



Aviation, Maritime, Freight & Canals Directorate

## **Clyde and Hebrides Ferry Services**

# **Competition for the Contract for the Provision of Ferry Services (with The Scottish Ministers) And Harbour Operating Agreement (with Caledonian Maritime Assets Ltd)**

**Volume 4: Version 3.0  
Harbour Operating Agreement**

**15 February 2016**

**TS/MTRIPS/SER/2015/01**

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**CLYDE AND HEBRIDES FERRY SERVICES**  
**COMPETITION FOR THE CONTRACT**  
**FOR THE PROVISION OF FERRY SERVICES**  
**(With The Scottish Ministers)**  
**AND HARBOUR OPERATING AGREEMENT**  
**(With Caledonian Maritime Assets Ltd)**

**VOLUME 4**

**HARBOUR OPERATING AGREEMENT**

**2 NOVEMBER 2015**

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**HARBOUR OPERATING AGREEMENT**

**between**

**CALEDONIAN MARITIME ASSETS LIMITED**

**and**

***[insert name of Harbour Operator]***

**2016**

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## HARBOUR OPERATING AGREEMENT

between

- (1) **CALEDONIAN MARITIME ASSETS LIMITED** registered in Scotland with registered number SC001854 and having its registered office at Municipal Building, Fore Street, Port Glasgow, Renfrewshire, PA14 5EQ (hereinafter called "**CMAL**" which expression shall include its successors, permitted assignees and transferees);

and

- (2) **[INSERT NAME AND DESIGNATION OF HARBOUR OPERATOR]** (hereinafter called the "**Harbour Operator**" which expression includes assignees permitted in terms of this Agreement).

### WHEREAS:-

- (A) CMAL is the harbour authority at certain Harbours and is responsible for the operation, management, maintenance and improvement thereof;
- (B) Following a competitive procurement process the Scottish Ministers have or are about to enter into a Public Service Contract with the CHFS Operator to provide certain ferry services in the Clyde and Hebrides;
- (C) Following the same competitive procurement process CMAL has selected the Harbour Operator to deal with certain matters associated with the operation of each of the Harbours; and
- (D) CMAL and the Harbour Operator have reached agreement on the terms and conditions set out below.

**NOW THEREFORE IT IS HEREBY AGREED** as follows:

### 1. DEFINITIONS

- 1.1. In this Agreement unless the context shall otherwise require the following expressions shall have the following meanings:

"**Agreement**" means this agreement together with the Schedule;

"**Approved Code of Practice**" means the Approved Code of Practice published by the HSE in relation to the Diving at Work Regulations 1997;

"**Business Day**" means any weekday on which the Scottish clearing banks (or a majority of them) are open for business in the City of Glasgow;

"**Change**" means any addition, modification, reduction or omission in respect of the Scope of Operations, OSMS or Division of Responsibilities instructed in accordance with Clause 19 (*Changes*);

"**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);

“**Change in Law**” means the coming into effect after the date of this Agreement of:

- a) Legislation; or
- b) any applicable judgement of a court of Law which changes a binding precedent;

The terms of which only apply to harbour operators or the provision of services by harbour operators, and without limitation:

- (i) excludes any changes in Taxation;
- (ii) excluding any changes which were foreseeable at the date of this Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of this Agreement has been published:

(A) in a draft parliamentary bill as part of a government departmental consultation paper;

(B) in a parliamentary bill;

(C) in a draft statutory instrument; or

(D) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom.

to the extent that the same are subsequently enacted in substantially the same form as the form in which it was previously published.

“**CHFS Service**” means the passenger vehicles and goods ferry service as more particularly described in the PSC;

“**CHFS Operator**” means the operator of the CHFS Services appointed by The Scottish Ministers under the PSC;

“**CMAL Insurances**” shall have the meaning given in Clause 17.1;

“**CMAL Representative**” means of the person or persons appointed by CMAL from time to time and notified in writing to the Harbour Operator ;

“**CMAL Operations**” means the works, maintenance and other activities (excluding Major Works) carried out by or on behalf of CMAL to meet:

- (i) CMAL’s obligations as harbour authority;
- (ii) the obligations on CMAL in the CMAL OSMS;
- (iii) the obligations on CMAL in the PMSC; and
- (iv) CMAL’s obligations under this Agreement.

“**CMAL OSMS**” means CMAL’s Operational and Safety Management System [ ] edition [date], as revised from time to time in accordance with its terms;

“**CMAL Parties**” shall have the meaning given in Clause 9.2 and the terms “**CMAL Party**” shall be construed accordingly;

“**Commencement Date**” means the later of 1 October 2016 and the date of commencement of the CHFS Service in accordance with the PSC;

“**Competent Authority**” means any competent authority from time to time exercising a regulatory role under, or for the purposes of, any Environmental Law, including (without limitation) all courts, tribunals and other judicial or quasi-judicial bodies;

“**Contract Meeting**” shall have the meaning given at Clause 14.1.3;

“**CP Certificate**” shall have the meaning given to it at Clause 3.6;

“**CPI**” means the Consumer Price Index (All Items) as published by the Office for National Statistics from time to time (the “**Index**”), or, failing such publication or in the event of a fundamental change to the Index, such other index as the parties may agree, or such adjustments to the Index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been in had the Index not ceased to be published or the relevant fundamental change not made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

“**Customer Care Process**” means the customer care process set out at Schedule Part 14;

“**Data Protection Legislation**” means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers (Scotland) Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

“**Dispute Resolution Procedure**” means the procedure for the resolution of certain disputes or differences between the Parties as set out in Clause 20;

“**Dispute Resolution Process**” means each individual use of the Dispute Resolution Procedure by the parties, up to the point of agreement on or determination of the matter in dispute; “**Division of Responsibilities**” means, the division of responsibilities set out at Schedule Part 5 to this Agreement;

“**Effective Date**” means the date of issue of the CP Certificate;

“**EIR**” means the Environmental Information (Scotland) Regulations 2004;

“**Emergency**” has the meaning given in Clause 8.1;

“**Environment**” means the natural and manmade environment and all or any of the following media namely air (including air within buildings and air within other natural or manmade structures above or below ground), water (including water under or within land or in pipes, drains or sewers) and land and soil (including buildings and structures thereon) and any living organisms (including man) or ecological systems supported by any one or more of such media;

“**Environmental Law**” means all law, statutes and subordinate legislation, European Union treaties, regulations and directives, rules of common law and other international, European, national or local laws and all regulations, orders, guidance notes or awards, codes of conduct or practice, bylaws and directions and all judgements, decrees, notices or orders, instructions and other lawful statements of any Competent Authority in respect of the Harbour, Harbour Facilities and the CHFS Services and all amendments, re-enactments and consolidations of same but only insofar as enforced in Scots law from time to time and relating to the protection of the Environment or human health or safety and animal welfare and emissions, discharges, releases or escapes into the Environment of Hazardous Substances, or the production,

processing, treatment, storage, transport or disposal of Hazardous Substances and having the force of law from time to time;

**“Environmental Management Plan”** means the environmental management plan at Schedule Part 9;

**“Estimate”** has the meaning given in Clause 19.3;

**“Event of Default”** has the meaning given in Clause 18.1;

**“Excluded Areas”** means the areas identified in the Harbour Plans;

**“Execution Date”** means the last date of execution of this Agreement;

**“Expiry Date”** means the earlier of the date the PSC expires or is terminated in accordance with its terms and the date of termination of this Agreement in accordance with its terms;

**“FOISA”** means the Freedom of Information (Scotland) Act 2002;

**“Former Operator”** means an operator supplying services to CMAL before the Relevant Transfer Date that are the same as or substantially similar to the Harbour Operations (or any part of the Harbour Operations) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);

**“Good Industry Practice”** means in relation to any undertaking the exercise of such degree of skill, care, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced person in carrying out activities of a similar nature, scope and complexity to the relevant works or operators;

**“Harbour Area”** means in respect of each Harbour:

- (a) the area of sea outlines and shaded in blue on the Harbour Plans; and
- (b) the area of land outlined in red on the Harbour Plans,

or, in each case, such other area shown in any Harbour Empowerment Order or Harbour Revision Order which may come into force in relation to that Harbour;

**“Harbour Buildings”** means the buildings identified on the plans set out at Part 1B of the Schedule under exception of the areas identified as being excluded;

**“Harbour Dues”** means the berthing dues, pier dues, cargo dues, and other dues payable by users of each of the Harbour Facilities as notified by CMAL to the Harbour Operator from time to time;

**“Harbour Dues Information”** shall have the meaning given in Clause 7.1;

**“Harbour Empowerment Order”** means a harbour empowerment order as defined in Section 16 of the Harbours Act 1964;

**“Harbour Equipment”** means all health and safety equipment, CCTV, water level and weather monitoring equipment, oil and fuel tanks (including fixed fuel tanks and fixed waste oil tanks), and CMAL gangways (three);

**“Harbour Facilities”** means the Harbour Buildings, Harbour Areas, (other than Excluded Areas) and Harbour Equipment made available by CMAL to the Harbour Operator at each Harbour pursuant to this Agreement;

“**Harbour Improvements**” shall have the meaning given in Clause 10.1;

“**Harbour Improvement Request**” shall have the meaning given in Clause 10.1;

“**Harbour Operating Fee**” means the amount calculated pursuant to Clause 11 (*Harbour Operating Fee*);

“**Harbour Operations**” means those tasks or operations described in Schedule Part 2 (*Scope of Operations*) and Schedule Part 3 (Division of Responsibilities) together with the provision of associated services and other obligations incumbent on the Harbour Operator as described in this Agreement;

“**Harbour Operations Organisation Structure**” means the harbour operations organisation structure set out at Schedule Part 11 as updated from time to time;

“**Harbour Operator Insurances**” shall have the meaning given in Clause 17.2;

“**Harbour Operator OSMS**” means the Harbour Operator’s Operational and Safety Management System set out at Part 12 of the Schedule, as revised from time to time in accordance with its terms;

“**Harbour Operator Representative**” means the person or persons appointed by the Harbour Operator from time to time as notified in writing to CMAL;

“**Harbour Operator’s Final Staff List**” means a list of all the Harbour Operator’s Personnel engaged in or wholly or mainly assigned to the provision of the Harbour Operations or any part of the Harbour Operations at the time of any Operations Transfer;

“**Harbour Operator Personnel**” means all employees, staff, other workers, agents and consultants of the Harbour Operator who are engaged in the provision of the Harbour Operations from time to time;

“**Harbour Operator’s Provisional Staff List**” means a list prepared and updated by the Harbour Operator of all the Harbour Operator’s Personnel engaged in, or wholly or mainly assigned to, the provision of the Harbour Operations or any part of the Harbour Operations at the date of preparation of the list;

“**Harbour Operator’s Rectification Plan**” shall have the meaning given in Clause 20.4;

“**Harbour Revision Order**” means a harbour revision order as defined in Section 14 of the Harbours Act 1964;

“**Harbour Plans**” means the plans signed and annexed at Schedule Part 1C;

“**Harbour User Record**” shall have the meaning given in Clause 7.1;

“**Harbours**” means those harbours listed in Schedule Part 1A, each a “**Harbour**”;

“**Hazardous Substance**” means any natural or artificial substance, material, liquid, gas or other matter of whatsoever nature, (in whatsoever form) which is capable of causing harm or damage to the Environment or to human health or safety, without limitation, capable of causing a common law or statutory nuisance or which is subject to regulatory control as being hazardous;

“**Hazard Work Permit Log**” means the system used by the Harbour Operator to record, control and monitor all Permits to Work issued by the Harbour Operator which are in force from time to time;

“**Health and Safety Meeting**” shall have the meaning given in Clause 14.1.2;

“**Health and Safety Plan**” means the health and safety plan set out at Schedule Part 7;

“**HSE**” means the Health and Safety Executive, or its statutory successor;

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

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

Where:

CPI[x]c is the Consumer Price Index published is the value of the CPI in respect of [date] being [ ]; 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;

“**Initial Harbour Operating Fee**” means [£] per month as such amounts may be amended from time to time in accordance with this Agreement:

- First Service Year = £[ ]

“**Key Personnel**” means those staff identified as key personnel in Schedule Part 10 of this Agreement;

“**Law**” means:

- any applicable statute or proclamation or any delegated or subordinate legislation or by-laws;
- any enforceable community right within the meaning of section 2(1) of the European Communities Act 1972;
- any applicable guidance, standards, directions, code of conduct, code of practice or determination with which CMAL and/or the Harbour Operator is bound to comply; and
- any applicable judgement of a relevant court of law which is a binding precedent in Scotland,

in each case in force in Scotland;

“**Liability Cap**” means the level of the Deductibles set out at Schedule Part 4, Section A;

“**Major Works**” shall have the meaning given in Clause 9.10;

“**New Harbour Operator**” shall have the meaning given in Clause 23;

“**Notice of Change**” means a notice served pursuant to Clause 19 (*Changes*), setting out the matters referred to in Clause 19.2;

“**Online Reporting Maintenance Management System**” means the web based information and reporting system notified by CMAL to the Harbour Operator from time to time;

“**Operations Liaison Meeting**” shall have the meaning given in Clause 14.1.1;

“**Operations Transfer**” shall have the meaning given in Clause 23;

“**OSMS**” means the Operational and Safety Management System comprising the CMAL OSMS and the Harbour Operator OSMS, as each of those documents are revised from time to time in accordance with their terms;

“**OSMS Amendment Notice**” shall have the meaning given in Clause 13.3;

“**Pilotage Plan**” shall have the meaning given to that term in the Terms and Conditions of Harbour Use;

“**Parties**” means CMAL and the Harbour Operator together with their successors, permitted assignees and transferees and “**Party**” shall mean any one of them;

“**Payment Month**” means a calendar month during the Service Period provided that where:

- (a) the Commencement Date does not fall on the first day of a calendar month, the first Payment Month shall be deemed, for the purposes of this Agreement, to start on the Commencement Date and to end at the start of the next calendar month; and/or
- (b) the Expiry Date does not fall on the last day of a calendar month the last Payment Month shall be deemed, for the purposes of this Agreement, to end on the Expiry Date.

“**Permit to Work**” means the scheme to be put in place by the Harbour Operator to issue permits to commercial divers to allow them to operate safely within the Harbour Facilities;

“**Personal Data**” has the meaning given to that term in section 1(1) of the Data Protection Act 1998;

“**PMSC**” means the Port Marine Safety Code dated March 2015, as revised from time to time in accordance with its terms;

“**Pre-existing Contamination Notices**” means any notice or requirement of any Competent Authority made pursuant to Environmental Law to the extent that it relates to the presence of any Hazardous Substances at, on or under the Harbour Facilities where that presence originated prior to the Commencement Date;

“**Prescribed Rate**” means the rate of statutory interest as set out in the Late Payment of Commercial Debts (Rate of Interest) (Scotland) Order 2002;

“**Project Data**” means all materials, documents and/or data acquired, brought into existence by or on behalf of the Harbour Operator or used by the Harbour Operator for the purposes of undertaking the Harbour Operations or otherwise in connection with this Agreement;

“**Project Meeting**” shall have the meaning given in Clause 14.2;

“**PSC**” means the public service contract entered into on or about the date of this Agreement between the CHFS Operator and the Scottish Ministers for the provision of lifeline ferry services for the Clyde and Hebrides;

“**Rectification Notice**” shall have the meaning given in Clause 18.3;

“**Rectification Plan**” shall have the meaning given in Clause 18.4;

“**Relevant Employees**” shall have the meaning given in Clause 24.1.1;

“**Relevant Transfer**” means a transfer of employment at the commencement of Harbour Operations, or any part of the Harbour Operations, to which the TUPE Regulations apply;

“**Relevant Transfer Date**” means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“**Review Meetings**” means the meetings referred to in Clause 14.1 and 14.2;

“**Requested Information**” shall have the meaning given in Clause 25.6;

“**Required Action**” shall have the meaning given in Clause 18.9;

“**Routine Maintenance**” means the obligations of the Harbour Operator set out at Section 3.4 of Schedule Part 2

“**Schedule**” means the Schedule in fourteen Parts annexed and signed as relative hereto;

“**Scope of Operations**” means the obligations of the Harbour Operator set out at Schedule Part 2;

“**Security Interest**” means a mortgage, charge (whether fixed or floating), pledge, lien, assignment, hypothecation, trust agreement or other security interest of any kind having the effect of securing any obligations of any person or any other encumbrance, agreement or arrangement having the effect of providing security;

“**Service Period**” means the period from the Commencement Date until the Expiry Date;

“**Service Year**” means each successive period of twelve months throughout the Service Period, the first of which begins on the Commencement Date and ends on the first anniversary of the Commencement Date;

“**Significant Revision**” has the meaning attributed to it in Clause 13.2.1;

“**Staffing Information**” means in relation to all persons detailed on the Harbour Operator's Provisional Staff List, such information as CMAL may reasonably request (subject to the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;

(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

(h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and

(i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals);

**“Start-up Plan”** means the mobilisation plan set out at Schedule Part 8;

**“Terms and Conditions of Harbour Use”** means the CMAL Terms and Conditions of Harbour Use as revised from time to time;

**“Transfer Date”** shall have the meaning given in Clause 22.1.1;

**“Transferring Employees”** means those employees whose contract of employment may be transferred to CMAL or the New Harbour Operator in accordance with the TUPE Regulations on expiry or termination of this agreement;

**“Transferring Former Operator Employees”** means in relation to a Former Operator, those employees of the Former Operator to whom the TUPE Regulations will apply on the Relevant Transfer Date;

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

**“Undisclosed Employee”** shall have the meaning given in Clause 22.1.4;

**“VAT”** means Value Added Tax;

**“Warning Notice”** shall have the meaning given in Clause 15.3;

**“Warning Notice Rectification Proposal”** shall have the meaning given in Clause 15.4;

**“Wilful Breach”** means the intentional breach by a Party acting by the directors or senior managers or through an employee, agent or contractor of that Party acting on the instructions of such director or senior manager of any material obligation of a Party under this Agreement, excluding any error of judgement or mistake or omission made by any person in the exercise, in good faith, of any function, authority or discretion conferred pursuant to this Agreement;

**“Work Site”** means any discreet work site within the Harbour Facilities which is capable of being isolated from the Harbour Facilities by the relevant CMAL Party for the purpose of carrying out Harbour Improvements, Major Works, or CMAL Operations;

1.2. In this Agreement:

1.2.1. the term “person” means any person, firm, partnership, company, corporation, association, organisation, government, state or trust (in each case whether or not having separate legal personality);

1.2.2. a reference at any time to any statute or enactment shall be construed as a reference to such statute or enactment as amended, supplemented or re-enacted from time to time and shall include any order, regulation, statutory instrument or other subordinate legislation made under the relevant statute or enactment or statutory provision;



- 1.2.3. any reference to this Agreement or to any other document shall include any variation, amendment or supplement to this Agreement or such other document as expressly permitted under the terms of this Agreement;
  - 1.2.4. every reference to a Clause, Paragraph or Schedule Part is, except where expressly provided to the contrary, a reference to a clause, paragraph or schedule part of this Agreement;
  - 1.2.5. unless the context otherwise requires, the masculine gender shall include the feminine and neuter genders, and vice versa;
  - 1.2.6. unless the context otherwise requires, a reference to the singular shall be deemed to include the plural and vice versa;
  - 1.2.7. a failure to specify that a breach by a party of a particular obligation or undertaking will constitute a material breach of this Agreement shall not in itself be construed as meaning that such breach is not a material breach of this Agreement;
  - 1.2.8. an obligation not to do something includes an obligation not to allow or permit it to be done; and
  - 1.2.9. any words following the terms include or including shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.3. Headings used in this Agreement are for ease of reference only and shall not affect the interpretation or construction of any provisions hereof.

