
SHAREHOLDERS' AGREEMENT
relating to the Companies

Between

THE SCOTTISH MINISTERS
and

DAVID MACBRAYNE LIMITED

and

CALMAC FERRIES LIMITED

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This Agreement is dated 23rd September 2025 and comes into effect from 1st October 2025.

BETWEEN

- (1) **SCOTTISH MINISTERS**, Victoria Quay, Edinburgh, EH6 6QQ (who and whose successors are referred to as the **Scottish Ministers**);
- (2) **DAVID MACBRAYNE LIMITED** incorporated and registered in Scotland with company number SC015304 whose registered office is at The Ferry Terminal, Gourock, PA19 1QP (**DML**); and
- (3) **CALMAC FERRIES LIMITED** incorporated and registered in Scotland with company number SC302282 whose registered office is at The Ferry Terminal, Gourock, PA19 1QP (**CFL**)
(each of DML and CFL being a **Company** and together being **the Companies**).

BACKGROUND

- (A) The Companies are private companies limited by shares.
- (B) The Scottish Ministers are the sole Shareholder of DML.
- (C) DML is the sole Shareholder of CFL.
- (D) This Agreement regulates the operation and management of the Companies.

NOW IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

Act means the Companies Act 2006;

Agreement means this agreement as the same may be amended from time to time in accordance with its terms;

Annual Budget means the budget for the Group for a Financial Year which has received Shareholder Consent pursuant to Clause 10.2;

Board means the board of directors of each of the Companies as constituted from time to time;

Board Meeting means a meeting of the Board of either Company, intended to be held at least twice a year at that Company's offices or via conference call at the request of a director;

Business shall have the meaning given to it in Clause 5.1;

Business Day means a day (other than a Saturday or Sunday) when clearing banks in Glasgow are open for business;

CFL Shareholder means the holder of the CFL Shares from time to time which as at the Effective Date is DML;

CFL Shares means the entire issued share capital in CFL;

Corporate Plan means the corporate plan, as agreed by the Shareholder and published on the Company's website, setting out the main financial, commercial and operational aims and objectives for the Company for a three (3) year period, or for a time period to be agreed and no greater than a five (5) year period, which shall include:

- (a) purpose and principal aims of the Company;

- (b) contribution to the national outcomes set out in the National Performance Framework, the Programme for Government, Scotland's Strategy for Economic Transformation, National Transport Strategy, the National Islands Plan and the Islands Connectivity Plan and other key policies, plans and priorities of Scottish Ministers;
- (c) analysis of the environment in which the Company operates;
- (d) key strategic objectives and associated key performance targets for the period of the plan, and the strategy for achieving those objectives;
- (e) indicators in which performance can be judged;
- (f) details of planned efficiencies, describing how better value for money will be achieved, including through collaboration and use of shared services; and,
- (g) other matters agreed between the Shareholder and Company.

and/or any revisions to such Corporate Plan which receive Shareholder Consent pursuant to Clause 9.1;

DML Shareholder means the holder of the DML Shares from time to time which as at the Effective Date is the Scottish Ministers;

DML Shares means the entire issued share capital in DML;

Draft Annual Budget has the meaning given in Clause 10.1;

Effective Date means the 1st October 2025;

Eligible Director a director who would be entitled to vote on the matter at a meeting of the Board;

Financial Year means in relation to a Company, a financial accounting period of twelve (12) months commencing on 1 April in each year;

Group means the Companies' wider corporate group including any parent companies, subsidiaries and 'sister' companies;

Law means:

- (a) any applicable statute or proclamation or any delegated or subordinate legislation;
- (b) any applicable guidance, direction or determination with which a Company is bound to comply; and/or
- (c) any applicable judgement of a relevant court of law which changes binding precedent in Scotland, in each case in force in Scotland;

Purpose means each Company (and its group of subsidiary companies) is to contribute to the achievement of the Scottish Government's Primary Purpose by aligning its corporate aims and objectives and day to day activities with the National Performance Framework, Programme for Government, Scotland's National Strategy for Economic Transformation, National Transport Strategy, the National Islands Plan, the Islands Connectivity Plan and other key policies, plans and priorities of the Shareholder. The Purpose shall be delivered through the provision of high quality, safe, reliable, resilient and inclusive public ferry services;

Reserved Matters means the matters listed in Part 1 of the Schedule;

Scottish Government's Primary Purpose means creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth and which may vary from time to time;

