

CALEDONIAN MARITIME ASSETS LTD PURCHASE ORDER/CONTRACT TERMS AND CONDITIONS FOR GOODS AND 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. INTERPRETATION AND DEFINITIONS

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

Commencement Date is defined in the covering letter to the ITT;

Consents means all approvals, consents, permissions, licences, accreditations, professional qualifications, certificates and authorisations (whether statutory or otherwise) which are required for the supply or provision of the Goods or Services;

Contract is defined in Schedule 1 (Tendering Instructions) of the ITT;

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

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;

Information has the meaning given under section 73 of FOISA;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Invitation to Tender (ITT) means [] of which these purchase order terms form Schedule 3;

Key Personnel means such personnel of the Supplier named in the Contract or otherwise deemed by the Buyer to be essential to the proper performance by the Supplier of the Contract;

Order means an order given in accordance with Clause 4.1;

Quotation means any quotation or other proposal issued by the Supplier, whether in response to an Order or otherwise, the acceptance of which results in the creation of a contractual relationship to which this Contract applies;

Regulations means regulation, legislation, practice or concession or official directive, ruling, request, notice, guideline, statement of policy or practice by any relevant legislative authority, the European Union, governmental, local, international, national or other competent authority or agency, which concerns or may affect the Goods or Services and/or the supply or performance or receipt thereof;

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; and

Tender is defined in the covering letter to the ITT.

1.1 Interpretation

In the Contract unless otherwise specified:

- 1.1.1 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.1.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.1.3 a statute or statutory instrument or any of their provisions is to be construed as a reference to that statute or statutory instrument or such provision as the same may have been or may from time to time hereafter be amended or re-enacted;
- 1.1.4 month means a calendar month;
- 1.1.5 words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders;
- 1.1.6 the words **including**, **include** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- 1.1.7 in the event of any conflict between this part of the Contract and another part of the Contract, the provisions of this part of the Contract shall prevail.

2. **GOODS/SERVICES**

- 2.1 In the case of framework agreements only, this framework agreement governs the overall relationship of the parties in relation to the Goods or Services to be provided by the Supplier to the Buyer for the duration of the period specified in the ITT and sets out inter alia the procedure for the Buyer to request the provision of Goods or Services from the Supplier.
- 2.2 In the case of framework agreements only, the Buyer, at its sole discretion, shall be entitled to request by way of an Order the provision of any Goods or Services from the Supplier. Such Orders may be intermittent and the requirements under each Order may vary. Every Order shall be governed by this Contract. This Contract and the appointment of the Supplier do not give rise to any entitlement on the part of the Supplier that it will be appointed to undertake any Services or provide any Goods and the Supplier shall have no claim at law or otherwise against the Buyer if the Buyer elects not to instruct the Supplier to carry out any of the Services or provide any of the Goods, or if the Buyer appoints any other person to carry out any of the Services or provide any of the Goods that the Supplier may be qualified to perform.
- 2.3 The Supplier shall supply the goods or services detailed in the ITT on the terms set out in the Contract. These purchase order terms apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. The Supplier warrants to the Buyer that by entering into the Contract and delivering the Goods it shall not be in breach of any contract or other binding obligation or performing the Services neither it nor any Key Personnel (as defined below) shall be in breach of any contract or other binding obligation.
- 2.4 In the case of framework agreements only, the Supplier shall be entitled to engage, hire or retain such persons as it deems appropriate to assist it in the provision of the Services or supply of the Goods, subject to other provisions of this Contract. The Supplier 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 the Buyer in respect thereof.
- 2.5 The Supplier shall procure the compliance of Key Personnel with the Contract and shall ensure that all Key Personnel involved in the provision of the Services are suitably qualified to ensure that the Services are provided to the highest possible standard. The Supplier shall provide any necessary training to the Key Personnel at its own expense.
- 2.6 The Supplier shall, if appropriate, permit the Buyer to inspect and test the Goods at any time before delivery. If following such inspection or testing the Buyer considers that the Goods do not conform or are unlikely to comply in all respects with the Contract including any warranty

set out herein, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding such inspection or testing, the Supplier shall remain fully responsible for the Goods and such inspection or testing shall not reduce or otherwise affect the Supplier's liability or obligations under the Contract.

