

This and the following 11 pages comprise Schedule 11 referred to in the foregoing Contract between the Scottish Ministers and Serco Ltd.

SCHEDULE 11 – GRANT PAYMENT

1. Payment of Monthly Instalments

- 1.1. Following the completion of the first month's Ferry Services the Operator must submit to the Scottish Ministers Grant Claim Form in a form specified by the Scottish Ministers for the first monthly instalment of the Grant. Where the details of the Grant Claim Form are agreed by the Scottish Ministers, then payment will be made to the Operator within 10 Business Days of receipt. A Grant Claim Form, the format of which to be agreed between both Parties, must be submitted monthly in arrears thereafter.
- 1.2. Where parts of the Grant Claim Form are not agreed or the Scottish Ministers believe that a deduction should be made under the terms of the Contract then a notice specifying the elements not agreed or the deduction being applied will be issued to the Operator. Payment will be made of any undisputed amounts of the Grant within 10 Business Days of receipt of the Grant Claim Form whereas any disputed amount (or such amount as is adjudged or resolved to be payable) shall be paid within 10 Business Days after the date the dispute is resolved or determined.
- 1.3. If any parts of a monthly Grant Claim Form are not agreed then this will be resolved through the Disputes Resolution Procedure.
- 1.4. The Scottish Ministers will pay the Charter and the balance of the agreed Monthly Instalment (if any) to the Operator. If in any Month the Charter Portion is greater than the Monthly Instalment the Charter Portion will nonetheless be paid to the Operator and Paragraph 1.7 will apply.
- 1.5. Notwithstanding any other provision in this Contract:
 - 1.5.1. the Scottish Ministers will pay all Charter Portions on the due dates in full and without any deduction or withholding in respect of set off, compensation, retention, counterclaim or any matter whatsoever (including without limitation and for the avoidance of doubt, the circumstances set out in Paragraph 1.6,

Clauses 18 (Performance Deductions), 15 (Annual Grant Reconciliations), and 50.1.7.

1.5.2. the Scottish Ministers are obliged to pay all Charter Portions in full in accordance with Paragraph 1.4 and notwithstanding any breach by the Operator of any provision in this Contract and/or the operation of Paragraph 1.6, Clauses 18 (Performance Deductions), 15 (Annual Grant Reconciliations), and 50.1.7.

1.5.3. The Scottish Ministers will pay all Charter Portions in full on or before the date when the relevant amounts are expressed to be due under the Fleet Bareboat Charterparty Agreement and this obligation will not be affected by:

1.5.3.1. any failure by the Operator to include the Charter Portion in any Grant Claim Form;

1.5.3.2. any failure or delay in the agreement of any Grant Claim Form; or

1.5.3.3. any limitations on recourse contained in the Fleet Bareboat Charterparty Agreement

1.6. The Scottish Ministers are not obliged to pay any part of a Monthly Instalment due to be paid to the Operator where, as at the due date for payment, an Event of Default (or event which with the giving of notice, lapse of time or other condition may constitute an Event of Default) has occurred. The Scottish Ministers may at their discretion pay the Grant or any part of a Monthly Instalment (but not, for the avoidance of doubt, any part of any Charter Portion) due to be paid to the Operator or any part thereof notwithstanding, and without waiving, any such Event of Default or event.

1.7. In the event that pursuant to Paragraph 1.4 the Scottish Ministers, in any Month, make payment of a Charter Portion which exceeds the Monthly Instalment then so much of the Charter Portion as exceeds the Monthly Instalment will be an advance payment of Grant and be compensated by the Scottish Ministers by adjusting any subsequent Monthly Instalment to the extent only that such Monthly Instalment exceeds Charter Portion in the relevant Month.

1.8. In the event that, pursuant to Fleet Bareboat Charterparty Agreement the Scottish Ministers make payments to the Operator such amount shall form part of the Grant notwithstanding that they do not or may not appear in the Base Case

for the relevant Service Year and if paid outwith the Grant Period shall be deemed to have been paid in respect of the last Service Year.