Shareholder means a holder of the Shares from time to time being, at the Effective Date, the Scottish Ministers as regards the DML Shares and DML as regards the CFL Shares;

Shareholder Consent means the prior written consent of the respective Shareholder to the respective Company;

Shareholder Representative means a representative of a Shareholder who shall be entitled to (i) attend Board Meetings of each Company for and on behalf of a Shareholder; (ii) to receive all information provided to Board members; and (iii) to attend all formal discussions of each Board;

Shares means the DML Shares and the CFL Shares;

Sponsor means Transport Scotland; and

Subsidiary, in relation to a company wherever incorporated, means a subsidiary as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

- 1.2 Unless the context otherwise requires, the application of the definition of Subsidiary to any Company at any time shall apply to the Company as it is at that time.
- 1.3 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.4 A reference to a Clause or the schedule is a reference to a Clause of, or the schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant part of the Schedule.
- 1.5 A person includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.6 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender includes a reference to the other gender.
- 1.8 A reference to a **party** is, unless specified otherwise, a reference to a party to this Agreement and **parties** shall be construed accordingly.
- 1.9 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.10 Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words **without limitation** following them.
- 1.11 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

- 1.13 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of twenty-four (24) hours running from midnight on the previous day.

2. THE PURPOSE OF THE COMPANY

- 2.1 The respective Shareholder and each Company shall cooperate with a view to achieving the Purpose. The articles of association of each Company must state the Purpose as defined in this Agreement.

3. PRINCIPLES

- 3.1 The aim of this Clause 3 is to identify the high-level principles which underpin the delivery of the parties' obligations under this Agreement and to set out key factors for a successful relationship between the parties. The articles of association of the Companies should both reflect the principles in Clause 3.2.

- 3.2 The principles referred to in Clause 3.1 are to:

- 3.2.1 focus on achieving the best value for the public purse, promoting the efficient, economic and effective use of resources, ensuring good practice and high standards of propriety and complying with the Scottish Public Finance Manual and any other guidance, including the General Guidance and Instructions as set out in Part 2 of the Schedule, which may vary from time to time;
- 3.2.2 set in place business processes to enable the Company to establish and agree challenging time and performance objectives that meet identified customer and community needs, and to meet or better them;
- 3.2.3 positively promote equal opportunities by combating discrimination on the grounds of race, ethnicity, religion, nationality, gender, disability, age or sexuality and promoting good relations between all sections of the community in 'everything we do' including:
 - (a) providing ferry services;
 - (b) supporting integration with onward travel; and,
 - (c) working with the local community, and partners in the public, private or voluntary sectors.
- 3.2.4 promote practical measures to mitigate the negative local and global environmental impacts of the Business; and
- 3.2.5 operate in a manner which is responsive, timely, transparent and cooperative in meeting customer needs, and engage collaboratively with local communities and stakeholders to enable delivery of mutual aims and objectives including those associated with the Purpose and Corporate Plan.

- 3.3 Each party undertakes to the other parties not to do anything which will or is likely to bring the names of the Companies or the Scottish Ministers into disrepute.

4. SHAREHOLDER RESPONSIBILITIES

- 4.1 The Shareholder shall be responsible for:
- 4.1.1 providing Shareholder Consent on all Reserved Matters;
 - 4.1.2 approving and appointing the Chair and all Board members of each Company;

- 4.1.3 approving the appointment of the Chief Executive Officer of each Company;
 - 4.1.4 approving the Code of Conduct of the Board of each Company;
 - 4.1.5 approving pay remits or proposals and superannuation arrangements for the staff, Chief Executive, Chair and Board members of each Company;
 - 4.1.6 setting out priorities for and agreeing the Corporate Plan of each Company including the strategic aims, objectives and key targets of that Company and any variations to these;
 - 4.1.7 approving the Annual Budget and securing the necessary approval of the Scottish Parliament;
 - 4.1.8 attending Board Meetings of each Company through the Shareholder Representative;
 - 4.1.9 approving delegated financial arrangements between the Shareholder and each Company and any limits and variations to these, in line with any requirements set out in the Scottish Public Finance Manual;
 - 4.1.10 laying the accounts of each Company before the Scottish Parliament; and,
 - 4.1.11 monitoring the performance of each Company against the Annual Budget and Corporate Plan.
- 4.2 Notwithstanding the provisions of Clause 4.1, where the CFL Shareholder exercises any of the responsibilities set out at Clauses 4.1.1 to 4.1.11 the CFL Shareholder shall not do so without first receiving the consent and approval of the DML Shareholder. Any actions by the CFL Shareholder in relation to Clause 4.1 shall be subject to the oversight and involvement of the DML Shareholder at all times.