- 2.7 On dispatch of any consignment of the Goods the Supplier shall send to the Buyer at the address for delivery of the goods an advice note specifying the means of transport, the place and date of dispatch, the date and time of delivery and the number of packages, a description of the Goods and their weight and volume. The Supplier shall free of charge and as quickly as possible either repair or replace (as the Buyer shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Buyer provided that:
- 2.7.1 in the case of damage to such Goods in transit the Buyer shall within thirty (30) Business Days of delivery give notice to the Supplier that the Goods have been damaged; and
- 2.7.2 in the case of non-delivery the Buyer shall (provided the Buyer has been advised of the dispatch and date of delivery of the Goods) within ten (10) Business Days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered.
- 2.8 If, during the transit of the Goods to the specified location, the Goods require to be stored on the Buyer's premises, such storage may, at the Buyer's sole discretion, be provided by the Buyer without acceptance by the Buyer of any liability whatsoever. The Buyer reserves the right to charge the Supplier a fee for such storage.
- 2.9 The guarantee period applicable to the Goods shall be twelve (12) months from the putting into service or eighteen (18) months from the date of delivery of the Goods, whichever shall be the shorter.
- 2.10 If the Buyer acting reasonably is not satisfied with the Goods or Services or believes that their manufacture or processing or provision does not comply in all respects with the Contract including any warranty set out herein, the Supplier shall without extra cost to the Buyer take all steps necessary to ensure prompt and due compliance to the satisfaction of the Buyer.
- 2.11 The Buyer may by written notice to the Supplier, within a reasonable time after delivery, reject any of the Goods which fail to meet the requirements specified in the Contract.
- 2.12 All representations, statements or warranties made or given by the Supplier, its employees and agents (whether orally in writing or in any of the Supplier's brochures, catalogues and advertisements) regarding the quality and fitness for purpose of the Goods or any part of the Goods shall be deemed to be express conditions of the Contract.

- 2.13 The time for the supply or provision of the Goods or Services as set out in the Contract and the relevant Order, Quotation or ITT shall be of the essence. If the Supplier fails to deliver or provide the Goods or Services in accordance with the Contract and the relevant Order, Quotation or ITT (other than as a result of any acts or events beyond its control) then without prejudice to the Buyer's rights for the breach of Contract the Buyer may:
- 2.13.1 terminate the Contract by written notice with immediate effect, without prejudice to the Buyer's other remedies, including the right to recover from the Supplier all additional costs incurred by the Buyer in having the Goods or Services supplied or provided by a third party;
 - 2.13.2 terminate the Order to which the supply or provision of the Goods or Services relates by written notice with immediate effect, without prejudice to the Buyer's other remedies, including the right to recover from the Supplier all additional costs incurred by the Buyer in having the Goods or Services supplied or provided by a third party; or
 - 2.13.3 require the Supplier to proceed with the fulfilment of the Order (making any such changes as are required for the [supply] [provision] of the [Goods] [Services] as are necessary to comply with the specification in the Contract) within a period approved by the Buyer and the Buyer shall have the right to recover from the Supplier any losses which it may have suffered, in accordance with Clause 2.13.
- 2.14 In the event that the Buyer shall elect to proceed with the fulfilment of the Order under Clause 2.13.3, and the Buyer shall have suffered a loss, then without prejudice to the Buyer's rights as aforesaid the Buyer shall have the right to deduct, as liquidated damages and not by way of a penalty, from the Price or Fee either:
- 2.14.1 the percentage stated in the relevant Order, Quotation or ITT and agreed at the time of awarding the Contract, of the total Price or Fee for each week or part thereof between the estimated completion date and the acceptance date (both specified in the Contract), amounting in the Contract to an agreed percentage of total order price; or
 - 2.14.2 where no percentage is specified, a sum equivalent to 1%, one per cent of the total Price or Fee for each week or part thereof between the estimated completion date and the acceptance date (both specified in the Contract). The acceptance date will amount to the date the Buyer accepts the product as fully meeting Buyer requirements in accordance with the terms of the Contract.
- In any event the amount so deducted shall not exceed:

2.14.3 the maximum percentage of the total Price or Fee stated in the relevant Order, Quotation or ITT where percentages have been agreed or where percentages have not been previously agreed; or

2.14.4 a maximum of ten per cent (10%) of the total Price or Fee as stated in the relevant Order, Quotation or ITT.

