

This and the following 1 pages comprise Schedule 1 Referred to in the foregoing Contract between the Scottish Ministers and Serco Ltd.

SCHEDULE 1 – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1. In this Contract, words and expressions will, except where the context otherwise requires, have the following meanings assigned to them:

Aberdeen City Council means Aberdeen City Council, a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 and having its principle offices at Marischal College, Broad Street, Aberdeen AB10 1AB;

Aberdeenshire Council means Aberdeenshire Council, a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 and having its principle offices at Woodhill House, Westburn Road, Aberdeen, AB16 5GB;

Actual Outcome Statement will be construed in accordance with Schedule 11, Paragraph 3;

Annual Fuel Reconciliation Payment will be construed in accordance with Schedule 11, Paragraphs 4.4 – 4.10 and **Annual Fuel Reconciliation** will be construed accordingly;

Annual Fuel Statement will be construed in accordance with Schedule 11.

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);

Assigned Employees will be construed in accordance with Clause 26.1.1;

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

Average Price means in relation to the Comparable Services provided by the Comparison Group, the mean average of prices for those Comparable Services as adjusted to produce Equivalent Services Data over the previous 12 month period, or other period as agreed between the Employer and the Operator. (For the avoidance of doubt, the "mean average price" shall be calculated by aggregating the prices derived from Equivalent Services Data for each of the services and dividing the same by the number of instances of Comparable Services);

Base Case means the financial model for the provision of the Services set out in Schedule 10 (the Initial Base Case) 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 Contract;

Base Case Schedule means the completed output schedules within the Base Case which were specified by Transport Scotland as templates to be incorporated into the model;

Base Case Operator's Return will be construed in accordance with the Base Case;

Benchmarked Services the Operational Services that the Scottish Ministers elect to include in a Benchmark Review under Schedule 15;

Benchmarker means the independent third party appointed under paragraph 3.1 of Schedule 15;

Benchmark Report means the report produced by the Benchmarker following the Benchmark Review as further described in paragraph 5 of Schedule 15;

Benchmark Review means a review of the Operational Services carried out in accordance with paragraph 4 of Schedule 15 to determine whether those Operational Services represent Good Value;

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

Business Hour means any time between 9:00am and 5:00pm on any Business Day;

Calendar Year means each 12 month period beginning on 1 January and ending on 31 December immediately following, provided that for the purpose of this Contract the first Calendar Year will be deemed to have commenced at 14:01 hours on 30 June 2020 and ends on the 31 December 2020;

Capital Supplement will be construed in accordance with Clause 20;

Change in Applicable Law means a change which is specified in terms of its requirements and the date of commencement is intimated after the 22 April 2020. (For the avoidance of doubt a change where the change commences following the 22 April 2020 but is intimated before that date is not a Change in Applicable Law).

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);

Charter Portion means the instalments of Charter Hire and all other amounts payable by the Operator to the Owner under the Fleet Bareboat Charterparty Agreement;

CMAL means Caledonian Maritime Assets Limited, a company incorporated under the Companies Acts with registered number SC001854, and having its registered office at Municipal Buildings, Fore Street, Port Glasgow Renfrewshire PA14 5EQ;

Commencement Date means 30 June 2020;

Community Shipowner has the meaning given in Council Regulation No 3577/92;

Comparable Services means services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar services exist in the market, the Benchmarker shall propose an approach for developing a comparable service benchmark;

Comparison Group means a sample group of organisations providing Comparable Services identified by the Benchmarker under paragraph 4.8(1) of Schedule 15 which consists of organisations which are either of similar size to the Operator or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Operator or which, in the professional opinion of the Benchmarker, are best practice organisations and that are carrying on at least a significant part of their business within the United Kingdom;

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 replaces the same provided always that if the CPI is rebased at any time in the period between the Mobilisation Date and the expiry or termination of this Contract, 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 Contract which are to be varied by reference to CPI are to be varied will 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 Contract are to be varied must be determined in accordance with Clause 49 (Dispute Resolution).

