

# **Public Service Contract**

**Between**

**The Scottish Ministers**

**and**

**Argyll Ferries Limited**

**Dated: 7 June 2011**

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## **PUBLIC SERVICE CONTRACT**

### **BETWEEN:**

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

and

**ARGYLL FERRIES LIMITED** incorporated in Scotland (Company No. SC391762) and having its registered/principal office at The Ferry Terminal, Gourock, PA19 1QP (who and whose permitted assignees are referred to as **the Operator**)

### **WHEREAS**

- A. The Scottish Ministers wish to continue to support ferry links between Gourock and Dunoon for the purpose of securing access between these communities by public transport links providing a continuing, safe and affordable regime for users;
- B. The Scottish Ministers may in terms of section 70 of the Transport (Scotland) Act 2001 make grants on such conditions as they determine;
- C. Ferry services between Gourock town centre and Dunoon town centre are currently provided by Cowal Ferries Limited;
- D. Cowal Ferries Limited will cease to provide these ferry services at 2359hrs on 29 June 2011 and thereafter the Services will be provided by the Operator in accordance with this Agreement;
- E. The Scottish Ministers are required pursuant to the European Commission Decision C16/2008 to advertise and competitively tender the provision of subsidised passenger services in accordance with Article 4 of the Maritime Cabotage Regulations (Council Regulation (EEC) No 3577/92) and Article 106(2) of the Treaty on the Functioning of the European Union;
- F. Following an open, transparent and non-discriminatory public tender process conducted in accordance with the Public Contracts (Scotland) Regulations 2006, the Scottish Ministers have entrusted public service obligations in relation to the provision of passenger services between Gourock and Dunoon to the Operator and agreed to compensate the Operator for the Services on the terms and conditions set out in this Agreement.

## 1. DEFINITIONS

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

**Actual Outcome Statement** shall be construed in accordance with Clause 5.4;

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

**Agreement Date** means the date of execution of this Agreement;

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

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

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

**Base Case** means the financial model for the provision of the Services set out in **Error! Reference source not found.** of the Schedule and/or Revised Base Case as the context requires and as may be amended by any Grant Adjustment or otherwise in accordance with the terms of this Agreement;

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

**CalMac Pension Fund** means the pension scheme known as the CalMac Pension Fund which was established by an interim trust deed dated 2 April 1990 and is presently governed by a trust deed and rules dated 8 May 2011 (as amended);

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

**Commencement Date** means 30 June 2011;

**Consumer Prices Index** or **CPI** means the Consumer Prices Index as published from time to time by the Office of National Statistics or such index as shall replace the same provided always that if the CPI is rebased at any time in the period between the Agreement Date and the expiry or termination of this Agreement, it shall nonetheless be determined as if such rebasing had not occurred. In the event of the abolition or a fundamental variation in the basis of the said Index (other than rebasing), the manner in which any sums referred to in this Agreement which are to be varied by reference to CPI are to be varied shall be as agreed between the Scottish Ministers and the Operator. In the event that such agreement has not been reached by the date on which the Grant next falls to be calculated (or re-calculated) using CPI the manner in which any sums referred to in this Agreement are to be varied shall be determined in accordance with Clause 21;

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

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

**Customer Complaint Process** shall be construed in accordance with Part 11 of the Schedule;

**Deduction Regime** means the system of deductions set out in Part 7 of the Schedule for failure by the Operator to meet the Performance Measures;

**Emergency** means any threat to the safety of life or property at sea affecting any person or vessel but shall not include any threat to a Vessel arising from a failure by the Operator to perform its obligations under this Agreement;

**Employees** means those employees of Caledonian Macbrayne Crewing (Guernsey) Limited, CalMac Ferries Limited and Cowal Ferries Limited (the **Employing Entities**)

who are in each case wholly or mainly assigned to the provision of services materially similar to the Services immediately prior to the Commencement Date (save for those who object to the transfer pursuant to regulation 4(7) of TUPE);

**Event of Default** means the occurrence of any of the events set out in Clause 15.1;

**Expert** means the expert appointed in accordance with Clause 5.10;

**Expiry Date** means 29 June 2017;

**Force Majeure Event** means:

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

in each case occurring after the Agreement Date;

**Fuel Cost** means, for any Service Year, the average cost of the appropriate grade of fuel oil per tonne pertaining in the final month of the immediately preceding Service Year (or, in the case of the first Service Year, the month of May 2011), which average cost shall be calculated by reference to Platt's Bunkerwire;

**Grant** shall be construed in accordance with Clause 5 and references to "Grant" include where the context so requires or admits references to Monthly Instalments;

**Grant Adjustment** means an adjustment to the Grant in accordance with Clause 5.8 to reflect changes in Applicable Law;

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

**Group** shall be construed in accordance with the Companies Act 2006;

**Harbour** means the harbour facilities at either or both of Gourock harbour and the breakwater pier at Dunoon;

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

**Health & Safety Plan** shall be construed in accordance with Part 10 of the Schedule;

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

**Index Linked** to a date in respect of a sum means that the sum is multiplied by the following factor:

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

Where:

CPI [x]c is the Consumer Price Index published in the Month of June in the Service Year in which Index Linking is being applied; and

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

and cognate expressions shall be construed accordingly;

**Inherited Employment Liabilities** means costs, claims, liabilities and expenses (including reasonable legal expenses) relating to or arising out of the employment of the Employees who transfer to the Operator pursuant to TUPE and which arise in the period prior to the Commencement Date for which the Operator or an Associated Company or a sub-contractor of the Operator becomes liable by reason of TUPE including, without prejudice to the foregoing generality, negligence claims by any such employees or any third party, unfair dismissal, redundancy, unlawful discrimination, breach of contract, unlawful deduction of wages and equal pay excluding claims in relation to pensions entitlement.

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

**Inverclyde Council** means Inverclyde Council, a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 and having its principal offices at Municipal Building, Greenock, PA15 1LY;

**Legislation** means any Act of Parliament, including any local, personal or private Act of Parliament, any subordinate legislation (as that expression is defined in section 21(1) of the Interpretation Act 1978), any exercise of the Royal Prerogative and any enforceable community right (as that expression is defined in section 2 of the European Communities Act 1972) and any bylaws, statutory instruments, orders, notices, directions, codes of practice, consents or permissions properly and lawfully

made or given under any of the foregoing (including for the avoidance of doubt, any legislation enacted by any Scottish Parliament or assembly or similar body and any subordinate or delegated legislation made by the Scottish Ministers or other person deriving authority from such legislation);

**Marketing Plan** shall be construed in accordance with Part 9 of the Schedule

**Material Reduction in Carryings** means the carryings on the Services for a relevant Service Year have been established (to the reasonable satisfaction of the Scottish Ministers) to have fallen by at least 30% from the carryings forecast in the Base Case for that relevant Service Year;

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

**Merchant Navy Officers Pension Fund** means the defined benefit pension scheme of that name established by a trust deed dated 29 October 1937 which is operated by MNPA Limited and is presently governed by a trust deed dated 25 June 1999 and rules (as amended);

**Merchant Navy Officers Pension Plan** means the money purchase scheme of that name established and operated by MNPA Limited;

**Merchant Navy Ratings Pension Plan** means the money purchase pension scheme of that name established and operated by MNPA Limited;

**Monitoring Procedures** shall mean the procedures set out in Part 6 of the Schedule;

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

**Monthly Instalments** shall be construed in accordance with Clause 5.3;

**New Agreement** means any arrangement or contract of whatsoever nature in relation to the provision by the Scottish Ministers of a grant in respect of passenger services between Gourock and Dunoon similar in scope to the Services commencing subsequent to the expiry or termination of this Agreement;



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

**Operator's Representative** means the suitably qualified and competent individual nominated by the Operator to be the main point of contact with the Scottish Ministers during the Contract Period;

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

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

**Party** means either of the parties to this Agreement;

**Pension Liability** means any amounts which on any day are due to the CalMac Pension Fund (including any amounts on termination of this Agreement) whether under Section 75 of the Pensions Act 1995 or otherwise other than the regular future service contribution due in respect of salary or wages paid or payable during or in respect of the Grant Period;

**Performance Deduction** shall be construed in accordance with Clause 5.9.1;

**Performance Measures** means all or any of the Performance Measure for Reliability, Performance Measure for Punctuality (Connectivity), Performance Measure for Punctuality (General), Performance Measure for Compliance, Performance Measure for Reporting and the Performance Measure for Customer Complaints all as set out in Part 7 of the Schedule;

**Projected Fuel Liability** means the Fuel Costs for the relevant Service Year multiplied by seven hundred (700) tonnes;

**Public Sector Contribution** shall be construed in accordance with Clause 6.1;

**Quarterly** means each period of three months during the Grant Period where the first Quarter commences on the Commencement Date and ends on the preceding day in the third following calendar month or, if the third following calendar month has no

numerically preceding day, on the last day of the appropriate calendar month and where the Termination Date does not fall on the last day of a Quarter that Quarter shall be deemed for the purposes of this Agreement to have ended on the Termination Date;

**Reconciliation Fuel Costs** means for any Service Year the actual average costs of the appropriate grade of fuel oil per tonne pertaining in a Service Year which average costs will be calculated by reference to Platt's Bunkerwire for a Service Year as soon as possible after the expiry of that Service Year;

**Redundancy Costs** means an Employee's entitlement to a statutory redundancy payment and/or an enhanced redundancy payment (if applicable) in relation only to an enhanced redundancy scheme in place as at the Commencement Date and the costs of a payment in lieu of notice or notice pay and for the avoidance of doubt shall exclude any other costs whatsoever or discretionary payments;

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

**Relief Event** means:

- (a) the cancellation of any sailing or the late arrival of any sailing if the cause of the cancellation or lateness is attributable to adverse weather, tidal conditions or any other safety factor (but not the non-attendance of suitably qualified and experienced staff) outwith the Operator's reasonable control which would in the Master's opinion have made the sailing or arrival in accordance with the Timetable unsafe or impractical and where such cancellation or lateness (or the effects thereof) could not have been avoided or mitigated by the exercise of due diligence by the Operator;
- (b) non-availability of, or operational restrictions at, any of the Harbours for any reason outwith the Operator's reasonable control including because any facilities at the Harbours are being used by vessels other than the Vessels;
- (c) terrorism, piracy or hijacking;
- (d) the Scheduled Unavailability of any Vessel;
- (e) the occurrence of an Emergency in which any Vessel is or becomes involved; and/or
- (f) the late departure or arrival of any sailing as a result of:

- (i) a departure being held back to await the arrival of a late running scheduled public transport service intended to connect with that sailing; and/or
- (ii) the knock on effect of an earlier late arrival where the lateness is firstly, not greater than the lateness of the earlier service, and secondly, the lateness could not have been avoided or mitigated by the exercise of due diligence by the Operator.

**Revenue** means the Operator's income from the Services for the relevant period including but not limited to all Public Sector Contributions and all amounts received by the Operator as a result of actual or threatened litigation, arbitration or other proceedings but not including any amounts paid or payable to the Operator by the Scottish Ministers under Clause 5;

**Revised Base Case** shall be construed in accordance with Clause 5.7;

**Revised Base Case Calculation** shall be construed in accordance with Clause 5.7;

**Schedule** means the Schedule to this Agreement;

**Scheduled Unavailability** means, in respect of the M.V. Ali Cat a period of two weeks in each Service Year in the month of November and in respect of the M.V. Banrion Chonamara a period of two weeks in each Service Year in the month of June;

**Services** means passenger services between the Harbours as specified in Part 3 of the Schedule;

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

**Start-up Plan** shall be construed in accordance with Part 2 of the Schedule;

**Tariff** shall be construed in accordance with Clause 3;

**Tariff Index Linking** means that the sum (excluding any element of the tariff which is set by a third party) is multiplied by the following factor:-

CPI Jc  
CPI Jp

Where **CPI Jc** is the Consumer Price Index published in the Month of June in the Service Year in which Tariff Index Linking is being applied, and

**CPI Jp** is the Consumer Price Index published in the Month of June in the previous Service Year,

and cognate expressions shall be construed accordingly;

**Tariff Period** means a period of approximately twelve months during the Grant Period which shall start on the earlier of (a) the commencement of the Easter holidays of the majority of the Scottish schools and (b) Good Friday and which continues until the next Tariff Period commences (provided always that the first Tariff Period shall be deemed to start on the Commencement Date) and Tariff Periods are identified by reference to the calendar years in which they commence and terminate;

**Termination Date** means the date of termination of this Agreement prior to the Expiry Date and Termination shall be construed accordingly;

**Timetable** means the timetable set out in Part 3 of the Schedule as the same may be amended from time to time in accordance with this Agreement;

**Transfer Assistance Period** means the period from 6 months prior to the Expiry Date or if earlier, the date that the Operator becomes aware that the provision of the Services is to cease until the Expiry Date;

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

**Vessels** means the M.V. Ali Cat and the M.V. Banrion Chonamara, (details of which are set out in Section 2 of Part 1 of the Schedule) or such other vessel employed from time to time by the Operator for the provision of all or any part of the Services as has been approved by the Scottish Ministers in accordance with Clause 2.

## 1.1 Interpretation

In this Agreement, except where the context otherwise requires:

1.1.1 all references to Clauses and to Parts of the Schedule are references to Clauses of and Parts of the Schedule to this Agreement and all references

to Parts and paragraphs are references to Parts of and paragraphs contained in the Schedule;

- 1.1.2 words importing the singular include the plural and vice versa;
- 1.1.3 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as from time to time amended, replaced, consolidated, extended or re-enacted;
- 1.1.4 all references to agreements, documents, or other instruments include a reference to that agreement, document or instrument as amended or supplemented from time to time or to any replacement or superseding agreement, document or instrument;
- 1.1.5 the headings to the Clauses are inserted for convenience only and shall not affect the interpretation of this Agreement;
- 1.1.6 any notice, instruction, notification, direction, request, consent or approval contemplated herein shall be made or given in writing; and
- 1.1.7 anything which may be done by the Scottish Ministers may be done by any person duly authorised by the Scottish Ministers for that purpose.

## 2. **SERVICES**

- 2.1 Subject to Clause 3.2 and any period of Scheduled Unavailability, the Operator shall employ the Vessels to provide the Services in accordance with the Timetable throughout the Grant Period.
- 2.2 The Operator shall ensure that the Services are provided throughout the Grant Period in accordance with:
  - 2.2.1 Applicable Law including but not limited to all Applicable Law relating to the Vessels, their registration, operation and maintenance, all vessel and crew safety requirements and all relevant health and safety requirements; and
  - 2.2.2 the Performance Measures.
- 2.3 The obligation on the Operator in Clause 2.1 to provide the Services does not preclude the Operator from using the Vessels or any of them for any other purpose

provided that the obligation to provide the Services has been and continues to be satisfied in accordance with this Agreement.

2.4 If at any time any Vessel is unable to undertake or complete a voyage for any reason, the Operator shall be entitled to provide the Services employing a vessel or vessels other than the Vessels provided that any such substitute vessel meets all relevant regulatory requirements and is insured by the Operator to a level at least equivalent to that required for the Vessel which is being replaced (or such other level as may be appropriate having regard to the specification of the vessel in question). As soon as reasonably practicable after the need to employ a replacement or substitute vessel arises, the Operator shall provide to the Scottish Ministers in relation to that substitute vessel all of the following documents all in form and substance satisfactory to the Scottish Ministers:

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

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

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

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

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

2.6 The Scottish Ministers may at any time contact either or both of the harbour authorities at the Harbours to obtain information about or relating to the Services and the Operator shall sign such documents and carry out such acts as required to facilitate the provision of such information by the relevant harbour authority and will use its reasonable endeavours to procure that any relevant harbour authority complies with such a request.

2.7 The Operator undertakes to comply with:

2.7.1 the requirements of Part 5 of the Schedule; and

2.7.2 the Monitoring Procedures set out in Part 6 of the Schedule;  
at all times during the Grant Period.

2.8 If a Relief Event occurs the Operator shall;

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

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

### 3. **FARES AND TIMETABLE**

3.1 Fares

3.1.1 The Operator shall throughout the Grant Period publish the tariff for the Services (the **Published Tariff**) and shall not charge rates in excess of the Published Tariff. The Published Tariff for the period from the Commencement Date until commencement of the 2012/13 Tariff Period shall be the 2011/12 Tariff set out in Section A of Part 4 of the Schedule.

3.1.2 The Operator shall seek the consent of the Scottish Ministers to the proposed Published Tariff for each Tariff Period no later than 31 July prior to the relevant Tariff Period and the Scottish Ministers will be deemed to have signified consent to any proposed increase in the Published Tariff unless they shall have refused their consent within 30 Business Days of the receipt by the Scottish Ministers of the application for consent.

3.1.3 Subject to Clause 3.1.2, the Published Tariff for each Tariff Period starting after the Commencement Date shall be the Published Tariff for the immediately preceding Tariff Period increased by Tariff Index Linking and rounded in accordance with Clause 3.1.9. If the Operator wishes to increase the Published Tariff by Tariff Index Linking the Operator shall seek the consent of the Scottish Ministers to the proposed increase no later than 31 July prior to the Tariff Period which will be affected and the Scottish Ministers will be deemed to have signified consent to any proposed increase in the Published Tariff unless they shall have refused their consent within 30 Business Days of the receipt by the Scottish Ministers of the application for consent.