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

2.15 Where split payment is not required, title and risk in the Goods shall pass to the Buyer on completion of delivery.

2.16 Where split payment is required, title in the Goods shall pass to the Buyer on delivery of the Goods. Risk in the Goods shall pass to the Buyer when the Buyer has paid the final stage of total invoice costs, as set out at Clause 4.14.

3. **DURATION**

The supply or provision of the Goods or Services by the Supplier shall be for the period specified in the ITT with the option to extend for the period specified in the tender subject to the mutual agreement of both parties to the Contract, subject to earlier termination pursuant to Clause 13 (Termination).

4. **PURCHASE ORDERS AND PRICES/FEES**

4.1 The Buyer shall be entitled from time to time to request in writing by way of an Order the provision of any or all of the Goods or Services from the Supplier.

4.2 Subject to the provisions of this Clause 4, the Supplier shall only accept and act upon an Order given in accordance with Clause 4.1 to buy the Goods or Services from the start of business on the Commencement Date. Notwithstanding that the parties have entered into the Contract the Buyer shall have no commitment to purchase the Goods or Services without an Order.

4.3 The Supplier shall comply with the relevant Order, Quotation or ITT in respect of:

4.3.1 the date upon which the supply of Goods or provision of Services require to commence and the duration of the supply or provision thereof;

4.3.2 the description of the Goods or Services which are to be supplied;

4.3.3 the Price or Fee of the Goods or Services which are to be supplied; and

4.3.4 where the delivery or provision of the Goods or Services is to be made and where invoices are to be sent;

or as may be otherwise agreed in writing with the Supplier.

- 4.4 In the case of framework agreements only, prior to placing an Order the Buyer shall provide the Supplier with details of the Goods or Services which are required from the Supplier. Within 2 – 5 Business Days of receipt thereof the Supplier shall give a firm quotation for the Goods or Services based upon the fees set out in or the existing feeing arrangement under the framework. In the event that the Buyer wishes to proceed to instruct the Supplier to carry out the Goods or Services at the fee specified in the quotation the Buyer shall thereafter issue an Order. The Buyer shall not be obliged to issue an Order until such time as the quotation has been accepted. In the event that the Buyer does not issue an Order it shall have no liability for any fees or costs which may be incurred by the Supplier.
- 4.5 In the case of framework agreements only, within twenty (20) Business Days of receipt of an Order, the Supplier shall:
- 4.5.1 either notify the Buyer that it is not able to provide the requested Services or supply the requested Goods; or
 - 4.5.2 confirm in writing that the Order is accepted and thereafter proceed on the basis set out therein.
- 4.6 In the case of framework agreements only, each Order issued pursuant to this framework agreement:
- 4.6.1 shall be entered into by the Buyer and the Supplier;
 - 4.6.2 forms a separate contract between the Buyer and the Supplier; and
 - 4.6.3 shall incorporate the purchase order terms set out in this Schedule 3.
- 4.7 Payment shall be due thirty (30) Business Days after receipt of the Goods or completion of the Services or the receipt of the correct invoice therefor, whichever is the later. Invoices are to be sent to Caledonian Maritime Assets Limited, Municipal Buildings, Fore Street, Port Glasgow, PA14 5EQ.
- 4.8 All of the Goods supplied or Services provided by the Supplier to the Buyer shall conform to the requirements set out in Schedule 2 (Requirements) of the ITT together with all legal and qualitative standards observed by parties following best practice. The parties may, from time to time during the Contract, review the specifications to ensure that the specifications are acceptable to both.
- 4.9 The Buyer may order any variation to any quantity or specification of Goods or to any part of the Service that for any reason shall in its opinion be desirable. The Supplier shall be entitled to submit a revised Price or Fee in respect of such variation and the parties shall thereafter agree the Price or Fee or the variation shall be deemed to be withdrawn.
- 4.10 Save as otherwise provided herein, no variation of the specification of the Goods or Services shall be valid unless given or confirmed in the form of an order given by the Buyer.