2. The Revised Base Case

- 2.1. Unless any price or cost is updated at prevailing prices as allowed for below, each price, and cost in respect of future years in the Base Case with the exception of HIRE costs within the Vessels tab which shall be deemed to have been included in the Spreadsheet at nominal prices will be Index Linked for each year after the initial year (YR1). Unless any revenue is updated at prevailing prices as allowed for below, each revenue in respect of future calendar years in the Base Case will be Varied by Tariff Index Linking Index Linked for each calendar year including 2020.
- 2.2. In the event that the Operator is able to establish (to the reasonable satisfaction of the Scottish Ministers) that:
 - 2.2.1. Revenue for a relevant Service Year had fallen by at least 10% plus the percentage of CPI attributable to the relevant Service Year from the Revenue in the preceding Service Year; and
 - 2.2.2. Revenue can reasonably be forecast to continue at levels at least 10% plus CPI below that in the preceding Service Year for subsequent Service Years, provided always that the Operator (i) has not in any way contributed to such material difference in Revenue and (ii) has taken all reasonable steps to mitigate the consequences of such material difference in Revenue 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 in the subsequent Service Years to take account of any forecast reduced Revenue. For the avoidance of doubt the Operator will not be considered to have taken all reasonable steps to mitigate the consequences of such a reduction in Revenue unless the Scottish Ministers are satisfied that all possible variations to the Services (including but not limited to the Fares, Timetable and Vessels) have been considered fully. The Scottish Ministers reserve the right to exercise their rights under Clause 5.6 and/or Clause 11 at any time.
- 2.3. If the Harbour dues payable by the Operator in connection with the provision of the services 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 subsequent Service Years to take account of such increase in Harbour dues.

- 2.4. If the level of reimbursements received by the Operator in connection with the provision of the Ferry Services from Transport Scotland through its Concessionary Travel 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 subsequent Service Years to take account of such reduction in reimbursements.
- 2.5. If, pursuant to the terms of the Ship Charters, the sums payable under the Fleet Bareboat Charterparty Agreement are varied (whether on account of Tonnage Tax or otherwise) and such variation has not been allowed for in the relevant Base Case then the Operator may prepare and submit to Scottish Ministers a Revised Fleet Bareboat Charterparty Agreement Base Case Recalculation for the current and subsequent Service years. A Revised Fleet Bareboat Charterparty Agreement Base Case Recalculation will be effected in the same manner *mutatis mutandis* as a Revised Base Case Calculation except that only the amount of the Charter Portions will be adjusted and a Revised Fleet Bareboat Charterparty Agreement Base Case Recalculation will come into effect as a Revised Base Case upon submission to Scottish Ministers.
- 2.6. For the avoidance of doubt when undertaking a Revised Base Case Calculation no account must be taken of the excepted matters referred to in Paragraph 3.4.
- 2.7. Actual information regarding Revenue and any associated reduction in costs on the Services to date in the relevant Service Year must, so far as known, be incorporated into the Revised Base Case Calculation. The Operator must 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) will come into effect as the Revised Base Case (until recalculated as herein provided). If the Scottish Ministers and the Operator do not agree any items in the Revised Base Case Calculation within 20 Business Days of submission of the Revised Base Case Calculation then, for the avoidance of doubt, the Revised Base Case Calculation will not come into effect as the Revised Base Case.

- 2.8. A retrospective payment may be made at the sole discretion of the Scottish Ministers, having regard to the circumstances prevailing, to adjust the final Monthly Instalment for the relevant Service Year to adjust the sum of all Monthly Instalments in the relevant Service Year to that sum which would derive from the Revised Base Case or a proportion of that sum.

Grant Adjustment: Changes in Applicable Law

- 2.9. 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 change in its Operating Costs or is reasonably likely to experience an unavoidable material change in Revenue then the Operator must advise the Scottish Ministers and either party will be entitled to request a Grant Adjustment.
- 2.10. When requesting a Grant Adjustment the Operator must provide such actual and projected information relating to Operating Costs and Revenue and Operator's Return as the Scottish Ministers may request and if the Scottish Ministers agree the Grant Adjustment the Base Case and all future Monthly Instalments must be adjusted accordingly.
- 2.11. 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 must refer any disputed item to the Expert. The Monthly Instalments will be adjusted by the net effects of such amounts as are not in dispute pending the Expert's determination.

3. Actual Outcome Statement

- 3.1. For financial monitoring purposes the Operator shall produce and submit to the Scottish Ministers an Annual Outcome Statement forecast detailing the first 6 months of each Service Year and 6 individual monthly forecasts for the remaining 6 months of that Service Year.