- 3.1.4 If the Operator wishes to increase the Published Tariff for any Tariff Period by an amount less than would arise from Tariff Index Linking the Published Tariff for the previous Tariff Period or to make no increase, the Operator shall seek the consent of the Scottish Ministers no later than 31 July prior to the Tariff Period which will be affected and the Scottish Ministers will be deemed to have signified consent unless they shall have refused their consent within 30 Business Days of the receipt by the Scottish Ministers of the application for consent.
- 3.1.5 The Operator may not increase the Published Tariff for any Tariff Period by an amount more than would arise from Tariff Index Linking, subject always to the provision of Clause 3.1.9,
- 3.1.6 The Operator shall not offer or vary preferential tariffs or discounts to achieve the effect of reducing the Published Tariff without the consent of the Scottish Ministers and the Scottish Ministers will be deemed to have signified consent to any such variation unless they shall have refused their consent within 30 Business Days of the receipt by the Scottish Ministers of the application for consent.
- 3.1.7 The Scottish Ministers shall be entitled to require the Operator to increase or reduce the Published Tariff in whole or in part or to vary any preferential tariffs or discounts at any time by issuing to the Operator a Revised Tariff Structure. The Revised Tariff Structure shall come into effect as the Published Tariff for all purposes on the date or dates specified by the Scottish Ministers which date or dates shall be not less than two months after the date of issue of the Revised Tariff Structure. The Scottish Ministers shall be entitled to specify that different parts of the Revised Tariff Structure shall come into effect as the Published Tariff on different dates.
- 3.1.8 A revised Tariff Structure shall be deemed to be a Scottish Ministers Change Order to which Clause 4.2 applies.
- 3.1.9 The amounts calculated by applying the Tariff Index Linking to the previous Tariff Period's Published Tariff shall be rounded as follows:
- (a) for amounts which are less than £25.00, round up to the next £0.05;
  - (b) for amounts which are greater than £25.01 but less than £50.00, round up to the next £0.50; and



- (c) for amounts which are greater than £50.01, round up to the next £1.00.

provided that for the purposes of calculating the Published Tariff the figures to be Tariff Index Linked shall be the unrounded figures from the previous Tariff Period (excluding any element of the traffic which is set by a third party) and those unrounded figures, Tariff Indexed Linked, shall (together with any element of the tariff which is set by a third party) then be rounded as set out above.

- 3.1.10 For the avoidance of doubt the Operator will not be required to reduce the Published Tariff in the event that Indexation applying to the relevant Tariff Period is less than zero.

## 3.2 Timetable

- 3.2.1 The Operator shall publish the Timetable for the Services.
- 3.2.2 The Operator shall provide the Services in accordance with the Timetable except in the event of a Relief Event.
- 3.2.3 The Operator shall be entitled with the consent of the Scottish Ministers to make changes to the departure and arrival times set out in the Timetable provided that all necessary consultation has been carried out pursuant to Clause 10.1 prior to the Operator seeking to make any such changes. The Operator shall give the Scottish Ministers not less than 30 Business Days notice of the coming in to effect of any proposed alterations to the Timetable and the Scottish Ministers will be deemed to have signified consent to any such changes unless they shall have refused their consent within 15 Business Days of the receipt by the Scottish Ministers of the application for consent. For the avoidance of doubt, any such proposal shall not have the effect of materially altering the Services.
- 3.2.4 On making changes in accordance with Clause 3.2.3, the Operator shall publish a new Timetable.

## 3.3 Marketing

- 3.3.1 The Operator will implement the Marketing Plan to the satisfaction of the Scottish Ministers.

3.3.2 The Operator will market the Services in accordance with the Marketing Plan and the Operator will review the Marketing Plan when so required by changing market conditions or when so requested by the Scottish Ministers, and shall update the Marketing Plan as appropriate.

#### 3.4 Health & Safety

3.4.1 The Operator will implement the Health & Safety Plan to the satisfaction of the Scottish Ministers.

### 4. CHANGE TO AGREEMENT REQUIREMENTS

4.1 The Scottish Ministers may at any time by written notice order any variation to any part of the Services or the Tariff if the Scottish Ministers, acting reasonably, have concluded that the Services are, or are about to become, inadequate or inappropriate for any reason.

4.2 Where any such variation of the Services or the Tariff made in accordance with Clause 4.1 and/or any requirement to implement a Revised Tariff Structure pursuant to Clause 3.1.7 has affected or may affect the Operating Costs or Revenue, the Operator will notify the Scottish Ministers timeously in writing of the effect which it has had or may have on said Operating Costs or Revenue and such notification shall be considered by the Scottish Ministers, who shall take all of the facts into account (including such supporting information as may be provided by the Operator) and may authorise such alterations to the Base Case and/or the Monthly Instalment to be paid to the Operator in accordance with the provisions of the Agreement as are, in the Scottish Ministers' sole opinion, appropriate and reasonable in the circumstances.

4.3 The Operator shall not be required to implement any variation which would cause the Operator to breach Applicable Law.

### 5. GRANT

5.1 The Scottish Ministers shall make advances by way of grant (the **Grant**) to the Operator towards provision of the Services during the Grant Period calculated in accordance with this Agreement.

5.2 The Grant shall not be revised except in accordance with this Clause 5 or Clause 6.

5.3 Ascertaining the Grant and the Monthly Instalments

- 5.3.1 The Base Case will show:
- (a) the projected difference between Operating Costs (including the Operator's Return) and the Revenue for each Month; and
  - (b) the projected cumulative difference between Operating Costs (including the Operator's Return) and the Revenue for each Service Year.
- 5.3.2 The Grant for each Service Year shall be:
- (a) the projected cumulative difference between Operating Costs (including the Operator's Return) and Revenue for that Service Year shown in the Base Case; together with
  - (b) the Projected Fuel Liability.
- 5.3.3 The Monthly Instalment for any Month shall be:
- (a) the projected difference between Operating Costs (including the Operator's Return) and Revenue (if a negative figure) for that Month shown in the applicable Base Case; together with
  - (b) one twelfth of the Projected Fuel Liability for the relevant Service Year.
- 5.3.4 Monthly Instalments shall be payable in arrears, on the fifth (5<sup>th</sup>) Business Day of the next following Month.
- 5.3.5 In the event that a Revised Base Case Calculation comes into effect as the Revised Base Case pursuant to Clause 5.7 any overpayment or underpayment to date shall be compensated by the Scottish Ministers by adjusting, in the case of an underpayment the next Monthly Instalment and in the case of an overpayment, any subsequent Monthly Instalment.
- 5.3.6 In the event that pursuant to Clause 25 (Pensions) the Scottish Ministers shall make a payment to the Operator in respect of any Pension Liability, such amount shall form part of the Grant notwithstanding that it does not or may not appear in the Base Case for the relevant Service Year and if paid outwith the Grant Period it shall be deemed to have been paid in respect of the last Service Year.

5.3.7 Payments under Clause 5.3.6, Clause 24.1 and/or Fuel Costs shall be ignored for the purposes of calculating Performance Deduction.

5.3.8 Amounts payable in respect of Pension Liabilities shall be paid by the Scottish Ministers in full and without any deductions or withholding in respect of set-off, compensation, retention, counterclaim or any matter whatsoever.

#### 5.4 Reconciliations

5.4.1 As soon as possible and in any event within 2 Months after the expiry of each Service Year, the Operator will submit a draft Actual Outcome Statement to the Scottish Ministers which shall be prepared in accordance with Clause 5.5. The Actual Outcome Statement will show the actual difference (the **Deficit**) between Operating Costs (including the Operator's Return) and the Revenue for that Service Year.

5.4.2 If in any Service Year the Grant actually paid exceeds the Deficit by £50,000 or less then no adjustments shall be due between the Operator and the Scottish Ministers.

5.4.3 If in any Service Year the Grant actually paid exceeds the Deficit by more than £50,000 then the appropriate row of the following table shall be applied to calculate the Clawback:

| If the Excess Payment ( <b>EP</b> ) is |                    | Clawback                                     |
|--|--------------------|--|
| More than:                             | But not more than: |  |
| £50,000                                | £100,000           | $(\text{EP} - 50,000) \times 50\%$           |
| £100,000                               | £150,000           | $(\text{EP} - 100,000) \times 75\% + 25,000$ |
| £150,000                               |                    | $(\text{EP} - 150,000) \times 95\% + 62,500$ |

where the Excess Payment is the amount by which the Grant actually paid exceeds the Deficit

- 5.4.4 In the event that the final Service Year shall be of less than 12 months duration all monetary amounts in the table shall be pro-rated.
- 5.4.5 The Operator shall repay the Clawback to the Scottish Ministers within 20 Business Days of the Actual Outcome Statement being agreed or determined as the case may be and the Clawback if not repaid as aforesaid may be deducted (in whole or in part) by the Scottish Ministers from any subsequent Monthly Instalment.
- 5.4.6 For the avoidance of doubt, if in any Service Year the Deficit exceeds the Grant actually paid then the Scottish Ministers shall be under no obligation to make any adjustments to the Grant for that Service Year or any other Service Year.

#### 5.4A Fuel Cost Reconciliation

- 5.4A.1 At the time the draft Actual Outcome Statement is submitted the Operator will submit a statement for the immediately preceding Service Year which discloses i) the Fuel Cost for that Service Year; ii) the Reconciliation Fuel Cost for that Service Year; iii) Projected Fuel Liability for that Service Year and iv) the Reconciliation Fuel Cost for that Service Year multiplied by seven hundred (700) tonnes (referred to as the **Reconciliation Fuel Liability**); and
- (a) if the Reconciliation Fuel Liability for the Service Year is less than 90% of the Projected Fuel Liability, the Operator will make a payment to the Scottish Ministers representing the difference between the Reconciliation Fuel Liability and 90% of the Projected Fuel Liability; or
  - (b) if the Reconciliation Fuel Liability for the Service Year is equal to or greater than 90% of the Projected Fuel Liability but equal to or less than 110% of the Projected Fuel Liability, no payment in respect of the reconciliation of fuel costs will be made by either party; or
  - (c) if the Reconciliation Fuel Liability for the Service Year is more than 110% of the Projected Fuel Liability, the Scottish Ministers will make a payment by way of additional grant to the Operator representing the difference between the Reconciliation Fuel Liability and 110% of the Projected Fuel Liability.

5.4A.2 For the avoidance of doubt there shall be no double counting of Fuel Cost and other Operating Costs in the reconciliations and additional payment or repayments to be carried out pursuant to this Clause 5.

## 5.5 Actual Outcome Statement

5.5.1 The Actual Outcome Statement for each Service Year shall be prepared using the actual Operating Costs (including the Operator's Return) and Revenue of the Operator for that Service Year except that:

- (a) no adjustment shall be made to the Operating Costs or the Revenue in respect of any Performance Deductions or in respect of any fines or penalties incurred by the Operator;
- (b) no allowance shall be made for any reduction in Revenue arising from the Operator allowing concessions or discounts which have not been provided for in the Base Case or consented to by the Scottish Ministers or otherwise reducing or not applying the Published Tariff;
- (c) no account shall be taken of the costs of any reference to the Expert;
- (d) the Published Tariff shall be assumed to have been Tariff Index Linked and rounded up on every applicable occasion unless agreed otherwise by the Scottish Ministers;
- (e) adjustments to the Operating Costs in respect of increased wages or salaries shall be limited to Index Linking of the wages and/or salaries allowed for in the applicable Service Year;
- (f) no adjustment shall be made to any interest charges (except so far as reasonably arising from changes in interest rates during the relevant Service Year) made or provided;
- (g) if any reduction in the Operating Costs is attributable to the deferring of scheduled expenditure or arises from a breach by the Operator of his obligations under this Agreement then the Grant shall be reduced by an amount equal to such reduction;
- (h) no adjustment shall be made for the costs associated with any increase in the amount of fuel oil purchased in excess of seven hundred (700) tonnes; and

- (i) any payments made to the Operator by way of additional grant under Clauses 24.1 and/or 25.4 shall not be included.

5.5.2 The draft Actual Outcome Statement will be submitted to the Scottish Ministers together with such supporting vouchers, reports and other documentation as the Scottish Ministers may reasonably require for the purpose of substantiating the Actual Outcome Statement and the Deficit. If the Scottish Ministers agree the draft Actual Outcome Statement as submitted or with variations agreed with the Operator then the Actual Outcome Statement shall come into effect for the purpose of establishing the Deficit. If the Scottish Ministers and the Operator do not agree any item in the Actual Outcome Statement within 10 Business Days of submission of the draft Actual Outcome Statement the Scottish Ministers shall refer such dispute to the Expert.

## 5.6 Purpose of Grant

5.6.1 The Grant shall be used solely to meet part of the costs and expenses of provision of the Services in accordance with this Agreement and for no other purpose whatsoever.

5.6.2 For the avoidance of doubt it is specifically declared that the Grant is a subsidy only and not a payment for services provided or to be provided to the Scottish Ministers.

5.6.3 If VAT is determined to be properly chargeable on any payments made by the Scottish Ministers to the Operator pursuant to this Agreement, all costs, amounts and values in this Agreement shall be deemed to be exclusive of VAT, and the Operator will provide appropriate VAT invoices to the Scottish Ministers.

## 5.7 Revised Base Case

5.7.1 In the event that the Operator is able to establish (to the reasonable satisfaction of the Scottish Ministers) that:

- (a) carryings on the Services for a relevant Service Year have fallen by at least 15% from the carryings forecast in the Base Case for that relevant Service Year; and

- (b) carryings on the Services can reasonably be forecast to continue at levels of at least 15% below that forecast in the Base Case for subsequent Service Years,

provided always that the Operator (i) has not in any way contributed to such material difference in carryings and (ii) has taken all reasonable steps to mitigate the consequences of such material difference in carryings then the Operator may submit, as soon as possible and in any event within 2 Months after the expiry of the relevant Service Year, a proposal for a Revised Base Case Calculation for the subsequent Service Years to take account of any forecast reduced carryings.

- 5.7.2 If the Harbour Dues payable are increased without an equivalent increase in the Published Tariff being authorised by the Scottish Ministers then provided always that the Operator (i) has not in any way contributed to such increase in Harbour Dues and (ii) has taken all reasonable steps to mitigate the consequences of such increase in Harbour Dues then the Operator may submit, as soon as possible, and in any event within two months after the relevant increase in Harbour Dues, a proposal for a Revised Base Case Calculation for the current and any subsequent Service Years to take account of such increase in Harbour Dues.
- 5.7.3 If the level of contributions received by the Operator in connection with the provision of the Services from Strathclyde Passenger Transport through its concession scheme are reduced without an equivalent increase in the Published Tariff being authorised by the Scottish Ministers then provided always that the Operator (i) has not in any way contributed to such reduction in contributions and (ii) has taken all reasonable steps to mitigate the consequences of such reduction in contributions then the Operator may submit, as soon as possible, and in any event within two months after the relevant reduction in contributions, a proposal for a Revised Base Case Calculation for the current and any subsequent Service Years to take account of such reduction in contributions.
- 5.7.4 For the avoidance of doubt when undertaking a Revised Base Case Calculation no account shall be taken of the matters referred to in Clause 5.5.1.
- 5.7.5 Actual information regarding carryings on the Services to date in the relevant Service Year shall, so far as known, be incorporated into the Revised Base



Case Calculation. The Operator shall also submit such information and supporting documentation as the Scottish Ministers may request. If the Scottish Ministers (in their sole discretion) agree the Revised Base Case Calculation as submitted by the Operator, or with variations agreed with the Operator, then the Revised Base Case Calculation (with any relevant variations) shall come into effect as the Revised Base Case for the subsequent Service Years (until recalculated as herein provided). If the Scottish Ministers and the Operator do not agree any items in the Revised Base Case Calculation within 10 Business Days of submission of the Revised Base Case Calculation then, for the avoidance of doubt, the Revised Base Case Calculation shall not come into effect as the Revised Base Case.

## 5.8 Changes in Applicable Law

5.8.1 In the event that there is a change in Applicable Law such that as a consequence of such change the Operator incurs an unavoidable material increase in its Operating Costs then the Operator shall so advise the Scottish Ministers and shall be entitled to request a Grant Adjustment.

5.8.2 When requesting a Grant Adjustment the Operator shall provide such actual and projected information relating to Operating Costs (including the Operator's Return) and Revenue as the Scottish Ministers may request and if the Scottish Ministers agree the Grant Adjustment the Base Case and all future Monthly Instalments shall be adjusted accordingly.

5.8.3 If the Scottish Ministers and the Operator do not agree any items relating to the requested Grant Adjustment within 30 days of submission the Scottish Ministers shall refer any disputed item to the Expert. The Monthly Instalments shall be adjusted by the net effects of such amounts as are not in dispute pending the Expert's determination.

## 5.9 Deductions

5.9.1 Without prejudice to and in addition to the rights of the Scottish Ministers under any other provisions of this Agreement, where the Operator has failed to meet any of the Performance Measures, the Scottish Ministers may make deductions (**Performance Deductions**) in accordance with the Deduction Regime. The Scottish Ministers shall notify the Operator of its liability to

Performance Deductions, but any delay or failure to notify shall not impair the right of the Scottish Ministers to make Performance Deductions.

- 5.9.2 The Scottish Ministers shall be entitled to recover Performance Deductions by way of deduction from the Monthly Instalment payable in any Month after the Quarter in respect of which the Performance Deductions arose. Any Performance Deductions which remain unrecovered after the Termination Date or the Expiry Date (as the case may be) shall be a debt due and owing to the Scottish Ministers.
- 5.9.3 No Performance Deductions under Clause 5.9.1 may be made where the failure to meet any Performance Measure is directly attributable to a Relief Event.
- 5.9.4 If the Scottish Ministers make a Performance Deduction for a failure to meet the Performance Measure for Reliability, they shall not make a Performance Deduction for a failure to meet the Performance Measure for Punctuality (Connectivity) or the Performance Measure for Punctuality (General) if all failures arise from the same circumstances and vice versa.
- 5.9.5 If the Scottish Ministers make a Performance Deduction for a failure to meet the Performance Measure for Punctuality (Connectivity), they shall not make a Performance Deduction for a failure to meet the Performance Measure for Punctuality (General) if both failures arise from the same circumstances and vice versa.