- 4.11 The Goods shall not be delivered in instalments without the Buyer's prior written consent. [Where goods are to be delivered in instalments they may be invoiced and paid for separately.
- 4.12 [The Buyer shall pay to the Supplier a price or fee at the rate specified in the Contract, which sum is exclusive of VAT.] [Include this Clause 4.12 if you are NOT including Clauses 4.14 and 4.15 below]
- 4.13 Where annual review is required, the prices or fees stipulated in the Contract exclude of VAT. The Price or Fee shall be subject to review every twelve (12) months (the **Review Date**) commencing on the first anniversary of the Commencement Date. The Supplier shall supply the Buyer with written proposals for any proposed price changes no later than three (3) 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 an agreement in respect of such proposals by the Review Date, the Buyer shall be entitled to terminate the Contract by giving the Supplier not less than one (1) months' prior written notice (during which the Price or Fee shall remain as it was prior to the Review Date thereof at any time after the Review Date. Where the parties fail to reach an agreement by the Review Date, the Price or Fee during any period after the Review Date (including the one (1) month notice) shall remain as it was prior to the Review Date.]
- 4.14 Where split payment is required the Buyer shall pay to the Supplier the Price specified in the Contract in the percentages provided in the Contract against the following stages, if appropriate, of total invoice cost subject to the discretion and authorisation of the Buyer:
- 4.14.1 upon receipt of invoice;
 - 4.14.2 upon satisfactory commencement of the service;
 - 4.14.3 upon satisfactory continuous service for the period stated in the Contract; and
 - 4.14.4 upon satisfactory completion of all provision requirements for the items stated in the Contract.

5. **DUTIES OF SUPPLIER**

- 5.1 The Supplier shall supply the Goods or provide the Services in accordance with the relevant Order, Quotation or ITT and the Contract itself including any performance dates set out in those documents.
- 5.2 The Supplier will comply with:
- 5.2.1 all applicable Consents and Regulations in force from time to time in respect of the performance of the Supplier's obligations under the Contract; and
 - 5.2.2 all health and safety rules and regulations that apply at any of the Buyer's premises.

- 5.3 The Supplier shall indemnify the Buyer against all actions, suits, claims demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any breach of Clause 5.2.2.
- 5.4 The Supplier and Key Personnel shall supply the Goods or provide the Services with best skill, care and diligence having regard to industry standards or professional requirements applicable to the Supplier and in accordance with best practice in the Supplier's industry, profession or trade.
- 5.5 The Supplier shall ensure that the Services and all deliverables required from the Supplier as a consequence thereof shall conform with all descriptions and specification set out in the ITT and shall be fit for any purpose expressly or impliedly made known to the Supplier by the Buyer.
- 5.6 Where the Buyer for the purpose of the Contract issues materials they shall at all times remain the property of the Buyer. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract.
- 5.7 The Supplier shall participate in regular management meetings as required by the Buyer and supply the Buyer with such reports of its work in supplying the Goods or providing the Services at such intervals and in such form as the Buyer may from time to time require.
- 5.8 The Supplier shall provide the Services at such location(s) as the Buyer may reasonably require or is appropriate for the provision of the Services using personnel who are suitably skilled and experienced to perform tasks assigned to them.
- 5.9 The Supplier is deemed to have inspected the premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied itself in relation to all matters connected with the Services and the premises.
- 5.10 The Supplier shall make no delivery of materials, plant or other things nor commence any provision of the Services on the premises without obtaining the Buyer's prior consent. The Supplier shall deliver the Goods at a time agreed between the Supplier and Buyer and at the location specified in the relevant Order, Quotation or ITT or such other location as specified by the Buyer.
- 5.11 Should the provision of the Services involve the supply of goods to the Buyer such goods shall be of satisfactory quality and fit for the purpose for which they are to be used by the Buyer having regard to the provisions of the Contract.
- 5.12 The Supplier warrants that:
- 5.12.1 it shall deliver the Goods in accordance with the delivery schedule specified by the Buyer. Each separate instalment shall be invoiced and paid for in accordance with the provisions in the relevant Order, Quotation or ITT;

- 5.12.2 the Goods will, where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
- 5.12.3 the Goods will conform with the quality, description and other particulars of the Goods set out in the Contract and will comply with all applicable statutory and regulatory requirements relating to the manufacturing, labelling, storage and delivery of the Goods;
- 5.12.4 supply or delivery of the Goods to the Buyer and use thereof by the Buyer will not infringe the Intellectual Property Rights of any third party;
- 5.12.5 the Goods shall be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this regard the Buyer relies on the Supplier's skills and judgement;
- 5.12.6 the Supplier has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same , and where appropriate that it has made available to the Buyer adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health;
- and
- 5.12.7 the Supplier is the sole beneficial owner of the Goods and has the entire right, title and interest in the Goods and has the authority to transfer title in the Goods to the Buyer.
- 5.13 The Supplier shall not omit to do anything which might cause the Buyer to lose any licence, authority, permit or other consent or permission upon which it relies and the Supplier acknowledges that the Buyer may rely or act upon the Services.