## **2. HARBOUR OPERATOR'S ENQUIRIES**

- 2.1. The Harbour Operator shall at the Execution Date be deemed to have:
- 2.1.1. satisfied itself as to the nature and extent of the risks and obligations assumed by it under this Agreement;
  - 2.1.2. gathered all information necessary to secure the performance of its obligations under this Agreement;
  - 2.1.3. inspected and examined the Harbour Facilities and to have satisfied itself as to the suitability of the Harbour Facilities for the provision of the Harbour Operations;
  - 2.1.4. acquired a full and complete understanding of the PMSC and the OSMS, its meaning and effect, including all statutes, regulations and other documents referred to in the OSMS, and made all enquiries considered by the Harbour Operator to be appropriate and to have received replies satisfactory to the Harbour Operator in every respect;
  - 2.1.5. in general to have obtained for itself all necessary information as to the risks, contingencies and all other circumstances influencing and affecting the entering into of this Agreement by the Harbour Operator.
- 2.2. Without prejudice to the foregoing generality the Harbour Operator acknowledges that:
- 2.2.1. it has not entered into this Agreement in reliance of the accuracy of any information or data provided by CMAL;
  - 2.2.2. the use of, or reliance upon, any of the information supplied by CMAL is entirely at the Harbour Operator's own risk; and

2.2.3. except where expressly provided in this Agreement the Harbour Operator shall have no entitlement as against CMAL under this Agreement or otherwise to any relief from its obligations or to claim any additional expenses in relation to the performance of its obligations or to any other payment or compensation from CMAL in respect of the Agreement on grounds that it has used or relied upon any information or data to which Clause 2.1 or Clauses 2.2.1 and 2.2.2 apply.

### 3. COMMENCEMENT, DURATION, REPRESENTATIONS AND WARRANTIES

3.1. Subject to Clause 3.3 (*Conditions Precedent*), this Agreement shall come into effect on the Execution Date and shall continue in effect until the Expiry Date.

3.2. Save in respect of Clause 2 (*Harbour Operator's Enquiries*), Clause 3 (*Conditions Precedent, Representations and Warranties*), Clause 20 (*Indemnities*), Clause 17 (*Insurance*), Clause 20 (*Dispute Resolution Procedure*), Clause 24 (*Intellectual Property*), Clause 25 (*Confidentiality, Freedom of Information and Data Protection*), Clause 26 (*Waiver*), Clause 27 (*Severability*), Clause 28 (*Relationship*), Clause 29 (*Entire Agreement*), Clause 30 (*Variation*), Clause 31 (*Notices*), Clause 32 (*Assignment, Novation and Sub-Contracting*), Clause 33 (*Survival*) and Clause 34 (*Governing Law and Jurisdiction*), the rights and obligations of the Parties under this Agreement shall come into effect on the Effective Date.

#### 3.3. Conditions Precedent

This Agreement is conditional upon:

3.3.1. the Conditions (as such term is defined in the PSC) being satisfied;

3.3.2. the receipt by CMAL of the following:

3.3.2.1. copies, certified by an officer of the Harbour Operator to be true, complete and up-to-date copies, of the Memorandum and Articles of Association of the Harbour Operator; and:

3.3.2.2. copies, certified by an officer of the Harbour Operator to be true copies, and as being in full force and effect and not amended or rescinded, of resolutions of the board of directors of the Harbour Operator:

(i) resolving that it enters into the PSC and this Agreement and approving the terms of, and the transactions contemplated by, the PSC and this Agreement; and

(ii) authorising a specified person or persons to sign and deliver on behalf of the Harbour Operator, the PSC and this Agreement.

(together the "**Conditions Precedent**").

3.4. The Harbour Operator shall use best endeavours to fulfil the Conditions Precedent by 1 October 2016 (or such later date as may be agreed by the Parties in writing).

3.5. CMAL may by notice in writing to the Harbour Operator waive all or any of the Conditions Precedent.

3.6. On the date that the Conditions Precedent have been satisfied or waived CMAL shall send notice in writing to the Harbour Operating confirming that all the Conditions Precedent have been satisfied or waived (the "**CP Certificate**").

3.7. If the Effective Date has not occurred by the date following three (3) Months after the Execution Date (or such later date as may be agreed in writing by the Parties), CMAL may terminate this Agreement with immediate effect following the service of a notice to that effect

on the Harbour Operator, upon which event, the provisions of this Agreement (other than Clause 2 (*Harbour Operator's Enquiries*), Clause 3 (*Conditions Precedent, Representations and Warranties*), Clause 20 (*Indemnities*), Clause 17 (*Insurance*), Clause 20 (*Dispute Resolution Procedure*), Clause 24 (*Intellectual Property*), Clause 25 (*Confidentiality, Freedom of Information and Data Protection*), Clause 26 (*Waiver*), Clause 27 (*Severability*), Clause 28 (*Relationship*), Clause 29 (*Entire Agreement*), Clause 30 (*Variation*), Clause 31 (*Notices*), Clause 32 (*Assignment, Novation and Sub-Contracting*), Clause 33 (*Survival*) and Clause 34 (*Governing Law and Jurisdiction*) shall cease to have effect and such termination shall be without prejudice to any accrued rights and obligations as at that date.

### 3.8. Representations and Warranties

The Harbour Operator makes the following representations and warranties on the Execution Date of this Agreement. The Harbour Operator understands that CMAL is relying on the representations and warranties and is entering into this Agreement on the basis of them:

- 3.8.1. the Harbour Operator is a company properly organised and validly existing under the laws of Scotland as a limited liability company, and it has power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
  - 3.8.2. the Harbour Operator has power to enter into and perform its obligations under PSC and this Agreement, and all necessary corporate, shareholder and other action has been taken to authorise its entry into, performance and delivery of the PSC and this Agreement;
  - 3.8.3. entering into the PSC and this Agreement and performing its obligations under these documents will not:
    - 3.8.3.1. conflict with the Harbour Operator's Memorandum and Articles of Association; or
    - 3.8.3.2. in any material respect conflict with, or result in a breach of, any existing contract to which the Harbour Operator is a Party or in the creation of any Security Interest over any of the Harbour Operator's property;
  - 3.8.4. no legal proceedings are pending or to the Harbour Operator's knowledge threatened against it which if decided against the Harbour Operator would have a material adverse effect upon the Harbour Operator's financial condition or business or its ability to perform its obligations under the PSC and this Agreement.
- 3.9. The Harbour Operator undertakes to CMAL to perform its obligations under this Agreement in accordance with Good Industry Practice.
  - 3.10. The Harbour Operator undertakes to keep the Authority informed of the progress of all material matters of which the Harbour Operator is aware under this Agreement.
  - 3.11. Subject to the provisions of Clause 33 (*Survival*) this Agreement shall terminate on the Expiry Date.

## 4. ACCESS TO HARBOURS FOR PROVISION OF THE HARBOUR OPERATIONS

- 4.1. CMAL grants to the Harbour Operator a non-exclusive right to enter and use the Harbour Facilities for the duration of the Service Period solely for the purpose of and to the extent necessary for conducting or performing the Harbour Operations.

- 4.2. Neither the grant nor the exercise of the right granted in Clause 4.1 shall in relation to the Harbour Facilities constitute a lease of any Harbour or any part thereof or create any relationship of landlord and tenant between CMAL and the Harbour Operator.
- 4.3. The Harbour Operator acknowledges that the CHFS Operator and their passengers, contractors and employees shall have a non-exclusive right to enter on and/or occupy and use the Harbour Facilities for the duration of the Service Period solely for the purpose of and to the extent necessary for providing the CHFS Service.
- 4.4. Unless otherwise agreed by CMAL, the Harbour Operator shall not display, or permit the display of any advertisement or promotional item of any nature at the Harbours.

## **5. APPOINTMENT AS HARBOUR OPERATOR**

- 5.1. CMAL hereby appoints the Harbour Operator to carry out the Harbour Operations for the duration of the Service Period in accordance with the provisions of this Agreement.
- 5.2. Save as expressly provided in this Agreement the Harbour Operator shall perform the Harbour Operations at its own cost and risk without recourse to CMAL.
- 5.3. The Harbour Operator shall not by act or omission obstruct, delay or otherwise interfere with the performance by CMAL of any of its functions, duties and responsibilities as harbour authority at the Harbours.
- 5.4. Without prejudice to or qualification of the obligation of the Harbour Operator to commence the Harbour Operations on the Commencement Date, during the period from the Effective Date to the Commencement Date CMAL shall take such reasonable steps and provide such reasonable assistance as the Harbour Operator may reasonably require to allow the Harbour Operator to make all necessary preparations for the commencement of Harbour Operations on the Commencement Date as set out in the Start-up Plan.
- 5.5. The Harbour Operator shall notify CMAL of any proposed changes to the responsibilities and reporting lines of each of the Key Personnel and staff and provide CMAL with an updated Harbour Operations Organisation Structure reflecting such changes. No changes shall be made to the responsibilities and reporting lines of any of the Key Personnel without the prior written consent of CMAL, such consent shall not be unreasonably withheld or delayed.

## **6. PERFORMANCE OF OPERATIONS**

- 6.1. With effect from the Commencement Date the Harbour Operator shall (or shall procure that its sub-contractors shall) undertake and perform the Harbour Operations and shall at all times ensure that the Harbour Operations are performed:
- 6.1.1. in accordance with and so as to comply in all respects with this Agreement;
- 6.1.2. in such a manner so as not to prevent, restrict or interfere with the CHFS Operator's provision of the CHFS Services.
- 6.1.3. so as to ensure compliance with the requirements of the OSMS and PMSC in every respect;
- 6.1.4. so as to ensure compliance with the requirements of the Health and Safety Plan in every respect to the satisfaction of CMAL. The Harbour Operator must review the Health and Safety Plan from time to time or when so required by any change of circumstance or when so requested by CMAL, and must update the Health and Safety Plan as appropriate;

- 6.1.5. so as to ensure compliance with Law;
  - 6.1.6. so as to ensure compliance with the Environmental Management Plan;
  - 6.1.7. in accordance with Good Industry Practice;
  - 6.1.8. in accordance with the Customer Care Process;
  - 6.1.9. in a manner consistent with the discharge by CMAL of its statutory duties as harbour authority;
  - 6.1.10. in such a manner so as not to detract from the image and reputation of CMAL as a harbour authority; and
  - 6.1.11. in such a manner as not to restrict or interfere with the lawful exercise of third party rights; and
  - 6.1.12. to permit third party vessel operators and their passengers, servants, agents and contractors to use the Harbour Facilities (and such passenger waiting and other facilities within the Harbour Area generally used by passengers) for the shipping and unshipping of freight and the embarking and landing of passengers and vehicles and the taking on of fresh water where available subject to such third parties paying the applicable Harbour Dues and complying with all applicable by-laws, regulations and other requirements of CMAL provided that such third party usage will not interfere with the provision of the CHFS Services. Where the Harbour Operator is notified of any grievance or complaint concerning the level or nature of the access of any third party vessel operator to any of the Harbours, the Harbour Operator shall comply with the Access Complaints Procedure in relation to such grievance or complaint and implement any decision resulting from such procedure.
- 6.2. The Harbour Operator shall at all times ensure that:
- 6.2.1. the Harbour Operations are overseen by the Key Personnel in accordance with the roles and responsibilities set out in the Harbour Operations Organisation Structure;
  - 6.2.2. it employs or engages the services of a sufficient number of properly trained, suitably qualified and experienced personnel to ensure that the Harbour Operations are performed in accordance with this Agreement;
  - 6.2.3. all aspects of the Harbour Operations are supervised by a sufficient number of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Harbour Operations in accordance with this Agreement;
  - 6.2.4. it maintains up to date personnel records on the Harbour Operator's Personnel engaged in the provision of the Harbour Operations and, on request, provide reasonable information to CMAL on the Harbour Operator's Personnel. The Harbour Operator shall at all times ensure that it has the right to provide these records under the Data Protection Legislation;
  - 6.2.5. provides at its own cost, all equipment, tools, work, appliances and all other facilities necessary for the performance of its obligations under this Agreement, as well as all operating and support services necessary for carrying out such obligations;
  - 6.2.6. it maintains full and accurate records relating to the Harbour Operations and, on reasonable notice being given to it by CMAL, make available to CMAL or any authorised representative of CMAL, all such records and any other documentation and information held by it relating to the Harbour Operations for the purpose of

verifying the Harbour Operator's proper performance of its obligations under this Agreement;

6.2.7. it ensures that the Harbour Operator Representative shall liaise with the CMAL Representative on all matters in connection with the operation of this Agreement; and

6.2.8. it carries out all actions agreed with the CMAL Representative promptly upon the same being agreed.

6.3. The Harbour Operator acknowledges that where subcontractors are employed by the Harbour Operator, the Harbour Operator shall not be relieved from any of its obligations under this agreement.

6.4. The Harbour Operator undertakes that it shall ensure all third party users of the Harbour Facilities comply with the Terms and Conditions of Harbour Use at all times and implement their Pilotage Plan.

## 7. HARBOUR DUES

7.1. The Harbour Operator shall use all reasonable endeavours to keep and maintain full and accurate records of all vessels using the Harbours (the "**Harbour User Record**"). The Harbour User Record shall include a note of the Harbour Dues payable in respect of each vessel's use of a Harbour together with details of the party liable to pay the Harbour Dues and a breakdown of the information used to calculate such Harbour Dues (the "**Harbour Dues Information**").

7.2. The Harbour Operator shall keep the Harbour User Record in good order and in such form as to be capable of audit by CMAL, CMAL's auditors or any third party. The Harbour Operator shall make the Harbour User Record available for inspection by or on behalf of CMAL, CMAL's auditors or any third party notified to the Harbour Operator during working hours on not less than one Business Days' notice.

7.3. Unless the Harbour Operator receives written notice from CMAL, the Harbour Operator shall collect Harbour Dues from all users of the Harbours. Within seven (7) Business Days of the start of each Payment Month the Operator shall pay to CMAL all Harbour Dues collected by it in the preceding Payment Month.

7.4. Where it has been agreed between the Parties that CMAL will collect the Harbour Dues directly from users of the Harbours, the Harbour Operator shall provide CMAL with the Harbour Dues Information in respect of those users on a [weekly basis] as notified by CMAL form time to time.

7.5. The Harbour Operator shall indemnify CMAL in respect of any Harbour Dues which were due to be paid by users of the Harbours but which CMAL has been unable to recover as a result of the Harbour Dues Information being incorrect or incomplete.

## 8. DAMAGE TO THE HARBOURS AND EMERGENCIES

8.1. Without prejudice to the provisions of Clause 17 (*Insurance*), where:

8.1.1. there has been an accident or other emergency at a Harbour;

8.1.2. the Harbour Facilities have been damaged or destroyed; or

8.1.3. there has been a failure in the operation of a part of a Harbour Facilities' structure or its machinery, equipment or fittings,

that could adversely and directly affect the safety of personnel or vessels using the Harbour Facilities, impact on the environment, or result in any liability for CMAL (an “**Emergency**”) the Harbour Operator shall (i) ensure that vessels passengers and vehicles have sufficient safe access to the relevant Harbour Facilities to allow the CHFS Operator to provide the CHFS Services in accordance with the PSC, and (ii) make the Harbour Facilities safe in accordance with the OSMS.