## 5.10 Expert

- 5.10.1 The Expert shall be a person having appropriate expertise with respect to, but no interest in the outcome of, the matter referred to him and shall be appointed jointly by the parties. Failing any such agreement within 5 Business Days of the first nomination of a person to be the Expert, the Expert shall be the person nominated by the President for the time being of the Institute of Chartered Accountants of Scotland on the application of either party. The party making the application shall request the President to nominate a person with appropriate expertise and no interest in the outcome. The costs of any reference to the Expert shall be borne by the parties in such proportions as the Expert shall determine.
- 5.10.2 The Expert shall be given terms of reference agreed between the parties stating the context in which the relevant referral is being made to him and

failing agreement each party shall be entitled to submit its own terms of reference. Each party may provide such supporting information as it sees fit. The Expert shall be free to make his own determination of the item referred to him and his determination shall be final and binding except in the case of manifest error. The Expert shall act as expert in determining the matter referred to him and not as an arbitrator.

- 5.11 If during the Grant Period the Operator permanently replaces either of the Vessels in accordance with Clause 2.4 and with the consent of the Scottish Ministers the Projected Fuel Liability shall be amended to reflect the fuel consumption of the replacement vessel.

## 6. PUBLIC SECTOR CONTRIBUTIONS

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

- 6.2 The Operator shall notify the Scottish Ministers immediately if:

6.2.1 the Operator shall make an application for any Public Sector Contribution in connection with the Services;

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

6.2.3 the Operator shall receive any Public Sector Contribution in connection with the Services.

Such notification shall give full details of the Public Sector Contribution applied for, offered or received as the case may be.

- 6.3 The Scottish Ministers may withhold payment of the Grant or any part of it or reclaim the Grant (and any additional grant paid to the Operator pursuant to Clause 24.1 or any other provision of this Agreement) or any part of it and the Operator shall repay any such sum within 20 Business Days together with interest (as determined by the European Commission in accordance with Article 10 of Commission Regulation (EC) No 794/2004 (OJL 140, 30.4.2004, p.1) and the Commission notice on the method

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

## **7. OPERATOR'S STATUS**

- 7.1 In carrying out the Services the Operator shall be acting as principal and not as the agent of the Scottish Ministers. Accordingly the Operator shall not (and shall procure that the Operator's agents and servants do not) say or do anything that might lead any other person to believe that the Operator is acting as the agent of the Scottish Ministers.

## **8. OPERATOR'S WARRANTIES**

- 8.1 The Operator warrants and undertakes to the Scottish Ministers that as at the Agreement Date and the Commencement Date:
- 8.1.1 it is a limited liability company, duly incorporated and validly existing and not in liquidation or apparently insolvent under the laws of Scotland or any jurisdiction outside Scotland;
  - 8.1.2 it has full power and authority to enter into, and to fulfil its obligations under, this Agreement and the agreements set out in Section 1 of Part 1 of the Schedule; and
  - 8.1.3 all authorisations, approvals, consents, licences, registrations and other matters, official or otherwise, required or advisable in connection with the entry into, performance, validity and enforceability of this Agreement and in connection with the operation of the Services have been obtained or effected and are in full force and effect and there are no circumstances which indicate that any of the same are likely to be revoked in whole or in part in the ordinary course of events.

## 9. PAYMENT

- 9.1 Subject to Clause 6.3, if either party fails to pay any sum due to the other within 20 Business Days of the due date for payment interest will accrue for the period of non-payment at the rate of statutory interest (as set in accordance with section 6 of the Late Payment of Commercial Debts (Interest) Act 1998) applying during the period of non-payment.
- 9.2 Either Party may retain or set off any amount owed to it by the other Party under this Agreement which has fallen due and payable against any amount due to the other Party under this Agreement.

## 10. CONSULTATION WITH USERS

- 10.1 The Parties, acting reasonably, shall consult with each other in good faith throughout the Grant Period in relation to all matters relevant to both the Services and this Agreement, in order to facilitate the continued provision of the Services.
- 10.2 The Operator shall take part in shipping services consultation meetings with representatives of the relevant Regional Transport Partnerships, Argyll & Bute Council and Inverclyde Council from time to time throughout the Grant Period as required by the Scottish Ministers and/or the relevant Regional Transport Partnership and/or Council.
- 10.3 As and when requested by the Scottish Ministers the Operator shall take part in consultation meetings throughout the Grant Period with representatives of users of the Services and the public and shall provide the Scottish Ministers with copies of minutes from such meetings. The Scottish Ministers shall be entitled to be represented at such meetings and their representatives shall be entitled to speak at such meetings.

## 11. AUDIT, EXPENDITURE AND ACCOUNTABILITY

- 11.1 The Operator shall ensure and procure that adequate internal expenditure controls are in place and that all resources are used economically, effectively and efficiently so as to comply with the terms of this Agreement.
- 11.2 The Operator shall ensure that there is no cross-subsidisation between the Services and any other service run by or activities of the Operator or between the Operator and any other Associated Company and that all transactions with any Associated

Company are conducted on an arms length basis and are so identified in all records and books of accounts.

- 11.3 The Operator shall have clear, separate and transparent accounting systems for the financing and operating of the Services (in accordance with the Financial Transparency (EC Directive) Regulations 2009/2331) to ensure that the Grant is only used for the Services and not for any other activity of the Operator and shall deal with the Scottish Ministers on an open book basis.
- 11.4 The Operator shall ensure that, in the event that it operates any other service or carries out any other activities, a cost allocation mechanism is in place such that costs which are common to the Services and those other services and/or activities are correctly allocated and recorded in accordance with clearly established, consistently applied and objectively justifiable cost accounting principles.
- 11.5 The Operator shall ensure that, in the event that it operates any other service or carries out any other activities, a revenue allocation mechanism is in place such that revenues which are common to the Services and those other services and/or activities are correctly allocated and recorded in accordance with clearly established, consistently applied and objectively justifiable cost accounting principles.
- 11.6 The Operator shall keep and maintain throughout the Grant Period and thereafter, until 5 years after the final payment by the Scottish Ministers to the Operator pursuant to this Agreement, adequate and proper records of and books of accounts recording the financial affairs of the Operator, the provision of the Services and all receipts and expenditures of monies advanced to the Operator by the Scottish Ministers by way of the Grant.
- 11.7 The Operator shall throughout the duration of the Grant Period and for a period of 5 years after the final payment has been made to the Operator by the Scottish Ministers pursuant to this Agreement provide the Auditor General for Scotland access at all reasonable times and on reasonable notice to its books and records for the purposes of carrying out any audit or examination which he is empowered to carry out pursuant to the Public Finance and Accountability (Scotland) Act 2000 or any other Legislation.
- 11.8 The Operator shall throughout the Grant Period and at its own cost present to the Scottish Ministers:
- 11.8.1 not later than 6 Months after the end of every accounting reference period of the Operator, a copy of the audited financial statements of the Operator and

the audited consolidated financial statements of any Group of which the Operator forms part for that accounting reference period;

11.8.2 as soon as reasonably practicable after the end of any period notified by the Scottish Ministers (but not more than once in any Service Year) a confirmation by the auditors of the Operator in such form as may be agreed between the Scottish Ministers, the Operator and the auditors containing information to confirm that the Grant paid to the Operator has been applied by the Operator in accordance with Clause 5; and

11.8.3 the information set out paragraph 2 of Part 6 of the Schedule.

11.9 The Operator shall provide to the Scottish Ministers (or any other person appointed by the Scottish Ministers) such information as they may reasonably require from time to time, including access to and/or copies of all records maintained by the Operator, concerning any of the Services (but not so as to involve the Operator in expenditure or managerial or administrative time which is unreasonable having regard to the nature of the information required) and the Scottish Ministers shall reimburse to the Operator its reasonable costs incurred in complying with this Clause 11.9.

## 12. **CORRUPT GIFTS OR PAYMENTS**

12.1 The Operator shall not offer or give, or agree to give, to any employee or representative of the Scottish Ministers any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Agreement with the Scottish Ministers or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Agreement. The attention of the Operator is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916 and the criminal offences to be created by the Bribery Act 2010.

## 13. **INDEMNITY**

13.1 Without prejudice to any rights or remedies of the Scottish Minister, the Operator shall indemnify the Scottish Ministers against all actions, suits, claims, demands, losses, charges, costs and expenses which the Scottish Ministers may suffer or incur as a result of or in connection with:

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

13.1.2 any breach of this Agreement by the Operator.

#### 14. **CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION**

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

14.2 The Operator shall do all things necessary to facilitate the Scottish Ministers' compliance with the Freedom of Information (Scotland) Act 2002 which shall include but may not be limited to:

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

14.2.2 where the Scottish Ministers receive a request for information in relation to information that the Operator is holding on their behalf and which the Scottish Ministers do not hold themselves the Scottish Ministers shall refer to the Operator such request for information that they receive as soon as reasonably practicable and in any event within 5 Business Days of receiving a request for information and the Operator shall provide the Scottish Ministers with a copy of all such information in the form that the Scottish Ministers require as soon as practicable and in any event within 10 Business Days (or such other period as the Scottish Ministers acting reasonably may specify) of the Scottish Ministers' request.

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

14.3 All information related to this Agreement will be treated as commercial in confidence by the parties except that:



- 14.3.1 either Party may disclose any information as required by law or judicial order to be disclosed; and
  - 14.3.2 either Party may disclose any information to its professional advisers provided always that the recipient of the information shall be subject to the same obligation of confidentiality as that contained herein.
  - 14.3.3 the Scottish Ministers may disclose all information obtained by the Scottish Ministers by virtue of this Agreement to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents or the European Commission or any other institution of the European Union.
- 14.4 The Operator shall not, and shall ensure and procure that its agents, employees, representatives and sub-contractors do not, except with the prior approval of the Scottish Ministers (which may be granted subject to such conditions as the Scottish Ministers see fit):
- 14.4.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning the Agreement; or
  - 14.4.2 disclose to third parties any information obtained by it from the Scottish Ministers under or in connection with the Agreement.
- 14.5 The provisions of this Clause shall not apply to any information which may reasonably be required to be disclosed to any party by the Scottish Ministers for the purposes of seeking an Incoming Operator.

## 15. **DEFAULT AND TERMINATION**

- 15.1 The occurrence of any of the following circumstances or event shall constitute an Event of Default:
- 15.1.1 the Operator knowingly and deliberately giving any fraudulent written information to the Scottish Ministers or giving any other written information to the Scottish Ministers which read as a whole is incorrect or misleading, in a material respect;
  - 15.1.2 the Operator being unable to pay its debts as they fall due, suspending making payments on any of its debts or commencing negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

- 15.1.3 the passing of a resolution that the Operator be wound up, or a court making an order that the Operator be wound up or that a liquidator (whether provisional, interim or otherwise) be appointed or any equivalent or analogous step is taken in any jurisdiction and such order not being recalled or discharged within 28 days, in any case otherwise than for the purposes of a solvent reconstruction or amalgamation previously sanctioned by the Scottish Ministers;
- 15.1.4 a receiver, manager, judicial factor, administrator or administrative receiver being appointed to the Operator or over all or any substantial part of the property which may from time to time be comprised in the property and undertaking of the Operator or any equivalent or analogous appointment is made in any jurisdiction and such appointment not being discharged within 28 days;
- 15.1.5 the Operator ceasing or threatening to cease to carry on business or to provide the Services or any of them;
- 15.1.6 the occurrence of any event which allows or which with the lapse of time would allow any party to any of the agreements set out in Section 1 of Part 1 of the Schedule (other than any charterparty and provided always that such event does not impact on the Services) to terminate the relevant agreement before its natural expiry date;
- 15.1.7 any breach of contract by the Operator which allows any counter party to any charterparty to terminate the relevant charterparty before its natural expiry date;
- 15.1.8 the arrest or detention of any Vessel unless the Vessel or Vessels in question shall be free from arrest or detention within 7 days;
- 15.1.9 the Operator committing a material breach of any provision of this Agreement which if capable of remedy has not been remedied within 7 days of the Scottish Ministers notifying the Operator of such breach;
- 15.1.10 any authorisation, approval, consent, licence, exemption, filing, registration or notarisation or other requirement necessary to enable the Operator to comply with any of its obligations hereunder which are material (as determined by the Scottish Ministers) and which the Operator is responsible for procuring and/or maintaining, being modified, revoked or withheld or ceasing to remain in full force and effect and not being reinstated in full force

and effect or replaced by an equivalent, unless lack of the same does not affect the provision of the Services and said reinstatement or replacement is achieved with 7 Business Days; or

15.1.11 there is any Change in Control of the Operator after the date of this Agreement except in circumstances where its holding company is listed on the London Stock Exchange and the Change in Control occurs as a result of a public offer (unless the Scottish Ministers shall have given their prior consent which, shall not be unreasonably withheld or delayed if there is no Event of Default then subsisting).

## 15.2 Remedies

If the Scottish Ministers become aware of the occurrence of an Event of Default, the Scottish Ministers may at any time exercise all or any of the following remedies:

15.2.1 by notice to the Operator terminate this Agreement with immediate effect or on such date as the Scottish Ministers in their sole discretion shall stipulate in the notice;

15.2.2 in relation to any of the Events of Default set out in Clauses 15.1.2 to 15.1.5, by notice to the Operator declare that all sums previously paid by way of Grant (other than those amounts paid by way of additional grant under Clauses 24.1, 24.3 and/or 25.4) shall be immediately due and payable to the Scottish Ministers; and/or

15.2.3 issue a Cure Notice.

15.3 In the event of this Agreement being terminated as a consequence of an Event of Default, the Operator shall pay to the Scottish Ministers the amount of any costs and expenses properly and reasonably incurred by the Scottish Ministers in connection with the Scottish Ministers re-tendering the Services.

15.4 This Agreement may be terminated at any time by agreement between the Scottish Ministers and the Operator. In the event of such termination, the Operator shall be entitled to all its proper and reasonable costs, losses or expenses (evidenced on an open book basis) arising as a direct result of such termination.

15.5 Without prejudice to any entitlement of the Operator to seek specific implement of any obligation under this Agreement or to any interdict or interim relief, in the event of a failure by the Scottish Ministers to implement any of their obligations under this

Agreement the sole remedy of the Operator shall be able to rescind and to recover from the Scottish Ministers any financial losses suffered by the Operator as a direct consequence of such failure.

- 15.6 Notwithstanding the provisions of this Clause 15, Clauses 1 (Definitions), 5.9.2, 11 (Audit, Expenditure and Accountability), 12 (Corrupt Gifts or Payments), 13 (Indemnity), 14 (Confidentiality and Access to Government Information), 15.3, 15.5, 18 (Transition Obligations), 21 (Arbitration), 23 (Governing Law), 24 (TUPE), 25 (Pensions) and 26 (General) shall survive termination of this Agreement along with any other Clauses or Parts of the Schedule necessary to give effect to those provisions. Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to either Party.

## 16. CURE

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

16.1.1 the Operator fails to meet the Performance Measure for Reliability on 3 or more occasions in any 3 month period;

16.1.2 the Operator fails to meet the Performance Measure for Punctuality (Connectivity) on 3 or more occasions in any 3 month period;

16.1.3 the Operator shall fail to comply with any of its obligations under this Agreement (other than where a Performance Deduction for either punctuality or reliability has been made in respect of such failure);

16.1.4 a Material Reduction in Carryings has occurred, irrespective of whether either Party has exercised its rights under Clause 5.7;

16.1.5 Clause 15.2.3 applies; or

16.1.6 one or more Relief Events shall prevent the provision by the Operator of the Services for a continuous period of 5 Business Days or for a cumulative period of 20 Business Days in any twelve consecutive months.

## 16.2 Cure Notice and Cure Plan

16.2.1 When the Cure Plan has been approved by the Scottish Ministers the Operator will implement the Cure Plan to the satisfaction of the Scottish Ministers.

16.2.2 If at any time the Scottish Ministers are not satisfied with the progress being achieved by the Operator in relation to the Cure Plan and it is not being implemented in accordance with its terms, then the Scottish Ministers may by notice to the Operator declare that the payment of the Grant shall be suspended whereupon the liability of the Scottish Ministers in respect of the Grant shall be suspended forthwith. The liability of the Scottish Ministers in respect of the Grant, if suspended, shall be reinstated upon the implementation of the Cure Plan to the satisfaction of the Scottish Ministers or otherwise as the Scottish Ministers may decide.

16.2.3 If:

- (a) the terms of the Cure Plan have not been agreed;
- (b) the actions specified in the Cure Plan to be taken by the Operator or otherwise shall not have been taken;
- (c) the matter(s) referred to in the Cure Notice have not otherwise been resolved to the satisfaction of the Scottish Ministers;

each or any within the periods specified in the Cure Plan, an Event of Default shall be deemed to have occurred and the provisions of Clauses 15.2, 15.3, 15.4 and 15.5 shall apply.

## 17. **FORCE MAJEURE**

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

17.2 If at any time the Operator claims a Force Majeure Event in respect of any of its obligations under this Agreement, the Scottish Ministers shall be entitled at their own cost to procure one or more third parties to provide passenger services between Gourock and Dunoon town centres in so far as the Operator is unable to provide the Services or part of them for so long as the Force Majeure Event or its effect continues to prevent the Operator from performing all or any of its obligations under this Agreement.

17.3 If the Force Majeure Event in question prevails for a continuous period in excess of 7 days, the Scottish Ministers and the Operator shall without prejudice to the rights of

the Scottish Ministers under Clause 17.2 enter into bona fide discussions with a view to alleviating the effects of the Force Majeure Event or to agreeing such alternative arrangements as may be fair and reasonable.