5. BUSINESS OF THE COMPANY

- 5.1 The articles of association of each Company must state that the business of the Company (**Business**) shall be to advance the priorities and objectives of Scottish Ministers by:
- 5.1.1 providing high quality, safe, reliable, resilient and inclusive public ferry services which meet the needs of all passengers and communities it serves;
 - 5.1.2 prioritising and engaging local communities, businesses, passengers and other stakeholders to continuously deliver ferry service improvement;
 - 5.1.3 ensuring value for money, efficient, economic and effective use of resources as well as high levels of, propriety and accountability in all aspects of its work;
 - 5.1.4 contributing to the achievement of the Scottish Government's economic, social and environmental policy objectives; and,
 - 5.1.5 advancing equality and non-discrimination.
- 5.2 In doing so, each Company shall ensure that its Business is delivering against and contributing to the strategic priorities, aims and objectives of Scottish Ministers as set out in the Corporate Plan.
- 5.3 The Companies shall be managed and controlled from Scotland.
- 5.4 The Companies shall comply with all statutory duties required of it, including employment, equality, health and safety, public procurement, cyber security and information sharing.

6. SHARE CAPITAL OF THE COMPANIES

- 6.1 As at the Effective Date the issued share capital of DML is five million five hundred thousand and two (5,500,002) ordinary shares of £1.00 each.
- 6.2 As at the Effective Date the issued share capital of CFL is one (1) ordinary share of £1.00.

7. RESERVED MATTERS

- 7.1 Each Shareholder agrees that it shall exercise all voting rights and powers of control available in relation to the relevant Company (and its Board) to procure that the Company and/or its Board shall not propose or effect any Reserved Matters unless Shareholder Consent has been obtained.
- 7.2 As regards DML, Shareholder Consent for a Reserved Matter shall be obtained by means of a written request to the Shareholder Representative through the Sponsor by that Company's Chief Executive or his nominated representative and the Shareholder Representative shall not unduly delay a Shareholder Consent decision. Where Shareholder Consent is urgent, DML's Chief Executive or nominated representative may request this orally to the Shareholder Representative with this being confirmed promptly in writing.
- 7.3 As regards CFL, Shareholder Consent for a Reserved Matter shall be obtained by means of a written request to the CFL Shareholder. On receipt of a request under this Clause 7.3, and for as long as the CFL Shareholder is DML, DML in its capacity as CFL Shareholder shall then follow the approval Shareholder Consent procedure detailed at Clause 7.2. For the avoidance of doubt any Reserved Matter shall not be proposed or effected in relation to CFL unless and until such times as DML Shareholder Consent has been obtained in accordance with Clause 7.2.
- 7.4 If a Shareholder gives any instruction on a Reserved Matter to the Company to undertake an action or an instruction to procure that the Company or any subsidiaries of its group undertake an action that the Chief Executive, the directors of the Company or the directors of any of its subsidiaries required to undertake any such action (an **Affected Company**) reasonably believe (in the case of the Affected Company, by providing written notice to the Company) would or may require the Company or any relevant Affected Company to undertake an action that would:
- 7.4.1 infringe the requirements of propriety or regularity or obligations of legal and/or commercial confidentiality;
 - 7.4.2 not represent good value for money for the Shareholder as a whole;
 - 7.4.3 be of questionable feasibility or is unethical;
 - 7.4.4 be contrary to the Company's Purpose or would result in the Affected Company being in breach of its objectives;
 - 7.4.5 result in the directors of the Company or any relevant Affected Company being in breach of their legal duties to the relevant company or otherwise in their legal or regulatory obligations; and/or,
 - 7.4.6 not be in the best interest of the Company or any relevant Affected Company for any other material and demonstrable reason,
- then the Company, acting through the Chief Executive, may make their reservations in respect of such matter clear to the Shareholder in writing (a **Reservation Matter**) to the Shareholder Representative through the Sponsor (as regards DML) or to the CFL Shareholder (as regards CFL) as applicable .
- 7.5 If a Shareholder, after receiving a Reservation Notice, nevertheless instructs the Company to

proceed, or to procure that any Affected Company shall proceed, with the matter the subject of the Reservation Notice (an **Instructed Matter**), then the Chief Executive shall:

7.5.1 seek a written instruction to undertake such Instructed Matter from the Shareholder, (a Written Direction) with any oral instruction from the Shareholder (an Oral Direction) being confirmed promptly in writing;

7.5.2 upon receipt of a Written Direction or an Oral Direction:

- (a) inform the Company Board who shall undertake the Instructed Matter or procure that the Instructed Matter shall be undertaken by any relevant Affected Company;
- (b) copy the Written Direction or any Oral Direction confirmed in writing to the Auditor General for Scotland and the Scottish Parliament, under publication arrangements agreed by the Shareholder;
- (c) if asked, explain the Shareholder's course of action; and
- (d) arrange for the existence of the Written Direction or any Oral Direction confirmed in writing to be published (unless the Shareholder has directed in writing to the Company that the matter must be kept confidential or unless the Shareholder considers that the matter is confidential).

7.6 Notwithstanding the provisions of Clause 7.5, the CFL Shareholder shall not give any instruction(s) as regards an Instructed Matter in terms of Clause 7.5 without the prior written consent of the DML Shareholder.

8. DIRECTORS AND MANAGEMENT

8.1 The Board has responsibility for the supervision and management of the Company and its Business but Shareholder Consent shall be obtained in accordance with the provisions of Clause 7 before taking any decision in relation to any of the Reserved Matters.

8.2 The Shareholder has the ability to appoint and remove directors, as well as the Chief Executive Officers, of the Companies, noting that the appointment and removal of directors is a Reserved Matter.

8.3 As regards both Companies the minimum number of directors on the Board shall be one. As regards both Companies, there shall be no maximum number of directors.

8.4 The chair of each Company is a non executive who is appointed by Scottish Ministers in line with the Ethical Standard Commissioner's Code of Practice for Ministerial Public Appointments to Public Bodies in Scotland. All appointments, reappointments and extensions of the chair to each Board shall be carried out in line with the Ethical Standard Commissioner's Code of Practice for Ministerial Public Appointments to Public Bodies in Scotland. When an appointment term of the chair ends, the appointing Scottish Minister may reappoint the chair to the same position or extend the chair's appointment term provided that:

8.4.1 the member's performance has been properly appraised as being effective during the current term and the member has been given the opportunity to demonstrate that they have the appropriate skills, knowledge and experience and other attributes required;

8.4.2 the reappointment or extension will continue to meet the Board's needs for the period concerned; and

8.4.3 the total period of appointment of a chair shall not exceed 8 years.

- 8.5 Any director may call a Board Meeting. No Board Meeting may be held unless at least three director(s) of the Company (the majority of which must be non-executive) are present.
- 8.6 Where a Board Meeting is called, the party calling the Board Meeting shall ensure that at least seven (7) Business Days' notice of that Board Meeting is given to all directors entitled to receive notice accompanied by:
- 8.6.1 an agenda specifying in reasonable detail the matters to be raised at the Board Meeting; and
 - 8.6.2 copies of any papers to be discussed at the Board Meeting.
- 8.7 A shorter period of notice of a Board Meeting than that specified in Clause 8.6 may be given if at least two (2) directors agree in writing.
- 8.8 No Business shall be conducted at any Board Meeting unless a quorum is present at the beginning of the meeting and at the time when there is to be voting on any Business. If a quorum is not present within thirty (30) minutes after the time specified for a Board Meeting in the notice of the meeting then it shall be adjourned for five (5) Business Days at the same time and place. Each director shall be notified in Writing by the Company of the date, time and place of the adjourned meeting.
- 8.9 Subject to Clause 8.10, for both Companies the quorum for directors' meetings shall be three, the majority of which shall be non-executive directors.
- 8.10 Unless notified by the Sponsor in advance, the Shareholder shall attend all Board Meetings of the Companies through the Shareholder Representative.
- 8.11 If only one director is in office for the time being then that director shall constitute a quorum.
- 8.12 All directors of the Companies shall be prohibited from appointing any other director or person to act as an alternate director at any Board Meeting.
- 8.13 Matters not on the agenda, or business conducted in relation to those matters, may not be raised at a Board Meeting unless all the directors present agree.
- 8.14 A Board Meeting shall be adjourned to another time or date at the request of the directors present at the meeting. No Business may be conducted at a Board Meeting after such a request has been made.
- 8.15 Board Meetings shall make decisions by passing resolutions. A resolution is passed if:
- 8.15.1 more votes are cast for it than against it; and
 - 8.15.2 in respect of any Reserved Matter requiring Shareholder Consent, Shareholder Consent has been received by the Company.
- 8.16 At a Board Meeting, each director has one vote. The Chairman shall not have a second or casting vote at a Board Meeting.