- 3.2. As soon as possible and in any event within 2 Months after the expiry of each Service Year, the Operator will submit an Actual Outcome Statement to the Scottish Ministers which must be prepared in accordance with this paragraph 3.
- 3.3. The Actual Outcome Statement will show:
 - 3.3.1. the actual Operating Costs and actual Revenue for that Service Year set out in the same format as the Base Case Schedule for that Service Year;
 - 3.3.2. the difference between payments made in respect of that Service year for the Operating Costs less Revenue and the actual Operating Costs less actual Revenue;
 - 3.3.3. the amount the Operator considers he is entitled to be paid as Outcome Operator's Return supported by the analysis of and which must include the Contract Adjustments To Base Case Operators Return as set out in the Base Case Schedule;
 - 3.3.4. the difference between payments made in the Service year for the Operator's Return and the entitlement under paragraph 3.3.3; and
 - 3.3.5. any other pertinent financial information as instructed by the Scottish Ministers.
- 3.4. The Actual Outcome Statement for each Service Year must be prepared using the actual Operating Costs, Revenue and the Outcome Operator's Return of the Operator for that Service Year except that:
 - 3.4.1. no adjustment will 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;
 - 3.4.2. no allowance will 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;
 - 3.4.3. no account will be taken of the costs of any reference to the Expert;

- 3.4.4. the Published Tariff will be assumed to have been Tariff Index Linked and rounded up on every applicable occasion unless agreed otherwise by the Scottish Ministers;
- 3.4.5. adjustments to the Operating Costs in respect of increased wages or salaries will be limited to Index Linking of the wages and/or salaries allowed for in the applicable Service Year where agreed with the Scottish Ministers;
- 3.4.6. no adjustment will 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;
- 3.4.7. 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 Contract then the Grant must be reduced by an amount equal to such reduction;
- 3.4.8. any payments made to the Operator by way of additional grant under Clauses 23.1 (Inherited Employment Liabilities) will not be included; and
- 3.4.9. no provision will be made for the cost of acquisition of Funded Assets or for Capital Supplements.
- 3.5. The Actual Outcome Statement must 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. If the Scottish Ministers agree the Actual Outcome Statement as submitted or with variations agreed with the Operator then the Actual Outcome Statement will come into effect for the purpose of establishing the Excess payment and the Varied Reward. If the Scottish Ministers and the Operator do not agree any item in the Actual Outcome Statement within 20 Business Days of submission of the draft Actual Outcome Statement the Scottish Ministers must refer such dispute to the Expert.

4. Annual Grant Reconciliations

Reconciliation of Operating Costs and Revenues

- 4.1. If, in the agreed Actual Outcome Statement the parts of Grant payments made in the relevant Service Year for the Operating Costs, less Revenue exceed the actual Operating Costs, less actual Revenue then the difference will be deemed

to be the Excess Payment. (For the avoidance of doubt, if in any Service Year Grant payments made in the Service Year for the Operating Costs, less Revenue are less than the actual Operating Costs, less actual Revenue then the Excess Payment will be deemed to be nil.).

- 4.2. The Sum Due to the Scottish Ministers is the net Excess Payment minus the Varied Reward. Where this is positive, the Operator must repay the Sum Due to the Scottish Ministers within 20 Business Days of the Actual Outcome Statement being agreed or determined as the case may be and the Excess payment if not repaid as aforesaid may be deducted (in whole or in part) by the Scottish Ministers from any subsequent Monthly Instalment.

Calculation of Varied Reward

- 4.3. Where the Excess Payment has arisen as a result of reductions in Eligible Costs and/or an increase in Eligible Revenue then the Varied Reward shall be calculated as set out in paragraph 4.4. The Excess Payment to be taken into account for the purposes of calculating the Varied Award (“the Eligible Excess Payment” or “EEP”) is the value of the actual Eligible Cost savings and/or the value of any increase in Eligible Revenue.
- 4.4. The Varied Reward shall be the proportion of the Eligible Excess Payment as set out below:

| If the Eligible Excess Payment is | | Entitlement to Varied Reward as a proportion of the Eligible Excess Payment |
|-----------------------------------|-------------------|---|
| More than | But not more than | |
| £0 | £200,000 | 75% |
| £200,000 | £400,000 | $\text{£}(\text{EEP} - 200,000) \times 50\% + 150,000$ |
| £400,000 | £600,000 | $\text{£}(\text{EEP} - 400,000) \times 25\% + 250,000$ |
| £600,000 | | $\text{£}(\text{EEP} - 600,000) \times 10\% + 300,000$ |