- 17.4 If no such terms are agreed within 6 Months of the commencement of the Force Majeure Event, and at that time such Force Majeure Event is continuing or its consequence remains such that the Operator is unable to comply with its obligations to any material extent, either Party may terminate this Agreement by giving 30 Business Days' notice to the other party.
- 17.5 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of such Force Majeure Event on the Services and the Operator shall at all times during which a Force Majeure Event is subsisting take all steps to overcome or minimise the consequences of the Force Majeure Event.
- 17.6 The Party affected by a Force Majeure Event shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes such Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall unless the Scottish Ministers have exercised their rights under Clause 4 continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

## 18. **TRANSITION OBLIGATIONS**

### 18.1 Start-up

The Operator shall implement the Start-Up Plan. The Operator shall provide regular reports to the Scottish Ministers as to the performance of and progress under the Start-Up Plan and notify the Scottish Ministers of and permit them, or their representatives, to attend meetings with third parties whose participation or co-operation is required to achieve completion of the Start-Up Plan.

### 18.2 Pre-Expiry

The Operator shall upon the request of the Scottish Ministers made at any time during the last 12 Months of the Grant Period (or if the Scottish Ministers shall have given notice under Clause 15.2.1 at any time after the date of such notice) supply the Scottish Ministers with all such information regarding the Vessels and their operation, employees, passenger numbers and other matters (including the like information as regards key sub-contractors) which the Scottish Ministers may require (of which the

Scottish Ministers shall be the sole judges) for all purposes connected with the inviting of tenders from persons interested in becoming the Incoming Operator and for the purposes of evaluating any such tender.

### 18.3 Handover

If the Scottish Ministers shall have appointed an Incoming Operator, the Operator shall cooperate with the Scottish Ministers and the Incoming Operator to ensure smooth handover and uninterrupted provision of the Services and shall procure the assignation or novation to the Incoming Operator of all intellectual property rights which are, in the reasonable opinion of the Scottish Ministers, essential to the uninterrupted provision of the Services.

## 19. **ASSIGNATION AND SUB CONTRACTING**

19.1 The Operator shall not assign or sub-contract any portion of the Agreement without the prior written consent of the Scottish Ministers. Sub-contracting any part of the Agreement shall not relieve the Operator of any obligation or duty (or part thereof) attributable to the Operator under the Agreement.

19.2 The Operator shall provide the Scottish Ministers with a copy of the deed or document formally recording any assignation of this Agreement.

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

19.4 Where the Operator enters an assignation or a sub-contract with an operator or contractor for the purpose of performing this Agreement, the Operator shall cause a term to be included in such assignation or sub-contract which

19.4.1 requires payment to be made to the assignee, operator or contractor within a specified period not exceeding 30 days from receipt of a valid invoice from the assignee, operator or contractor as defined by the sub-contract or assignation requirements and provides that, where the Scottish Ministers have made payment to the Operator in respect of the Services and the assignee, operator or contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Operator is not exercising a right of retention or set-off in respect of a breach of contract by the assignee, operator or contractor, or in respect of a sum otherwise due by the assignee, operator or contractor to the Operator,

payment must be made to the assignee, operator or contractor without deduction;

19.4.2 notifies the assignee, operator or contractor that the sub-contract or assignment forms part of a larger contract for the benefit of the Scottish Ministers and that should the assignee, operator or contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the assignee, operator or contractor to the Scottish Ministers; and

19.4.3 is in the same terms as that set out in this clause 19.4 (including for the avoidance of doubt this clause 19.4.3) subject only to modification to refer to the correct designation of the equivalent party as the Scottish Ministers and assignee, operator or contractor, as the case may be.

## 20. **NOTICES**

20.1 Any notice given under or pursuant to the Agreement may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the Party shown at the top of this Agreement, or to such other address as the Party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

## 21. **ARBITRATION**

21.1 All disputes, differences or questions between the parties to the Agreement with respect to any matter or thing arising out of or relating to the Agreement, except to the extent to which provision for reference to an Expert is made elsewhere in the Agreement, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party.

21.2 Where a dispute relates to the amount of any payment the Party disputing payment shall pay any undisputed amount when due under this Agreement.



## 22. **CONDITIONS PRECEDENT**

- 22.1 The obligation of the Scottish Ministers to pay the Grant or any Monthly Instalment under this Agreement is subject to the condition that the Scottish Ministers have received all of the documents and other evidence listed in Part 1 Section 1 of the Schedule all in form and substance satisfactory to the Scottish Ministers.

## 23. **GOVERNING LAW**

- 23.1 These Clauses shall be governed by and construed in accordance with the laws of Scotland and the Operator hereby irrevocably submits to the jurisdiction of the Court of Session.

## 24. **TUPE**

- 24.1 In the event that the Operator (or an Associated Company or sub-contractor of the Operator) becomes liable for any Inherited Employment Liabilities which relate to or arise out of any event or occurrence in each case before the Commencement Date in respect of any Employees the Scottish Ministers shall reimburse the Operator for all amounts paid by way of additional grant provided always that no additional grant shall be paid in relation to Inherited Employment Liabilities which (i) the Operator was aware of or could reasonably be expected to be aware of having made enquiries that a prudent operator in the Operator's position ought to have made prior to the Commencement Date or (ii) relate to or arise from the actions or omissions of the Operator (or its associated companies or its sub-contractors) or (iii) relate to or arise from claims which have been notified to the Scottish Ministers after the period of 3 months from the Commencement Date or (iv) relate to or arise from a breach of regulations 13 and 14 of TUPE.
- 24.2 The Operator shall, and shall procure that any Associated Company or sub-contractor of the Operator shall, comply with its or their obligations under regulations 13 and 14 of TUPE in relation to the commencement of the Services and shall indemnify and keep indemnified the Scottish Ministers and/or, on demand by the Scottish Ministers, any third party from and against any costs, claims, liabilities and expenses (including reasonable legal expenses) arising out of any failure to so comply.
- 24.3 In the event that any Employee is dismissed by the Operator (or any Associated Company or sub-contractor of the Operator) by reason of redundancy (within the meaning of section 139 of the Employment Rights Act 1996) within a period of 3

months from the Commencement Date, the Scottish Ministers shall reimburse the Operator in respect of Redundancy Costs incurred in relation to such dismissal (subject to clause 24.4) which shall be paid by way of additional grant provided that the Operator has (i) made reasonable efforts to minimise such Redundancy Costs (including without limitation making efforts to re-deploy such Employees where appropriate and requiring employees to work notice periods where appropriate) (ii) carried out a fair and objective selection process and (iii) has provided such evidence to verify such Redundancy Costs and to verify its compliance with the terms of this clause 24.3 as the Scottish Ministers may reasonably require including without limitation the total number of redundancies, details of each individual's entitlement in relation to the Redundancy Costs, details of each individual's notice period and the total amount of the Redundancy Costs it proposes to pay in respect of each individual . In the event that the Operator (or any Associated Company or sub-contractor of the Operator) re-employs such Employee within a period of 12 months from the date of termination of his/her employment, the Operator shall notify the Scottish Ministers in writing of this fact and shall repay any Redundancy Costs to the Scottish Ministers on demand which were paid in relation to such Employee's dismissal.

- 24.4 For any redundancies effected in accordance with clause 24.3 above, the reimbursement provided by the Scottish Ministers shall be limited in accordance with this clause 24.4. The total amount due by the Scottish Ministers shall not exceed £1.5 Million.
- 24.5 The Parties acknowledge that TUPE may apply to transfer the employment of those employees of the Operator (or an Associated Company or sub-contractor of the Operator) who are wholly or mainly assigned to the Services immediately prior to the termination of this Agreement (**Transferring Employees**) to an Incoming Operator. In the event that TUPE does so apply, Clauses 24.6 to 24.9 shall apply.
- 24.6 The Operator shall and shall procure that any Associated Company or sub-contractor of the Operator shall comply with its or their obligations under regulations 11, 13 and 14 of TUPE and shall indemnify and keep indemnified the Scottish Ministers and on demand by the Scottish Ministers, any third party from and against any costs, claims liabilities, expenses (including reasonable legal expenses) arising out of any failure to so comply.
- 24.7 In the event that there is a New Agreement, the Operator agrees that remuneration and benefits of any kind due to Transferring Employees in respect of the period up to the termination of this Agreement shall be paid or settled in full by or on behalf of the Operator.

- 24.8 The Operator hereby undertakes to indemnify and keep indemnified on demand the Scottish Ministers and/or, on demand by the Scottish Ministers, any Incoming Operator from and against any Operator Employment Liabilities which relate to or arise out of any act or omission by the Operator or any Associated Company or subcontractor of the Operator or any other event or occurrence in the period up to and including the termination of this Agreement for which the Scottish Ministers and/or any Incoming Operator is or becomes liable by reason of TUPE.
- 24.9 The Operator acknowledges that the Scottish Ministers may grant an indemnity to any Incoming Operator or third party to the same extent that the Scottish Ministers are indemnified in terms of Clauses 24.6 and 24.8 and agrees that in the event of a claim for loss incurred by the Scottish Ministers, that loss shall include the amount, if any, which the Scottish Ministers are required to pay by virtue of any indemnity granted by the Scottish Ministers in accordance the provisions of this Clause 24.9.
- 24.10 During each Transfer Assistance Period the Operator shall within 5 Business Days of its receipt of a request by the Scottish Ministers supply in writing to the Scottish Ministers or to its nominee:
- 24.10.1 full, complete and accurate information as to the terms and conditions of employment of all employees wholly or partly assigned to the Services during the Transfer Assistance Period (**Assigned Employees**);
  - 24.10.2 the job title, role, length of service and date of birth of all Assigned Employees;
  - 24.10.3 details of any outstanding disputes or litigation between the Operator and any of the Assigned Employees; and
  - 24.10.4 such other information relating to such Assigned Employees as the Scottish Ministers may reasonably require.
- 24.11 The Operator shall during the Grant Period maintain complete and accurate personnel records and shall deliver such records to the Scottish Ministers on or prior to the Expiry Date.

## 25. PENSIONS

- 25.1 The Operator shall in respect of each of the CalMac Pension Fund, the Merchant Navy Officers Pension Fund, the Merchant Navy Officers Pension Plan and the Merchant Navy Ratings Pension Plan (the **Pension Arrangements**) either:-

25.1.1 apply to enter into a participation agreement in order to become a participating employer in respect of the Pension Arrangement with effect from the Commencement Date, and if successful in so applying, thereafter procure:-

- (a) that each Employee who is an active member of the Pension Arrangement at the Commencement Date is entitled, during the whole period that such Employee is involved in the provision of the Services, to remain an active member of that Pension Arrangement on substantially the same terms as those offered to him whilst employed by the Employing Entities and
- (b) that his service under the Pension Arrangement is treated as continuous;

or

25.1.2 offer to every Employee who is an active member of the Pension Arrangement at the Commencement Date, and continue to offer during the whole period that such Employee is involved in the provision of the Services, membership of a registered pension scheme (as defined for the purposes of Part 4 of the Finance Act 2004) (the **Receiving Scheme**) which has been certified by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Pension Arrangement.

25.2 If Clause 25.1.2 applies, the Operator will offer each Employee to whom it applies the opportunity to transfer the benefits accrued in respect of him under the Pension Arrangement to the Receiving Scheme and, in the case of the CalMac Pension Fund or the Merchant Navy Officers Pension Fund, shall procure that the amount transferred to the Receiving Scheme shall be applied in providing the relevant Employees with past service credits on a day for day basis (or an equivalent value basis reflecting any differences between the benefit structures of the two schemes), such amount to be agreed by an actuary appointed by the Scottish Ministers and by an actuary appointed by the Operator or, if the said actuaries are unable to reach such agreement, determined by an independent actuary appointed jointly by the Scottish Ministers and the Operator or, if they cannot agree, by the President of the Institute and Faculty of Actuaries, on application by either party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the Scottish Ministers and the Operator. The independent actuary's

costs shall be borne equally by the Scottish Ministers and the Operator. Where there is a subsequent TUPE transfer, the Operator will offer each such Employee the opportunity to transfer the benefits accrued in respect of him under the Receiving Scheme to another registered pension scheme (as defined for the purposes of Part 4 of the Finance Act 2004) (the **Second Receiving Scheme**) and procure that the amount transferred from the Receiving Scheme to the Second Receiving Scheme shall be applied in providing the relevant Employees with (in the case of benefits derived from the CalMac Pension Fund or the Merchant Navy Officers Pension Fund) past service credits on a day to day basis (or an equivalent basis reflecting any differences between the benefit structures of the two schemes), such amount to be agreed by an actuary appointed by the Operator and by an actuary appointed by the operator of the Second Receiving Scheme or, if the said actuaries are unable to reach such agreement, which are determined by an independent actuary appointed jointly by the Operator and such operator or, if they cannot agree, by the President of the Institute and Faculty of Actuaries, on application by either party. The independent actuary shall act as an expert and not as an arbitrator, and his decision shall be final and binding on the Operator and such operator. The independent actuary's costs shall be borne equally by the Operator and such operator.

- 25.3 The Operator shall procure that employees of the Operator who are assigned to the Services and are not Employees are during the whole period that they are involved in the provision of the Services entitled to active membership of the CalMac Pension Fund or the corresponding Receiving Scheme provided under Clause 25.1.2, and to remain as such an active member on substantially the same terms as equivalent Employees (including the transfer terms described at Clause 25.2).
- 25.4 In the event that the Operator becomes liable for any Pension Liability the Scottish Ministers shall reimburse the Operator for all amounts paid by way of additional grant.

## 26. **GENERAL**

### 26.1 Entire Agreement

26.1.1 Except where expressly provided in this Agreement, this Agreement supersedes all understandings, agreements and documents between or by the Parties prior to the Agreement Date regarding any matters dealt with in this Agreement.

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

## 26.2 Amendments to Agreement

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

## 26.3 Waiver

No failure by either Party to exercise or enforce, and no delay in exercising or enforcing, any right, remedy or provision of this Agreement shall operate as a waiver of such right, remedy or provision nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise or enforcement or any other right, remedy or provision. No waiver shall be effective unless it is in writing.

## 26.4 Severability

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

26.5 Jus Quaesitum Tertio

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

**IN WITNESS WHEREOF** these presents consisting of this and the preceding 44 pages together with the Schedule in 11 Parts attached as relative hereto are executed as follows:

**SIGNED** for and on behalf of

**SCOTTISH MINISTERS**

[Graham Laidlaw](#)

by Graham McGregor Laidlaw

at Glasgow on 7<sup>th</sup> June 2011

in the presence of this witness:

[Sarah-Jane McArthur](#)

Sarah-Jane McArthur..... Name

c/o 191 West George Street, Glasgow Address

**SIGNED** for and on behalf of

**ARGYLL FERRIES LIMITED**

by Philip Godfrey Preston

[Philip G. Preston](#)

Director

and Alexander McKay Lynch

[Alex Lynch](#)

Director

at Glasgow on 7<sup>th</sup> June 2011

**This is the Schedule in Eleven Parts referred to in the foregoing Agreement between Scottish Ministers and Argyll Ferries Limited.**

**SCHEDULE**

**PART 1 SECTION 1**

**CONDITIONS PRECEDENT**

1. Evidence of Insurance arrangements
2. All certificates required by MCA or other relevant regulatory body
3. Valid Certificate of Registry in respect of each Vessel
4. Copy of executed charterparty, or other evidence of entitlement to operate, in respect of each Vessel
5. Copy of any Harbour access arrangements
6. An executed Parent Company Guarantee in favour of the Scottish Ministers in the agreed form.



**PART 1 SECTION 2  
THE VESSELS**

**"Banrion Chonamara"  
Vessel Specification**



|                           |   |   |
|---------------------------|---|---|
| LENGTH OVERALL            | : | 30M   |
| LENGTH AT WATERLINE       | : | 27.6M   |
| BEAM MOULDED              | : | 7M  |
| MAXIMUM DRAUGHT           | : | 1.9M  |
| DEPTH MOULDED AT MIDSHIPS | : | 2.7M  |
| GROSS TONNAGE             | : | 172   |
| NET TONNAGE               | : | 72  |
| FUEL OIL CAPACITY         | : | 7,350 LITRES                                    |
| FRESH WATER CAPACITY      | : | 1,500 LITRES                                    |
| PASSENGER CAPACITY        | : | 122 (Max 244)                                   |
| CREW                      | : | 3 (6)   |
| MAIN ENGINES              | : | MTU 12V 2000 M70                                |
| POWER                     | : | 2 X 1075 HP                                     |
| MAXIMUM SPEED             | : | 19.7 KNOTS                                      |
| BUILT                     | : | FRANCE – 05/2001                                |
| CLASSED WITH              | : | IRISH DEPARTMENT OF MARINE                      |
| DIRECTIVE                 | : | 98/18 EC L 144<br>DOMESTIC VOYAGES – CATEGORY B |

# SOLENT & WIGHTLINE CRUISES

80 NEWNHAM ROAD, BINSTEAD, RYDE, ISLE OF WIGHT, PO33 3TF  
Tel and Fax: 01983 564602 Email: solentcruises@clara.co.uk



## ALI CAT SPECIFICATIONS



- Length Overall: 19.75m
- Length Waterline: 17.55m
- Beam Overall: 8.65m
- Draft: 1.95m
- Built 1999 of GRP/Alloy Superstructure
- Licensed by Maritime and Coastguard Agency to Class IV, V & VI
- Speed: 13.5 knots @ 28 gallons diesel/hour
- Deadweight: 65 tonnes
- Gross Tonnage: 73.48 tonnes
- Registered Tonnage: 73.48 tonnes
- 2 x Scania DSI 14 460 HP V8 Engines producing 688KW
- Bunker Capacity: 1300 gallons

Passenger Capacity: Mode 1: Pax 200 + 3 Crew. Summer  
Mode 2: Pax 240 + 4 Crew. Summer  
Mode 3: Pax 200 + 3 Crew. Winter  
Mode 4: Pax 228 + 4 Crew. Winter

### Bar Facilities

Passenger access via top deck or direct into passenger saloon, including disabled passenger access

VAT No. 108 8377 51 Limited Company Reg. No. 3667197  
All bookings and cruises subject to company conditions of carriage, available upon request

**PART 2**  
**START-UP PLAN**

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APPENDIX 1 START UP TIMETABLE

## 1. INTRODUCTION

- 1.1 As part of the David MacBrayne Group, and sister company to the current operators of the Gourock to Dunoon and CHFS ferry services, AFL has a clear understanding of the technical and commercial requirements for operating the ferry service. On being appointed operator of the Gourock to Dunoon service, there would be no requirement for AFL to liaise formally with the outgoing operator. Nevertheless, there are certain steps that must be carried out before commencing the new Contract Period. Arrangements include putting additional financial procedures in place, introducing the new Vessels that AFL will operate, and recruitment, staffing etc.
- 1.2 The Start-Up plan for transition to the new arrangements under the PSC envisages a series of work packages requiring completion prior to the contract Commencement Date, by AFL and, where appropriate, its parent company, David MacBrayne Limited, and associated companies CalMac Ferries Limited, Cowal Ferries Limited and David MacBrayne HR (UK) Limited.
- 1.3 Sections 2-6 below include tables which set out the Actions in terms of critical dates and the responsibilities of key individuals to ensure successful Start Up of the Service. For ease of reference, each Action identified in Sections 2-6 below has been cross-indexed to the corresponding entry in the Master Chart, which can be found in Appendix 1.
- 1.4 Delivery against the Start-Up Plan will be monitored by the Managing Director of AFL and performance updates will be added as an agenda item to weekly review meetings. These meetings have already been organised to facilitate discussion amongst the Management Team on how the Start-Up Plan will be implemented.

