

MINUTE OF EXTENSION AND VARIATION

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 and the Operator (“the Parties”) entered into a contract dated 7 June 2011 for the provision of a ferry service between Gourock and Dunoon (“the Contract”)
- B The Contract is due to expire at 00.00 hours on 31 March 2018
- C The Scottish Ministers wish to extend the Contract for a further period of nine months and three weeks
- D The Parties have agreed to amend the terms of the Contract and provision is made in terms of clause 4 of the Contract for its amendment by way of a formal variation in writing.

NOW THEREFORE the Scottish Ministers and the Operator agree as follows:-

- 1 In this Minute of Extension and Variation, unless the context otherwise requires, the definitions and interpretations set out in clause 1 (Definitions) of the Contract shall apply, and words and expression used in this Minute of Extension and Variation

shall, unless an alternative definition is provided herein, have the meaning assigned to them in the Contract.

- 2 From and including the 31 March 2018, the Contract shall be read and construed as varied by the provisions set out in the schedule annexed to this Minute of Extension and Variation (“the Schedule”).
- 3 Except to the extent that it is varied herein, the whole terms and conditions of the Contract shall remain in full force and effect and shall continue to apply to the Parties.
- 4 In the event of any conflict or inconsistency between the terms and provisions of this Minute of Extension and Variation and the terms and provisions of the Contract, the terms and provisions of this Minute of Extension and Variation shall prevail.
- 5 The obligation of the Scottish Ministers to pay the Grant or any Monthly Instalment, from and including the Extension Date is subject to the condition that Scottish Ministers have received all the documents and other evidence listed at Annex 1 to the Schedule to this Minute of Extension and Variation in a form and substance satisfactory to the Scottish Ministers. Scottish Ministers may at their sole discretion waive or deem to be satisfied in whole or in part the provisions of this clause 5.
- 6 A Base Case for each of the Service Year for the period from the Extension Date to the Expiry Date is set out in Annex 2 to the Schedule to this Minute of Extension and Variation.
- 7 This Minute of Extension and Variation shall be governed by and construed in accordance with the laws of Scotland and is subject to the exclusive jurisdiction of the Court of Session.
- 8 Should the current vessels be required following the expiry of the current Public Service Contract Extension, Transport Scotland will fund any and all necessary maintenance and/or upgrading works to ensure that the vessels are fully able to provide the services for the required additional duration, currently estimated at *{redacted}* in Assumption 3 of the Extension Base Case. Approval for these works will be provided at such time when it is known that the vessels will be required post contract extension period.

- 9 The Operator shall be relieved of all financial penalties of any technical breakdown relating to any of the noted in the works required in Assumption 3 of the Extension Base Case, not having yet been funded or carried out.

IN WITNESS WHEREOF this Minute of Extension and Variation and the Schedule which is annexed and identified as relative hereto has been duly executed by the Parties as follows:

SIGNED for and on behalf of **THE SCOTTISH MINISTERS**

Signature
Name
Position
Date2018
Place
Witness
Witness' full name
Witness' address

SIGNED for and on behalf of **ARGYLL FERRIES LIMITED**

Signature
Name
Position
Date2018
Place
Witness
Witness' full name
Witness' address

This is the Schedule referred to in the foregoing Minute of Extension and Variation between the Scottish Ministers and the Operator.

SCHEDULE

The Contract is hereby amended as follows:

- 1 In Clause 1 (Definitions and Interpretation):-
 - (ii) In the definition of “Expiry Date” delete “31 March 2018” and replace with “20 January 2019”
 - (iii) Add new definition “Extension Date means 31 March 2018
 - (iv) Add new definition “Minute of Extension and Variation means the Minute of Extension and Variation entered into by the Scottish Ministers and the Operator and dated 30 March 2018”
- 2 In clause 18.2 insert at the end “For the avoidance of doubt, any request for information made for the purposes of this Clause 18.2 must be complied with within such reasonable timescale as the Scottish Ministers may specify and may not only require the provision of data or information which is held by the Operator in the format requested, but also the collection and collation of that information or data where considered necessary by the Scottish Ministers (acting reasonably).”
- 3 In clause 18.3 insert after “shall submit” the following “not less than 3 months prior to the Expiry Date”
- 4 Insert new clause 15.7 “The Scottish Ministers may withhold payment of the Grant or any part of it or reclaim the Grant or any part of it (other than the Assets Portion) and the Operator must 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 and the Commission notice on the method for setting the reference and discount rates) 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 must 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. In the event that any

determination by the European Commission, European Court of Justice or any Scottish Court requires repayment of the Grant or any part of it, this Contract may be terminated by either the Scottish Ministers or the Operator.”

This is Annex 1 of the Schedule to the Minute of Extension and Variation between the Scottish Ministers and the Operator.

**ANNEX 1
Conditions Precedent**

1 Evidence of Insurance

This is Annex 2 of the Schedule to the Minute of Extension and Variation between the Scottish Ministers and the Operator

ANNEX 2

Base Case

[REDACTED]