9. THE CORPORATE PLAN

- 9.1 Not later than twelve (12) months prior to the expiry of the then current Corporate Plan, or on a date otherwise agreed by the Shareholder, the Company shall submit a draft corporate plan meeting the requirements of the Corporate Plan to the Shareholder for Shareholder Consent.
- 9.2 The parties shall procure that Board Meetings of the Company are held as may be necessary to adopt the Corporate Plan.

- 9.3 Should the draft corporate plan submitted to the Shareholder pursuant to Clause 9.1 not receive Shareholder Consent by the date of expiry of the then current Corporate Plan, such current Corporate Plan shall remain in force for at least a three (3) calendar month period until a new Corporate Plan receives Shareholder Consent.
- 9.4 The Shareholder shall procure that the directors implement the Corporate Plan in accordance with its terms.
- 9.5 The Company shall provide to the Shareholder such information in respect of the progress made by the Company in delivering the Corporate Plan (including achieving the aims and objectives of the same) and the Annual Budget as frequently as the Shareholder requires.
- 9.6 Notwithstanding the provisions of Clauses 9.1 to 9.5, the CFL Shareholder shall require the prior written consent of the DML Shareholder as regards all matters relating to the approval, adoption and implementation of any Corporate Plan for CFL. Similarly, any information provided to the CFL Shareholder under Clause 9.5 shall be immediately shared (by the CFL Shareholder) with the DML Shareholder.

10. ANNUAL BUDGET

- 10.1 Not later than 30 June of each year, each Company shall ensure that the draft budget for the Group for the next Financial Year is prepared which sets out:
- 10.1.1 the requirement for funding resource and capital grant in aid;
 - 10.1.2 a cash flow statement giving:
 - (a) an estimate of the working capital requirements; and
 - (b) a monthly projected profit and loss account;
 - (c) an operating budget (including capital expenditure requirements) and balance sheet forecast;
 - (d) key assumptions on factors impacting revenue and costs; and
 - (e) any other information requested by the DML Shareholder.
 - 10.1.3 a financial report which shall include an analysis of the estimated results of the Group for the Financial Year identifying variations in sales revenues, costs and other material items,
- (the **Draft Annual Budget**).
- 10.2 Each Company shall ensure that the Draft Annual Budget is submitted to the respective Shareholder and if the Draft Annual Budget receives DML Shareholder Consent it shall be the Annual Budget for the Financial Year to which it relates.
- 10.3 The parties shall procure that Board Meetings of each Company are held as may be necessary to adopt the Annual Budget.
- 10.4 Should either Company identify that the Group needs to incur costs in excess of the Annual Budget, it shall ensure that a revised and updated Draft Annual Budget is prepared for the remainder of such Financial Year and the provisions of Clause 10.2 shall apply, provided that for the avoidance of doubt no Shareholder shall be required to fund any amount which exceeds the Annual Budget for the relevant Financial Year.
- 10.5 Notwithstanding the provisions of Clauses 10.1 to 10.4, the CFL Shareholder shall require the

prior written consent of the DML Shareholder as regards all matters relating to the approval and adoption of the Draft Annual Budget and the Annual Budget for CFL. For the avoidance of doubt no Shareholder shall be required to fund any amount which exceeds the Annual Budget for the relevant Financial Year in respect of either of the Companies.

11. PERFORMANCE

11.1 The Company shall:

- 11.1.1 put in place appropriate systems and procedures for monitoring performance of the Corporate Plan and Annual Budget to the Shareholder's reasonable satisfaction;
- 11.1.2 take such action as may be reasonably necessary to implement and maintain the Corporate Plan from time to time and the Company shall refrain from taking any action or omitting to take any action which could result in a material detrimental effect to the respective Corporate Plan without Shareholder Consent; and
- 11.1.3 where Shareholder Consent is required to be given by the CFL Shareholder under Clause 11.1.2 the CFL Shareholder shall, before providing its own consent, require the prior written consent of the DML Shareholder.

12. ACCOUNTING AND TAX

12.1 Each Company shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable Laws and generally accepted accounting principles applicable in the United Kingdom.