Contract means this Contract between the Scottish Ministers and the Operator, including the Schedules, 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;

Contract Variation means any variation to the Contract as set out in a Contract Variation Notice, other than an Operational Variation;

Contract Variation Form means the form set out in Schedule 14;

Contract Variation Notice means will be construed in accordance with Clause 11 and Variation will be construed accordingly;

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;

Dangerous Goods means those listed as such in the International Maritime Dangerous Goods (IMDG) Code as applicable at the time for adoption on a voluntary basis;

Data Controller, Data Processor, Data Subject and Data Subject Access Request have the meanings given in the Data Protection Laws ;

Data Protection Laws means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR;

Dispute will be construed in accordance with Clause 49;

Dispute Resolution Procedure will be construed in accordance with Clause 49;

Eligible Costs means operational costs excluding the element of the Charter Portion applicable to the new, varied or terminated vessel costs, harbour dues, fuel prices and all staff costs (including without limitation, any staff costs arising from any reduction in staff numbers as a result of redundancy);

Eligible Revenue means any increase in Revenue in any Service Year that consists of an increase in fares receipts which derives directly from an increase in the volume of traffic and/or loose freight and parcels across the Services and/or an increase in the receipts for retailing or catering or other ancillary activities above the level stated in the Base Case for the relevant Service Year;

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

Emergency Measures Agreement: means an agreement between the parties contained in Schedule A1 to address the consequences of a Pandemic Event including (but not limited to):

a) Providing the Operator with relief from any default or failure in the provision of the Services during the continuance of a Pandemic Event including relief from Performance Measures AND Performance Deductions; and/or

b) Amending the Services to reflect the impact of the Pandemic Event; and/or

c) A Revised Base Case incorporating changes to the Operating Costs, Revenue, Operator's Return, the Fuel Management Programme and any other changes to the Base Case as are appropriate and reasonable in the circumstances and will result in the Operator being in no better or worse a position than it was prior to the Pandemic Event other than in relation to any alteration to the Operator's Return which may be reasonable to compensate the Operator for any increased risk, effort or capital required in respect of the Contract. For the avoidance of doubt the Operator shall take

reasonable steps to reduce Operating Costs where such costs no longer require to be incurred as a result of any amendment of the Services;

Environmental Information Regulations means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations;

Environmental Management Delivery Plan means the Operator's Environmental Management Plan and will be construed in accordance with Schedule 22;

Evaluation will be construed in accordance with Clause 11;

Event of Default means the occurrence of any of the events set out in Clause 50.1;

Excess Payment will be construed in accordance with Schedule 11;

Expert means the expert appointed in accordance with Clause 19;

Expiry Date means 30 June 2026 and Expiry will be construed accordingly;

Equivalent Services Data means data derived from an analysis of the Comparable Services provided by the Comparison Group as adjusted in accordance with Schedule 15;

Financial Distress Event means the occurrence of one or more of the events listed in paragraph 3.1 of Schedule 17;

Financial Distress Service Continuity Plan means a plan setting out how the Operator (together with the Guarantor where appropriate) will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that the Operator and/or the Guarantor suffers a Distress Event;

Fleet Bareboat Charterparty Agreement means the Fleet Bareboat Charterparty Agreement in respect of the Vessels between the Operator and CMAL;

Fleet Vessels means the vessels described in Schedule 4 as such, and leased to the Operator under the Fleet Bareboat Charterparty Agreement;

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 Mobilisation Date;

Freedom of Information (Scotland) Act 2002 means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation;

Fuel Cost will be construed in accordance with Schedule 11;

Fuel Management Programme will be construed in accordance with Clause 14.3 and Schedule 12;

GDPR means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

General Change in Applicable Law means a Change in Applicable Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Operator);

Good Working Order means fully fit to perform the functions for which the asset has been designed and having a residual life expectancy of at least one year or that pertaining when the asset was taken over less the effects of reasonable wear and tear, whichever is greater;

Good Value means the Grant payments attributable to a Benchmarked Service, having taken into account the Service Levels, less than or equal to the Average Price;