## 2. VESSELS

2.1 AFL will operate Ali Cat and Banrion Chonamara on the Gourock – Dunoon service. This section of the Start-Up Plan details the processes required to complete purchase of both Vessels, and to bring both into service. In this respect, this section of the Start-Up Plan follows on from Section 3 of the Technical Submission.

2.2 Introduction of Vessels will be the responsibility of DML's Group Technical Director.

| Reference |   |  |
|-----------|---|--|
| V1        | Ensure DML completes Purchase of Ali Cat                                      | DML has received commitment from the owner to sell this ship once the PSC has been secured by AFL. Immediately after the Contract Start Date, AFL will ensure that DML completes purchase formalities with Messrs Solent & Wightline Cruises Ltd in respect of Ali Cat. DML has advised that documentation – the BIMCO Sale form 1993 - will be prepared in advance of the Contract Start Date, as far as is possible, to ensure the sale is completed without delay.      |
| V1.1      | Insurance   | Immediately after the purchase of MV Ali Cat has been completed, DML will notify Insurers that cover should commence on the same day. (Separate arrangement for insurance regarding Time Charter immediately commencing between Cowal Ferries Ltd and DML)   |
| V2        | Complete Bareboat charter procedures with DML                                 | After purchase is complete, AFL will ensure that Bareboat Charter procedures (BIMCO Standard Bareboat Charter) between DML and AFL are completed.  |
| V3        | Complete Purchase of Banrion Chonamara  | DML has received a commitment from the owner to sell this ship once the PSC has been secured by AFL. Immediately after the Contract Start Date, AFL will ensure that DML completes purchase formalities with Messrs Aran Island Ferries Ltd in respect of Banrion Chonamara. DML has advised that documentation – the BIMCO Sale form 1993 - will be prepared in advance of the Contract Start Date, as far as is possible, to ensure the sale is completed without delay. |
| V3.1      | Insurance   | Immediately after the purchase of MV Banrion Chonamara has been completed, DML will notify Insurers that cover should commence on the same day.  |
| V4        | Complete Bareboat charter procedures with DML in respect of Banrion Chonamara | After purchase is complete, AFL will ensure that Bareboat Charter procedures (BIMCO Standard Bareboat Charter) between DML and AFL are completed.  |
| V5        | Delivery of Banrion Chonamara   | Banrion Chonamara will be delivered to the Clyde by Messrs Aran Island Ferries Ltd on completion of purchase procedures.   |
| V6        | Ensure DML completes procedures for renaming Banrion Chonamara                | Procedures will be effected as soon as the purchase of Banrion Chonamara is complete. Paperwork to effect this change will be prepared in advance, as far as is possible.  |
| V7        | Obtain Passenger  | The Passenger Ship Safety Certificate is issued in the   |

| Reference |  |   |
|-----------|--|---|
|           | Ship Safety Certificates for both Vessels                  | <p>name of the Vessel operator (which will be AFL). For Ali Cat, certificates are current and valid (MCA Class IV), in the name of the current operator, which is Solent and Wightline Cruises Ltd. Upon completion of the purchase and charterparty agreements, Certification will be transferred to AFL.</p> <p>Banrion Chonamara is currently registered in Ireland and issued with an Irish Euro B Passenger Safety Certificate for operation in Ireland. With reference to Circular Advice Note 10, Q31, upon completion of purchase of the Vessel and charterparty Agreements, AFL intends to register Banrion Chonamara under the UK flag and obtain a Class IV Passenger Ship Safety Certificate.</p> |
| V8        | Safety Management System (SMS)                             | <p>A Safety Management System is required. The Safety Management System will be in line with other Safety Management Systems already well-established elsewhere in the DML Group. Work on the SMS will commence immediately upon the announcement of Preferred Tenderer status to ensure it is in place and does not delay the issuance of the Ship Safety Management Certificate. AFL will produce the SMS and the MCA will conduct the audit in conjunction with the issue of the Passenger Ship Safety Certificate. Successful completion of the audit will lead to the issuance of the Ship Safety Management Certificate.</p>  |
| V9        | Obtain Ship Safety Management Certificate for both Vessels | <p>The Ship Safety Management Certificate will be issued to the operator (which will be AFL) by the MCA after execution of charter party Agreement and completion of audit of the Safety Management System.</p>   |
| V10       | Refurbishment of Vessels                                   | <p>Stern access ramps, suitable for the use of all passengers (including mobility impaired passengers) will be installed; vending machines, bicycle racks and outdoor seating (on Ali Cat) will be installed; Vessels will be refurbished in AFL corporate livery; signage and onboard notices will be installed.</p>   |
| V11       | Berthing Trials  | <p>As part of the Induction programme, Boatmasters will carry out berthing trials at both Gourock and Dunoon.</p>   |

### 3. CREWING IMPLICATIONS

- 3.1 The roles of 'Boatmaster', 'Assistant Boatmaster' and 'Crewmember' which AFL needs to operate the Ali Cat and Banrion Chonamara are significantly different and of reduced seniority to those of the current crew servicing the Gourock to Dunoon Service. This is due to the different levels of certificate required for the proposed Vessels and the car ferries currently operating on the Service.
- 3.2 Caledonian MacBrayne (Crewing) Guernsey Ltd will seek to re-deploy the Deck and Engine crew which currently service the Gourock to Dunoon route to other, more appropriate roles on vessels requiring more senior certification elsewhere in the network. Therefore, it is likely that it will be necessary to recruit some new crew to fill positions on the Vessels to be operated on the Gourock to Dunoon service.
- 3.3 We will, of course, consult with the relevant employees and trade unions with regard to staffing and any decisions regarding the engagement of new crew will be discussed as part of this consultation process.
- 3.4 The timescales for any necessary recruitment is tight, particularly if new recruits have to work a notice period.
- 3.5 Any vacancies will be formally advertised around 1 June 2011 and for the purposes of meeting the Service Commencement deadline; we will start the recruitment process from this point. However, no offers of employment will be made until the matter has been consulted upon.
- 3.6 In the unlikely event that we are unable to secure all necessary recruits to meet the Service start date then we will deliver the Service by either seconding, on a short term basis, appropriately qualified crew from elsewhere in the Caledonian MacBrayne Crewing Guernsey network, or recruiting qualified temporary staff from reputable crewing agencies with whom we already have excellent working relationships.
- 3.7 The AFL Managing Director, through the Managing Director, David MacBrayne HR (UK) Ltd, will assume overall responsibility for all crewing matters.

| Reference |                                    |   |
|-----------|------------------------------------|---|
|           | <b>Recruitment</b>                 |   |
| C1        | Advertise Positions (if necessary) | Advertisements will be prepared in advance of the announcement of Preferred Tenderer and placed in appropriate titles and websites around 1 June 2011.                              |
| C1        | Conduct Interviews (if necessary)  | The interview process will be conducted without delay.  |
| C1        | Make offers (if necessary)         | Offers of employment will be made as soon as the consultation process allows and after the Contract Start Date. The decision-making stage will be prioritised by senior management. |
|           | <b>Training</b>                    |   |
| C2        | Onboard Training –Ali Cat          | Onboard training will be provided onboard Ali Cat during the Start-Up period, courtesy of Cowal Ferries Ltd.  |
| C3        | Onboard Training – Banrion         | Onboard training will be provided onboard Banrion Chonamara during the Start-Up period by Messrs Aran Island Ferries Ltd.   |

| Reference |                        |   |
|-----------|------------------------|---|
|           | Chonamara              |   |
| C4        | Pilotage Certification | This is a Clydeport requirement and exams will be booked upon the announcement of Preferred Tenderer status to minimise delays during the Start-Up period.  |
| C5        | Boatmaster exams       | This is an MCA requirement. It is anticipated that any Boatmasters who will be recruited will already have this qualification but will also require route-specific endorsements on their certificates. Exams will be booked on a provisional basis to minimise delays during the Start-Up Period.                   |
| M4        | Boatmaster Induction   | The Boatmaster will be responsible for ensuring that departure and arrival times are recorded accurately and timeously, including details of the causes of any delays incurred. Furthermore, the Boatmaster will be responsible for ensuring this information is passed to the Contract Manager in Company systems. |
| C6        | Shipboard Induction    | All crew required to be signed off as familiar with the ship and the route to be operated. The induction process will follow procedures already in place elsewhere in the DML Group, which themselves are designed to comply with International Safety Management (ISM) Requirements.                               |



#### 4. FACILITIES

- 4.1 All facilities necessary for the provision of the approved Service have been identified, are in situ and are operational. There is no necessity for procurement of any other such facilities to ensure the continued operation of the Service by AFL. AFL will continue to honour all valid passenger tickets held and purchased prior to the commencement date of the Gourock to Dunoon contract.
- 4.2 The AFL Contract Manager will assume responsibility for these Actions, working with the CFL Customer Care and Marketing Managers, and with CMAL and Argyll & Bute Council in respect of harbour access arrangements and dues, etc.

| Reference |  |  |
|-----------|--|--|
| F1        | Ticketing System                                     | Work with CFL regarding ticketing system. Ensure ticketing system is in place, with correct fare structure.  |
| F2        | Ticketing Data Transfer                              | Finalise ticketing data transfer with CFL.   |
| F3        | Agency Ticket Sales                                  | Finalise agency ticket sales arrangements with Dunoon retail outlets.  |
|           | Systems to support Performance and Monitoring Regime | Ensure systems in place for recording operational data required under Performance and Monitoring Regime. This is detailed further in Para 5.   |
| F4        | Complaints Procedure                                 | Confirm Customer Complaint Handling procedures in place.   |
| F5        | Gourock Waiting Room                                 | Confirm and finalise access arrangements (with CMAL) at Gourock for both pier and waiting room.  |
| F6        | Dunoon Berthing Arrangements                         | Confirm and finalise berthing arrangements (including timings) and passenger handling procedures at Dunoon Pier with Argyll & Bute Council.  |
| F7        | Dunoon Bus/ Taxi Stance                              | Confirm re-organised public transport interchange/ parking with Argyll & Bute Council.   |
| F8        | Dunoon Signage                                       | Review signage procedures at Dunoon with Argyll & Bute Council, advising passengers of location of new Service, etc.   |
| F9        | Gourock Signage                                      | Review signage procedures at Gourock with CFL and Inverclyde Council, advising passengers of location of new Service, etc.   |
| F10       | Production of Timetables                             | Printed timetables produced for onboard display. In addition, these will be distributed to local outlets in advance of the Service Commencement Date.  |
| F11       | Website, App and SMS Messaging                       | The design of AFL's website will commence upon notification of Preferred Tenderer status (25 May), with the build stage commencing immediately after the Contract Start Date. This latter stage will also include procedures for SMS service status messaging. Work on the Apps (iPhone and Android/ BlackBerry) will commence at the same time, to ensure these are completed by the Service Commencement Date. There is an external appraisal process for Apps, especially iPhone, which takes place to others' timescales. However, we are confident that the approval process can be achieved without undue delay. |
| F12       | PR/ Media Plan                                       | A full PR and Media Plan will be produced to maximise local and national press interest in the new service.  |

| Reference |                    |   |
|-----------|--------------------|---|
| F13       | Company Procedures | Initial Company Procedures will be prepared for the commencement of the Services, for the use of AFL staff. |

## 5. MONITORING AND REPORTING

- 5.1 The Start-Up Plan will be established to allow the new Performance and Monitoring regime to be implemented prior to the Service Commencement Date of 30 June 2011. Processes and Procedures will be implemented as part of the Start-Up Plan to ensure the accuracy and robustness of the Performance and Monitoring Regime, which forms an integral part of the running of the Service.
- 5.2 The AFL Contract Manager will be responsible for ensuring completion of key actions, which are as follows:-

| Reference |                                |  |
|-----------|--------------------------------|--|
| M1        | Documentation                  | Documentation for reporting and procedures to be followed will be agreed and introduced. |
| M2        | Procedures & Timescales        | Reporting process and timescales will be agreed and introduced.                          |
| M3        | Customer Complaints Procedures | Monitoring procedures for Customer Complaints will be confirmed and finalised.           |

## 6. FINANCIAL PROCEDURES

- 6.1 A number of procedures will be carried out during the Start-Up period in relation to financial arrangements. Of these, procedures relating to opening Bank Accounts and VAT Registration generally take some time to set up (due to Bank and HMRC checking procedures). Paperwork will be prepared in advance so as to expedite matters without delay immediately after the Contract Start Date.
- 6.2 The AFL Managing Director, through the DML Group Finance Director, will be responsible for completion of all financial procedures under the Start-Up Plan as follows:-

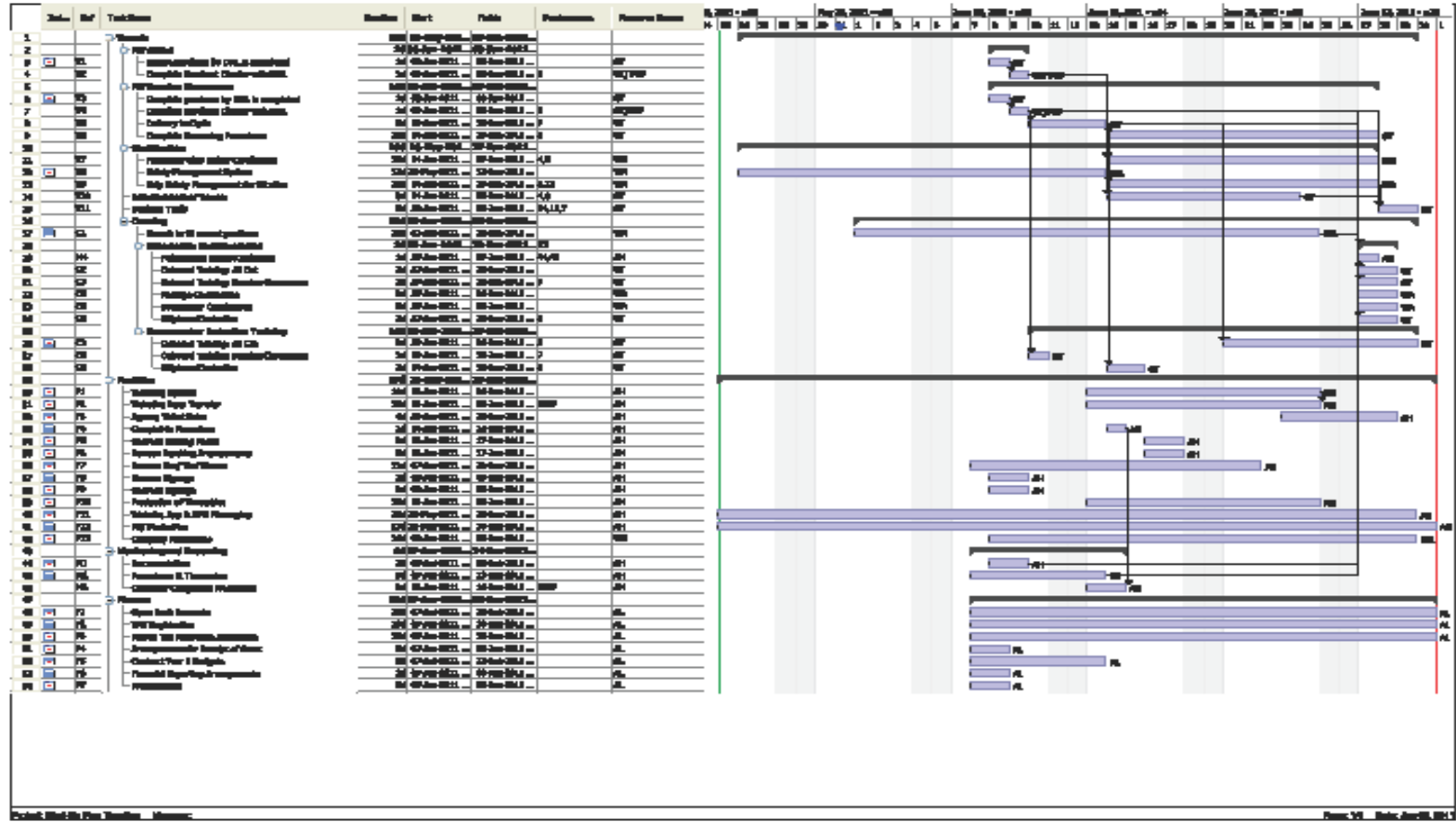
| Reference |                                   |  |
|-----------|-----------------------------------|--|
| F1        | Open Bank Accounts                | Bank Account opening forms and other required paperwork will be prepared in advance of the Contract Start Date to ensure RBS procedures commence immediately thereafter.                                 |
| F2        | VAT Registration                  | VAT registration paperwork will be prepared in advance of the Contract Start Date to ensure the lengthy HMRC procedures commence immediately thereafter.   |
| F3        | Payroll Tax Reference Application | Tax reference submission to HMRC paperwork will be prepared in advance of the Contract Start Date, as far as is possible, to ensure no delay in finalising arrangements with HMRC.                       |
| F4        | Arrangements for Receipt of Grant | Communicate and agree bank account details with Scottish Government for timeous receipt of Grant into two bank accounts by the fifth business day of each month for day to day operational requirements. |
| F5        | Contract Year 1 Budget            | Tender proposal presented to Management team for re-alignment/ confirmation of Contract Year 1 budget.   |
| F6        | Financial Reporting Arrangements  | Agree financial reporting requirements from AFL to David MacBrayne Limited and Scottish Government.  |
| F7        | Prepayments                       | Establish prepayment values e.g. cash received by Cowal Ferries Limited for travel to be undertaken in new contract period.  |