- 8.2. As soon as reasonably practicable and in any event within 24 hours of the occurrence of an Emergency, the Harbour Operator shall notify CMAL of the occurrence of the Emergency and provide CMAL with:
- 8.2.1. details of the Emergency;
  - 8.2.2. the impact the Emergency has had on the Harbour Facilities, the Harbour Operations and/or the functioning of the Harbour; and
  - 8.2.3. any actions proposed or taken by the Harbour Operator pursuant to Clause 8.1 in response to the Emergency.
- 8.3. If Harbour Facilities are damaged or destroyed as referred to in Clause 8.1.2, CMAL may carry out all reinstatement work to remedy such damage or destruction. If CMAL opts not to reinstate such damage or destruction and the Harbour Facilities can no longer be used to support the CHFS Services, CMAL shall notify the Harbour Operator that the Harbour Facilities shall be deleted from Schedule Part 1 and the Harbour Operator shall cease to have any responsibility or obligation under this Agreement for the carrying out of the Harbour Operations in relation thereto.

## 9. CMAL OPERATIONS AT THE HARBOURS

- 9.1. Save to the extent the Harbour Operator is responsible for Routine Maintenance in terms of this Agreement, CMAL shall maintain the Harbour Facilities in a suitable and safe condition so as to allow the Harbour Operator to perform its obligations in accordance with this Agreement.
- 9.2. CMAL shall carry out the CMAL Operations. The Harbour Operator acknowledges that CMAL’s employees, officers, directors, advisers, agents, representatives, contractors, sub-contractors and any other persons authorised by CMAL (but excluding the Harbour Operator) (“**CMAL Parties**”) shall be entitled to access the Harbour Facilities together with all necessary plant, equipment or materials at such times as are agreed between CMAL and the relevant CMAL Party, to carry out CMAL Operations, Harbour Improvements and Major Works.
- 9.3. CMAL shall be entitled to access, and may grant any CMAL Party the right to access, the Harbour Facilities to carry out CMAL Operations, Major Works or Harbour Improvements outside port office hours. Where the Harbour Operator is required to facilitate access to the Harbour Facilities outside port office hours and this results in additional costs to the Harbour Operator, CMAL shall reimburse the Harbour Operator for any demonstrable expenses reasonably and properly incurred.
- 9.4. Unless otherwise agreed between CMAL and the Harbour Operator, CMAL shall give the Harbour Operator reasonable notice of when CMAL expects CMAL or any CMAL Party to be present at a Harbour to undertake CMAL Operations. No notice will be required in cases of urgency or emergency or when CMAL or any CMAL Party are using the Harbour Facilities for travel.
- 9.5. Upon receipt of a notice that a CMAL Party is due to be present at Harbour Facilities, the Harbour Operator shall liaise with CMAL and the CMAL Party to agree reasonable and appropriate access to the Harbour Facilities. While a CMAL Party is working within the Harbour Facilities, the Harbour Operator shall ensure the CMAL Party complies with the agreed access and shall ensure the CMAL Party complies with the OSMS.

- 9.6. Where a CMAL Party requires a Work Site at a Harbour to carry out Major Works, Harbour Improvements or CMAL Operations, the Harbour Operator shall:
- 9.6.1. liaise with the CMAL Party in relation to the creation of a Work Site at the Harbour;
  - 9.6.2. assist the CMAL Party to carry out a risk assessment for the operation of the Work Site;
  - 9.6.3. monitor the CMAL Party to ensure that all operations are carried out in accordance with the OSMS;
  - 9.6.4. assist the CMAL Party to ensure that the Work Site is secure to prevent injury to any person;
- 9.7. The Harbour Operator shall not delay, obstruct, or interfere with the exercise by CMAL of its rights in terms of this clause and, except to the extent necessary to prevent injury to any person or damage to any property, shall not seek to direct or interfere with any activity of CMAL at the Harbour Facilities.

### **Major Works**

- 9.8. The agenda for each Review Meeting shall include any planned CMAL Operations or Major Works. At each Review Meeting CMAL shall provide an update of any CMAL Operations and/or Major Works CMAL plans to undertake in the next twelve (12) months.
- 9.9. The Harbour Operator shall liaise with CMAL and any CMAL Party, as CMAL may reasonably require, to facilitate the planning and programming of CMAL Operations and Major Works to ensure that impact of such CMAL Operations or Major Works on the operation of the Harbour Facilities is minimised.
- 9.10. Prior to undertaking any major works of repair, renewal, replacement, reinstatement, improvement at Harbour Facilities ("**Major Works**") CMAL shall provide the Harbour Operator with sufficient detail of the proposed Major Works to allow the Harbour Operator to assess what, if any, impact the proposed Major Works will have on the Harbour Operations.
- 9.11. Within 15 Business Days of receipt of the information set out in Clause 9.10 the Harbour Operator shall provide CMAL with details of the impact the proposed Major Works may have on the Harbour Operations.
- 9.12. CMAL shall consider and take into account any comments received from the Harbour Operator pursuant to Clause 9.11 when finalising the programme and specification for the proposed Harbour Works.
- 9.13. When carrying out Major Works CMAL shall, and shall use reasonable endeavours to procure that any CMAL Party shall:
- 9.13.1. carry out Major Works in accordance with Good Industry Practice, all necessary Laws, permissions and other consents and in so far as applicable the CMAL OSMS;
  - 9.13.2. take all steps and precautions reasonably necessary to avoid disruption to or obstruction of the activities of the Harbour Operator at the Harbour Facilities; and
  - 9.13.3. take all precautions reasonably practicable to avoid damage to or destruction of any goods, property or equipment of the Harbour Operator at the Harbour Facilities and where any such damage or destruction occurs, CMAL shall repair, reinstate or replace the same, as necessary,.



## 10. HARBOUR IMPROVEMENTS

- 10.1. The Harbour Operator may propose physical improvements to a Harbour and/or Harbour Facilities (all such works of improvement are hereinafter referred to as “**Harbour Improvements**”). Notice of any proposal or requirement for Harbour Improvements shall be given in writing by the Harbour Operator Representative to CMAL raising such proposal (such notice hereinafter being referred to as a “**Harbour Improvement Request**”).
- 10.2. A Harbour Improvement Request shall:
- 10.2.1. set out the proposed Harbour Improvements (as the case may be) in sufficient detail to enable CMAL to evaluate the effect the Harbour Improvements Works will have on the provision of the Harbour Operations and the functioning of the relevant Harbour Facilities;
  - 10.2.2. state whether the Harbour Operator intends to meet the costs involved in implementing the Harbour Improvements or whether, and if so the extent to which, it is requesting CMAL to meet the costs or make a contribution towards the costs of the Harbour Improvements ; and
  - 10.2.3. set out the date by which the Harbour Operator would like the Harbour Improvements to be completed and the proposed programme for achieving that date.
- 10.3. Any Harbour Improvement Requests shall be discussed at the bi-monthly Operations Liaison Meetings, the Parties shall discuss with a view to agreeing:
- 10.3.1. whether the Harbour Improvements should be undertaken;
  - 10.3.2. whether the Harbour Improvements will require a Harbour Empowerment Order or Harbour Revision Order;
  - 10.3.3. whether any additional right or rights over land are required to allow the Harbour Improvements to proceed;
  - 10.3.4. any changes required by CMAL to the Harbour Improvement Request;
  - 10.3.5. which Party shall meet the costs of implementing the Harbour Improvements;
  - 10.3.6. the timescale and programme for implementing the Harbour Improvements;
  - 10.3.7. arrangements for access to and responsibility for work sites when the Harbour Improvements are being undertaken; and
  - 10.3.8. whether the Harbour Improvement Request amounts to a Change.
- 10.4. If the Parties cannot agree any of the matters set out in Clause 10.3 either Party may refer such dispute to the Dispute Resolution Procedure provided that, save where the proposed Harbour Improvements are required by law, CMAL may withhold its agreement to the carrying out of the Harbour Improvements at its absolute discretion.
- 10.5. Where the Parties agree pursuant to Clause 10.3 that CMAL shall instruct or undertake the Harbour Improvements and the Harbour Operator shall be responsible for paying all or part of the costs of implementing the Harbour Improvements, the Parties shall agree a payment schedule for payments by the Harbour Operator to CMAL reflecting the amount and timing of the costs to be incurred by CMAL in carrying out the Harbour Works to the extent that such costs are to be borne by the Harbour Operator.
- 10.6. Where the Parties agree pursuant to Clause 10.3 that CMAL shall instruct or undertake the Harbour Improvements, the Harbour Operator shall indemnify CMAL in respect of any

additional costs or delays caused by any acts or omissions of the Harbour Operator which CMAL or any CMAL Party incurring additional costs or delays.

- 10.7. The Harbour Operator agrees and undertakes that it shall not carry out any Harbour Improvements or otherwise make any physical alterations to the Harbour Facilities without the express written consent of CMAL.

## **11. HARBOUR OPERATING FEE**

- 11.1. In consideration of the undertakings and obligations of the Harbour Operator under this Agreement, CMAL shall pay the Harbour Operator the Harbour Operating Fee in accordance with Clause 12 (*Invoicing, Payment and VAT*).

- 11.2. The Harbour Operating Fee shall be:

11.2.1. for the First Service Year the Initial Harbour Operating Fee for that Service Year; and

11.2.2. for each subsequent Service Year the Initial Harbour Operating Fee Index Linked.

- 11.3. The provisions of this Clause 11 are without prejudice to the right of CMAL in terms of Clause 18.11 to withhold payment of the Harbour Operating Fee.

- 11.4. Where, pursuant to Clause 8.3, Harbour Facilities can no longer be used to support the CHFS Services and the Harbour Operator ceases to have any responsibility or obligation under this Agreement for the carrying out of the Harbour Operations at the Harbour Facilities, the Harbour Operating Fee shall be amended in accordance with Clause 19 (*Change*).

## **12. INVOICING, PAYMENT AND VAT**

### **12.1. Harbour Operator's VAT invoice**

On the last Business Day of each Payment Month, the Harbour Operator shall deliver to CMAL a valid VAT invoice setting out:

12.1.1. the Harbour Operating Fee payable in respect of that Payment Month;

12.1.2. other amounts (if any) due and payable by CMAL to the Harbour Operator under this Agreement;

12.1.3. any VAT payable in respect of any payments; and

12.1.4. the amount owing by CMAL to the Harbour Operator in respect of that Payment Month.

### **12.2. Payment**

Subject to Clause 12.4 (*Disputed Amounts*), all payments:

12.2.1. due by CMAL to the Harbour Operator under this Agreement shall be due and payable no later than the tenth Business Day following the issue of a valid VAT invoice in terms of Clause 12.1; and

12.2.2. due by the Harbour Operator to CMAL under this Agreement shall be due and payable no later than the tenth Business Day following the issue of a valid VAT invoice in terms of Clause 14.2,

and shall be made in pounds sterling by electronic transfer or equivalent instantaneous transfer of funds for value on the day in question to the bank account of the Party specified in the invoice for such payment, quoting the invoice number against which payment is made.

### 12.3. **Late Payments**

Save where otherwise specifically provided, if any undisputed payment due to either Party under this Agreement remains unpaid after the due date for payment in accordance with this Agreement, such payment shall bear interest at the Prescribed Rate from the day after the date on which payment was due up to (and including) the date of payment. The right of the Party to receive interest in respect of the late payment of any sum due shall be without prejudice to such other rights as the Party may have under this Agreement.

### 12.4. **Disputed Amounts**

If either Party (acting in good faith) gives notice to the other Party that it disputes all or any part of any invoice issued in terms of Clauses 12.1 (as the case may be), any undisputed amount shall be paid by the Party due to make such payment in accordance with Clause 12.3 then the provisions of this Clause 12.4 shall apply. The Parties shall use all reasonable endeavours to resolve the dispute in question within ten (10) Business Days of the dispute being notified to the other Party. If the Parties fail so to resolve any dispute, either Party may refer the matter to the Dispute Resolution Procedure. Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid by the Party due to make payment to the other Party, together with interest on such amount equal to 6% below the Prescribed Rate from the day after the date on which payment first became due up to (and including) the date of payment.

### 12.5. **Set-Off**

The Harbour Operator shall not be entitled to retain or set-off any amount due to CMAL by the Harbour Operator. If a default notice is served in respect of a breach of Clauses 18.1.5 and 18.7 CMAL may retain or set-off any amount owed by CMAL to the Harbour Operator under this Agreement which has fallen due and payable against any amount due to CMAL by the Harbour Operator under this Agreement

### 12.6. **VAT**

12.6.1. All sums due to or by either Party under this Agreement are exclusive of VAT thereon, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be payable by the paying Party only against receipt from the other Party of a valid VAT invoice in respect thereof.

12.6.2. Where under this Agreement one Party has agreed to reimburse or indemnify the other in respect of any payment made or cost incurred by the other, then the first Party shall also reimburse any VAT paid by the other which forms part of its payment or costs incurred to the extent that such VAT is not available for credit for the other under Sections 25 and 26 of the Value Added Tax Act 1994.

## 13. **AMENDMENTS TO THE OSMS**

13.1. CMAL may revise or amend the CMAL OSMS at any time during the Service Period. CMAL shall consult with the Harbour Operator prior to the making of any such revisions or amendments and take account of any reasonable representations and comments received from the Harbour Operator as part of such consultation.

- 13.2. The Harbour Operator's obligations to comply with the OSMS shall be construed and applied with reference to the revised OSMS as soon as reasonably practicable following CMAL giving notice to the Harbour Operator advising of such revision.
- 13.3. The Harbour Operator may propose revisions or amendments to the Harbour Operator OSMS at any time during the Service Period by giving notice in writing to CMAL (an **OSMS Amendment Notice**). Such OSMS Amendment Notice shall:
- 13.3.1. set out the proposed amendments to the Harbour Operator OSMS together with the reasons for those proposed amendments;
  - 13.3.2. set out the affect the proposed amendments to the Harbour Operator OSMS will have on the Harbour Operations and the functioning of the Harbour Facilities; and
  - 13.3.3. detail any inconsistency with, or changes required to, the CMAL OSMS which would arise as a result of the proposed amendment to the Harbour Operator OSMS.
- 13.4. Within 20 Business Days of receipt of OSMS Amendment Notice, CMAL may, acting reasonably:
- 13.4.1. consent to any amendments set out in the OSMS Amendment Notice:
  - 13.4.2. provide conditional consent to any amendments set out in the Harbour Operator OSMS Amendment Notice, subject to reasonable amendments notified by CMAL; or
  - 13.4.3. reject any amendments set out in an OSMS Amendment Notice.
- CMAL may reject amendments set out in an Harbour Operator OSMS Amendment Notice in its absolute discretion where such amendments conflict with or would be likely to lead to a breach of the requirements of the CMAL OSMS, PMSC or Law.
- 13.5. Any increase of the Harbour Operating Fee agreed or determined pursuant to the provisions of Clause 19 arising as a result of an amendment to the OSMS pursuant to this Clause 13, shall be effective from the first Business Day following such agreement or determination, and shall be reflected in the next following invoice issued by CMAL in respect of the Harbour Operating Fee.

#### 14. REVIEW MEETINGS

- 14.1. Not less frequently than once every two months during the Service Period, the CMAL Representative and the Harbour Operator Representative shall meet, together with such colleagues or others as they consider appropriate to invite, to review the conduct of the Harbour Operations and performance by each Party of its obligations in accordance with this Agreement and to discuss any other relevant matters. The parties shall also attend the following Review Meetings not less than once every two months to discuss:
- 14.1.1. the ongoing delivery of the Harbour Operations and the CMAL Operations (the **"Operations Liaison Meeting"**);
  - 14.1.2. the ongoing health and safety policy and management of the Harbour Facilities (the **"Health and Safety Meeting"**);
  - 14.1.3. the parties obligations under this Agreement (the **"Contract Meeting"**);
- 14.2. CMAL and the Harbour Operator may arrange meetings to discuss the ongoing progress of any Major Works or Harbour Improvements (a **"Project Meeting"**) as necessary from time to time.

- 14.3. The agenda for each meeting shall be as set out at paragraph [ ] of the CMAL OSMS and CMAL shall circulate that agenda, and any supporting documentation to all proposed attendees at least ten Business Days before the date of the meeting.
- 14.4. The Harbour Operator shall prepare for consideration at each Review Meeting, a report, in such form as the Parties, acting reasonably, may agree in relation to the conduct of the Operations in the period since the last review meeting and any issues arising. The Harbour Operator shall ensure that such report is available for circulation with the agenda referred to in Clause 14.3.