12.2 The respective Shareholder and their authorised representatives shall be allowed access at all reasonable times to examine the books and records of the respective Company. In addition, the DML Shareholder and their authorised representatives shall be allowed access at all reasonable times to examine the books and records of CFL.

12.3 By 30 June each year, each Company shall supply the Shareholder with the financial and other information necessary to keep the Shareholder informed about how effectively the Company is performing the Purpose, which information shall include:

- 12.3.1 a copy of each year's Annual Budget and the Corporate Plan;
- 12.3.2 a copy of the draft accounts of the Company prepared in accordance with the Laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom;
- 12.3.3 monthly management accounts of the Company to be supplied within seven (7) days of the end of the month to which they relate (the first day being the first day of the following month) and the accounts shall include a profit and loss account, a balance sheet and a cash flow statement; and
- 12.3.4 as regards CFL, the CFL Shareholder shall ensure that the DML Shareholder also receives any documentation, reports and information produced or required in terms of this Clause 12.3.

12.4 By 15 October each year, each Company shall supply the Shareholder with a copy of the final version of the audited accounts to facilitate these being laid before the Scottish Parliament prior to the end of October each year. Following the accounts being laid before Parliament, each Company shall be responsible for any publication or lodging requirements relating to the audited

accounts. Each Company shall ensure that the audited accounts are not published or lodged prior to these having been laid before the Scottish Parliament.

- 12.5 Each Company shall as soon as possible comply with a request to provide any documents, information and correspondence necessary to enable the Shareholder to comply with filing, elections, returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority, including Audit Scotland, the Accounts Commission, the Auditor General for Scotland and any other statutory body or representative of such body.
- 12.6 Each Company shall:
- 12.6.1 keep the Shareholder promptly and fully informed of the progress of, and shall provide copies of all material correspondence received by the Company from HM Revenue & Customs, or from any other revenue or tax authority, relating to all material tax matters;
 - 12.6.2 if requested provide the Shareholder with drafts of corporation tax computations, corporation tax returns and other correspondence relating to material tax matters which are to be submitted by or on behalf of the Company to HM Revenue & Customs, or any other revenue or tax authority, in reasonably sufficient time (considering the circumstances) to allow the Shareholder to comment thereon;
 - 12.6.3 consider and take on board all comments on such computations, returns and correspondence made by the Shareholder; and
 - 12.6.4 as regards CFL, the CFL Shareholder shall ensure that the DML Shareholder shall also receive any documentation, reports and information produced or required in terms of this Clause 12.6.

13. TERMINATION AND LIQUIDATION

- 13.1 Except for the provisions which this Clause states shall continue in full force after termination, this Agreement shall terminate:
- 13.1.1 when a resolution is passed by Shareholder or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to a Company being wound up and its assets being distributed among that Company's creditors, Shareholder or other contributors; or
 - 13.1.2 when a Shareholder so notifies the respective Company in writing.
- 13.2 The following provisions of this Agreement remain in full force after termination:
- 13.2.1 Clause 1 (*Interpretation*);
 - 13.2.2 Clause 13 (*Termination and Liquidation*);
 - 13.2.3 Clause 16 (*Entire Agreement*);
 - 13.2.4 Clause 17 (*Variation and Waiver*)
 - 13.2.5 Clause 25 (*Governing Law and Jurisdiction*)
- 13.3 Termination of this Agreement shall not affect any rights or liabilities that the parties have accrued under it prior to the date of termination.

14. ASSIGNATION

- 14.1 Neither Company may assign, transfer or otherwise dispose of its rights, interests or obligations arising under this Agreement, in whole or in part, without Shareholder Consent. As regards CFL,

no steps or action shall be taken under this Clause 14.1 without the prior written consent of both the CFL Shareholder and the DML Shareholder.

15. ALTERATIONS

- 15.1 Any alteration to this Agreement must be in writing, refer specifically to this Agreement, and be duly executed by each party.

16. ENTIRE AGREEMENT

- 16.1 This Agreement constitutes the entire agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 16.2 Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, warranty, undertaking or other assurance given or made by any person (whether a party to this Agreement or not) other than as expressly set out or referred to in this Agreement or any document entered into pursuant to this Agreement. Each party waives all rights and remedies howsoever arising which, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, undertaking or other assurance. The only remedy available to a party in respect of any representation, warranty, undertaking or other assurance expressly set out or referred to in this Agreement is for breach of contract.
- 16.3 Nothing in this Agreement is intended to or will be construed as limiting or excluding any liability for fraud or fraudulent misrepresentation.