## 7. KEY CONSULTATION ACTIONS

- 7.1 During the start-up period, local authorities, and in particular key officials responsible for transportation, will be regularly and fully informed of progress. This communication will form part of the customary dialogue already established by David MacBrayne Ltd and its subsidiaries.
- 7.2 As part of its commitment to community engagement, key staff, in particular Directors and the Contract Manager, will meet with local authority and other relevant representatives to discuss the management of key projects and developments on an individual basis.
- 7.3 The Regional Transport Partnership (RTP) with lead responsibility for ferry issues in the Highlands and Islands Transport Partnership (HITRANS), will be asked to convene a Tier 1 meeting prior to the Commencement Date of the service, to bring together all relevant partners and stakeholders and provide an opportunity to air and share any outstanding areas of concern. We appreciate that Strathclyde Partnership for Transport (SPT) also has an interest in the RTP.
- 7.4 Key partners/stakeholders expected to participate in the RTP Tier 1 meeting include:
- Argyll & Bute Council;
  - First ScotRail;
  - Inverclyde Council;
  - HiTrans;
  - Strathclyde Partnership for Transport (SPT); and
  - Confederation of Passenger Transport (Bus operators).
- 7.5 As sister companies within the David MacBrayne Group, Argyll Ferries Ltd and Cowal Ferries Ltd will be best placed to co-operate on all matters to ensure a smooth transition from the service operated by Cowal Ferries Ltd to that operated by Argyll Ferries Ltd.

### Consultation with Employees and Trade Unions

- 7.6 It is anticipated that TUPE legislation will apply to some of the existing positions, and therefore AFL will ensure that it consults properly with unions and staff, and complies with TUPE legislation.
- 7.7 It is also anticipated that some redundancies are possible, which may require collective consultation, and AFL will ensure that it properly consults with unions and staff and complies with the appropriate legislation.
- 7.8 The Managing Director of AFL will be responsible for ensuring completion of key consultation actions, with the assistance of the Managing Director, David MacBrayne HR (UK) Ltd.



**PART 3  
SERVICES**

1. The Services are the public transport services by sea of passengers between the Harbours, as specified in accordance with the following Timetable. For the avoidance of doubt "passengers" refers to gangway foot passengers only and not vehicles or their passengers. The Operator may operate a vehicle transport service or use the Vessels for other purposes in accordance with Clause 2.3 of this Agreement, but these activities will not be included in the definition of Services for the purposes of this Agreement.

**Gourock - Dunoon  
Timetable  
MONDAY-SATURDAY**

| Rail            |                | Ferry          |               |               |                | Rail           |                 |
|-----------------|----------------|----------------|---------------|---------------|----------------|----------------|-----------------|
| Glasgow Central | Gourock arrive | Gourock depart | Dunoon arrive | Dunoon depart | Gourock arrive | Gourock depart | Glasgow Central |
| -               | -              | 0620           | 0645          | 0650          | 0715           | 0722           | 0814            |
| 0555            | 0636           | 0645           | 0705          | 0715          | 0740           | 0747           | 0830            |
| 0625            | 0713           | 0720           | 0745          | 0750          | 0815           | 0824           | 0916            |
| 0655            | 0739           | 0745           | 0805          | 0810          | 0830           | 0836           | 0928            |
| 0725            | 0813           | 0820           | 0845          | 0850          | 0915           | 0923           | 1003            |
| 0735            | 0828           | 0840           | 0900          | 0910          | 0930           | 0936           | 1028            |
| 0828            | 0909           | 0920           | 0945          | 0950          | 1015           | 1023           | 1103            |
| 0836            | 0927           | 0940           | 1000          | 1010          | 1030           | 1036           | 1128            |
| 0925            | 1006           | 1020           | 1045          | 1050          | 1115           | 1123           | 1203            |
| 0935            | 1027           | 1040           | 1100          | 1110          | 1130           | 1136           | 1228            |
| 1025            | 1106           | 1120           | 1145          | 1150          | 1215           | 1223           | 1303            |
| 1035            | 1127           | 1140           | 1200          | 1210          | 1230           | 1236           | 1328            |
| 1125            | 1206           | 1220           | 1245          | 1250          | 1315           | 1323           | 1403            |
| 1225            | 1306           | 1320           | 1345          | 1350          | 1415           | 1423           | 1503            |
| 1325            | 1406           | 1420           | 1445          | 1450          | 1515           | 1523           | 1605            |
| 1425            | 1506           | 1520           | 1545          | 1550          | 1615           | 1623           | 1705            |

## Gourock - Dunoon

## Timetable

MONDAY-SATURDAY

| Rail            |                | Ferry          |               |               |                | Rail           |                 |
|-----------------|----------------|----------------|---------------|---------------|----------------|----------------|-----------------|
| Glasgow Central | Gourock arrive | Gourock depart | Dunoon arrive | Dunoon depart | Gourock arrive | Gourock depart | Glasgow Central |
| 1435            | 1527           | 1540           | 1600          | 1610          | 1630           | 1636           | 1729            |
| 1525            | 1606           | 1620           | 1645          | 1650          | 1715           | 1723           | 1803            |
| 1535            | 1627           | 1640           | 1700          | 1710          | 1730           | 1748           | 1840            |
| 1623            | 1715           | 1720           | 1745          | 1750          | 1815           | 1823           | 1904            |
| 1655            | 1739           | 1745           | 1805          | 1810          | 1830           | 1840           | 1932            |
| 1725            | 1806           | 1820           | 1845          | 1850          | 1915           | 1922           | 2014            |
| 1740            | 1832           | 1840           | 1900          | 1910          | 1930           | 1945           | 2026            |
| 1825            | 1906           | 1920           | 1945          | 1950          | 2015           | 2020           | 2112            |
| 1835            | 1927           | 1940           | 2000          | 2010          | 2030           | 2047           | 2129            |
| 1925            | 2006           | 2020           | 2045          | 2050          | 2115           | 2124           | 2215            |
| 1950            | 2034           | 2040           | 2100          | 2110          | 2130           | 2145           | 2226            |
| 2005            | 2058           | 2120           | 2145          | 2150          | 2215           | 2220           | 2314            |
| 2050            | 2132           | 2140           | 2200          | 2210          | 2230           | -              | -               |
| 2150            | 2233           | 2240           | 2300          | 2310          | 2330           | -              | -               |
| 2250            | 2333           | 2340*          | 0000          | 0010*         | 0030           | -              | -               |
| 2350            | 0042           | 0100*          | 0120          | 0125*         | 0145           | -              | -               |
| *= Fri/Sat only |                |                |               |               |                |                |                 |

## Gourock - Dunoon

## Timetable

Sunday

| Rail            |                | Ferry          |               |               |                | Rail           |                 |
|-----------------|----------------|----------------|---------------|---------------|----------------|----------------|-----------------|
| Glasgow Central | Gourock arrive | Gourock depart | Dunoon arrive | Dunoon depart | Gourock arrive | Gourock depart | Glasgow Central |
| 0705            | 0810           | 0820           | 0845          | 0850          | 0915           | 0923           | 1030            |
| 0805            | 0914           | 0920           | 0945          | 0950          | 1015           | 1023           | 1130            |
| 0905            | 1014           | 1020           | 1045          | 1050          | 1115           | 1123           | 1215            |



**Gourock - Dunoon**  
**Sunday**

**Timetable**

| Rail                  |                | Ferry          |               |               |                | Rail           |                 |
|-----------------------|----------------|----------------|---------------|---------------|----------------|----------------|-----------------|
| Glasgow Central       | Gourock arrive | Gourock depart | Dunoon arrive | Dunoon depart | Gourock arrive | Gourock depart | Glasgow Central |
| 1005                  | 1116           | 1120*          | 1145          | 1150          | 1215           | 1223           | 1315            |
| 1120                  | 1212           | 1220           | 1245          | 1250          | 1315           | 1323           | 1415            |
| 1220                  | 1312           | 1320           | 1345          | 1350          | 1415           | 1423           | 1515            |
| 1320                  | 1412           | 1420           | 1445          | 1450          | 1515           | 1523           | 1615            |
| 1420                  | 1512           | 1520           | 1545          | 1550          | 1615           | 1623           | 1715            |
| 1520                  | 1612           | 1620           | 1645          | 1650          | 1715           | 1723           | 1815            |
| 1620                  | 1712           | 1720           | 1745          | 1750          | 1815           | 1823           | 1915            |
| 1720                  | 1812           | 1820           | 1845          | 1850          | 1915           | 1923           | 2015            |
| 1820                  | 1912           | 1920           | 1945          | 1950          | 2015           | 2023           | 2115            |
| 1920                  | 2012           | 2020           | 2045          | 2050          | 2115           | 2123           | 2230            |
| 2020                  | 2112           | 2120           | 2140          | 2150          | 2210           | 2223           | 2330            |
| 2105                  | 2214           | 2220           | 2240          | 2250          | 2310           | -              | -               |
| * Will wait for train |                |                |               |               |                |                |                 |

2. The Services include:

- (i) provision of facilities at both Harbours for accepting payments issuing tickets and other relevant documentation which may include selling tickets on-board the Vessels;
- (ii) marketing the operation of a year round timetable;
- (iii) the provision of an internet website providing links to on-line information e.g. timetables and fares and an early warning notice board to flag and disruptions and changes to the Ferry Services caused by bad weather;
- (iv) the provision of real-time information to passengers through a smartphone 'App' and via third party public transport information system, e.g. Traveline, for travellers to and from the Ferry Services; and

- (v) the safe and efficient operation and maintenance of the Vessels so as to comply with Applicable Law including a passenger counting system.

**PART 4  
TARIFFS**

2011/12 Published Tariff

|                       |               |               |                                   |                       |
|-----------------------|---------------|---------------|-----------------------------------|-----------------------|
| <b>Gourock-Dunoon</b> |               |               | <b>Saver<br/>5 Day<br/>Return</b> | <b>10<br/>Journey</b> |
|                       | <b>Single</b> | <b>Return</b> |                                   |                       |

|                           |                        |                       |                     |                                     |
|---------------------------|------------------------|-----------------------|---------------------|-------------------------------------|
| <b>Senior<br/>Citizen</b> |                        |                       | <b>ITX</b>          | <b>SPT<br/>Companion<br/>Single</b> |
| <b>Day Return</b>         | <b>B.R.<br/>Single</b> | <b>ITX<br/>Single</b> | <b>5 Day Return</b> |                                     |

**PASSENGER FARES**

|                   |                |                     |      |      |      |       |
|-------------------|----------------|---------------------|------|------|------|-------|
| <b>Passenger</b>  | <b>(Adult)</b> | <b>Off<br/>Peak</b> | 3.40 | 6.80 | 5.75 | 26.50 |
|                   | <b>(Child)</b> |                     | 1.70 | 3.40 | 2.88 | 13.25 |
| <b>Group Rate</b> | <b>(Adult)</b> |                     | 2.90 | 5.80 | 4.90 |       |
|                   | <b>(Child)</b> |                     | 1.45 | 2.90 | 2.45 |       |
| <b>Passenger</b>  | <b>(Adult)</b> | <b>Standard</b>     | 3.85 | 7.70 | 6.60 | 26.50 |
|                   | <b>(Child)</b> |                     | 1.93 | 3.85 | 3.30 | 13.25 |
| <b>Group Rate</b> | <b>(Adult)</b> |                     | 3.30 | 6.60 | 5.65 |       |
|                   | <b>(Child)</b> |                     | 1.65 | 3.30 | 2.83 |       |

|             |      |      |      |      |
|-------------|------|------|------|------|
| <b>5.25</b> | 0.85 | 3.00 | 5.05 | 1.70 |
|             | 0.43 | 1.50 | 2.53 |      |

|             |      |      |      |      |
|-------------|------|------|------|------|
| <b>5.25</b> | 0.97 | 3.40 | 5.80 | 1.93 |
|             | 0.49 | 1.70 | 2.90 |      |

| SPT Concession |              |
|----------------|--------------|
| <b>Sgl</b>     | <b>£0.80</b> |
| <b>Rtn</b>     | <b>£1.20</b> |

| Bucket Shop Rates |        |
|-------------------|--------|
| Adult             | £19.50 |

Effective from 30th March 2011

|                       |               |               |                                   |                            |
|-----------------------|---------------|---------------|-----------------------------------|----------------------------|
| <b>Gourock-Dunoon</b> |               |               | <b>Saver<br/>5 Day<br/>Return</b> | <b>10<br/>Journe<br/>y</b> |
|                       | <b>Single</b> | <b>Return</b> |                                   |                            |

|               |                          |
|---------------|--------------------------|
| <b>B.R.</b>   | <b>SPT<br/>Companion</b> |
| <b>Single</b> | <b>Single</b>            |

### PASSENGER FARES

|                   |                |                     |             |      |             |              |
|-------------------|----------------|---------------------|-------------|------|-------------|--------------|
| <b>Passenger</b>  | <b>(Adult)</b> | <b>Off<br/>Peak</b> | <b>3.40</b> | 6.80 | <b>5.75</b> | <b>26.50</b> |
|                   | <b>(Child)</b> |                     | 1.70        | 3.40 | 2.88        | 13.25        |
| <b>Group Rate</b> | <b>(Adult)</b> |                     | <b>2.90</b> | 5.80 | <b>4.90</b> |              |
|                   | <b>(Child)</b> |                     | 1.45        | 2.90 | 2.45        |              |
| <b>Passenger</b>  | <b>(Adult)</b> | <b>Standard</b>     | <b>3.85</b> | 7.70 | <b>6.60</b> | 26.50        |
|                   | <b>(Child)</b> |                     | 1.93        | 3.85 | 3.30        | 13.25        |
| <b>Group Rate</b> | <b>(Adult)</b> |                     | <b>3.30</b> | 6.60 | <b>5.65</b> |              |
|                   | <b>(Child)</b> |                     | 1.65        | 3.30 | 2.83        |              |

|      |      |
|------|------|
| 0.85 | 1.70 |
| 0.43 |      |

|      |      |
|------|------|
| 0.97 | 1.93 |
| 0.49 |      |

|                             |                |                 |                 |                  |
|-----------------------------|----------------|-----------------|-----------------|------------------|
| <b>Season Ticket prices</b> | <b>1 Month</b> | <b>3 Months</b> | <b>6 Months</b> | <b>12 Months</b> |
| (Ship Portion)              | <b>81.00</b>   | <b>216.00</b>   | <b>350.00</b>   | <b>652.00</b>    |

|                         |              |                         |               |
|-------------------------|--------------|-------------------------|---------------|
| <b>SPT Concession *</b> |              | <b>Bucket Shop Rate</b> |               |
| <b>Sgl</b>              | <b>£0.80</b> | <b>Adult</b>            | <b>£19.50</b> |
| <b>Rtn</b>              | <b>£1.20</b> |                         |               |

\* Fare will be set by SPT

**PART 5**  
**OPERATIONAL UNDERTAKINGS**

References herein to “the Vessel” apply to the Vessels and any substitute, as appropriate.

**1. Maintenance and Operation**

The Operator shall throughout the Grant Period:

- 1.1 furnish the Scottish Ministers promptly with all such information as they may from time to time require regarding (i) the business and affairs of the Operator and of any Associated Company of the Operator employed as a sub-contractor in the provision of the Services, (ii) the provision of the Services, and (iii) any other matters connected with or affecting the foregoing or the performance by the Operator of its obligations under this Agreement or the performance by the relevant parties of their obligations under the agreements set out in Section 1 of Part 1 of the Schedule;
- 1.2 at its sole cost and expense maintain the Vessel and keep it in a good and efficient state of repair and safe operating condition, seaworthy in all respects and in accordance with good maintenance practice (fair wear and tear excepted and having regard to the age and type of the Vessel) and in accordance with good industry practice for United Kingdom passenger ferry service operators;
- 1.3 at its sole cost and expense maintain the Vessel to proper standards of cleanliness and hygiene;
- 1.4 notify the Scottish Ministers in writing forthwith upon becoming aware of the same and in reasonable detail of:
  - (a) the hijacking, confiscation, seizure, impounding, arrest, taking in execution, forfeiture or detention of the Vessel or any requisition for hire of the Vessel;
  - (b) any requirement or recommendation made by any insurer or any competent authority which is not, or cannot be, complied with in accordance with its terms;
  - (c) any death or serious or potentially serious injury to a third party or substantial damage to property, caused by, or in connection with, the Vessel;

- (d) any single casualty or other accident or damage to the Vessel which may be or become an actual or constructive total loss or which may involve repairs or maintenance costing more than £100,000;
- (e) any other event which occurs in connection with the Vessel which affects or may reasonably be expected to affect the rights of the Scottish Ministers;
- (f) any notices, requirements or recommendations made by or on behalf of a governmental or statutory body or agency. This includes, but is not limited to, notices, requirements or recommendations made by or on behalf of:
  - (i) the Health and Safety Executive (HSE) or any other agency of the Health and Safety Commission;
  - (ii) the Scottish Environment Protection Agency (SEPA);
  - (iii) the MCA;
- (g) the commencement of any procedure for the winding up of the Operator or for the appointment of a liquidator, receiver, judicial factor, administrator or administrative receiver to the Operator or of analogous proceedings in any jurisdiction, and to provide the Scottish Ministers with copies of all communications that are dispatched to the Operator's creditors pursuant to or in contemplation of any of the foregoing; and/or
- (h) any legal or administrative action involving the Operator or any Vessel as soon as such action is instituted; and/or
- (i) the occurrence of any Event of Default.

