding jointly and severally on all persons who are or become partners of the firm at any time and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order and such obligations shall subsist and remain in full force and effect notwithstanding the dissolution of the firm or partnership or any change or changes which may take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner or by a change in the firm name.

34.7 Severability

Each provision of this Contract shall be construed separately and notwithstanding that any such provision may prove to be illegal or unenforceable the remaining provisions of this Contract shall continue in full force and effect.

34.8 Audit

34.8.1 The Contractor shall provide CMAL (including without limitation any staff of CMAL and/or representatives of any authority) with reasonable access to all places where the Works are performed including without limitation where elements of the Works are being carried out off-site for the purpose of inspection and shall provide CMAL with such documentation, explanations and information in each case related to the Works as it may reasonably require to inspect and appraise the Works.

34.8.2 The Contractor shall promptly and in any event within five (5) Business Days of a request to do so, both during the term of the Contract and following termination, make available to CMAL and any relevant statutory authority reasonable information relating to the carrying out of the Works to enable CMAL to fully and effectively comply with the requirements of any statutory authority.

35. **TUPE - ORGANISATION OF WORKFORCE**

35.1 In this clause 35 “**TUPE**” means The Transfer of Undertakings (Protection of Employment) Regulations 2006.

35.2 The Contractor shall procure that at no time are any of its employees (or the employees of any of its Sub-Contractors) assigned to the carrying out of the Services and/or the supply of the Goods. In this sub-clause, “assigned” has the meaning given to it in Regulation 2(1) of TUPE.

35.3 Notwithstanding sub-clause 35.2, the Contractor agrees that, if, as a result of the suspension or termination of this Contract or the cessation (in whole or in part) of the Services and/or the supply of the Goods, the employment of any individual is transferred from the Contractor (or any of its Sub-Contractors) to CMAL (or any of its own sub-Contractors) by virtue of TUPE (or such employment would have transferred but for its termination) or any such individual asserts that his employment has so transferred (or would have so transferred, but for its termination), then CMAL or its sub-Contractor may terminate the employment of any such individual (insofar as it has not already terminated) within thirty (30) days of becoming aware of such transfer or alleged transfer. The Contractor will, on demand by CMAL, indemnify CMAL (and/or any sub-Contractor of the CMAL) against, and as a separate obligation undertakes to pay to CMAL (and/or any sub-Contractor of CMAL), the amount of all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which CMAL (and/or any sub-Contractor of CMAL) may suffer or incur and which arise in connection with, or relate to the employment of, such individual and/or the termination of their employment (whether by the Contractor (or any of its Sub-Contractors) or CMAL (or any of its Sub-Contractors)).

35.4 The Contractor acknowledges and agrees that the CMAL may grant an indemnity in favour of any sub-Contractor engaged by it to carry out the Services and/or supply the Goods s (or similar services and/or goods similar to the Services and/or Goods, as appropriate) to the same extent that the Contractor is undertaking to indemnify the CMAL in terms of sub-clause 35.2 of this Clause 35, and the Contractor agrees that, in the event of a claim on any indemnity in terms of such sub-clause for loss incurred by CMAL, that loss shall include such amount, if any, as CMAL has paid or is required to pay to any such Sub-Contractor by virtue

of any indemnity granted by CMAL in favour of any such Sub-Contractor in accordance with the provisions of this sub-clause 35.4.

36. **GOVERNING LAW**

This Contract shall be governed by the laws of Scotland and the Parties hereby submit to the non-exclusive jurisdiction of the Courts of Scotland.