Grant will be construed in accordance with Clauses 13-19 and Schedule 11, 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 17 to reflect Changes in Applicable Law, and/or an adjustment to the Grant in accordance with Clause 16 to reflect a Revised Base Case;

Grant Claim Form will be construed in accordance with Schedule 11;

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 will be construed in accordance with the Companies Act 2006;

Guarantee means the Parent Company Guarantee in favour of the Scottish Ministers entered into by the Guarantor on or about the date of this Contract, or any guarantee acceptable to the Scottish Ministers that replaces it from time to time;

Handover Assistance Plan means the timetable and activity plan for handover assistance with respect to the Services, which must include details of all forward bookings and reservations made and deposits received;

Health & Safety Delivery Plan will be construed in accordance with Schedule 21;

Highland Council means Highland Council a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 and having its principle offices at Glenurquhart Road, Inverness IV3 5NX;

Incoming Employees means individuals whose employment transfers on the commencement of the provision of the Services by operation of TUPE;

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

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

CPI [x]c

CPI [x]p

Where:

CPI [x]c is the Consumer Price Index published in the Month of June in the Service Year immediately prior to that 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 will be construed accordingly;

(e.g. for an Index Linked change to be applied in the Service year 2021 then the indices CPI[x]c will be that for June 2020 and CPI[x]p that for June 2020);

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 relate to 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, claims in relation to pension entitlement, unlawful deduction of wages and equal pay;

Insolvency Event means the occurrence of any of the following events (or any event analogous to any of the following in any jurisdiction) in relation to the relevant entity:

- (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the appointment of an administrator of, or the making of an administration order in relation to, the entity or the appointment of a receiver or administrative receiver over the whole or part of the entity's undertaking, assets, rights or revenue;
- (c) the entity being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (d) the entity entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

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;

Intellectual Property Rights means the following types of property and/or rights as granted in any jurisdiction (where references to any Scottish legal term for such property/rights will, in respect of any jurisdiction other than Scotland, be deemed to include what most nearly approximates in that jurisdiction to the right/property under English law) : i) patents; ii) petty patents and utility model rights; iii) registered trade marks; iv) registered design rights; v) applications for, and rights to apply for the property rights listed in items i) to v) (inclusive) above; vi) copyrights; vii) database rights; (viii) unregistered design rights; (ix) rights in performances; (x) the moral rights set out in Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 (as amended from time to time); (xi) any rights of action in relation to confidential information; and (xii) any rights of action in relation to trade names, trading styles, product packaging and/or domain names;

Key Personnel means the Operator's employees identified as such in accordance with Schedule 20;

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);

Lolo means freight which is lifted on and off the vessel by crane or vessels carrying only that freight, as the context requires.

Marketing and Sales Delivery Plan will be construed in accordance with Schedule 7;

Material Reduction in Revenue means the Revenue from the Services for a relevant Service Year have been established (to the reasonable satisfaction of the Scottish Ministers) to have fallen by at least 20% from the Revenue in the preceding Service Year;

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

Mobilisation Date means 23 April 2020;

Mobilisation Period means the period starting from the Mobilisation Date and ending on the Commencement Date;

Mobilisation Plan will be construed in accordance with Schedule 6;

Monitoring Procedures means the procedures set out in Schedule 13;

Month means 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 Contract 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 Contract to end on the Termination Date;

Monthly Instalments will be construed in accordance with Clauses 14 to 18;

New Contract means any arrangement or contract of whatsoever nature in relation to the provision by the Scottish Ministers of a grant in respect of public transport services by sea to the Northern Isles similar in scope to the Services commencing subsequent to the Expiry or Termination of this Contract;

Non-contributory Emergency means any threat to the safety of life or property at sea affecting any person or vessel but not including any threat to a Vessel arising from a failure by the Operator to perform its obligations under this Contract or the Principal Contracts;

Northern Isles means Shetland and Orkney;

Operating Management Delivery Plan will be construed in accordance with Schedule 8;