## 15. PERFORMANCE MONITORING

- 15.1. The Harbour Operator shall be responsible for monitoring its performance of the Harbour Operations during the Service Period, in the manner and at the frequencies set out in the OSMS. The Harbour Operator shall provide the CMAL Representative with relevant particulars of any aspects of its performance which fail to meet the requirements of this Agreement (unless otherwise notified in writing by CMAL). CMAL may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the monitoring procedures (including without limitation carrying out sample checks).
- 15.2. CMAL may at any time take any steps to audit, inspect or monitor any part of the provision or performance by the Harbour Operator of the Harbour Operations to the extent that it considers necessary to ensure the satisfactory performance of the Harbour Operator's obligations under this Agreement. No such review or inspection shall relieve the Harbour Operator from any liability or obligation under this Agreement.
- 15.3. If at any time during the Service Period the Harbour Operator:
- 15.3.1. fails to attend a Review Meeting;
  - 15.3.2. fails to report against or meet the KPI reporting standards to be agreed between the parties;
  - 15.3.3. fails to comply with the requirements of the OSMS;
  - 15.3.4. fails to address issues identified in an audit review and subsequently notified to the Harbour Operator;
  - 15.3.5. fails to comply with its obligations under this Agreement;

CMAL may serve a written notice (a "**Warning Notice**") on the Harbour Operator setting out the matter giving rise to such notice provided always that CMAL shall not be entitled to serve either (a) more than one Warning Notice in any Payment Month or (b) a Warning Notice in respect of the same event/breach in any 2 consecutive Payment Months or (c) a Warning Notice where any such failure by the Harbour Operator arises as a result of a breach by CMAL of its obligations under this Agreement. Any such notice shall state on its face that it is a "Warning Notice". A Warning Notice served pursuant to this Clause 15.3 shall remain valid for 12 months.

- 15.4. Following receipt of a Warning Notice pursuant to Clause 15.3, the Harbour Operator shall submit to CMAL a proposal for rectification of the matter which was the subject of the Warning Notice ("**Warning Notice Rectification Proposal**"). If a Warning Notice Rectification Proposal is not received by CMAL within 10 Business Days following service of the Warning Notice or if the Harbour Operator fails to implement the Warning Notice Rectification Proposal in accordance with its terms, CMAL may serve another Warning Notice on the Harbour Operator.

- 15.5. If within any 12-month period the Harbour Operator is served with three Warning Notices, CMAL shall be entitled to make a retention of 25% from the Harbour Operating Fee. Such retention shall continue until the Harbour Operator has rectified the matters which were the subject of the Warning Notices pursuant to the Warning Notice Rectification Proposals.
- 15.6. Without prejudice to CMAL's rights under Clause 18 (*Events of Default*), if within any 12-month period the Harbour Operator is served with three Warning Notices, CMAL may terminate this Agreement by serving on the Harbour Operator a written termination notice and this Agreement will terminate with immediate effect following receipt by the Harbour Operator of such termination notice.

## 16. INDEMNITIES

- 16.1. The Harbour Operator shall indemnify CMAL (and shall keep CMAL fully indemnified) from and against all direct costs, liabilities, losses, expenses (including legal expenses), accidents, claims, demands, injury and damages (including legal fees properly incurred) which CMAL or any CMAL Party may sustain or incur arising out of or in connection with:

- 16.1.1. any claim against CMAL made by a third party as a result of any act or omission of the Harbour Operator;
- 16.1.2. any claim for, or in respect of, death or personal injury by any employee of, or person engaged by the Harbour Operator;
- 16.1.3. any claim for, or in respect of, death or personal injury of any third party arising out of, or in the course of, the performance of the Harbour Operator's obligations under this Agreement, save to the extent caused (or contributed to) by any breach of any express provision of this Agreement by CMAL or deliberate act or omission of CMAL;
- 16.1.4. any loss of or damage to property arising by reason of any act of the Harbour Operator, save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by CMAL or any deliberate act or omission of CMAL;
- 16.1.5. any breach of statutory duty to the extent caused by any act or omission by the Harbour Operator in breach of its obligations under this Agreement; and
- 16.1.6. any liability under Environmental Law save in respect of liability for any Pre-existing Contamination Notices.
- 16.1.7. any liability arising through any act or omission of the Harbour Operator, including breach or failure by the Harbour Operator in the performance of any of its obligations under this Agreement, which results in CMAL breaching or failing in any of its functions, duties and responsibilities as harbour authority.

provided that the Harbour Operator will not be liable for any act or omission of CMAL, and will not indemnify CMAL in respect of any claim which arises out of any act or omission of CMAL, except to the extent that such act or omission arises out of and is a necessary consequence of CMAL's compliance with an express instruction from the Harbour Operator.

## 16.2. CMAL Indemnity

CMAL shall indemnify the Harbour Operator (and shall keep the Harbour Operator fully indemnified) from and against all direct costs, liabilities, losses, expenses (including legal expenses), accidents, claims, demands, injury and damages (including legal fees properly incurred) which the Harbour Operator may sustain or incur arising out of or in connection with:

- 16.2.1. any claim against the Harbour Operator made by a third party as a result of any act or omission of CMAL;
- 16.2.2. any claim for, or in respect of, death or personal injury by any employee of, or person engaged by CMAL;
- 16.2.3. any claim for, or in respect of, death or personal injury of any third party arising out of, or in the course of, the performance of CMAL's obligations under this Agreement, save to the extent caused (or contributed to) by any breach of any express provision of this Agreement by the Harbour Operator or any deliberate act or omission of the Harbour Operator;
- 16.2.4. any loss of or damage to property arising by reason of any act of CMAL, save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by the Harbour Operator or any deliberate act or omission of the Harbour Operator; and
- 16.2.5. any Pre-existing Contamination Notices,

provided that CMAL will not be liable for any act or omission of the Harbour Operator, and will not indemnify the Harbour Operator in respect of any claim which arises out of any act or omission of the Harbour Operator, where the Harbour Operator is acting as CMAL's agent under the terms of this Agreement except to the extent that such act or omission arises out of and is a necessary consequence of the Harbour Operator's compliance with an express instruction from CMAL.

### 16.3. **Limit of Liability**

- 16.3.1. Save as provided by this Clause 16.3.1 or in respect of any claim under Clauses 16.1 and 16.2 neither CMAL nor any of its officers, employees, agents or sub-contractors shall be liable to the Harbour Operator for loss arising from any breach of this Agreement other than for loss directly resulting from a Wilful Breach and which at the date of the last execution of this Agreement was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach.
- 16.3.2. Neither Party's liability to the other for any death or personal injury caused by the negligence of that Party, its employees, agents or sub-contractors shall be limited in any way.
- 16.3.3. Neither Party's liability to the other for fraud or fraudulent misrepresentation of that Party, its employees, or agents, shall be limited in any way.
- 16.3.4. Neither Party nor any of its officers, employees, agents or sub-contractors shall in any circumstances whatsoever be liable to the other for:
  - 16.3.4.1. any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
  - 16.3.4.2. any indirect or consequential loss.
- 16.3.5. CMAL's liability under or in connection with this Agreement shall be limited to the Liability Cap, The calculation of CMAL's liability shall exclude any amount paid to the Harbour Operator under the CMAL Insurances, or any liability that would have been covered by the CMAL Insurances if CMAL had complied with its obligations under this agreement.
- 16.3.6. The calculation of the Harbour Operator's liability shall exclude any amount paid to CMAL under the Harbour Operator Insurances, or any liability that would have been

covered by the Harbour Operator Insurances if the Harbour Operator had complied with its obligations under this Agreement.

16.3.7. Each of the sub-clauses of this Clause 16.3 shall:

16.3.7.1. be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

16.3.7.2. survive termination of this Agreement.

16.3.8. The Parties hereby acknowledges and agrees that each party holds the benefit of this Clause 16.3 for itself and as trustee and agent for its officers, employees, agents and sub-contractors.

16.3.9. Each Party hereby acknowledges and agrees that the provisions of this Clause 16.3 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of the last execution of this Agreement.

16.3.10. For the avoidance of doubt, nothing in this Clause 16.3 shall prevent or restrict either Party enforcing any obligation (including suing for a debt or claiming under the indemnities set out in Clauses 16.1 and 16.2) owed to it under or pursuant to this Agreement.

#### 16.4. **Claims Procedure**

16.4.1. This Clause shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement, of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "**Indemnified**" and the Party giving the indemnity is referred to as the "**Indemnifier**". Accordingly:

16.4.2. If the Indemnified receives a notice or demand or other document concerning any claim from which it appears that the Indemnified is or may become entitled to indemnification under a provision of this Agreement, the Indemnified shall notify the Indemnifier in writing as soon as reasonably practicable.

16.4.3. Where it appears that the Indemnified is or may become entitled to indemnification from the Indemnifier, the Indemnifier shall (subject to confirming in writing that it will agree to indemnify the Indemnified and providing the Indemnified with such security in respect of the costs thereby involved as the Indemnified may reasonably require) be entitled to take over the conduct of the claim and having done so to defend, dispute, compromise or appeal the claim.

16.4.4. If the Indemnifier takes over the conduct of the claim then the Indemnified will give the Indemnifier all reasonable co-operation, access and assistance in considering and dealing with the claim. The Indemnifier shall keep the Indemnified fully informed and consult with it about the conduct of the claim.

16.4.5. The Indemnified shall not pay or settle any claim without the prior consent of the Indemnifier except as permitted by Clause 16.4.6 below.

16.4.6. The Indemnified shall be free to pay or settle any claim on such terms as it may think fit and without prejudice to any of its rights and remedies under this Agreement in the event that the Indemnifier fails to notify the Indemnified of its intention to dispute the claim within ten (10) Business Days of receiving the notice from the Indemnified in terms



of Clause 16.4.2, if the Indemnifier fails to comply with the terms of Clause 16.4.4 or if the Indemnified believes the dispute is having a material adverse impact on its business.

16.4.7. Both the Indemnifier and the Indemnified shall, in the event of taking any of the steps envisaged by this Clause 16, comply with the requirements of any insurer who has an obligation in respect of any liability arising under this Agreement only to the extent that such requirements are contained in the policies of insurance.

## 17. INSURANCE

- 17.1. CMAL shall take out and maintain throughout the Service Period the insurances detailed in Section A of Part 3 of the Schedule (*Insurance*) (the “**CMAL Insurances**”)
- 17.2. Subject to Clause 17.4 the Harbour Operator shall take out and maintain throughout the Service Period the insurances detailed in Section B of Part 4 of the Schedule (*Insurance*) (the “**Harbour Operator Insurances**”).
- 17.3. In addition to the Harbour Operator Insurances the Harbour Operator shall take out and maintain in force throughout the Service Period all of such other insurances as may be required by Law.
- 17.4. CMAL may request amendments to the Harbour Operator Insurances to be effective from the beginning of any Service Year by giving the Harbour Operator notice of the amendments no later than four months prior to the beginning of that Service Year. The Harbour Operator shall implement any request of CMAL for an amendment to the Harbour Operator Insurances unless the amendment will result in the relevant Harbour Operator Insurance not being available in the worldwide market.

### Insurance Obligations

- 17.5. Neither Party shall take nor fail to take any reasonable action or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any of the insurance policies effected in terms of this Agreement. Each Party shall assist and co-operate with the other Party in relation to bringing claims under such insurance policies.
- 17.6. Neither Party shall knowingly do or permit to be done anything which may result in any policy or policies of insurance effected in terms of this Agreement being restricted or becoming void or voidable in whole or in part.
- 17.7. The Harbour Operator shall provide CMAL with copies of all insurances from time to time effected in terms of this Agreement. The Harbour Operator shall, within five (5) Business Days of any request to do so by CMAL, supply proof that all relevant premiums for the then current insurance period have been paid, and that the relevant policies remain in force and that CMAL is named as co-insured on such policies or its interest is endorsed thereon.
- 17.8. The supply to CMAL of any certificate of insurance or other evidence of compliance with this Clause 17 shall not imply acceptance by CMAL that the extent or level of insurance cover is sufficient or, in respect of any proposed variation of the requirements, shall not imply acceptance by CMAL of such variation.
- 17.9. If the Harbour Operator fails to take out or maintain any of the insurances required by this Clause 17 CMAL may, without prejudice to any of its other rights under this Agreement or otherwise, effect such insurances itself and recover the premiums (and reasonable administrative and other expenses incurred in connection with effecting such insurances) from the Harbour Operator as a debt due.

- 17.10. The Harbour Operator shall give CMAL notification as soon as reasonably practicable of any circumstances which may give rise to any claim estimated at the time of notification to be in excess of £20,000 under any of the Harbour Operator Insurances effected in terms of this Agreement accompanied by full details of the incident giving rise to such claim. The Harbour Operator shall give CMAL a quarterly report detailing all claims under the insurance policies expected in terms of this Agreement including full details of the incidents giving rise to such claim.
- 17.11. As soon as the Harbour Operator becomes aware of any incident resulting in damage to or destruction of Harbour Facilities which in its reasonable opinion is likely to give rise to a claim under any physical damage policy, it shall as soon as is reasonably practicable and in any event within five Business Days give written notice to CMAL thereof.

## 18. EVENTS OF DEFAULT

- 18.1. For the purpose of this Agreement Event of Default means any of the following events or circumstances:
- 18.1.1. the Harbour Operator commits a breach of any of its obligations under this Agreement which materially and adversely affects the delivery of the Harbour Operations;
- 18.1.2. the Harbour Operator has not commenced the Harbour Operations by the date one week after the Commencement Date;
- 18.1.3. the Harbour Operator commits a breach of any of its obligations under this Agreement which in relation to Harbour Facilities causes CMAL to be in breach of its functions, duties or responsibilities as harbour authority;
- 18.1.4. the Harbour Operator commits a breach of any of its obligations under this Agreement which in relation to Harbour Facilities, materially and adversely affects the CHFS Operator's ability to deliver the CHFS Services;
- 18.1.5. the Harbour Operator fails to make payment to CMAL of any amount of money which equates to or exceeds an amount equivalent to one month's Harbour Operating Fee in a single payment or exceeds one month's Harbour Operating Fee in aggregate in either case within five (5) Business Days of the date such payment(s) become due in terms of this Agreement;
- 18.1.6. the Harbour Operator ceases to carry on the whole of its business or disposes of all of its assets (other than in the terms of Clause 34 (*Assignment, Novation and Sub-Contracting*) of this Agreement);
- 18.1.7. the Harbour Operator:
- 18.1.7.1. becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986; or
  - 18.1.7.2. is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 save that for the purposes of this Agreement the minimum amount referred to in section 123(1) shall be £50,000; or
  - 18.1.7.3. has a receiver, administrator or administrative receiver appointed over all or any material part of its undertakings, assets or income; or
  - 18.1.7.4. has a petition presented to any court for its winding up or for an administration order; or

- 18.1.7.5. has passed a resolution for its winding-up; or
- 18.1.7.6. is the subject of any process or event similar or analogous to the events in Clauses 18.1.7.1 to 18.1.7.5 in any jurisdiction outside Scotland;
- 18.1.8. the Harbour Operator commits a breach of any of (a) Clause 17 (*Insurance*) in relation to an insurance in respect of which CMAL has an insurable interest, or (b) Clause 16 (*Indemnities*);
- 18.1.9. the Harbour Operator is served with three Warning Notices pursuant to Clause 15(*Performance Monitoring*);
- 18.1.10. in relation to Harbour Facilities the Harbour Operator abandons the Harbour Operations;
- 18.1.11. the Harbour Operator knowingly or deliberately gives any fraudulent written information to CMAL or giving any other written information to CMAL which read as a whole is incorrect or misleading, in a material respect;
- 18.1.12. there is a Change in Control of the Harbour Operator after the date of this agreement except in circumstance where its holding company is listed on the London Stock Exchange and the Change in Control occurs as a result of a public offer (unless CMAL have given their prior written consent, which must not be unreasonably withheld or delayed if there is no Event of Default then subsisting or
- 18.1.13. termination of the PSC for default by the CHFS Operator.

#### **Termination**

- 18.2. Where an Event of Default under Clauses 18.1.6, 18.1.7, 18.1.8, 18.1.9, and/or 18.1.11 has occurred or any Event of Default has occurred which CMAL consider, acting reasonably, cannot be rectified, then CMAL may, after giving notice in writing to the Harbour Operator specifying the nature of the Event of Default which has occurred, terminate this agreement.
- 18.3. Where an Event of Default other than those specified in Clause 18.2 has occurred CMAL may give notice in writing to the Harbour Operator specifying the nature of that Event of Default that has occurred (a "**Rectification Notice**").
- 18.4. Following the service of a Rectification Notice in accordance with clause 20.3, the Harbour Operator may submit a comprehensive Rectification Plan setting out how it intends to remedy the Event of Default in respect of which the Rectification Notice has been served to CMAL within 10 Business Days of the date of such notice (or such longer period as CMAL may agree in its absolute discretion) (the "**Harbour Operator's Rectification Plan**"). CMAL shall consider such Rectification Plan and determine, at CMAL's absolute discretion, within 10 Business Days of receipt whether the Rectification Plan is acceptable. If CMAL accepts the Rectification Plan, the Rectification Notice shall no longer be effective and no further Rectification Plan will be served by CMAL in respect of the relevant Event of Default, provided that the Harbour Operator complies in full with the terms of the Rectification Plan as accepted by CMAL. Any failure by the Harbour Operator to comply with the terms of such Rectification Plan shall entitle CMAL to terminate the agreement immediately on written notice to the Harbour Operator and there shall be no obligation on CMAL to consider any further Rectification Plan.
- 18.5. If:

18.5.1. CMAL:

18.5.1.1. acting reasonably does not approve the Rectification Plan and, on the ground that the Rectification Plan will not remedy the Event of Default, rejects the proposal for rectification; and

18.5.1.2. having given the Harbour Operator a further period of 15 Business Days (or such longer period as is agreed by CMAL) to prepare alternative proposals, has not received any acceptable alternative proposals; or

18.5.2. without prejudice to Clause 18.4, the Rectification Plan is approved but the Harbour Operator fails to implement it in accordance with its terms,

CMAL may terminate this Agreement by serving on the Harbour Operator a written termination notice and this Agreement will terminate with immediate effect following receipt by the Harbour Operator of such termination notice.