6. **[LABELLING AND PACKAGING]**

- 6.1 The Goods shall be packed and marked in a proper manner and in accordance with the Buyer's instructions, any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the number of the Order (if any) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Buyer against all actions, suits, claims demands, losses, charges, costs and expenses which the Buyer may suffer or incur as a result of or in connection with any breach of this Clause.

- 6.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Buyer accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Buyer unless the Supplier shall within ten days (10) Business Days of receiving notice from the Buyer that the packages have been dispatched notify the Buyer of such non-arrival.

7. **GOODS INSTALLED IN OTHER ASSEMBLIES**

Without prejudice to the other rights of the Buyer, if it is necessary to open up or dismantle any other works or assemblies to permit repair or replacement as a consequence of non-conformance of the Goods or part thereof with the Contract, the Supplier shall bear the cost of such opening up or dismantling or re-assembly and making good after repairs, replacements and testing of such goods have been completed to the Buyer's reasonable satisfaction.

8. **IMPORT OR EXPORT LICENCES AND OTHER FORMALITIES**

The Supplier shall promptly obtain all necessary export licences, clearances and other Consents necessary for the supply of the Goods. The Supplier shall be liable for all import duties and charges paid in relation to the supply of the Goods and for compliance with all other legal requirements incumbent upon the Supplier or the Buyer prior to use of the Goods including the lawful handling, transportation, treatment and preparation of the Goods and disposal of packaging.]

9. **SUPPLIER'S PERSONNEL**

- 9.1 The Supplier shall take the steps reasonably required by the Buyer to prevent unauthorised persons from being admitted to the premises.
- 9.2 The Buyer, at its sole discretion, is entitled to give notice to the Supplier requiring any person:
- 9.2.1 not to be admitted to the premises;
 - 9.2.2 to be removed from the premises;
 - 9.2.3 not to be involved in the performance of the Contract; and/or
 - 9.2.4 to be removed from their involvement in the performance of the Contract.
- 9.3 The Supplier shall take all reasonable steps to comply with such notice and shall bear the cost of any removal or instruction under any notice. The giving of any notice shall not entitle the Supplier to delay, suspend, terminate or withhold the performance of any of its obligation under the Contract.
- 9.4 If requested by the Buyer, the Supplier shall provide the Buyer with names, addresses, evidence of identity and any other supporting evidence (as the Buyer may reasonably require) of all persons involved in the performance of the Contract.

10. ACCESS AND SECURITY

- 10.1 The Supplier shall comply with all security requirements of the Buyer and in particular shall:
- 10.1.1 ensure that all sub-contractors observe the Buyer's security requirements;
 - 10.1.2 ensure that all keys and entrance cards issued to Key Personnel by the Buyer are signed for and returned to the appropriate place.
- 10.2 The Buyer shall provide the Supplier with reasonable access at reasonable times for the purposes of supplying the Goods or providing the Services.
- 10.3 The Buyer reserves the right to deny access to its premises to anyone not directly employed in connection with the Contract or for whom authorisation for access has not been obtained.
- 10.4 Any access to the premises, any labour and equipment and any storage or transportation (for any property belonging to the Supplier) that may be provided by the Buyer in connection with the provision of Services or supply of Goods shall be provided without acceptance by the Buyer of any liability whatsoever.
- 10.5 The Buyer shall have the power at any time during the progress of the provision of Services or supply of Goods to order in writing:
- 10.5.1 the removal from the premises of any materials which in the opinion of the Buyer are either hazardous, noxious or not in accordance with the Contract:
 - 10.5.2 the substitution of proper and suitable materials;
 - 10.5.3 the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship, is not in the opinion of the Buyer in accordance with the Contract.
- 10.6 The Supplier shall comply forthwith with the terms of any such order.
- 10.7 On completion of the delivery of the Goods or provision of Services the Supplier shall remove its plant, equipment and unused materials and shall clear away from the premises all rubbish arising out of the delivery of the Goods or provision of Services and leave the premises in a neat and tidy condition.