Operational Variation means a variation in order to improve the efficiency of the Services whether through the Continuous Improvement Plan or otherwise ;

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 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;

Operator Personnel all persons engaged by the Operator in the performance of its obligations under the Contract including:

- (a) its employees and workers (including persons employed by a third party but working for and under the control of the Operator);
- (b) its agents, service providers and carriers; and
- (c) any sub-contractors of the Operator (whether approved under Clause 46 (Sub-contracting) or otherwise);

Operator Vessels means the vessels referred to as such in Schedule 4, Part A (*to include only those additional to or in place of any of the Fleet Vessels*);

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, and for the purposes of Clause 49;

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

Operator's Vessel Obligations will be construed in accordance with Schedule 4;

Orkney Islands Council means Orkney Islands Council a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 and having its principle offices at Council Offices, School Place, Kirkwall, Orkney, KW15 1NY;

Outcome Operator's Return means the Operator's Return plus the Contract Adjustments to Base Case Operator's Return;

Outgoing Operator means Serco Ltd together with any of its Associated Companies and any subcontractors employed wholly or mainly in the provision of the Services;

Owners means CMAL as the owner party to the Fleet Bareboat Charterparty Agreement and will include its successors, permitted assignees or permitted transferees; ;

Pandemic Event: means an event (commencing before or after the date hereof) referred to in the following paragraphs which has or is likely to have a material impact upon the service provided under the Contract:

- a) an announcement by the World Health Organisation that a virus, or other infectious disease, has become a pandemic;
- b) a governmental authority has imposed, as a result of a viral or other infection, legal restrictions on:
 - (i) travel (including use of public transport), assembly of individuals or the operation of schools or universities; or
 - (ii) the operation of one or more categories of business; or
- c) recommendations being issued by any governmental authority, or any official medical officer of any agency or officer of any governmental authority, which would have a similar effect to the circumstances referred to at (b) above and which result from a viral or other infection.

Party means either of the Parties to this Contract;

Performance Deductions will be construed in accordance with Clause 18;

Performance Measures means all or any of the Performance Measures for the Services as set out in Schedule 13, Part 2;

Performance Regime will be construed in accordance with Schedule 13;

Personal Data has the meaning given in the Data Protection Laws;

Port means the port facilities at each or any of Aberdeen, Kirkwall (Hatston), Lerwick, Scrabster and Stromness;

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

Projected Fuel Costs means those costs for each grade of fuel the Operator will use in the provision of the Services, which is estimated in the Fuel Management Programme to be representative for the next Service Year until the Annual Fuel Reconciliation exercise is undertaken;

Projected Fuel Liability means the Projected Fuel Costs for each grade of fuel the Operator will use in that Service Year, multiplied by the Projected Tonnage for each grade of fuel;

Projected Tonnage means the annual fuel tonnage figure split according to the volume of each grade as appears in the Initial Base Case;

Public Sector Contribution will be construed in accordance with Clause 20;

Published Tariff Scheme will be construed in accordance with Clause 5.1;

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 Contract to have ended on the Termination Date;

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

Register of Transferring Assets will be construed in accordance with Clause 6A;

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 Ports for any reason outwith the Operator's reasonable control including because any facilities at the Ports are being used by vessels other than the Vessels;

- (c) terrorism, piracy or hijacking;
- (d) the occurrence of an Emergency in which any Vessel is or becomes involved;
- (e) 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.
- (f) Fuel shortages outwith the Operator's reasonable control;
- (g) The non-availability of Transferring Assets at or, if required, before the Commencement Date: and/ or
- (h) Any act or omission of the Scottish Ministers, its employees, agents or sub-contractors which causes or materially contributes towards the Operator failing to comply with the Performance Regime;
- (i) Pandemic Event;

Revenue means the Operator's income from the Services for the relevant period including but not limited to all Public Sector Contributions and reimbursements from Transport Scotland in relation to Concessionary Travel entitlements 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 Clauses 14-17;

Revised Base Case will be construed in accordance with Clause 16;

Revised Base Case Calculation will be construed in accordance with Clause 16;