18.6. If CMAL does not approve the Harbour Operator's Rectification Plan or alternative proposals, in each case within a period of 20 Business Days following receipt thereof from the Harbour Operator, the Harbour Operator's Rectification Plan or alternative proposals shall be deemed to have been rejected.

**Step-In**

18.7. If CMAL reasonably believes that it needs to take action in connection with the Harbour Operations:

18.7.1. because of a failure by the Harbour Operator to perform any of its obligations under this Agreement (irrespective of whether or not a Rectification Notice has been served on the Harbour Operator in respect of such failure);

18.7.2. because a serious risk exists to the health or safety of persons or property or to the environment;

18.7.3. to discharge a statutory duty; and/or

18.7.4. to remedy of a failure for which a Rectification Notice was served within the period specified in the Harbour Operator Rectification Plan,

then CMAL shall be entitled to take action in accordance with Clauses 18.8 to 18.11

18.8. If Clause 20.9 applies and CMAL wishes to take action, CMAL shall notify the Harbour Operator in writing of the following:

18.8.1. the action it wishes to take;

18.8.2. the reason for such action;

18.8.3. the date it wishes to commence such action;

18.8.4. the time period which it believes will be necessary for such action; and

18.8.5. to the extent practicable, the effect on the Harbour Operator and its obligation to provide the Harbour Operations during the period such action is being taken.

18.9. Following service of such notice, CMAL shall take such action as notified under Clause 18.8 and any consequential additional action as it reasonably believes is necessary (together, the

“**Required Action**”) and the Harbour Operator shall give all reasonable assistance to CMAL while it is taking the Required Action. To the extent that CMAL performs any of the obligations of the Harbour Operator hereunder or undertakes tasks that would otherwise be undertaken by the Harbour Operator pursuant to this Agreement, CMAL shall perform such obligations or undertake such tasks to the same standard as would be required of the Harbour Operator hereunder.

18.10. If the Harbour Operator is not in breach of its obligations under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Harbour Operator from providing any part of the Harbour Operations:

18.10.1. the Harbour Operator shall be relieved from its obligations to provide such part of the Harbour Operations; and

18.10.2. in respect of the period in which CMAL is taking the Required Action and provided that the Harbour Operator provides CMAL with reasonable assistance (such assistance to be at the expense of CMAL to the extent that additional costs are incurred), the Harbour Operating Fee due from CMAL to the Harbour Operator shall equal the amount the Harbour Operator would receive if it were satisfying all its obligations and providing the Harbour Operations affected by the Required Action in full over that period.

18.11. If the Required Action is taken as a result of a breach of the obligations of the Harbour Operator under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Harbour Operator from providing any part of the Harbour Operations:

18.11.1. the Harbour Operator shall be relieved of its obligations to provide such part of the Harbour Operations; and

18.11.2. in respect of the period in which CMAL is taking the Required Action, the Harbour Operating Fee due from CMAL to the Harbour Operator shall equal the amount the Harbour Operator would receive if it were satisfying all its obligations and providing the Harbour Operations affected by the Required Action in full over that period, less an amount equal to all CMAL's costs of operation in taking the Required Action.

## 19. CHANGES

### CMAL Change

19.1. Where CMAL require a Change, CMAL must serve a Notice of Change on the Harbour Operator.

19.2. A Notice of Change shall:

19.2.1. set out the proposed Change in sufficient detail to enable the Harbour Operator to calculate and provide an estimate of the impact on the Harbour Operating Fee as a result of the Change;

19.2.2. require the Harbour Operator to provide CMAL with an estimate of the impact on the Harbour Operating Fee within 15 Business Days of receipt of the Notice of Change; and

19.2.3. set out any changes which CMAL believe are required to the terms of this Agreement to give effect to the proposed Change.

19.3. As soon as reasonably practicable, and in any event within 20 Business Days after receiving the Notice of Change, the Harbour Operator shall deliver to CMAL the estimated impact on

Harbour Operations and the Harbour Operating Fee (the “**Estimate**”). This estimate shall include:

- 19.3.1. whether relief from compliance with any of its obligations under this Agreement is required during or as a result of the implementation of the proposed Change;
  - 19.3.2. any impact on the performance of the Harbour Operations;
  - 19.3.3. confirmation of the changes to the terms of this Agreement proposed by CMAL and any further changes to the terms of this Agreement required to give effect to the proposed Change;
  - 19.3.4. any increase or decrease in any sums due to be paid to the Harbour Operator under this Agreement that result as a direct consequence of the implementation of the Change.
- 19.4. Where the parties cannot agree the matter set out in clause 19.3, either party may refer the Estimate to determination in accordance with the Dispute Resolution Procedure.
- 19.5. When the Estimate is agreed between the parties, CMAL shall issues a notice confirming the programme for the implementation of the Change which shall comply with the OSMS and the agreed Estimate.

#### **Harbour Operator Change**

- 19.6. If the Harbour Operator becomes aware of the need for a variation to this Agreement the Harbour Operator shall notify CMAL of the reason for such variation and make proposals for the proposed variation in writing. CMAL shall consider the proposed variation and may, at its absolute discretion, decide to accept or reject the proposal (unless the Change relates to a Change in Law.)
- 19.7. If CMAL determines to proceed with the variation proposed by the Harbour Operator, CMAL shall serve a Notice of Change on the Harbour Operator and the parties shall adhere to the process set out in clauses 19.2 to 19.5, provided that:
- 19.7.1. CMAL may require that there be a reduction in the Harbour Operating Fee if such Change will result in lower costs for the Harbour Operator; or
  - 19.7.2. where there is an anticipated increase to the costs to the Harbour Operator resulting from any change requested by the Harbour Operator, there shall be no variation to the Harbour Operating Fee unless otherwise agreed in writing between the Parties.

#### **Change in Law**

- 19.8. If a Change in Law occurs or is to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:
- 19.8.1. any necessary change to Harbour Operations;
  - 19.8.2. whether any changes are required to the terms of this Agreement to deal with the Change in Law; or
  - 19.8.3. whether any relief from compliance with any obligations under this Agreement is required as a result of the Change in Law;
  - 19.8.4. any increase or decrease in any sums due to be paid to the Harbour Operator under this Agreement that result as a direct consequence of the implementation of the Change.

in each case providing full details of the procedure for implementing the Change in Law.

- 19.9. As soon as reasonably practicable, following receipt of a notice pursuant to clause 19.8, the Parties shall discuss and agree the issues referred to in clause 19.8 and the way in which the Harbour Operator can mitigate the effect of the Change in Law. The Harbour Operator shall:
- 19.9.1. provide evidence to CMAL that it has used and shall continue to use all reasonable endeavours to minimise any increase in costs and maximise any reduction in costs;
- 19.9.2. demonstrate how the effects of the Change in Law will be mitigated;
- 19.9.3. demonstrate that the relevant changes will be implemented in the most cost effective manner.
- 19.10. As soon as reasonably practicable after the matters referred to in clause 19.9 are agreed between the Parties or determined pursuant to the Dispute Resolution Procedure, CMAL shall give a Notice of Change stating that any effect of the Change in Law on the cost to the Harbour Operator of performing its obligations under this Agreement shall be borne by CMAL as if the Change had been requested by CMAL.

## **20. DISPUTE RESOLUTION PROCEDURE**

- 20.1. If any dispute arises out of or in connection with this Agreement, the CMAL Representative and the Harbour Operator Representative shall meet in a good faith effort to resolve the dispute. The meeting will take place as soon as is reasonably practicable and in any event within twenty days following a written request from one Party to the other. Unless otherwise agreed, the meeting will take place at CMAL's offices.
- 20.2. If following the meeting between the CMAL Representative and the Harbour Operator Representative the dispute has not been resolved, then a director or directors of CMAL and the Harbour Operator, with authority to settle, will meet in a good faith effort to resolve the matter at issue. The meeting will take place as soon as is reasonably practicable, and in any event within twenty days following a written request by one Party to the other. The meeting will take place, unless otherwise agreed, at CMAL's offices.
- 20.3. If following the steps required by Clauses 20.1 and 20.2 the dispute has not been resolved, either party may require the dispute to be referred to arbitration. The arbitrator appointed shall be an individual with appropriate skill and experience having regard to the nature of the dispute.
- 20.4. The Arbitration Scotland Act 2010 will govern any such arbitration.
- 20.5. If the Parties fail to agree who should be appointed as arbitrator within twenty days following the intimation by one Party to the other that it requires an arbitration, the arbitrator shall be appointed by Chairman of the Chartered Institute of Arbitrators.
- 20.6. CMAL may serve a notice of termination if, following conclusion of a Dispute Resolution Process, the Harbour Operator fails within such period as shall have been agreed or determined through the Dispute Resolution Process to implement any agreement or determination which is the outcome of the Dispute Resolution Process and has required action by the Harbour Operator.

## **21. TUPE REGULATIONS ON COMMENCEMENT OF OPERATIONS**

- 21.1. **CMAL and the Harbour Operator agree that:**

- 21.1.1. the commencement of the provision of the Harbour Operations or of any relevant part of the Harbour Operations will be a Relevant Transfer in relation to the Transferring Former Operator Employees; and
- 21.1.2. as a result of the operation of the TUPE Regulations, the contracts of employment between each Former Operator and the Transferring Former Operator Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the TUPE Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Harbour Operator contractor and each such Transferring Former Operator Employee.
- 21.2. Subject to paragraph 21.3, the Harbour Operator shall indemnify CMAL and/or the Former Operator and shall keep CMAL and/or the Former Operator indemnified against any each and every action, proceeding, cost, claim, liability (including, without limitation, any taxation), expense (including, without limitation, reasonable legal fees) or demand in respect of any Transferring Former Operator Employee (or, where applicable any employee representative as defined in the TUPE Regulations) arising from or as a result of:
- 21.2.1. any act or omission by the Harbour Operator or any of its sub-contractors whether occurring before, on or after the Relevant Transfer Date;
- 21.2.2. the breach or non-observance by the Harbour Operator or any of its sub-contractors on or after the Relevant Transfer Date of:
- 21.2.2.1. any collective agreement applicable to the Transferring Former Operator Employee; and/or
- 21.2.2.2. any custom or practice in respect of any Transferring Former Operator Employees which the Harbour Operator or any of its sub-contractors is contractually bound to honour;
- 21.2.3. any claim by any trade union or other body or person representing any Transferring Former Operator Employees arising from or connected with any failure by the Harbour Operator or any of its sub-contractors to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 21.2.4. any proposal by the Harbour Operator or any of its sub-contractors prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Operator Employees to their material detriment on or after their transfer to the Harbour Operator or any of its sub-contractors (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Operator Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the TUPE Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 21.2.5. any statement communicated to or action undertaken by the Harbour Operator or any of its sub-contractors to, or in respect of, any Transferring Former Operator Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with CMAL and/or the Former Operator in writing;
- 21.2.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- 21.2.6.1. in relation to any Transferring Former Operator Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and



- 21.2.6.2. in relation to any employee who is not a Transferring Former Operator Employee, and in respect of whom it is later alleged or determined that the TUPE Regulations applied so as to transfer his/her employment from the Former Operator to the Harbour Operator or any of its sub-contractors, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 21.2.7. a failure of the Harbour Operator or any of its sub-contractors to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Operator Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 21.2.8. any claim made by or in respect of a Transferring Former Operator Employee or any appropriate employee representative (as defined in the TUPE Regulations) of any Transferring Former Operator Employee relating to any act or omission of the Harbour Operator or any of its sub-contractors in relation to obligations under regulation 13 of the TUPE Regulations, except to the extent that the liability arises from the Former Operator's failure to comply with its obligations under regulation 13 of the TUPE Regulations.
- 21.3. The indemnities in paragraph 21.2 shall not apply to the extent that the action, proceeding, cost, claim, liability (including, without limitation, any taxation), expense (including, without limitation, reasonable legal fees) or demand arise or are attributable to an act or omission of the Former Operator whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any action, proceeding, cost, claim, liability (including, without limitation, any taxation), expense (including, without limitation, reasonable legal fees) or demand arising from the Former Operator's failure to comply with its obligations under the TUPE Regulations.
- 21.4. The Harbour Operator shall comply, and shall procure that each of its sub-contractors shall comply, with all its obligations under the TUPE Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the TUPE Regulations) and shall perform and discharge, and shall procure that each of its sub-contractors shall perform and discharge, all its obligations in respect of all the Transferring Former Operator Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which fall to be paid by the Harbour Operator by operation of the TUPE Regulations
- 21.5. The Harbour Operator shall, and shall procure that each of its sub-contractors shall, promptly provide to CMAL and/or at CMAL's direction, the Former Operator, in writing such information as is necessary to enable CMAL and/or the Former Operator to carry out their respective duties under regulation 13 of the TUPE Regulations.

## **22. TUPE REGULATIONS ON EXPIRY OR TERMINATION**

- 22.1. Each of CMAL and the Harbour Operator accept that on the expiry or termination of this Agreement (howsoever arising) if CMAL or the New Harbour Operator operate a service equivalent to the Harbour Operations or any part thereof (the "**Operations Transfer**"), the Operations Transfer shall be governed by the TUPE Regulations and the following provisions shall apply in connection therewith:
- 22.1.1. the contract of employment of each of the Harbour Operator's employees referred to in the Harbour Operators Provisional Staff List and/or the Harbour Operators Final Staff List ("**Relevant Employees**") (save insofar as such contract relates to any occupational pension scheme) shall be transferred to CMAL or the New Harbour Operator with effect from the date of expiry or termination of this Agreement ("**Transfer Date**") which shall be the time of transfer under the TUPE Regulations

and CMAL or the New Harbour Operator shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;

- 22.1.2. the Harbour Operator shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify CMAL or the New Harbour Operator and keep CMAL or the New Harbour Operator indemnified against each and every action, proceeding, liability (including, without limitation, any taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Harbour Operator's failure so to discharge;
- 22.1.3. the Harbour Operator shall indemnify CMAL or the New Harbour Operator and keep CMAL or the New Harbour Operator indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Harbour Operator or any other event or occurrence prior to the Transfer Date and which CMAL or the New Harbour Operator may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the TUPE Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- 24.1.3.1 the Harbour Operator's rights, powers, duties and/or liabilities (including, without limitation, any taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to CMAL or the New Harbour Operator in accordance with the TUPE Regulations; or
- 24.1.3.2 anything done or omitted before the Transfer Date by or in relation to the Harbour Operator in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the TUPE Regulations to have been done or omitted by or in relation to CMAL or the New Harbour Operator.
- 22.1.4. if any contract of employment or collective agreement which is neither disclosed in writing to CMAL or the New Harbour Operator by the Harbour Operator prior to the Transfer Date nor made available to CMAL prior to the Transfer Date shall have effect as if originally made between CMAL or the New Harbour Operator and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the TUPE Regulations (without prejudice to any other right or remedy which may be available to CMAL or the New Harbour Operator):
- 22.1.4.1. CMAL or the New Harbour Operator may, upon becoming aware of the application of the TUPE Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
- 22.1.4.2. the Harbour Operator shall indemnify CMAL or the New Harbour Operator against each and every action, proceeding, cost, claim, liability (including, without limitation, any taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse CMAL or the New Harbour Operator for all costs and expenses (including, without

limitation, any taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and

22.1.4.3. the Harbour Operator shall indemnify CMAL or the New Harbour Operator in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Harbour Operator has indemnified CMAL or the New Harbour Operator in respect of a Relevant Employee pursuant to the terms of clauses 22.1.2 and 22.1.3; and

22.1.4.4. the Harbour Operator shall indemnify CMAL or the New Harbour Operator and keep CMAL or the New Harbour Operator indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal and the cost of any redundancy payment) by CMAL or the Harbour Operator of any employee (not being a Relevant Employee) and which CMAL or the New Harbour Operator may incur pursuant to the provisions of the TUPE Regulations.