11. BUYER'S RIGHT OF SET-OFF

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

12. ASSIGNATION AND SUB-CONTRACTING

- 12.1 The Buyer shall be fully entitled to assign or otherwise transfer or sub-contract or charge the whole or any part of its rights and obligations under the Contract without the Supplier's consent.

- 12.2 The Supplier shall provide the Buyer with not less than two (2) weeks' written notice of any intention to assign or otherwise transfer or sub-contract or charge the whole or any part of its rights and obligations under the Contract. Such written notice shall include the following:
- 12.2.1 Name of proposed sub-contractor;
 - 12.2.2 Documentation and other evidence to demonstrate that the sub-contractor is suitably qualified and capable to undertake that part of the Contract which is being or has been sub-contracted; and
- 12.3 The Supplier shall not assign or otherwise transfer or sub-contract or charge the whole or any part of its rights and obligations under the Contract without the prior written consent of the Buyer.
- 12.4 In the event of any permitted sub-contracting pursuant to Clause 12.3, the Supplier shall, on the Buyer's written demand at any time, provide such documentation and other evidence as the Buyer 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 is being or has been sub-contracted to it.
- 12.5 The Supplier shall remove any sub-contractor upon the reasonable request of the Buyer to do so and replace such sub-contractor with another, subject to obtaining the prior written consent of the Buyer. The cost of such removal and replacement shall be borne by the Supplier.

13. **TERMINATION**

- 13.1 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 13.1.1 the Supplier or any Key Personnel commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within one (1) month of receipt of notice in writing of the breach;
 - 13.1.2 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 13.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- 13.1.4 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
 - 13.1.5 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 13.1.2 to Clause 13.1.4 (inclusive);
 - 13.1.6 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
 - 13.1.7 the Supplier is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed) or any offence under any regulation or legislation relating to insider dealing; or
 - 13.1.8 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 13.2 Without limiting its other rights or remedies:
- 13.2.1 the Buyer may terminate the Contract giving the Supplier not less than one (1) month prior written notice; or
 - 13.2.2 the Supplier may terminate the Contract giving the Buyer not less than three (3) months' prior written notice.
- 13.3 On termination of this Contract, howsoever arising, each Order then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such Order, unless earlier terminated in accordance with its terms.
- 13.4 The Buyer may terminate any Order (in any of the circumstances in which it may terminate the Contract) and the Contract shall continue in respect of any then existing or future Order.
- 13.5 On termination of the Contract or any Order the Supplier shall immediately deliver to the Buyer all deliverables whether or not complete, which were required pursuant to the Contract together with any materials belonging to the Buyer. The Buyer shall have the right to enter the Supplier's premises to take possession of such items, without limitation to the Buyer's other rights and remedies.
- 13.6 The Supplier 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.

14. **SUSPENSION**

- 14.1 *In the case of Consultancy only, the Buyer may at any time by notice in writing to the Supplier require the Supplier to suspend the carrying out of the Services for the time being.*

15. **INSURANCE**

- 15.1 The Supplier shall maintain levels stated in the tender of insurances outlined below:

15.1.1 professional indemnity insurance commencing on the Commencement Date and expiring on the date occurring twelve (12) years after the termination of the Contract;

15.1.2 product liability insurance;

15.1.3 public liability insurance; and

15.1.4 employer's liability insurance

for each and every claim in respect of any loss, liability, cost, damages or expenses arising from any breach by the Supplier of the terms of the Contract including any negligent or reckless act, omission or default in the [supply or provision of the Goods or Services.

- 15.2 The Supplier shall:

15.2.1 ensure that the insurance policies are taken out with reputable insurers;

15.2.2 on request, produce for inspection documentary evidence which establishes to the Buyer's reasonable satisfaction that such insurance referred to in Clause 15.1 are being maintained;

15.2.3 notify the Buyer immediately if such insurance ceases to be available at commercially reasonable rates or if for any other reason, the Supplier is unable to continue to maintain such insurance; and

15.2.4 ensure that any sub-contractor also maintains adequate insurance having regard to the part of the Contract which is being or has been sub-contracted to it.