In the event of a casualty or maintenance referred to in (d) above, the Operator will notify the Scottish Ministers orally within 48 hours of discovery and in writing within 72 hours after the discovery of the event. Such notification will also describe the plan and time frame for rectification;

- 1.5 maintain an emergency response plan and undertake the appropriate exercises for training purposes;
- 1.6 operate a procedure, available for inspection by the Scottish Ministers, pursuant to which customers or other parties having an interest can make complaints, such complaints and any related rectification action or response to be recorded; and

1.7 to send to the Scottish Ministers, at the same time as they are dispatched, copies of all communications that are dispatched to the Operator's shareholders.

2. **Insurance Undertakings**

2.1 The Operator hereby covenants and undertakes that throughout the Grant Period it will insure and keep the Vessel insured at its own cost and expense in respect of all matters of whatsoever nature and howsoever arising in respect of which insurance would be maintained by a prudent owner of the Vessel having regard to the situation, nature and method of operation of that Vessel.

2.2 The Operator hereby covenants and undertakes that it will not do, consent to or permit any act or omission which might invalidate or render unenforceable the whole or any part of the Insurances and not (without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe) employ the Vessel or suffer the Vessel to be employed otherwise than in conformity with the terms of the Insurances (including any warranties express or implied therein).

2.3 The Operator hereby covenants and undertakes that it will apply all sums receivable under the Insurances which are paid to the Operator in repairing all damage and/or in discharging the liability in respect of which such sums shall have been received.

## **PART 6**

### **MONITORING PROCEDURES**

#### **Performance of the Services**

1. The Operator shall supply reports to the Scottish Ministers as follows:
  - 1.1 Quarterly Reports on Performance Measures for Punctuality (Connectivity) and Performance Measures for Punctuality (General) summarised on the basis of Annex A;
  - 1.2 Quarterly Reports on Performance Measures for Reliability summarised on the basis of Annex A;
  - 1.3 Quarterly Reports on Performance Measures for Compliance summarised on the basis of Annex A;
  - 1.4 Quarterly Reports on Performance Measures for Customer Complaints summarised on the basis of Annex A;
  - 1.5 Quarterly Reports (in a form to be agreed) on the Relief Events and, of appropriate, the steps being taken to alleviate the consequences of Relief Events;
  - 1.6 a Quarterly summary (in a form to be agreed) of the position in relation to Clause 5.9 on Performance Measures before Relief Events are taken into account, and Performance Measures after Relief Events are taken into account;
  - 1.7 Quarterly carrying information summarised from its management systems;
  - 1.8 Quarterly detailed statements of both revenue and operating costs where appropriate differentiating between general shore costs, fuel costs, sea-going costs, marketing costs and other costs, including separate financing statements for Grant supported services which clearly demonstrate that there is no cross subsidisation with any other of the Operator's activities or the activities of any Associated Company; and
  - 1.9 an annual safety report including detailed information about any reportable accidents, including any major injuries and serious injuries, and any hazardous events.



2. The Operator will submit the Quarterly Reports to the Scottish Ministers within 6 weeks after the end of the relevant Quarter. The format of the information can be adjusted by mutual agreement between the Scottish Ministers and the Operator.
3. The Operator's Representative shall attend quarterly meetings with representatives of the Scottish Ministers in order to assist with the monitoring and management of this Agreement. The Scottish Ministers may, at their own expense, carry out such monitoring and/or audit of the Services as they determine may be required in order to measure the performance of the Operator against the Performance Measures, provided that such monitoring and/or audit does not have an adverse effect on the provision by the Operator of the Services or its ability to meet the Performance Measures.
4. A summary of the monitoring regime for each Service Year should be made available for publication by the Operator's within 6 weeks after the end of the relevant Service Year and for use by the Scottish Ministers as necessary. The same information should also be made available to the members of the consultation meetings with users as required under Clause 10.

**PART 6**  
**ANNEX A - MONITORING PROCEDURES – SAMPLE REPORTS**

**Punctuality (Connectivity):**

| Vessel | Number of times in the relevant Quarter that the Vessel: |                                      |                                  |
|--------|--|--------------------------------------|----------------------------------|
|        | Met the Performance Measure                              | Did not meet the Performance Measure | Applicable Relief Event (if any) |
|        |  |                                      |                                  |

**Punctuality (General):**

| Vessel | Number of times in the relevant Quarter that the Vessel: |                                      |                                  |
|--------|--|--------------------------------------|----------------------------------|
|        | Met the Performance Measure                              | Did not meet the Performance Measure | Applicable Relief Event (if any) |
|        |  |                                      |                                  |

**Reliability:**

| Vessel | In the relevant Quarter:  |                           |                        |                                  |
|--------|---------------------------|---------------------------|------------------------|----------------------------------|
|        | No. of scheduled sailings | No. of sailings completed | Sailings completed (%) | Applicable Relief Event (if any) |
|        |                           |                           |                        |                                  |

**Compliance:**

| Quarter | Number of notices issued by HSE, SEPA or other governmental or statutory body or agency and of criminal fines or convictions | Further details of notices / fines / convictions |
|---------|--|--|
|         |  |  |

**Customer Complaints:**

| <b>Quarter</b> | <b>Quantity of customer complaints received in relation to the Services</b> | <b>Further details of customer complaints (including how complaint was escalated / resolved) in accordance with the Customer Complaint Process</b> |
|----------------|---|--|
|                |   |  |

**PART 7**  
**PERFORMANCE AND MONITORING REGIME**

For the purposes of this Part of the Schedule (i) a sailing means each sailing on the Timetable between the Harbours and (ii) Average Grant per Sailing means in any Service Year the Grant (excluding Fuel Costs and any additional grant paid pursuant to Clause 24 and/or 25) for that Service Year divided by the number of sailings in that Service Year.

**SECTION A**

**PERFORMANCE MEASURE FOR RELIABILITY:**

|   |   |  |
|---|---|--|
| <b>Performance Measure for Reliability</b>        |   | The Performance Measure for Reliability is the completion by the relevant Vessel of each sailing identified as part of the Services in the Timetable.<br><br>A sailing which either does not commence or does not complete in accordance with the Timetable as a direct consequence of a Relief Event shall be deemed to have been completed for the purpose of the Performance Measure for Reliability. |
| <b>Periods to be measured</b>                     |   | Quarterly  |
| <b>Classification of reliability over period:</b> |   | <b>Deduction to apply to classification:</b>   |
| <b>1</b>  | Less than 100% of sailings meet the Performance Measure for Reliability | Deduct 100% of the Average Grant per Sailing for each affected sailing   |

**SECTION B**

**PERFORMANCE MEASURE FOR PUNCTUALITY (CONNECTIVITY):**

|   |  |
|---|--|
| <b>Performance Measure for Punctuality (Connectivity)</b> | A Vessel providing a Service meets the Performance Measure for Punctuality (Connectivity) if the Vessel arrives at the destination Harbour in accordance with the Timetable and in time for passengers to connect with any departing train which the particular sailing is intended to service (assuming that the relevant train departs at the published time).<br><br>A Vessel which does not meet the Performance Measure for Punctuality (Connectivity) for a sailing either because it is late, or fails to run, as |
|---|--|

|   |  |
|---|--|
|   | a direct consequence (in either case) of a Relief Event shall be deemed to have met the Performance Measure for Punctuality (Connectivity) in respect of the relevant sailing. |
| <b>Periods to be measured</b>   | Quarterly  |
| <b>Classification of punctuality over period:</b>   | <b>Deduction to apply to classification:</b>   |
| <b>1</b> Less than 100% of sailings meet the Performance Measure for Punctuality (Connectivity) | Deduct 100% of the Average Grant per Sailing for each incident of lateness.  |

## SECTION C

### PERFORMANCE MEASURE FOR PUNCTUALITY (GENERAL):

|  |   |
|--|---|
| <b>Performance Measure for Punctuality (General)</b><br><br>Arrival at the destination Harbour means that the Vessel is all fast and secure alongside. | A Vessel providing a Service meets the Performance Measure for Punctuality (General) if the Vessel arrives at the destination Harbour in accordance with the Timetable within 5 minutes of the time of arrival set out in the Timetable.<br><br>A Vessel which does not meet the Performance Measure for Punctuality (General) for a sailing either because it is late, or fails to run, as a direct consequence (in either case) of a Relief Event shall be deemed to have met the Performance Measure for Punctuality (General) in respect of the relevant sailing. |
| <b>Periods to be measured</b>  | Quarterly   |
| <b>Classification of punctuality over period:</b>  | <b>Deduction to apply to classification:</b>  |
| <b>1</b> Less than 100% of sailings meet the Performance Measure for Punctuality (General)   | Deduct 50% of the Average Grant per Sailing for the relevant sailing for each incident of lateness.   |

## SECTION D

### PERFORMANCE MEASURES FOR COMPLIANCE:

|   |   |
|---|---|
| <b>Performance Measure for Compliance</b> | The Performance Measure for Compliance is compliance with all Applicable Law. |
|---|---|

|  |   |  |
|--|---|--|
|  |   | This Performance Measure shall not apply to notices issued on the Operator or any sub-contractor thereof in respect of actions or incidences of non-compliance by a third party (not being an Associated Company). |
| <b>Periods to be measured</b>                        |   | Quarterly  |
| <b>Classification of service levels over period:</b> |   | <b>Deduction to apply to classification:</b>   |
| <b>1</b>   | No notices as a result of non-compliance issued on the Operator or any sub-contractor thereof by or on behalf of HSE, SEPA or any other governmental or statutory body or agency and no criminal convictions / fines  | No deduction (compliance)  |
| <b>2</b>   | 1 – 2 notices as a result of non-compliance issued on the Operator or any sub-contractor thereof by or on behalf of HSE, SEPA or any other governmental or statutory body or agency or a conviction for a summary offence resulting in a Level 1 or 2 fine    | Deduct 25% of the Average Grant per Sailing for each notice, conviction or fine  |
| <b>3</b>   | 3 – 5 notices as a result of non-compliance issued on the Operator or any sub-contractor thereof by or on behalf of HSE, SEPA or any other governmental or statutory body or agency or a conviction for a summary offence resulting in a Level 3, 4 or 5 fine | Deduct 50% of the Average Grant per Sailing for each notice, conviction or fine  |
| <b>4</b>   | 6 or more notices as a result of non-compliance issued on the Operator or any sub-contractor thereof by or on behalf of HSE, SEPA or any other governmental or statutory body or agency or a conviction for an indictable offence                             | Deduct 75% of the Average Grant per Sailing for each notice, conviction or fine  |

## SECTION E

### PERFORMANCE MEASURE FOR REPORTING:

|   |  |
|---|--|
| <b>Performance Measure for Reporting</b>  | The Operator meets the Performance Measure for Reporting if it submits the Quarterly reports required under Part 6 of the Schedule within 6 weeks after the end of the relevant Quarter. |
| <b>Periods to be measured</b>             | Quarterly  |
| <b>Classification of punctuality over</b> | <b>Deduction to apply to classification:</b>   |

|                |   |  |
|----------------|---|--|
| <b>period:</b> |   |  |
| <b>1</b>       | Failure to submit any of the reports required in accordance with Part 6 of the Schedule within 6 weeks after the end of the relevant Quarter. | Deduct 2% of the following Monthly Instalment. |

## SECTION F

### PERFORMANCE MEASURES FOR SERVICE LEVELS – CUSTOMER COMPLAINTS

|  |  |
|--|--|
| <p><b>Performance Measure for Services – Customer Complaints</b></p> | <p>The Performance Measure for Service Levels is the quantity of customer complaints received in relation to the Services which, in the opinion of the Scottish Ministers, have not be resolved in accordance with the Customer Complaint Process.</p> <p>Where more than one complaint arises out of a single act or omission by the Operator in relation to the Services, those complaints shall be treated as one complaint for the purposes of this Performance Measure for Service Levels.</p> <p>Complaints measured under this Performance Measure shall be limited to any complaint which the Scottish Ministers deems to be a valid complaint received by the Operator in the period up to the end of the Quarter following the Quarter in which the incident giving rise to the complaint occurred.</p> <p>For the avoidance of doubt, where a complaint directly relates to an incident in relation to which deductions have been applied pursuant to Sections A, B, C and/or D of this Part 7 of the Schedule, the complaint shall be disregarded for the purposes of this Performance Measure for Service Levels.</p> |
|--|--|

|  |  |  |
|--|--|--|
| <b>Periods to be measured</b>                        |  | Quarterly                                      |
| <b>Classification of service levels over period:</b> |  | <b>Deduction to apply to classification:</b>   |
| <b>1</b>   | No incidents giving rise to receipt by the Operator of a valid complaint occurred        | No Deduction (compliance).                     |
| <b>2</b>   | 1 incident giving rise to receipt by the Operator of a valid complaint occurred          | Deduct 1% of the following Monthly Instalment. |
| <b>3</b>   | 2 incidents giving rise to receipt by the Operator of a valid complaint occurred         | Deduct 2% of the following Monthly Instalment. |
| <b>4</b>   | 3 or more incidents giving rise to receipt by the Operator of a valid complaint occurred | Deduct 3% of the following Monthly Instalment. |



**PART 8**  
**HEALTH & SAFETY PLAN**

Paragraph

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## 1. **INTRODUCTION**

- 1.1 Safety Management has the highest priority in all of AFL's operations. This Health & Safety Plan sets out in detail how AFL will maintain the highest level of safety and will place safety at the forefront of the provision of the ferry service. AFL confirms that it will comply with this Plan.
- 1.2 The Board of the parent company, DML, gives health and safety its highest priority. Safety performance across all its subsidiary operating companies is monitored closely by the Group Board Safety Committee.

## 2. SAFETY MANAGEMENT

- 2.1 Safety Management has the highest priority in all of AFL's operations, and, accordingly, the requirements of The Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001 (SMC) and all other relevant safety regulations, will be fully implemented.
- 2.2 As Cowal Ferries Limited, and previously as Caledonian MacBrayne Limited, we have operated this service safely for more than 100 years. We are determined to maintain this very high standard as AFL.
- 2.3 As part of the David MacBrayne Group, AFL will utilise the knowledge and expertise gained by the Group as the current service providers of the Clyde and Hebrides Ferry Services and the Northern Isles route.
- 2.4 The Designated Person Ashore (DPA) will be Mr W Robertson, Group Safety, Environmental & Security Manager.
- 2.5 The DML Group of companies can confirm that they have not had any notices, requirements or recommendations made to them by HSE or any other body.
- 2.6 The DML Group Board Safety Committee monitors safety performance across all subsidiary operating companies.
- 2.7 A Health and Safety Policy will be produced for AFL's operations. The Health and Safety Policy will be approved by the Managing Director on behalf of the Board. The policy will be posted on each Vessel's notice board. All employees will be required to be familiar with the policy. The policy will also be displayed in passenger areas of the Vessels and on the AFL website.
- 2.8 AFL's safety management policy, as set out within this Plan, will embody a culture where, as a ferry operator, AFL have an absolute commitment to ensuring the safety and security of its passengers and crews and Vessels, and AFL will regularly exceed the standards, which are set by regulatory bodies, in the course of AFL providing Services between Gourock and Dunoon.
- 2.9 Key features of this safety management policy will be that:
- 2.9.1 A safety culture must be nurtured, developed, maintained and constantly reviewed, with a view to continual improvement.
  - 2.9.2 All employees, at all levels, must be proactive in safety matters, in accordance with AFL's safety management policy.
  - 2.9.3 All incidents, accidents and near misses must be reported and investigated to ensure that lessons are learned and that all staff are made aware of AFL's commitment to safety in all its aspects.
  - 2.9.4 Emergency preparedness must be practised regularly.
  - 2.9.5 Complacency must be seen as a potential failure of the safety culture.
  - 2.9.6 AFL has a duty to motivate staff in respect of safety matters and will do so.

- 2.9.7 Safety issues will be reported on each month in a monthly Safety and Environmental Report to the Managing Director. Any Incident Reports will also be reviewed and discussed by the Directors on a fortnightly basis.
- 2.9.8 The importance of managing contractors in relation to safety cannot be over emphasised. Contractors appointed by AFL to carry out work on a Vessel will be required to submit a work method statement and risk assessment to the appropriate manager for agreement prior to any work being carried out. The responsible manager is required to monitor the work and ensure that the contractor is applying the agreed safety 'rules'.

### 3. MANAGEMENT OF SAFETY ON BOARD

#### 3.1 Proposals

AFL's proposals for the management of safety on board are in accordance with all applicable legislation.

Vessel operations will comply with the requirements of the Safety Management Certificate (SMC) which is issued by MCA. The overall objective of the SMC is to ensure safety at sea, prevent human injury or loss of life, avoid damage to the environment, and to property, and to establish an effective safety culture.

The SMC requires AFL to establish a **Safety Management System (SMS)**. The objective of the SMS is to document the procedures required to ensure that all safety and environmental protection policies are executed according to AFL and statutory requirements, and to enhance the relationship between all staff, ashore and afloat, including staff from organisations other than AFL. This manual, together with others in AFL Management System, includes the requirements of the SMC.