## 22.2.

22.2.1. the Harbour Operator agrees that, subject to compliance with Data Protection Legislation:

22.2.1.1. within 20 days of the earliest of:

22.2.1.1.1. receipt of a notification from CMAL of an Operations Transfer or intended Operations Transfer;

22.2.1.1.2. receipt of the giving of notice of early termination of this agreement or any part thereof; or

22.2.1.1.3. the date which is 12 months before the expiry of the Service Period or any renewal term,

and, in any event, on receipt of a written request of CMAL at any time, it shall provide the Harbour Operator's Provisional Staff List and the Staffing Information to CMAL or, at the direction of CMAL, to the New Harbour Operator and it shall provide an updated Harbour Operator's Provisional Staff List and Staffing Information when reasonably requested by CMAL or the New Harbour Operator;

22.2.1.2. at least 28 days before the date of any Operations Transfer, the Harbour Operator shall prepare and provide to CMAL and/or, at the direction of CMAL, to the New Harbour Operator, the Harbour Operator's Final Staff List, which shall be complete and accurate in all material respects. The Harbour Operator's Final Staff List shall identify which of the Harbour Operator's Personnel named are Transferring Employees;

22.2.1.3. CMAL shall be permitted to use and disclose the Harbour Operator's Provisional Staff List, the Harbour Operator's Final Staff List and the Staffing Information for informing any tenderer or other prospective New Harbour Operator for any services which are substantially the same type of services (or any part thereof) as the Harbour Operations; and

- 22.2.1.4. on reasonable request by CMAL the Harbour Operator shall provide CMAL or at the request of CMAL, the New Harbour Operator, with access (on reasonable notice and during normal working hours) to such of the Harbour Operator's employment records (and provide copies) as CMAL reasonably requests;
- 22.2.2. the Harbour Operator warrants that the Harbour Operator's Provisional Staff List, the Harbour Operator's Final Staff List and the Staffing Information will be true and accurate in all material respects;
- 22.2.3. from the date of the earliest event referred to in Clause 22.2.1.1, the Harbour Operator agrees that it shall not without the prior written consent of CMAL, assign any person to the provision of the Harbour Operations(or the relevant part) which is the subject of an Operations Transfer who is not listed in the Harbour Operator's Provisional Staff List and shall not without the prior written consent of CMAL (such consent not to be unreasonably withheld or delayed):
- 22.2.3.1. increase the total number of employees listed on the Harbour Operator's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with CMAL;
- 22.2.3.2. make, propose or permit any changes to the terms and conditions of employment, including the cost of employing, any employees listed on the Harbour Operator's Provisional Staff List;
- 22.2.3.3. increase the proportion of working time spent on the Harbour Operations (or the relevant part) by any of the Harbour Operator's Personnel save for fulfilling assignments and projects previously scheduled and agreed with CMAL;
- 22.2.3.4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Harbour Operator's Provisional Staff List; and
- 22.2.3.5. replace any of the Harbour Operator's Personnel listed on the Harbour Operator's Provisional Staff List or deploy any other person to perform the Harbour Operations(or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Harbour Operator's Provisional Staff List;
- 22.2.3.6. the Harbour Operator will promptly notify CMAL or, at the direction of CMAL, the New Harbour Operator of any notice to terminate employment received from any persons listed on the Harbour Operator's Provisional Staff List, or the Harbour Operator's Final Staff List, regardless of when such notice takes effect.

## 23. TRANSITION

During the final Service Year or upon receipt by the Harbour Operator of a written termination notice issued by CMAL in accordance with this Agreement, the Harbour Operator shall co-operate fully with CMAL and any person who is to become responsible for the Harbour Operations or any part of the Harbour Operations ("**New Harbour Operator**") to achieve the transfer of responsibility for the Harbour Operations or any part of the Harbour Operations to the New Harbour Operator. For the purposes of this Clause 23, such co-operation shall include:

- 23.1. Liaising with CMAL and/or the New Harbour Operator, and providing reasonable and timely assistance and advice concerning the Harbour Operations and their transfer to the New Harbour Operator;
- 23.2. Allowing CMAL and/or the New Harbour Operator access (at reasonable times and on reasonable notice) to the Harbour Facilities but not so as to interfere with or impede the provisions of the Harbour Operations;
- 23.3. Providing to CMAL and/or the New Harbour Operator all and any information concerning Harbour Operations which is required for the efficient transfer of responsibility for the performance of the Harbour Operations;
- 23.4. Using all reasonable endeavours to facilitate the smooth transfer of the Harbour Operations and taking no action at any time during the Service Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult or could reasonably be expected to prejudice or frustrate or make more difficult such transfer; and
- 23.5. Taking all reasonable steps and co-operating fully with CMAL and the New Harbour Operator so that any transfer of the Harbour Operations is achieved with the maximum continuity of and minimum of disruption to the performance of the Harbour Operations and so as to prevent or mitigate any inconvenience or risk to health and safety of the employees of CMAL of the New Harbour Operator, third party users of the Harbour Facilities and members of the public,

and the Harbour Operator shall continue to provide such co-operation with CMAL and the New Harbour Operator as CMAL and/or the New Harbour Operator may require for a period of six (6) months after the expiry of the Service Period or the earlier termination of this Agreement.

## **24. INTELLECTUAL PROPERTY**

- 24.1. To the extent that it may lawfully and is free and able to do so and subject to any third party rights (a) the Harbour Operator shall make all Project Data available to CMAL free of charge and (b) hereby irrevocably licences CMAL to use the same. The Harbour Operator shall use reasonable endeavours to ensure that it obtains all necessary licences, permissions and consents to ensure that it can make such Project Data available to CMAL. In this Clause "use" shall not be limited and shall include use by CMAL for any business purpose, and disclosure by CMAL to such third parties as it considers require access to the Project Data and the right to amend or modify such Project Data and the term "licence to use" shall be construed accordingly.
- 24.2. Forthwith on the expiry or termination of this Agreement, the Harbour Operator will to the extent that it may lawfully and is free and able to do so and subject to any third party rights assign to CMAL, absolutely and free from all charges, encumbrances and liens, all rights in and to the Project Data that are owned by and vested in it and will deliver the Project Data to CMAL or as CMAL may direct provided that where any Project Data is kept otherwise in legible form then the Harbour Operator shall deliver the relevant electronic stored data, computer files, magnetic media files or micro files in common and readable form to CMAL as CMAL may direct. If any such rights are owned by or vested in third parties, the Harbour Operator shall use its reasonable endeavours to procure that the third parties assign all such rights to CMAL.
- 24.3. The Harbour Operator undertakes at the request and expense of CMAL to execute any further documents and to do all things that CMAL may require in order to implement the provisions of Clause 24.2 above.

## **25. CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION**

### **Confidentiality**

- 25.1. Subject to Clause 25.2, the Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees, agents and sub-contractors from making any disclosure to any person of any matters relating to this Agreement.

### **Permitted Disclosure**

- 25.2. Clause 25.1 shall not apply to:
- 25.2.1. any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Agreement for the performance of such obligations;
  - 25.2.2. any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of breach of this Clause;
  - 25.2.3. any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
  - 25.2.4. any disclosure which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
  - 25.2.5. any disclosure of information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;
  - 25.2.6. any provision of information to the parties' own professional advisers or insurance advisers;
  - 25.2.7. any disclosure of information by CMAL to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to CMAL for any purpose related to or ancillary to this Agreement;
  - 25.2.8. any disclosure for the purpose of:
    - 25.2.8.1. the examination and certification of the CMAL's or the Harbour Operator's accounts;
    - 25.2.8.2. complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
    - 25.2.8.3. subject always to the procedures set out in Clause 25.6 to 25.11 either Party responding to a request for information in compliance with its obligations under FOISA or EIR and the Parties acknowledge that no term of this Agreement, whether express or implied, shall preclude a Party from disclosing, in accordance with FOISA or EIR and any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to this Agreement unless such information is exempt from disclosure in accordance with the exemptions set out in FOISA or exceptions set out in EIR.
- 25.3. Where disclosure is permitted under this Clause 25 the disclosing Party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

25.4. Neither Party shall make use of this Agreement or any information issued or provided by or on behalf of the other Party in connection with this Agreement otherwise than for the purposes of and in accordance with this Agreement, except with the written consent of the other.

25.5. On or before the Expiry Date the Harbour Operator shall ensure that all documents and computer records in its possession, custody or control which contain information relating to the Harbour Operations are delivered up to CMAL.

#### **Freedom of Information**

25.6. Where CMAL receives a request for information which is covered by FOISA or EIR and which relates to any Commercially Sensitive Information of the Harbour Operator (the “**Requested Information**”) the Parties shall comply with the procedure set out in Clauses 25.6 to 25.11.

25.7. Subject to Clause 25.9 CMAL shall, before making any disclosure of the Requested Information and as soon as reasonably practicable after receiving FOISA or EIR request, notify the Harbour Operator of the receipt of such request and of the nature and extent of the Requested Information.

25.8. Following notification under Clause 25.7 the Harbour Operator may make representations in writing to CMAL as to the basis on which the Requested Information is covered by an exemption in FOISA or an exception in EIR and should not, therefore, be disclosed, including, where relevant, any representations as to the balance of the public interests in disclosure and non-disclosure. Such representations must be provided to CMAL no later than five (5) Business Days following the notification under Clause 25.7.

25.9. CMAL shall reasonably consider any representations and recommendations made by the Harbour Operator under Clause 25.8 before reaching a decision on whether it must and will disclose the Requested Information. However, the Parties acknowledge that in all cases it is for CMAL (having full regard to any guidance or briefings issued by the Scottish Information Commissioner or the Scottish Ministers) to determine whether it is obliged to disclose the Requested Information under FOISA or EIR, including where the public interest lies in relation to disclosure.

25.10. If CMAL makes a decision to disclose the Requested Information, it shall notify the Harbour Operator of this decision not less than three (3) Business Days in advance of the disclosure being made.

25.11. The Harbour Operator shall to the extent that it is reasonably practicable for it to do so, cooperate, facilitate, support and assist CMAL to comply with FOISA or EIR and any codes of practice applicable from time to time relating to access to public authorities’ information.

#### **Data Protection**

25.12. In relation to all Personal Data, each Party shall at all times comply with DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under DPA covering the data processing to be performed in connection with the Harbour Operations or this Agreement.

25.13. The Parties and any sub-contractor shall only undertake processing of Personal Data in so far as reasonably required in connection with the Harbour Operations or this Agreement and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

25.14. Neither Party shall disclose Personal Data to any third parties other than:

25.14.1. to employees and sub-contractors to whom such disclosure is reasonably necessary in order for that Party to comply with its obligations under this Agreement; or

25.14.2.to the extent required under a court order,

25.14.3.provided that disclosure under Clause 25.14.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in Clause 25.12 to 25.16 and that the relevant party shall give notice in writing to the other Party of any disclosure of Personal Data.

25.15. Each Party shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data.

25.16. Each Party may, at reasonable intervals, request a written description of the technical and organisational measures referred to in Clause 25.15 employed by the other Party and/or the sub-contractors. Within 30 days of such a request, the relevant Party shall supply or procure the supply of written particulars of all such measures detailed to a reasonable level such that the requesting Party can determine whether or not, in connection with the Personal Data, it is compliant with DPA.

## **26. WAIVER**

The failure by either Party to exercise, or the delay by either Party in exercising, any right, power, privilege or remedy provided by this Agreement or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

## **27. SEVERABILITY**

If any provision of this Agreement shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or other authority whose decisions shall be binding on either of the Parties, the same shall be deemed to be severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

## **28. RELATIONSHIP**

Save as expressly set out herein, nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between CMAL and the Harbour Operator or the relationship of principal and agent between CMAL and the Harbour Operator and neither Party shall have any authority to act on behalf of or otherwise to legally bind the other in any way.

## **29. ENTIRE AGREEMENT**

This Agreement and any documents referred to herein represent the entire understanding, and constitute the entire agreement between CMAL and the Harbour Operator in relation to the subject matter of the Agreement and supersede all prior proposals, representations, agreements and negotiations relating thereto between the Parties or their respective advisers.

## **30. VARIATION**

No addition to or modification of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of CMAL and a duly authorised representative of the Harbour Operator in the form set out at Part 13 of the Schedule.



### 31. NOTICES

31.1. Any notice to be given by one Party to the other under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post, courier or fax to that other Party as follows:

31.1.1. if to CMAL, to:

Director of Harbours  
Caledonian Maritime Assets Limited  
Municipal Building  
Fore Street  
Port Glasgow  
Renfrewshire  
PA14 5EQ

(Tel 01475 749 920)  
(Email: Operations@cmassets.co.uk)

31.1.2. if to the Harbour Operator, to:

[ ]

(Tel [ ])  
(Email: [ ])

or to any such other persons, addresses or e-mail addresses as may from time to time be notified in writing by one Party to the other.

31.2. Unless otherwise stated in this Agreement, a notice, request or other communication sent in accordance with this Clause 31 shall be deemed received:

31.2.1. if delivered personally, when left at the address referred to above;

31.2.2. if sent by post, two (2) Business Days after the date of posting;

### 32. ASSIGNATION, NOVATION AND SUB-CONTRACTING

32.1. The Harbour Operator shall not assign its interest, rights or obligations under or in terms of this Agreement, in whole or in part.

32.2. The Harbour Operator shall not sub-contract, sub-licence, delegate or otherwise grant or impose to or on any other party the Harbour Operations in whole

32.3. The Harbour Operator shall not sub-contract, sub-licence, delegate or otherwise grant or impose to or on any other party the Harbour Operations in part without the prior written consent of CMAL.

32.4. CMAL may assign its interest, rights or obligations under or in terms of this Agreement, in whole or in part to any statutory successor.

### 33. THIRD PARTY RIGHTS

Save as expressly set out herein, it is declared that no rights shall be conferred under and arising out of this Agreement upon any person other than the parties hereto and, without prejudice to the generality of the foregoing, there shall not be created by this Agreement a jus quaesitum tertio in favour of any person whatsoever.

**34. SURVIVAL**

The provisions of Clause 1 (*Definitions*), Clause 2 (*Harbour Operator's Enquiries*), Clause 16 (*Indemnities*), Clause 17 (*Insurance*), Clause 20 (*Dispute Resolution Procedure*), Clause 22 (*TUPE Regulations on Expiry or Termination*), Clause 23 (*Transition*), Clause 24 (*Intellectual Property*), Clause 25 (*Confidentiality, Freedom of Information and Data Protection*), Clause 33 (*Third Party Rights*), Clause 34 (*Survival*), Clause 35 (*Governing Law and Jurisdiction*), and any other obligation on either party to indemnify the other shall survive the termination of this Agreement and continue in full force and effect along with any other Clauses or Schedule Parts necessary to give effect to them.

**35. GOVERNING LAW AND JURISDICTION**

35.1. This Agreement is governed by, and shall be construed in accordance with, the law of Scotland and, subject to Clause 20, the Parties prorogate the non-exclusive jurisdiction of the Scottish Courts.

35.2. Each Party agrees that without preventing any other mode of service, any document in an action (including any writ or summons or other originating process or any third party notice) may be served on either Party by being delivered to or left for that Party at its address for service of notices under Clause 31.1 and each Party undertakes to maintain such an address at all times in Scotland and to notify the other Party in advance of any change from time to time of the details of such address in the manner prescribed in Clause 31.

IN WITNESS WHEREOF this Agreement comprising this and the preceding [ ] pages together with the Schedule, is executed by the parties as follows:-

**SUBSCRIBED** for and on behalf of the  
**CALEDONIAN MARITIME ASSETS LIMITED**

at \_\_\_\_\_ on \_\_\_\_\_ 2016 by:

Director \_\_\_\_\_

Full Name \_\_\_\_\_

Witness Signature \_\_\_\_\_

Witness Full Name \_\_\_\_\_

Witness Address \_\_\_\_\_

**SUBSCRIBED** for and on behalf of [ ]

at \_\_\_\_\_ on \_\_\_\_\_ 2016 by:

Director \_\_\_\_\_

Full Name \_\_\_\_\_

Witness Signature \_\_\_\_\_

Witness Full Name \_\_\_\_\_

Clyde and Hebrides Ferry Services Contract for Provision of Ferry Services and Harbour Operating Agreement	ITT Documents Volume 4: Harbour operating Agreement
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Witness Address

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This is the Schedule referred to in the foregoing Agreement between Caledonian Maritime Assets Limited and [ ]

**SCHEDULE PART 1A**

**THE HARBOURS**

	<b>Port</b>	<b>Facility</b>	<b>PAS</b>	<b>Passenger waiting facilities as identified on the plans</b>	<b>Harbour operations accommodation</b>	<b>Manned/ Unmanned</b>	<b>Existing Third Party Vessel activity</b>
1.	Gourock	Linkspan	N	Y	Y	M	Y
2.	Oban	Linkspan (2)	Y (2)	Y	Y	M	Y
3.	Wemyss Bay (WB)	Linkspan	Y	Y	Y	M	N
4.	Brodick	Linkspan	Y	Y	Y	M	Y
5.	Tarbert (H)	Linkspan	N	Y	Y	M	Y
6.	Lochboisdale	Linkspan	N	Y	Y	M	Y
7.	Castlebay	Linkspan	N	Y	Y	M	Y
8.	Kennacraig	Linkspan	N	Y	Y	M	Y
9.	Port Ellen	Linkspan	N	Y	Y	M	Y
10.	Armadale	Linkspan	Y	Y	Y	M	Y
11.	Coll	Linkspan	N	Y	Y	M	Y
12.	Tiree	Linkspan	N	Y	Y	M	Y
13.	Colonsay	Linkspan	N	Y	Y	M	Y
14.	Colintraive	Slipway	N	N	Y	M	N
15.	Tobermory	Slipway (with pier)	N	N	Y	M	Y
16.	Largs	Slipway (with pier)	N	Y	Y	M	Y
17.	Lochaline	Slipway	N	N	Y	U	N
18.	Kilchoan	Slipway (with pier)	N	N	N	U	Y
19.	Rhubodach	Slipway	N	N	N	U	N
20.	Cumbrae	Slipway	N	N	N	U	N

	<b>Port</b>	<b>Facility</b>	<b>PAS</b>	<b>Passenger waiting facilities as identified on the plans</b>	<b>Harbour operations accommodation</b>	<b>Manned/ Unmanned</b>	<b>Existing Third Party Vessel activity</b>
21.	Fishnish	Slipway	N	Y	N	U	N
22.	Claonaig	Slipway	N	N	N	U	N
23.	Portavadie	Slipway	N	Y	N	U	N
24.	Lochranza	Slipway (with pier)	N	Y	Y	U	Y

**SCHEDULE PART 1B**

**HARBOUR BUILDINGS**



Schedule Part 1B -  
Harbour Buildings.pdf

## **SCHEDULE PART 1C**

### **HARBOUR PLANS**



Schedule Part 1C -  
Harbour Plans.pdf



**SCHEDULE PART 2**  
**SCOPE OF OPERATIONS**

## 1. Definitions

**“Accident”** means an accident as defined by regulation 3 of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012/1743;

**“Aids to Navigation”** mean all of CMAL’s navigation lights, navigation buoys and navigation beacons;

**“Chief Inspector of Marine Accidents”** means the Chief Inspector of Marine Accidents as appointed by the Secretary of State under section 267(1) of the Merchant Shipping Act 1995;

**“Control of Noise at Work Regulations 2005”** means the Control of Noise at Work Regulations 2005;

**“International Maritime Dangerous Goods Code”** means the Code published by the International Maritime Organisation which is in force, from time to time;

**“Dangerous Substance”** has the meaning given to that term in the International Maritime Dangerous Goods Code;

**“Designated Person”** has the meaning given to that term in the Port Marine Safety Code and for the purposes of this agreement is the CMAL Harbour Master

**“Electrical Equipment”** has the meaning given to that term in the Electricity at Work Regulations 1989;

**“Electrical Systems”** means an electrical system in which all the electrical equipment is, or may be, electrically connected to a common source of electrical energy, and includes such source and such equipment

**“Fittings”** means moveable items of property which are neither land nor permanently attached to land or buildings, either directly or vicariously through attachment to real property.