- 15.3 On termination of this Contract, howsoever arising, the Supplier shall maintain the insurances referred to in Clauses 15.1.2 – 15.1.4 for the remainder of the term of any Order then in force at the date of such termination.

16. **LIABILITY**

- 16.1 The Supplier shall keep the Buyer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Buyer as a result of or in connection with:

- 16.1.1 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors;
- 16.1.2 any claim made against the Buyer by a third party arising out of, or in connection with, the delivery of the Goods or provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or sub-contractors; and
- 16.1.3 any damage or injury (whether fatal or otherwise) occurring in the course of the delivery of the Goods or provision of the Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier, its employees, agents or sub-contractors.

17. STATUS OF THE PARTIES

- 17.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. DISPUTE RESOLUTION

- 18.1 The determination of the Buyer 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.
- 18.2 If the dispute or difference is not resolved to the satisfaction of both parties within thirty (30) Business Days after it has arisen or such other period as the parties agree, either party shall be entitled to institute proceedings against the other.

19. NOTICES

Any notice or other document to be served under the Contract shall be delivered or sent by first class post or facsimile process to the relevant address shown on the Contract or to such other address as the party may advise in writing. 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 10.00am on the day after it was posted or (c) if sent by facsimile process, at the expiration of 2 hours after the time of despatch, if despatched before 3.00pm on any day, and in any other case at 10.00am on the day following the date of despatch. 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 or that the facsimile message was properly addressed and despatched as the case may be. For the purposes of the Contract, "writing" shall not include e-mail.

20. **FREEDOM OF INFORMATION**

20.1 The Supplier acknowledges that:

20.1.1 the Buyer is subject to the requirements of FOISA and the Environmental Information Regulations and the Supplier shall assist and cooperate with the Buyer (at the Supplier's expense) to enable the Buyer to comply with these Information disclosure requirements; and

20.1.2 all information submitted by the Supplier to the Buyer may need to be disclosed and/or published by the Buyer in order to comply with the requirements of FOISA.

20.2 The Supplier shall:

20.2.1 provide all necessary assistance as reasonably requested by the Buyer to enable the Buyer 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.

20.2.2 provide the Buyer with a copy of all Information in its possession or power in the form that the Buyer requires within five (5) Business Days (or such other period as the Buyer may specify) of the Buyer requesting that Information.

20.3 The Supplier acknowledges that the Buyer 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:

20.3.1 without consulting with the Supplier, or

20.3.2 following consultation with the Supplier and having taken its views into account.

20.4 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Buyer to inspect such records as requested from time to time.

20.5 The Supplier agrees that notwithstanding the terms of the Contract any disclosure of Information by the Buyer in response to a Request for Information will not breach any confidentiality obligations imposed on the Buyer by the Supplier whether in the Contract or otherwise.

20.6 All Information related to the Contract which is held by the Supplier on behalf of the Buyer shall be regarded as being held by the Buyer and is subject to the provisions of FOISA and

the Environmental Information Regulations and the Buyer's Freedom of Information Policy at <http://www.cmassets.co.uk>.

21. **INTELLECTUAL PROPERTY RIGHTS**

- 21.1 The Supplier shall fully and continually indemnify the Buyer on demand from and against any and all losses, claims, damages, charges, expenses, liabilities, demands, proceedings and actions (including reasonable legal costs) which the Buyer sustains or incurs or which may be brought or established against the Buyer by any person and which in any case arises out of or in relation to or by reason of any allegation that the Goods or Services provided or made available by the Supplier or its use or possession by the Buyer infringes any Intellectual Property Rights of any third party.
- 21.2 Any Intellectual Property Rights owned by, vested in or controlled by the Buyer which may be disclosed or made available to the Supplier will remain at all times the property of the Buyer.
- 21.3 Any specifications, instructions, reports or documentation provided to the Buyer by the Supplier in relation to the supply of the Goods or provision of the Services (including any Confidential Information) shall remain the property of the Buyer at all times and the Supplier will return such items to the Buyer immediately upon request but in any case no later than the termination or the expiry of the Contract.