Reconciliation of Fuel Costs

- 4.5. The Operator shall be under an obligation to take all reasonable steps to procure the fuel used for the Services on the best terms available to the Operator which shall not depart materially from the terms normally negotiated with the Operator’s

suppliers across the Operator's activities, and which may include where agreed by the Scottish Ministers entering into a fuel cap contract with a supplier whereby the Operator is assured that it will not have to pay more than a stated price for fuel. Where the procurement of fuel involves the receipt of a discount or payment of a commission to the Operator, then that discount or commission in relation to the fuel used for the services shall be deducted from the cost of the fuel submitted in the Monthly Fuel Statement and Annual Fuel Statement.

- 4.6. The Operator must submit to the Scottish Ministers within 14 days of the end of each Month a Monthly Fuel Statement accompanied by copies of relevant invoices and delivery notes. The Monthly Fuel Statement must show the Projected Fuel Liability for that month by grade and by vessel, and the actual cost incurred by the Operator in purchasing each grade of fuel used by each Vessel for that month.
- 4.7. The Operator must submit to the Scottish Ministers a draft Annual Fuel Statement within 2 Months after the expiry of each Service Year together with such supporting vouchers reports and other documentation as the Scottish Ministers may reasonably require , including the Monthly Fuel Statements, for the purpose of substantiating the Annual Fuel Statement. If the Scottish Ministers agree the draft Annual Fuel Statement as submitted or with variations agreed with the Operator then the Annual Fuel Statement will come into effect for the purpose of establishing the Annual Fuel Reconciliation Payment. If the Scottish Ministers do not agree any item in the Fuel Statement within 10 Business Days of submission of the draft Annual Fuel Statement then the Scottish Ministers shall refer such dispute to the Expert in accordance with Clause 49.
- 4.8. The Annual Fuel Statement must show the cost of purchasing the fuel used by applying the Average Price per Litre (or for electricity the Average Price per KW Hour) paid to the actual Volume (litres or KW Hours) used by the Operator for each grade of fuel used for the relevant Service Year (the Fuel Cost). The Average Price per Litre or KW Hour will be derived from the total quantity of each grade of fuel purchased by the Operator during that Service Year and the total delivered price paid by the Operator for each grade of fuel in that Service Year.
- 4.9. The Annual Fuel Reconciliation Payment will be itemised in the Annual Fuel Statement and shall be the multiple of the actual Volume (litres or KW Hours) used and the difference between the Average Price per Litre and the price per litre or the Average Price per KW Hour and the price per KW Hour stated in the

Fuel Management Plan for each grade of fuel in that Service Year , or in a situation where there has been more than one Fuel Management Plan issued during a Service Year the calculation will be undertaken for each period during which each Fuel Management Plan was used to calculate the Monthly Instalment of the Grant and shall be the multiple of the actual Volume (litres or KW Hours) used during that period and the difference between the Average Price per Litre and the price per litre or the Average price oer KW Hour and the price per KW Hour stated in the relevant Fuel Management Plan for each Fuel Management Plan in that Service Year applied for each grade of fuel.

4.10. The Annual Fuel Reconciliation Payment will be paid to or by the Scottish Ministers within 20 Business Days of the Annual Fuel Statement being agreed or determined as the case may be. If due by the Scottish Ministers will be paid to the Operator and if due by the Operator and not paid in accordance with Paragraph 4.9, may be deducted by the Ministers from any subsequent payment to the Operator.

4.11. If during the Grant Period the Operator permanently replaces any of the Vessels in accordance with Clause 4 (Services) (with the consent of the Scottish Ministers), and/or if a Variation to the Services comes into effect, the Projected Volume must be amended to reflect any changes in fuel consumption.

5. Performance Deductions

5.1. 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 Performance Regime in Schedule 13. The Operator must notify the Scottish Ministers of its liability to Performance Deductions, but any delay or failure to notify must not impair the right of the Scottish Ministers to make Performance Deductions.

5.2. The Scottish Ministers are 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) will be a debt due and owing to the Scottish Ministers.

5.3. No performance Deductions under Paragraph 5.1 may be made where the failure to meet any Performance Measure is directly attributable to a Relief Event.

6. Grant Disputes – Expert Determination

- 6.1. Grant disputes shall be determined in accordance with the provisions of Clause 49 (Dispute Resolution).

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