**“General Principles of Prevention”** means the general principles of prevention set out at Schedule 1 of the Management of Health and Safety at Work Regulations 1999;

**“Harbour Authority”** has the meaning given to that term under the Harbours Act 1964;

**“Harbour Directions”** means a Direction made by a Harbour Authority pursuant to section 40A to 40D of the Harbours Act 1964;

**“Notices to Mariners”** means any notice to Mariners published by the United Kingdom Hydrographic Office;

**“MARPOL”** means the International Convention for the Prevention of Pollution from Ships;

**“OPRC”** means the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998;

**“Oil Spill Contingency Plan”** means an oil spill contingency plan prepared in compliance with regulation 4 of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998;

**“PUWER”** means the Health and Safety Executive’s Guide to Providing and Using Work Equipment Safety as updated and amended from time to time;

**“Risk Assessment”** means a risk assessment carried out in accordance with Regulation 3 of the Management of Health and Safety at Work Regulations 1999 and in accordance with the Manual Handling Operations Regulations 1992;

**“Safety of Small Work Boats and Pilot Boats Code of Practice”** means the Safety of Small Work Boats and Pilot Boats Code of Practice published in June 2014, and as amended or replaced from time to time;

**“Shipboard Oil Pollution Emergency Plan”** means an approved plan implemented in compliance with Regulation 37 of MARPOL;

**“Tier 1 Response”** means the contingency plans put in place by the Harbour Operator in relation to an oil spill at the Harbour Facilities;

**“Vessels”** means every description of vessel however propelled or moved, and includes anything (whether in, on, under or supported by a cushion of air over water) constructed or used to carry persons or Goods by water and a seaplane on or in the water, and will include floating production storage and offloading vessels.

**“Waste Management Plan”** means a waste Management Plan prepared by a Harbour Operator in accordance with the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003/1809;

**“Water Byelaws”** means the Water Supply (Water Fitting)(Scotland) Byelaws 2014;

**“Work Equipment”** has the meaning given to that term in the Provision and Use of Work Equipment Regulations 1998;

## **2. DISCHARGING STATUTORY DUTIES**

### **2.1. Port Safety**

#### **2.1.1. Port Marine Safety Code**

The Harbour Operator shall:

- cooperate fully with CMAL to implement communication procedures and protocols to ensure the effective and efficient operation and functioning of the Harbour Facilities in compliance with the PMSC;
- allow access to appropriate documentation and locations to all the Designated Person to undertake audits as required by the Port Marine Safety Code
- comply with all Laws in force from time to time;
- Ensure all risks are formally risk assessed and any risks identified are mitigated as much as reasonably practicable accordance with Good Industry Practice;
- implement an effective OSMS following consultation with CMAL and any relevant stakeholders;
- appoint Key Personnel to oversee Harbour Operations, including Key Personnel who are responsible for the safety of navigation at each of the Harbour Facilities;
- on a regular basis, monitor, review and audit the Harbour Operator OSMS in accordance with clause 13 of this Agreement; and
- publish a safety plan for each of the Harbour Facilities showing how the PMSC will be implemented, how the Harbour Operator’s performance shall be assessed against the safety plan, and an annual report shall be published on the Harbour Operator’s compliance with the PMSC .

#### **2.1.2. Public marine activities in Harbour Areas**

The Harbour Operator shall:

- facilitate access to the Harbour Facilities for members of the public;
- ensure Harbour Operations are carried out in accordance with the OSMS and PMSC; and
- support commercial activities carried out at the Harbour Facilities through the safe and efficient provision of Harbour Operations and, the effective regulation of shipping within the Harbour Facilities.

### **2.2. Conservancy**

#### **2.2.1. Aids to Navigation**

The Harbour Operator shall:

- supervise the Aids to Navigation on a daily basis to ensure they are fully operational.
- The Harbour Operator shall ensure that all Aids to Navigation are inspected regularly to ensure they are in good repair and condition.

### **2.2.2. Tidal information**

The Harbour Operator shall ensure that relevant tidal information is displayed and available to harbour users at each of the Harbour Facilities at all times including, where relevant, on the Harbour Operator's website for each of the Harbour Facilities.

### **2.2.3. Notice to Mariners**

The Harbour Operator shall ensure that all active Notices to Mariners are displayed and available to harbour users at each of the Harbour Facilities at all times including, where relevant, on the Harbour Operator's website for each of the Harbour Facilities.

### **2.2.4. Authority to mark or remove wrecks or floating timber**

The Harbour Operator shall remove any fixed or floating obstructions from the Harbour Facilities. Where an obstruction cannot be immediately removed, the Harbour Operator shall ensure the obstruction is clearly marked and a safe approach to the Harbour Facilities is identified for all users of the Harbour Facilities.

### **2.2.5. Quays and Docks emergency works**

Where there is an Emergency at the Harbour Facilities, the Harbour Operator shall follow the procedure set out at clause 8 of this Agreement.

## **2.3. Dangerous Substances in Harbours**

### **2.3.1. Statutory plans**

Where a Dangerous Substance enters the Harbour Facilities, the Harbour Operator shall comply with the terms of the Dangerous Substances in Harbour Areas Regulations 1987 and the International Maritime Dangerous Goods Code in respect of the Dangerous Substances.

The Harbour Operator shall ensure that the Health and Safety Plan contains appropriate provisions to deal with an Emergency involving any Dangerous Substance to ensure that all users of the Harbour Facilities and Harbour Operator Personnel are protected.

### **2.3.2. Appoint an Explosives Security Officer.**

The Harbour Operator shall appoint Key Personnel to maintain full and accurate records of any Dangerous Substances which are present at the Harbour Facilities for a period of at least 5 years after the Dangerous Substance leaves the Harbour Facilities.

## **2.4. Berthing and Mooring**

The Harbour Operator shall control the access and movement of all Vessels in and around the Harbour Facilities, including the timing and approach of each Vessel.

The Harbour Operator shall ensure all Vessels use appropriate berths or moorings within the Harbour Area, and that each Vessel approaches and leaves the Harbour Facilities in a safe manner, following any directions of the Harbour Operator.

## **2.5. Port Waste Management**

The Harbour Operator shall assess the need for a Waste Management Plan at each of the Harbour Facilities and develop and implement each Waste Management Plan in accordance with the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003/1809.

## **2.6. Accident reporting and investigation**

Where there is an Accident which must be reported to the Chief Inspector of Marine Accidents, the Harbour Operator shall ensure that the Accident is reported as soon as reasonably practicable and by the quickest means available.

The Harbour Operator shall ensure that the OSMS contains clear guidelines on the requirements of accident and incident investigations and the level of detail required. The Harbour Operator shall ensure that any accident and incident investigations are carried out by the Key Personnel responsible for safety within the Harbour Facilities.

## **2.7. Maritime Security Measures**

The Harbour Operator shall:

- ensure that the Harbour Facilities are safe and secure for any Harbour Operator Personnel and third party users;
- take all measures reasonably practicable to prevent any acts by any person which do not comply with the Law;
- maintain the security of the Harbour Facilities and Harbour Equipment; and
- ensure that the OSMS has appropriate procedures in place to ensure the safety and security measures are implemented.

## **2.8. Harbour Dues**

The Harbour Operator shall collect Harbour Dues from all third party users of the Harbour Facilities, save where the third party user has a direct charging agreement with CMAL.

## **2.9. Oil Pollution**

The Harbour Operator shall:

- prepare and maintain an Oil Spill Contingency Plan for each of the Harbour Facilities to which the OPRC apply;
- provide an appropriate Tier 1 Response;
- ensure that where it observes or is made aware of any event involving a discharge of or possible discharge of oil or the presence of oil in the sea, the Harbour Operator shall report the event to HM Coastguard without delay;
- undertake all checks necessary to ensure every oil tanker over 150 gross tonnes and every ship over 400 gross tonnes carries a Shipboard Oil Pollution Emergency Plan on board the vessel.

### **3. HARBOUR OPERATIONS**

#### **3.1. Port Safety and Security**

The Harbour Operator shall ensure it complies with Merchant Shipping Notice 1831 on behalf of CMAL, and shall provide all information necessary to the Maritime and Coastguard Agency as soon as reasonably practicable and by the quickest means available.

#### **3.2. General Directions**

Where recommended by the PMSC, the Harbour Operator shall assist CMAL, as Harbour Authority, to make an application to the Scottish Ministers to allow CMAL to make Harbour Directions;

#### **3.3. Management of Health and Safety**

##### **3.3.1. Workboats**

The Harbour Operator shall carry out inspections to ensure that all Small Work Boats and Pilot Boats used within the Harbour Facilities are fit for purpose and comply with the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998 and the associated Safety of Small Work Boats and Pilot Boats Code of Practice.

The Harbour Operator may also impose additional criteria including minimum manning and competency standards, geographical constraints, or restrictions to the use of a Vessel commensurate with that Vessel's size and capabilities.

The Harbour Operator shall keep formal records of the outcome of all inspections in relation to this paragraph 2.3.1.

##### **3.3.2. Traffic Management**

As far as reasonably practicable, the Harbour Operator shall manage all traffic within the Harbour Facilities, including:

- ensuring that pedestrians and vehicles are segregated as a fundamental safety principle of the operation of all passenger carrying Vessels; and
- ensuring all operations involving Vessels are planned and carried out in accordance of the OSMS.

##### **3.3.3. General Health Issues**

The Harbour Operator shall comply with all obligations set out in the Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998, as amended from time to time.

### **3.3.4. Dangerous substances**

The Harbour Operator shall comply with all requirements of the Control of Major Accident Hazards Regulations 2015 where applicable to the Harbour Facilities.

## **3.4. Routine Maintenance**

3.4.1. The Harbour Operator shall carry out the following maintenance activities:

- Routine inspections and greasing of linkspans and passenger access system, to be carried out in accordance with the OSMS;
- Cleaning gutters and drains, and keeping the Harbour Buildings clear and clean;
- Sanding and gritting the Harbour Facilities in winter, where appropriate;
- Maintaining, repairing and replacing all equipment owned by the Harbour Operator;
- Routine inspection and maintenance of all Fittings to the Harbour Buildings; and
- Cleaning the slipways and pier decks, including the associated pier furniture, ladders, and steps.
- Keep the harbour area in proper, neat and tidy order and condition, free of litter and weeds to the reasonable satisfaction of CMAL

3.4.2. The Harbour Operator shall replace all consumables which relate to the Harbour Operations.

3.4.3. The Harbour Operator shall carry out inspections in accordance with the CMAL Online Reporting Maintenance Management System.

## **4. HEALTH AND SAFETY**

### **4.1. Construction**

Where the Harbour Operator is overseeing construction work at any of the Harbour Facilities, the Harbour Operator shall:

- ensure the work complies with the Construction (Design and Management) Regulations 2015.
- apply the General Principles of Prevention to manage any risks;
- appoint suitably qualified personnel and contractors to carry out the construction work as required;
- ensure all Harbour Operator Personnel and contractors comply with the Health and Safety Plan and have received adequate instruction, training and supervision.
- ensure Key Personnel cooperate and communicate to ensure the work proceeds efficiently; and
- engage and consult with Harbour Operator Personnel to promote and develop effective measures to secure health, safety and welfare.

### **4.2. Diving**

The Harbour Operator shall:

- Ensure all commercial diving activity is undertaken in compliance with the Diving at Work Regulations 1997, as superseded or amended from time to time;

- ensure information is displayed and available to harbour users at each of the Harbour Facilities in relation to diving at the Harbour Facilities..

### **4.3. Fire**

The Harbour Operator shall:

- comply with all relevant requirements set out in the Fire (Scotland) Act 2005 and Fire Safety (Scotland) Regulations 2006; and
- put in place procedures to ensure the safety of all Harbour Operator Personnel and any third party users of the Harbour Facilities, in the event of fire.

### **4.4. First Aid**

The Harbour Operator shall ensure that adequate and appropriate equipment and facilities are available to enable first-aid to be rendered to Harbour Operator Personnel and third party users of the Harbour Facilities if they are injured or become ill at work, in compliance with the Health and Safety (First Aid) Regulations 1981, as amended from time to time.

### **4.5. General Health Issues**

#### **4.5.1. Manual handling**

The Harbour Operator shall carry out the required Risk Assessments.

#### **4.5.2. Noise**

The Harbour Operator shall:

- assess Harbour Facilities and the activities carried out within those Harbour Facilities to identify if the Control of Noise at Work Regulations 2005 apply to Harbour Operator Personnel and to implement the requirements set out in those Regulations.
- comply with the requirements of the Health and Safety at Work etc Act 1974 in relation to all third party users of the Harbour Facilities.

#### **4.5.3. Display Screen Equipment**

The Harbour Operator shall comply with the requirements of the Health and Safety (Display Screen Equipment) Regulations 1992.

#### **4.5.4. Vibration**

The Harbour Operator shall comply with the provisions of the Control of Vibration at Work Regulations 2005.

### **4.6. Hazardous Substances**

#### **4.6.1. Water supply and testing**

The Harbour Operator shall:



- ensure that there are appropriate measures in place for the supply and testing of water to protect the health and safety of Harbour Operator Personnel and third party users of the Harbour Facilities; and
- ensure that the plumbing systems and water fittings meet the requirements of Water Byelaws.

#### **4.6.2. Asbestos**

The Harbour Operator shall comply with the requirements of the Control of Asbestos Regulations 2012 in relation to the Harbour Facilities.

#### **4.6.3. Hazardous Substances (Including biological)**

The Harbour Operator shall comply with the requirements of the Control Of Substances Hazardous to Health Regulations 2002.

#### **4.6.4. Lead**

The Harbour Operator shall comply with the requirements of the Control of Lead at Work Regulations 2002.

#### **4.6.5. Radiation**

The Harbour Operator shall comply with the requirements of the Ionising Radiation Regulations 1999.

### **4.7. Machinery & Equipment**

#### **4.7.1. Electricity**

The Harbour Operator shall ensure that Electrical Systems within the Harbour Facilities are adequately maintained in compliance with the Electricity at Work Regulations 1989.

#### **4.7.2. Lifting**

The Harbour Operator shall ensure that any operations carried out by Harbour Operator Personnel involving lifting operations and lifting equipment meet the requirements of the Lifting Operations and Lifting Equipment Regulations 1998.

#### **4.7.3. Work equipment**

The Harbour Operator shall ensure that any Work Equipment complies with the requirements of the Provision and Use of Work Equipment Regulations 1998.

### **4.8. Appliances**

#### **4.8.1. Portable Appliance Testing**

The Harbour Operator shall ensure that portable Electrical Equipment within the Harbour Facilities comply with the provisions of the Electricity at Work Regulations 1989.

## **4.9. Management of Health & Safety**

### **4.9.1. Insurance**

For the duration of this Agreement, the Harbour Operator shall ensure that they take out and maintain with a reputable insurance company the Harbour Operator Insurances.

### **4.9.2. Risk assessments**

The Harbour Operator shall carry out the required Risk Assessments.

### **4.9.3. Recording and Reporting of Accidents**

The Harbour Operator shall put in place a system to record and report incident in compliance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.

### **4.9.4. Work equipment**

The Harbour Operator shall ensure that all equipment, including any plant and machinery, vehicle, aircraft and clothing, is selected carefully and inspected through its life in accordance with PUWER.

### **4.9.5. Occupier's Liability - visitors**

The Harbour Operator shall take all measures reasonably required to ensure the health and safety of the Harbour Operator Personnel and third party users of the Harbour Facilities.