22. **CONFIDENTIALITY**

- 22.1 The Supplier undertakes that it shall not (at any time) disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Buyer (**Confidential Information**) except as permitted by this Clause 22.1. The Supplier may disclose the Buyer's Confidential Information:
- 22.1.1 to its Key Personnel, representatives or advisers who need to know such information for the purposes of carrying out the Supplier's obligations under the Contract. The Supplier shall procure that its Key Personnel, representatives or advisers to whom it discloses the Buyer's Confidential Information comply with this Clause 22.1; and
- 22.1.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 22.2 The Supplier shall not use the Buyer's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 22.3 The Buyer may seek and obtain references about the Supplier from banks, existing or past clients,] or other referees proposed by the Supplier.

23. AUDIT

- 23.1 The Supplier shall provide the Buyer with full and unrestricted access to all places where the Services are performed or Goods are manufactured and shall provide the Buyer with such documentation, explanations and information in each case related to the supply of the Goods or provision of the Services as it may reasonably require to inspect and appraise the Goods or Services and to conduct operational audits and/or give instructions to the Supplier.
- 23.2 The Supplier shall keep and maintain until two (2) years after the Contract has been completed records to the satisfaction of the Buyer of all expenditures which are reimbursable by the Buyer and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Buyer on a time charge basis. The Supplier shall on request afford the Buyer or its representatives such access to those records as may be required.

24. DISCRIMINATION

The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation (including but not limited to the Equality Act 2010) relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment. The Supplier shall take all reasonable steps to ensure the observance of these provisions by all servants, employees and agents of the Supplier and all sub-contractors employed in the execution of the Contract.

25. ANTI-CORRUPTION AND ANTI-BRIBERY

- 25.1 The Supplier shall (and shall procure that any persons associated with it engaged in the performance of the Contract shall):
- 25.1.1 comply with all applicable laws and codes of practice relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 or do or omit to do, any act that will cause or lead the Buyer to be in breach of the Bribery Act 2010;
 - 25.1.2 comply with the Buyer's ethics, anti-bribery and anti-corruption policies as notified to the Supplier from time to time and have, maintain in place and enforce throughout the term of the Contract adequate procedures to ensure compliance with Clause 25.1.1; and
 - 25.1.3 promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Contract.
- 25.2 For the purpose of this Clause 25, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with the Bribery

Act 2010 (and any guidance issued under section 9 of that Act). Breach of this Clause 25 shall entitle the Buyer to terminate the Contract by written notice with immediate effect.

26. COMMUNITY BENEFITS AND ETHICAL AND SOCIAL REQUIREMENTS

- 26.1 The Supplier shall use reasonable endeavours to identify to the Buyer and thereafter discuss with the Buyer possible ways in which delivery of Community Benefits under the Contract
- 26.2 The Supplier, 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:
- 26.2.1 health and safety requirements;
 - 26.2.2 national minimum wage requirements; and
 - 26.2.3 any relevant social security requirements.
- 26.3 The Supplier, its supplier and any sub-contractor shall not engage in any form of child or forced labour.
- 26.4 In the event that the Supplier, its suppliers or any sub-contractor breach the terms of Clauses 26.2 and/or 26.3 above; the Buyer will be entitled to terminate this Contract immediately on written notice pursuant to Clause 13.1.1.

27. GOVERNING LAW AND JURISDICTION

- 27.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law.
- 27.2 The parties irrevocably agree that the courts of Scotland shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

28. MISCELLANEOUS

28.1 Variation

Any variation of the Contract shall be binding only if it is recorded in a document signed by an authorised signatory of the Supplier and an authorised signatory or a director of the Buyer. In the case of framework agreements only, any variation to this Contract in accordance herewith shall be deemed to apply to all future Orders entered into after the date of such variation.

28.2 **Invalidity**

If any provision of the Contract is or becomes invalid or unenforceable, in whole or in part, in any jurisdiction, the validity and enforceability of the other provisions of the 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.

28.3 **Costs**

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

28.4 **Waiver**

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

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

28.5 **Survival of obligations**

28.5.1 On termination of this Contract the following clauses shall survive and continue in full force and effect:

- (a) Clause 15.1.1 (Insurance);
- (b) Clause 16 (Liability);
- (c) Clause 18 (Dispute Resolution);
- (d) Clause 20 (Freedom of Information);
- (e) Clause 21 (Intellectual Property Rights);
- (f) Clause 22 (Confidentiality); and

(g) Clause 27 (Governing Law and Jurisdiction).