17. VARIATION AND WAIVER

- 17.1 A variation of this Agreement shall be in writing and signed by or on behalf of all parties.
- 17.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.
- 17.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.
- 17.4 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by Law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.
- 17.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.
- 17.6 Unless specifically provided otherwise in this Agreement, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by Law.

18. COSTS

- 18.1 Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the party that incurred the costs.

19. NO PARTNERSHIP

- 19.1 The parties are not in partnership with each other and this Agreement does not create a partnership and there is no relationship of principal and agent between them.

20. THIRD PARTY RIGHTS

- 20.1 Unless it expressly states otherwise, this Agreement does not confer on any person other than the parties any right to enforce or otherwise invoke any term of this Agreement under the Contract (Third Party Rights) (Scotland) Act 2017.

21. NOTICE

- 21.1 A notice given under this Agreement:

21.1.1 shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

21.1.2 shall be sent for the attention of the person, and to the address given in this Clause 21 (or such other address or person as the relevant party may notify to the other parties, such notice to take effect five (5) Business Days from the notice being received), and shall be:

- (a) delivered by hand; or
- (b) sent by pre-paid United Kingdom first-class post; or
- (c) sent by e-mail to an e-mail address notified by the relevant party to the other party for such purpose.

- 21.2 The addresses for service of notice are:

The Scottish Ministers

Address: Transport Scotland, 177 Bothwell Street, Glasgow, G7 2ER

For the attention of: Chief Executive of Transport Scotland

DML

Address: The Ferry Terminal, Gourock, PA19 1QP

For the attention of: Chief Executive of David MacBrayne Limited

CFL

Address: The Ferry Terminal, Gourock, PA19 1QP

For the attention of: Chief Executive of CalMac Ferries Limited

- 21.3 A notice is deemed to have been received:

21.3.1 if properly addressed and delivered by hand, when it was given or left at the appropriate address; or

21.3.2 if sent or supplied by electronic means, if properly addressed and provided that the sender has not had notice that the email is undelivered, one hour after the notice was sent or supplied;

21.3.3 if properly addressed and sent by pre-paid United Kingdom first class post to an address in the United Kingdom, forty-eight (48) hours after it was posted; or

21.3.4 if deemed receipt under the previous paragraphs of this Clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt.

- 21.4 In proving that any notice was properly addressed it is sufficient to show that the notice was

delivered to an address provided for such purpose pursuant to this Agreement.

22. LANGUAGE

- 22.1 If this Agreement is translated into any language other than English, the English language text shall prevail.

23. SEVERANCE

- 23.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 23.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

24. FURTHER ASSURANCE

- 24.1 Without prejudice to Clause 4 and subject to Clause 3.3, each party shall promptly execute and deliver all such documents, and do all such things, as the other parties may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the Law of Scotland.
- 25.2 The parties irrevocably agree that the courts of Scotland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

26. COUNTERPARTS

26.1 This Agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.

26.2 If executed in counterparts:

26.2.1 this Agreement shall not take effect until each of the counterparts have been delivered;

26.2.2 each counterpart will be held as undelivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the parties agree a date (**Agreed Date**) on which the counterparts are to be treated as delivered; and

26.2.3 this Agreement is dated and shall take effect from the date provided for that purpose on page 1.

In Witness whereof these presents consisting of this and the preceding 14 pages and the Schedule in 2 parts are executed as follows:

Subscribed for and on behalf of **Scottish Ministers**

.....
Full Name

at

on

in the presence of (*witness signature*)

Witness name

Address

.....
.....
.....
.....
.....

Subscribed for and on behalf of **David
MacBrayne Limited**

.....

Full Name

at

on

in the presence of (*witness signature*)

Witness name

.....

Address

.....

.....

.....

.....

Subscribed for and on behalf of **Calmac
Ferries Limited**

.....

Full Name

at

on

in the presence of (*witness signature*)

Witness name

.....

Address

.....

.....

.....

.....