#### 3.2 Control of Substances Hazardous to Health (COSHH)

Due to the nature of the work carried out on board a Vessel, there is a need to use substances (for example, bilge cleaner, disinfectant or degreaser) that may be harmful, if not used correctly. If there are any concerns on the usage of a particular substance, then the Safety, Environmental and Security Department shall be consulted before it is used.

Data sheets shall be obtained for all substances purchased by AFL and COSHH assessments carried out on each substance prior to it being used.

The COSHH Assessments will be available from the Safety, Environmental and Security Department. A list of approved chemicals, identifying hazards and control measures, shall be forwarded to Vessels for information. Only substances contained on this approved list shall be used.

Should there be a need for a substance not on the approved list, then this should be referred to the Safety, Environmental and Security Department in order that an assessment can be carried out.

If a Vessel purchases substances which have **not** been assessed, then the safety data sheet shall be forwarded by the Vessel to the Safety, Environmental and Security Department for review.

#### 3.3 Responsibilities

Mr W Robertson (Group Safety, Environmental & Security Manager) will assume the role as Designated Person Ashore (DPA) in accordance with Merchant Shipping Notice 1754 (M), and the Managing Director, Mr P G Preston, will have overall responsibility for health and safety matters on behalf of AFL; however, the Boatmaster of the Vessel will be responsible for instructing and motivating the crew in the observance of AFL's Safety Policy and the requirements of the SMC. AFL expects all crew on board to assist the Boatmaster in this task. This includes, but is not limited to, familiarisation training for new starts, participation in emergency drills

and exercises and setting an example in the wearing of Personal Protective Equipment (PPE).

The Vessel staff will be responsible for assisting passengers to embark and disembark safely.

The Boatmaster will be appointed as the Vessel Safety Officer, responsible for carrying out the statutory duties of a Vessel Safety Officer as defined in *Code of Safe Working Practices for Merchant Seamen* and other relevant legislation.

An 'Authorising Crew Member for Permits to Work' shall be appointed by the Boatmaster; the Authorising Person may be the Boatmaster. The appointment and any changes shall be recorded in the Deck Log Book.

It is the responsibility of the Group Safety, Environmental & Security Manager to ensure that all accidents and incidents are fully investigated and that corrective and preventive action is carried out effectively.

The Group Safety, Environmental & Security Manager will keep the AFL Managing Director informed of any safety concerns and subsequent actions.

The Group Safety, Environmental & Security Manager will report to the Group Board Safety Committee.

#### 3.4 **Statutory and Other Official Requirements**

The relevant (or applicable) laws and regulations of the United Kingdom which are enforced by the Maritime and Coastguard Agency (MCA) will be complied with at all times. Other applicable regulations enforced by the United Kingdom Port Authorities and other regulatory bodies will be complied with.

The standards of safety equipment and safety practices which will apply on board will be those required by statute of the U.K. Government, unless AFL specifies a more stringent requirement for a Vessel. When a Vessel is handed over to a contractor for the purposes of repair or overhaul, the appropriate Health and Safety Regulations will apply to working practices and equipment used by ship's staff and the contractor.

The Boatmaster will set out in detail, within Standing Orders or Work Instructions, any **additional** requirements they may have which they consider are necessary to ensure the safe operation of the Vessel.

#### 3.5 **Safety of the Passengers, Crew and the Vessel**

The first consideration of the Boatmaster and crew will be the safety of the passengers, crew and the Vessel. This consideration overrides all other obligations. The Boatmaster has the overriding authority and responsibility to make decisions with respect to safety, security and pollution prevention and to request management assistance as necessary.

Under no circumstances shall schedule, expense, convenience or prior instructions be allowed to justify the taking of any risk which may endanger any passenger, member of the crew or the Vessel, or cause pollution to the environment.

The Boatmaster will never be expected to undertake any operation or manoeuvre which he knows to be hazardous. **AFL will always support a decision taken in good faith by the Boatmaster, in the interest of safety or pollution prevention.**

### 3.6 On Board Safety Management

The Boatmaster of each Vessel shall be the Safety Officer. Every Vessel shall have a Safety Committee comprising the crew. A meeting of the Safety Committee will be held at between four and six week intervals to discuss and address all matters relating to Vessel safety, including Vessel and port interfaces.

The Group Safety, Environmental & Security Manager will keep relevant shore based staff informed of any safety concerns and subsequent actions.

### 3.7 Accident and Incident Reporting and Investigation

The terms 'accident' and 'incident' have various legal meanings, depending on the definitions used in current legislation.

For the purposes of this Health and Safety Plan, the term 'accident' is used when there is injury to people. All accidents will be reported and investigated to minimise risk of a recurrence.

The term 'incident' will be used when there is an unplanned occurrence where damage to AFL, or third party property, or the environment, is sustained. All incidents will be reported and investigated to minimise risk of a recurrence.

In order that accidents and incidents are reported and investigated in accordance with their severity, accidents or incidents will be categorised by AFL as major and non-major. If there are any doubts as to whether an accident or incident is **major or non-major**, it will be treated as **major** until decided otherwise by the Group Safety, Environment & Security Manager. A definition of each is given below:

#### 3.7.1 Major Accident/Incident

- (a) a fatality;
- (b) an accident as defined in the current Merchant Shipping (Accident Reporting and Investigation) Regulations and the current MGN 'Accident Reporting and Investigation';
- (c) a major injury as defined in the same documents;
- (d) an accident as defined in the current Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations;
- (e) damage to AFL assets or third party assets (involving AFL personnel) in excess of £25,000;
- (f) severe environmental impact involving AFL and third parties.

#### 3.7.2 Non-major Accident/Incident

- (a) a serious injury as defined in the current Merchant Shipping (Accident Reporting and Investigation) Regulations and current MGN 'Accident Reporting and Investigation';

- (b) an incident as defined in the current Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations;
- (c) damage to AFL assets or third party assets (involving AFL personnel) of less than £25,000.

### 3.8 **Accident/Incident Investigation**

Accidents and incidents will be investigated to minimise the risk of recurrence and to learn any wider causes. The process of investigation has four steps and seeks to identify:

#### 3.8.1 Direct causes of an accident/incident

These are factors relating to people, the job, equipment and the environment, which were in place just before the accident occurred, and which influenced its occurrence. They may, or may not, be specific to the particular location. Accidents/incidents always have more than one direct cause. Direct Causes arise from Root Causes.

#### 3.8.2 Corrective Action

This is the action taken to address Direct Causes. Corrective action will be identified by the Boatmaster and be directed at resolving the problem at that location. Potential application to other locations should be noted and actioned by the Fleet Group Safety, Environmental & Security Manager when reviewing the accident report.

#### 3.8.3 Root Causes of an accident

These are factors that lead to lack of control through the management system. They may be considered to be failures or 'holes' in the management system. They normally apply to more than one location and more generally across the organisation. If these causes are not identified and resolved, the Direct Causes arising from them will recur.

#### 3.8.4 Preventive Action

This is the action taken to address Root Causes. It will be identified by the Group Safety, Environment & Security Manager in discussion with relevant staff and managers, during a review of accident/incident reports. Such action may be based on more than one report and will take into consideration other factors such as personal, AFL and industry experience.

### 3.9 **Accident Reporting**

If an accident occurs it will be recorded on the appropriate accident report form, a copy of which will be sent to the Group Safety, Environment & Security Manager and Managing Director. If it is a major accident, as defined in the current Merchant Shipping (Accident Reporting and Investigation) Regulations and current MGN 'Accident Reporting and Investigation', then the Boatmaster will complete an Marine Accident Investigation Board (MAIB) Report and forward it to the Group Safety, Environment & Security Manager.

#### 3.9.1 Incident Reporting



If an incident occurs it will be recorded on the appropriate incident report form and the original forwarded to the Group Insurance Manager. If it is a major incident, as defined in the current Merchant Shipping (Accident Reporting and Investigation) Regulations and the current MGN 'Accident Reporting and Investigation', then the Boatmaster will complete an MAIB Report and forward it to the Group Safety, Environmental & Security Manager.

### 3.9.2 On Board Investigating and Reporting of Major Accidents or Incidents

When the situation is stabilised, the appropriate accident or incident report form will be completed and retained for use by the investigation team. Immediate corrective action may be implemented, if applicable, but Boatmasters shall take into consideration the need to preserve accident sites and other evidence until formal investigations have been completed by the Vessel Safety Officer and third parties, as appropriate.

### 3.9.3 Management Investigation of Major Accidents or Incidents

On the authority of the Managing Director, the Group Safety, Environmental & Security Manager will appoint an appropriate investigation team from DML Group resources which will be provided with terms of reference. These will determine the areas to be investigated, the team's level of authority, the required output from the investigation and the timescale in which it is to be completed.

The investigation team will confirm the direct causes and identify root causes of the accident. A formal report will be prepared within the timescale specified and presented to the Group Safety, Environmental and Security Manager. The report shall follow the format:

- (a) Introduction;
- (b) Terms of Reference;
- (c) Management Summary;
- (d) Description of the Accident (events leading to, during and following the occurrence);
- (e) Direct Causes and Corrective Action;
- (f) Root Causes and Preventive Action;
- (g) Appendices (photographs, plans, extracts from logs, etc.).

Implementation of the preventive action will be monitored by the Group Safety, Environmental & Security Manager.

### 3.9.4 Investigating and Reporting Non-major Accidents

When a non-major accident or incident is reported to the Boatmaster he will first assess the situation and take appropriate immediate action to safeguard injured personnel and make safe the situation. This will precede, in all cases, the administrative task of reporting the accident.

When the situation is stabilised the appropriate form will be completed by the Boatmaster.

The Boatmaster (who will also be the Vessel Safety Officer) will carry out his statutory duties as required by the relevant Regulations.

The direct causes of the accident or incident will be identified as accurately as possible. Based on these, the Boatmaster will identify and implement appropriate corrective action that can be taken in the short term at the location to reduce the likelihood of recurrence.

The Group Safety, Environmental & Security Manager will review the corrective action for adequacy and potential application to other locations, and advise the originator. If the corrective action is not adequate, it will be referred back to the originator for reconsideration.

The Group Safety, Environmental & Security Manager will identify the root causes and develop preventive action accordingly. Implementation will be monitored on board by the Safety Committee.

### 3.10 **Near Miss Reporting and Investigation**

A Near Miss Report is an unplanned occurrence where a small change to prevailing conditions could have resulted in injury to people, damage to property or the environment. A Near Miss Report may also be referred to as a hazardous incident in MCA documentation.

The importance of recognising, investigating and reporting Near Miss Reports cannot be over emphasised. If unidentified, they could recur as an accident, when the prevailing conditions are marginally different. Each near miss represents a learning opportunity.

All Near Miss Reports will be reported by employees in the knowledge that AFL will **NOT** seek to apportion blame, but to identify the direct and root causes, so that effective corrective and preventive action can be applied to reduce the likelihood of recurrence.

When a Near Miss Report is identified by, or reported to, the Boatmaster, he will ensure that a Near Miss Report is completed.

The circumstances of the Near Miss Report will be **clearly** and **factually** recorded, together with the direct causes and corrective action to be implemented.

Near Miss Reports will be given a reference number consisting of the Vessel initials, the consecutive report number and the last two digits of the current year.

The report form will be sent to the Group Safety, Environmental & Security Manager, who will prioritise any preventive action required and decide on whether further investigations are required prior to final closure of the report. A copy will be retained on board.

### 3.11 Risk Assessments

It is a requirement of UK legislation that risks inherent in the working environment be identified and then assessed, in order that measures can be put in place to remove or minimise them.

Boatmasters will be responsible for ensuring that risk assessments are carried out in the areas for which they are responsible and that additional controls identified, if acceptable, are implemented in a timely manner. Risk assessment training will be given to Boatmasters and relevant crew members.

During maintenance periods, risk assessment of operations may be undertaken as part of a specific yard's own safety management system. Regardless of this, the Boatmaster of a Vessel will still be required to ensure that adequate controls exist for any operation carried out where the actions of AFL personnel could impact upon others.

#### 3.11.1 Format of Risk Assessment

Risk assessment on Vessels will be carried out in three distinct formats:

- (a) Generic Risk Assessments are carried out by the Group Safety, Environmental & Security Manager and will be copied to the Vessels.
- (b) Specific Assessments will be carried out prior to carrying out an operation classed as 'non-routine'.
- (c) Specific Assessments for HSE legislation purposes will be carried out.

#### 3.11.2 Specific Assessment for Non-Routine Operation

For non-routine operations, a detailed Risk Assessment form will be completed. These operations include many of the activities that take place during repair periods, where personnel (AFL and others) could be at risk.

The Boatmaster of the Vessel in which the operation is taking place will conduct the assessment and determine any necessary corrective actions to lower the risk rating to either 'low' or 'insignificant'. Guidance on risk assessment of this type is given in the *Code of Safe Working Practices for Merchant Seamen, Chapter 1*.

Where necessary, a permit to work may also be required, following such assessment. For diving operations, a permit to dive will be required and will be copied to the Vessel.

A register of on board specific risk assessments will be maintained for the Vessel. The register and risk assessments will be subject to review, at least annually, or if any changes in operations or legislation require amendments to be carried out at any other time.

#### 4. **PERMIT TO WORK**

4.1 A Permit to Work (PTW) system will be developed appropriate to the scale of the two Vessels operating this Service.

#### 4.2 **Security**

To safeguard the crew and Vessel from acts of vandalism, theft and terrorism, the undernoted precautions shall be taken as a minimum:-

- no visitors will be allowed in the wheelhouse, without permission of the Boatmaster.
- vulnerable areas will be kept secured at night and during the day when access is not required.

#### 4.3 **Muster Lists**

The Boatmaster will ensure that Muster Lists reflect the Passenger Certificate in use at the time and the crew currently on board and that it is posted in the wheelhouse.

#### 4.4 **Safety and Fire Equipment Plan**

A Safety and Fire Equipment Plan will be supplied to each Vessel and will show the location of each item of emergency equipment. Copies will be placed as follows:

- 4.4.1 In the wheelhouse;
- 4.4.2 in a sealed container near the gangway in use, where it is easily accessible to shore emergency services;
- 4.4.3 in the box of ship's drawings.

A spare copy will be retained for any future amendment purposes.

#### 4.5 **Emergency Steering/Engine Controls**

In addition to the emergency drills, all members of crew who are responsible for manoeuvring the Vessel will receive instruction in the procedure to be followed when changing from the normal steering and engine control systems to the emergency steering and engine control systems. They will also have practical experience in manoeuvring the Vessel with only one propulsion unit in operation.

The Boatmaster will identify periods when crews can be allowed time to change over the steering gear and practice manoeuvring the Vessel in clear water, with only one propulsion unit. This training shall be carried out by each Boatmaster appointed to the Vessel as soon as practicable and for new appointees before they take command of the Vessel.

This training will take place every three months for all personnel who manoeuvre the Vessel and be recorded in the Official Log Book and the Deck Log Book.

## 5. PREVENTION OF FIRE

### 5.1 Vessel in Service

A high standard of cleanliness will be maintained throughout the Vessel, particularly in machinery spaces and store areas, in order to reduce the risk of fire. Combustible materials, such as oily rags, will not be allowed to accumulate. All 'No Smoking' notices on the Vessel will be complied with, in accordance with relevant legislation.

### 5.2 Vessel Out of Service

When the Vessel has been handed over to a Contractor for overhaul or repair, the Contractor will have sole responsibility for all fire and safety precautions. When AFL personnel are working on board, they will comply with the Contractor's fire and safety precautions.

When welding or operations involving naked flame are to be undertaken on board by a repair yard's personnel, all flammable material in the vicinity and adjacent compartments will first be removed and the Contractors' and Vessel's personnel warned of all possible risks. When hot work is in progress in places where a risk of fire exists, a fire watchman (Vessel or shore personnel) shall be in attendance throughout, with a portable fire extinguisher. On completion, a Contractor's representative will inspect the work and adjacent compartments to ensure that no possibility of an outbreak of fire remains. The repair yard's Permit to Work system will be operated in such cases.

## PART 9 CUSTOMER COMPLAINT PROCESS

### CUSTOMER COMPLAINT PROCESS

- 1.1 Customers can give feedback, including complaints, in the following ways:
- By phone;
  - In writing;
  - by email
- 1.2 AFL recognises the importance of customer feedback. Customer feedback will be recorded in AFL's systems within 5 working days of receipt under one of the following categories:
- complaints;
  - appreciations;
  - enquiries;
  - suggestions;
  - claims;
  - others (comments which do not fit into any of the above listed categories).
- 1.3 The system used for recording feedback is proprietary software known as 'Respond'. This software offers the benefits of being able to monitor the progress of feedback and to identify any patterns or trends to enable corrective action to be taken.
- 1.4 Complaints will be acknowledged within 5 working days of receipt and investigated in conjunction with the Contract Manager. A resolution will be reached within 21 working days of the acknowledgement. If it is not possible to reach a resolution within 21 working days, due to an ongoing investigation, the customer will be informed and advised of the reason for the delay and likely timescale for a resolution.
- 1.5 If the customer is not satisfied with the response received their complaint may be escalated to AFL's Managing Director. If a customer remains dissatisfied with AFL's response they may contact the Regional Transport Partnership Chief Executive, Highlands and Islands Transport Partnership (HITRANS).
- 1.6 It is AFL's understanding that the penalties applicable for customer complaints arising from the provision of the Services are intended to be applied for failure to comply with the agreed process, rather than based on the number of complaints received and AFL's Derogated PSC has been amended accordingly to this effect.
- 1.7 Communicating AFL's Passenger Feedback Mechanism
- Passengers will be provided with information about AFL's passenger feedback policy, and how to give feedback.