Revised Tariff Structure will be construed in accordance with Clause 5.7;

Ropax means vessels carrying passengers, cars and other vehicles accessing the vessel by driving on and off;

Roro means freight vehicles and trailers accessing the vessel by being driven or towed on and off or vessels carrying freight vehicles and trailers accessing the vessel by being driven or towed on and off, additional freight loaded onto and lifted from the vessel by other means such as craneage (all including hazardous loads) and passengers (normally lorry drivers) limited in number to 12 as the context applies;

Schedule means a schedule annexed to and forming part of this Contract;

Scheduled Maintenance Programme means the programme for scheduled maintenance of the Vessels, set out in Schedule 4;

Scheduled Unavailability means, in respect of each of the Vessels a period during which the Vessel is scheduled to be unavailable to provide the Services whilst scheduled maintenance is taking place as specified in the Scheduled Maintenance Programme.

Scottish Ministers means the Scottish Ministers and their successors to their interest under this Contract;

Scottish Ministers' Representative means the suitably qualified and competent individual nominated by the Scottish Ministers to be the main point of contact with the Operator during the Contract Period, and for the purposes of Clause 49;

Senior Operator's Representative means the suitably qualified and competent individual nominated by the Operator to be responsible for resolving Disputes in accordance with Clause 49 (as specified in Schedule 20);

Senior Representative's Board will be construed in accordance with Clause 49;

Senior Scottish Ministers' Representative means the suitably qualified and competent individual nominated by the Scottish Ministers to be responsible for resolving Disputes in accordance with Clause 49;

Services means those public transport services as specified in Schedule 3.

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;

Shetland Islands Council means Shetland Islands Council a local authority constituted and incorporated under the Local Government etc Scotland Act 1994 and having its principle offices at Town Hall, Upper Hillhead, Lerwick, Shetland, ZE1 0HB, UK;

Tariff will be construed in accordance with Clause 5;

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 immediately prior to that 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 will be construed accordingly.

(e.g. for an Index Linked change to be applied in the year January to December 2020 then the indices CPIJc will be that for June 2019 and CPIJp that for June 2020).

Tariff Index Linking will be applied to separately to passengers, vehicles, cabins and freight, but prices within these categories may be varied up or down provided that the balance for each category will reasonably be expected to provide the same average fare within the category (defined as the total yield for each category divided by the number of tickets sold for that category excepting cancellation or booking amendment charges);

Termination Date means the date of termination of this Contract prior to the Expiry Date and Termination will be construed accordingly;

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

Transfer Assistance Period means the period from 12 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;

Transferring Assets means any assets to be or which have been acquired or improved by the Operator pursuant to Clause 20 (Capital Supplements), or which were provided to the Operator by the Outgoing Operator at the Commencement Date, listed and maintained by the Operator in accordance with Clause 6A (Register of Transferring Assets and Subcontracts);

Transferring Employees will be construed in accordance with Clause 24;

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

Variation Notice will be construed in accordance with Clause 11 and Variation will be construed accordingly;

Varied Reward will be construed in accordance with Schedule 11;

Vessels means the Fleet Vessels and the Operator Vessels 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 4.

2. INTERPRETATION

2.1. In this Contract, except where the context otherwise requires:

- (a) all references to Clauses and Schedules are references to Clauses of and Schedules to this Contract and all references to paragraphs are references to paragraphs contained in the Schedules;
- (b) words importing the singular include the plural and vice versa;
- (c) any reference to any enactment, order, regulation or other similar instrument will 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;
- (d) 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;
- (e) the headings to the Clauses are inserted for convenience only and shall not affect the interpretation of this Contract;

- (f) any notice, instruction, notification, direction, request, consent or approval contemplated herein will be made or given in writing;
- (g) anything which may be done by the Scottish Ministers may be done by any person duly authorised by the Scottish Ministers for that purpose; and
- (h) any reference to us, we or our, or Serco Ltd in Schedules 3 to 10, 12 and 14 means the Operator (Serco Ltd.).

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