**This is the Schedule in two (2) Parts referred to in the Shareholder's Agreement between
The Scottish Ministers and David MacBrayne Limited and CalMac Ferries Limited**

**Part 1
Reserved Matters**

1. The following are Reserved Matters requiring Shareholder Consent:

Constitution of the Company	
1.	Varying in any respect the articles or the rights attaching to any of the Shares or membership(s) (as applicable) in the Company.
Officers and Shareholder of the Company	
2.	The appointment and the appointment terms (including any remuneration terms) of any director.
3.	The removal of any director (including any terms on which such director is removed from their office as director).
4.	Permitting the registration of any person as a Shareholder other than the Scottish Ministers.
Future direction and development of the Company	
5.	Financial investments and/or forming any subsidiary or acquiring shares in any other company or participating in any partnership or incorporated joint venture vehicle.
6.	Amalgamating or merging with any other company or business undertaking
7.	Selling or disposing of any part of the business of the Company.
8.	Adopting the Corporate Plan and any in-year changes to the Corporate Plan.
9.	Amending or deviating from the Corporate Plan.
10.	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
11.	Agreeing or approving any other material services to be provided by the Company to a third party, other than to the Shareholder.
12.	Appointing any agent (not being a subcontractor), other than the Shareholder to conduct the whole or any part of the business of the Company.
13.	Applying for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).

Management of the business of the Company	
14.	Carrying out any business other than the Business.
15.	Approving the Draft Annual Budget pursuant to Clause 10.2 and adopting the Annual Budget pursuant to Clause 10.3.
16.	Changing the Company's registered office.
17.	Changing the Company's name.
18.	Creating or agreeing to create a charge, security or encumbrance over the Company's assets, shares or income and any guarantees out with the normal course of business.
19.	Incurring expenditure for any purpose that is or might be considered novel, contentious or repercussive or which has or could have significant future cost implications.
20.	Any acquisition of land.
21.	Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company.
22.	Entering into and/or giving notice of termination of any arrangements, contracts or transactions (including financial and operating lease arrangements) where the Company does not have a specific delegated financial authority from the Scottish Ministers to do so, or where such arrangement, contract or transaction has not received prior approval from Scottish Ministers through approval of the Draft Annual Budget.
23.	Granting rights (by licence or otherwise) in or over any intellectual property owned by the Company.
24.	Appointing and changing the Company's auditors.
25.	Changing the Financial Year of the Company.
26.	Agreeing to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit, making special payments, or giving any guarantee or indemnity that would be outwith the normal course of business.
27.	Increasing or reducing the amount of its issued share capital, granting any option over or in its share capital, redeeming or purchasing any of its own shares or otherwise altering, or effecting any re-organisation of, its share capital (where applicable).
28.	Assigning any of the Company's rights to any Company assets to a third party.
29.	Entering into any contract or agreement in respect of the purchase or charter of any vessel.

30.	The carrying on of any business outside the United Kingdom.
31.	Making or permitting to be made any material change in the accounting policies and principles adopted by the Company in the preparation of its audited accounts save as may be required to ensure compliance with relevant accounting standards under the Act or any other generally accepted accounting principles in the United Kingdom.
32.	Consenting to any amendment, modification and/or termination of any of the contracts entered into from time to time with Caledonian Maritime Assets Limited (or such successor entity as may exist from time to time).
33.	Assigning, transferring or otherwise disposing of any right interest or obligation arising under this Agreement pursuant to Clause 14.
34.	Receipt or issue of any grant by the Company, unless otherwise agreed with the Shareholder.
35.	Superannuation arrangements for employees of the Companies including any proposal to move from existing pension arrangements.
36.	Any proposal to pay an employee or director a redundancy payment or compensation payment for loss of office noting that the Company shall engage with the Sponsor prior to proceeding with proposed severance options and prior to making any verbal or written offer.

Part 2

General Guidance and Instructions

The Company shall comply with the following general guidance and instructions:

The Scottish Public Finance Manual: <https://www.gov.scot/publications/scottish-public-finance-manual/>

HMT Green Book:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf

Public Sector Internal Audit Standards: <https://www.gov.uk/government/publications/public-sector-internal-audit-standards>

On Board: a guide for members of statutory boards, <https://www.gov.scot/publications/board-guide-members-statutory-boards/>

Scottish Government Audit and Assurance committee handbook:

<https://www.gov.scot/publications/audit-assurance-committee-handbook/>

Relevant Freedom of Information (Scotland) Act guidance and instructions

Other relevant guidance and instructions issued by Scottish Government;

Other relevant instructions and guidance issued by the Shareholder;

Recommendations made under Scottish Parliamentary authority, accepted by the Scottish Government and relevant to the Company.