### **4.9.6. Working Time**

The Harbour Operator shall comply with the requirements of the Working Time Regulations 1998.

### **4.9.7. Consultation with employees**

The Harbour Operator shall comply with:

- the Safety Representatives and Safety Committees Regulations 1977; and
- the Health and Safety (Consultation with Employees) Regulations 1996.

### **4.9.8. Confined Spaces**

The Harbour Operator shall comply with the provisions of the Confined Spaces Regulations 1997.

### **4.9.9. Protective Equipment**

Where necessary, the Harbour Operator shall ensure that it complies with the provisions of the Personal Protective Equipment at Work Regulations 1992.

#### **4.10. Work environment**

##### **4.10.1. Premises**

The Harbour Operator shall ensure that the Harbour Facilities comply with the requirements of the Workplace (Health, Safety and Welfare) Regulations 1992.

##### **4.10.2. Permit to Work System**

The Harbour Operator shall implement a Permit to Work systems to control work may adversely impact the safety of Harbour Operator Personnel, Harbour Equipment or the Environment.

##### **4.10.3. Signage**

The Harbour Operator shall ensure:

- that there is adequate signage at the Harbour Facilities to highlight any hazards and controls to the Harbour Operator Personnel and any third party users.
- that the number of signs are appropriate to ensure there is no danger of confusion or of important information being overlooked by Harbour Operator Personnel or third party users.

## SCHEDULE PART 3 DIVISION OF RESPONSIBILITIES

### Summary

This document details the division of harbour operation responsibilities between Caledonian Maritime Assets Ltd, as statutory harbour authority, non-statutory asset owner or lessee (as applicable) and the contracted Harbour Operator to achieve the aim of providing and operating safe and efficient harbours.

Harbour authorities have a duty to take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate it may do so without danger to their lives or property. This includes an obligation to conserve, and promote the safe use of, the harbour; and a duty of care to prevent loss or injury caused by the authority's negligence.

Each harbour authority has an obligation to have regard to efficiency, economy and safety of operation as respects the services and facilities provided.

Most harbour authorities also have a duty to take such action that is necessary or desirable for the maintenance, operation, improvement or conservancy of their harbour.

The contracted Harbour Operator is delegated the powers of the CMAL Harbour Master and the duties, responsibilities and powers of CMAL as statutory harbour authority or non-statutory asset owner/lessee for each of the harbours, other than agreed exceptions and any other function which as a matter of law may not be delegated.

The Duty Holder is the CMAL board and the Designated Person is the CMAL Harbour Master.

Although harbour authorities have powers to appoint a harbour master, and to authorise pilots, and may properly entrust the operation of the harbour to such professional people, they cannot assign their accountability.

CMAL will therefore maintain strategic and operational oversight of the standard of performance by the Harbour Operator.

Where it is deemed necessary by operational circumstances, consistently poor performance standards or a significant failure to comply with legal requirements, CMAL retains the powers and the right to give strategic or operational instructions to the harbour operator to address significant failings in matters where CMAL is accountable.

The CMAL OSMS covers those responsibilities identified as CMAL and Both responsibilities;

The Harbour Operator OSMS covers those responsibilities as Harbour Operator.

For the purposes of the Port Marine Safety Code the SMS (OSMS) will be a combination of the CMAL OSMS and the Harbour Operator OSMS

## Harbour Operations

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Port Safety	Port Marine Safety Code	Various	<p>The Code establishes a measure by which harbour authorities can be held accountable for their legal powers and duties to run their harbours' in safety. It is intended that the Code applies to all harbour authorities, to the extent that they have duties and powers relating to marine safety.</p> <p>The Code establishes the principle of a national standard for every aspect of port marine safety and aims to enhance safety for those who use or work in ports, their ships, passengers and the environment.</p>	<p>As statutory harbour authority and non-SHA for other harbour locations, ensure all CMAL harbours are operated in compliance with the requirements of the PMSC.</p> <p>To operate CMAL harbours where the law allows, the powers of a Harbour Master may be delegated to other marine staff but such delegations must be clear, formal and must not obscure the accountability of the statutory harbour authority and its board members.</p>	<ol style="list-style-type: none"> <li>1. As statutory harbour authority and owner of other non-statutory assets, to comply with the PMSC across all harbour locations with the CMAL Board as Duty Holder</li> <li>2. Appoint a CMAL Harbour Master and Designated Person</li> <li>3. Appoint a Harbour Operator and delegate to them duties, responsibilities and powers of CMAL as statutory harbour authority or non-statutory asset owner as applicable for each of the harbours, other than agreed exceptions and any other function which as a matter of law may not be delegated</li> <li>4. Ensure that powers are discharged but not exceeded</li> <li>5. Ensure the CMAL Operational and Safety Management System and its procedures satisfy the requirements of the Port Marine Safety Code, reporting performance directly to the Board</li> <li>6. Ensure CMAL discharges its duties and powers to the standard laid down in the Port Marine Safety Code</li> <li>7. Provide strategic and operational oversight and direction as necessary on all aspects of the harbour operation</li> <li>8. Ensure that appropriate physical infrastructure and facilities are available to operate safe and efficient harbours</li> <li>9. Develop and maintain appropriate policies, plans and procedures and ensure that assessments and reviews are</li> </ol>	✓		

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
					<p>undertaken as required</p> <p>10. Seek and adopt appropriate powers for the effective enforcement of regulations</p> <p>11. Participate as a member of MCA District Marine Safety Committees</p>			
Port Safety	Port Marine Safety Code	Various	<p>The Port Marine Safety Code represents a code of practice for the ports industry and is intended to apply to all harbour authorities, to the extent that they have duties and powers relating to marine safety.</p> <p>It establishes a measure by which harbour authorities can be accountable for the legal powers and duties that they have in order to run their harbours safely.</p> <p>Its object is the widest possible adoption of good practice.</p> <p>The code embraces some fundamental principles.</p> <p>1. The promotion of nationally agreed standards.</p> <p>2. Recognising that best practice is built on experience and is therefore evolutionary.</p>	<p>1. Comply with the duties and powers under existing legislation as appropriate;</p> <p>2. Ensure all risks are formally assessed and as low as reasonably practicable in accordance with good practice;</p> <p>3. Operate an effective marine safety management system (SMS) which has been developed after consultation and uses formal risk assessment;</p> <p>4. Use competent people in positions of responsibility for safety of navigation;</p> <p>5. Monitor, review and audit the marine SMS on a regular basis;</p> <p>6. Publish a safety plan showing how the</p>	<p>1. Implement, monitor and review a marine safety management system</p> <p>2. Manage the safety of navigation for all port users based on a system of formal risk assessments, ensuring that risks are kept as low as reasonably practicable</p> <p>3. Comply with all legal duties and responsibilities for the regulation of vessel traffic and the safety of navigation</p> <p>4. Chair Harbour User Group meetings in line with the CMAL consultation matrix to establish consultation and create awareness and motivation of all port users with respect to safety and the protection of the environment.</p> <p>5. Maintain and promote the commercial use of the port, upholding and promoting the rights of Masters, ship owners and other shipping and marine interests to ply their respective trades</p> <p>6. Maintain access to port services.</p> <p>7. Maintain and promote the leisure use of the port, maintaining and protecting the rights of the public to access its waters for leisure use.</p>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
			3. Focus upon those risks affecting the safety of life, property and the environment.	standard in the Code will be met and a report assessing the performance against the plan;	8. Compile and maintain plans to cover emergency situations relating to the safety of life, property or the environment. 9. Maintain an appropriate oil spill response capability. 10. Exercise initial statutory duties in relation to wrecks. 11. Ensure that all harbour operations staff are trained to standards acceptable to CMAL (listed in CMAL OSMS) and have appropriate experience for their roles and duties. 12. Participate as a member of MCA District Marine Safety Committees			

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Port Safety	Port Marine Safety Code	Various	<p>The Port Marine Safety Code represents a code of practice for the ports industry and is intended to apply to all harbour authorities, to the extent that they have duties and powers relating to marine safety.</p> <p>It establishes a measure by which harbour authorities can be accountable for the legal powers and duties that they have in order to run their harbours safely.</p> <p>Its object is the widest possible adoption of good practice.</p> <p>The code embraces some fundamental principles.</p> <ol style="list-style-type: none"> <li>1. The promotion of nationally agreed standards.</li> <li>2. Recognising that best practice is built on experience and is therefore evolutionary.</li> <li>3. Focus upon those risks affecting the safety of life, property and the environment</li> </ol>	<ol style="list-style-type: none"> <li>1. Comply with the duties and powers under existing legislation as appropriate;</li> <li>2. Ensure all risks are formally assessed and as low as reasonably practicable in accordance with good practice;</li> <li>3. Operate an effective marine safety management system (SMS) which has been developed after consultation and uses formal risk assessment;</li> <li>4. Use competent people (i.e. trained, qualified and experienced) in positions of responsibility for safety of navigation;</li> <li>5. Monitor, review and audit the marine SMS on a regular basis;</li> <li>6. Publish a safety plan showing how the standard in the Code will be met and a report assessing the performance against the plan;</li> </ol>	<ol style="list-style-type: none"> <li>1. The Harbour Operator shall work in mutual cooperation with CMAL and implement communication procedures and protocols to ensure the effective and efficient operation and functioning of the harbours</li> <li>2. Other than with prior agreement with CMAL maintain records of vessels, passengers and cargos using the harbours, submitting a monthly summary to CMAL.</li> <li>3. Responsibility for management and recording of dangerous substances in harbour areas.</li> <li>4. Ensure that hazardous work is carried out in a way which minimises any danger and meets appropriate safety standards and performance criteria (including any statutory requirements).</li> <li>5. Ensure reports regarding unsafe acts, near misses, accidents and incidents are recorded. Verify that the necessary corrective actions have been implemented.</li> <li>6. Ensure Harbour Master's reports regarding navigational deficiencies, non-conformities, accidents and incidents are submitted timeously.</li> <li>7. Prepare a quarterly harbours safety summary report and attend quarterly safety meetings with the Harbour Master.</li> <li>8. Report infrastructure defects or damage as soon as practicable via the CMAL IT reporting system</li> <li>9. Report AtoN defects or damage via the CMAL IT reporting system in line with agreed timescales</li> <li>10. Submit infrastructure and AtoN checks as required via the CMAL IT reporting system</li> </ol>		✓	
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1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Port Safety	Recreational marine activities in Harbour Areas	PMSC	Ensure the safety of marine operations in CMAL harbour waters and approaches.	Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property.	<p>The following information (where applicable) is to be published and made available by CMAL to all Harbour users:</p> <ol style="list-style-type: none"> <li>1. Byelaws and general directions</li> <li>2. Notices to mariners</li> <li>3. Harbour guides/websites</li> <li>4. Details of the facilities available to visiting recreational users</li> <li>5. Maintain strategic and operational oversight, review and direction as necessary on activities of vessels within statutory harbour limits and approaches</li> </ol>	✓		
Port Safety	Recreational marine activities in Harbour Areas	PMSC	Ensure the safety of marine operations in CMAL harbour waters and approaches.	Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property.	<ol style="list-style-type: none"> <li>1. The following information (where applicable) is to be published and made available by the Harbour Operator to all Harbour users: <ul style="list-style-type: none"> <li>• Byelaws and general directions</li> <li>• Notices to mariners</li> </ul> </li> <li>2. Identify and risk assess any potential conflicts between both commercial and recreational users; and between different classes of recreational user</li> <li>3. Review relevant risk assessments at pre-determined periods or more frequently where necessary</li> <li>4. Manage recreational event planning.</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Conservancy	Aids to Navigation	Merchant Shipping Act 1995 Sec. 193	Harbour authorities have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks or obstructions effectively managed.	To deliver a reliable, efficient, and cost effective AtoN service for the benefit and safety of all mariners using CMAL harbours.  Any functions relating to the laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks, so far as those functions are exercisable for the purposes of the safety of navigation	<ol style="list-style-type: none"> <li>1. Oversee planning and implementation of a programme of maintenance of Navigational Aids in accordance with the availability criteria laid down by the Northern Lighthouse Board.</li> <li>2. Subject all AtoNs to annual review or following an incident/accident</li> <li>3. Supply information and periodic returns to NLB when required</li> <li>4. Obtain statutory sanctions</li> <li>5. Maintain an AtoN database</li> <li>6. Maintain a risk register</li> <li>7. Maintain an AtoN defect reporting system</li> </ol>	✓		
Conservancy	Aids to Navigation	Merchant Shipping Act 1995 Sec. 193	Harbour authorities have duties and powers as local lighthouse authorities. Aids to navigation must be provided (as necessary), properly maintained and any danger to navigation from wrecks or obstructions effectively managed.	Responsible for the daily supervision of all CMAL lights, buoys and beacons.  Subject all AtoNs to periodic review.	<ol style="list-style-type: none"> <li>1. Subject all AtoNs and associated risk assessments to annual review with harbour users or following an incident/accident</li> <li>2. Report AtoN defects within 24hrs of discovery/being informed, via the CMAL IT reporting system</li> <li>3. Report navigational hazards, i.e. something with the potential to cause harm, loss or injury, to CMAL within 24hrs of discovery/ being informed</li> <li>4. Assess the navigational hazard and take the necessary local action commensurate with level of risk</li> <li>5. Ensure VHF broadcasts of urgent local navigational warnings are promulgated as required</li> <li>6. Undertake monthly operation checks of on-shore and 6-monthly operation checks of offshore AtoNs and report results via the CMAL reporting system</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Conservancy	Hydrographic Surveys	PMSC Common Law	A harbour authority has a duty to conserve the harbour so that it is fit for use as a port, and a duty of reasonable care to see that the harbour is in a fit condition for a vessel to utilise it safely. They should provide users with adequate information about conditions in the harbour.	Areas of the harbours are considered and appropriate survey intervals established having regard to: <ul style="list-style-type: none"> <li>•Critical depths (if any)</li> <li>•Draught of traffic using the area</li> <li>•Stability of the seabed (i.e. historical trends)</li> </ul> Promulgate survey results to UKHO and relevant harbour users	<ol style="list-style-type: none"> <li>1. Maintenance of Navigational Channels</li> <li>2. Responsible for all hydrographic surveying and associated record keeping for harbour areas carried out to Special Order standard</li> <li>3. Frequency and methodology for hydrographic survey operations will be determined primarily by a risk assessment, rather than by the blanket adoption of a set of rigid criteria.</li> <li>4. Prepare and collate up to date information on channel data for UK Hydrographic Office</li> <li>5. Make current survey information available to the Harbour Operator and the scheduled ferry operator</li> <li>6. Liaise with Harbour Operator and UK Hydrographic Office to improve the relevancy and accuracy of harbour charted information</li> </ol>	✓		
Conservancy	Tidal information	PMSC Common Law	The operation and accuracy of tide gauges can be critical to safe navigation in the port	Establish and operate tide gauges and/or tide boards at major harbour areas. Promulgate information to Harbour Operator	<ol style="list-style-type: none"> <li>1. Establish, maintain and operate tide gauges and other relevant equipment.</li> <li>2. Promulgate information to the Harbour Operator and others as required</li> </ol>	✓		
Conservancy	Tidal information	PMSC Common Law	The operation and accuracy of tide gauges can be critical to safe navigation in the port	Promulgate information to local harbour users	<ol style="list-style-type: none"> <li>1. Maintain periodic checks on the accuracy of electronic tide gauges.</li> <li>2. Promulgate information to local harbour users as required</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Conservancy	Notice to Mariners	PMSC Common Law	Promulgate warnings to port users of changes to navigation aids, depths or other dangers to navigation	Promulgate information to harbour users	<ol style="list-style-type: none"> <li>1. Compile and issue NTMs directly to frequent harbour users, harbour operator and other statutory authorities</li> <li>2. Promulgate NTMs via the CMAL website</li> </ol>	✓		
Conservancy	Notice to Mariners	PMSC Common Law	Promulgate warnings to port users of changes to navigation aids, depths or other dangers to navigation	Promulgate active NTM information	<ol style="list-style-type: none"> <li>1. Within local harbour areas display pertinent NTMs which are active and other relevant safety information</li> </ol>		✓	
Conservancy	Authority to mark or remove wrecks or floating timber	Harbours, Docks and Piers Clauses Act 1847 Sec 56 Merchant Shipping Act 1995 Sec 252	Details the powers of harbour and conservancy agencies in relation to wrecks and floating timber	Remove or mark obstructions to the harbour, dock, or pier, or the approaches to the same.	<ol style="list-style-type: none"> <li>1. On being informed by the Harbour Operator that a wreck or other navigational obstruction that is beyond their capability to facilitate removal or marking, assume responsibility and undertake this task.</li> <li>2. Issue notice to mariners</li> <li>3. Liaise with the Harbour Operator and engage a competent contractor</li> </ol>	✓		
Conservancy	Authority to mark or remove wrecks or floating timber	Harbours, Docks and Piers Clauses Act 1847 Sec 56 Merchant Shipping Act 1995 Sec 252	Details the powers of harbour and conservancy agencies in relation to wrecks and floating timber	Remove or mark obstructions to the harbour, dock, or pier, or the approaches to the same.	<ol style="list-style-type: none"> <li>1. On discovering a wreck or other navigational obstruction the harbour operator will take immediate action to mark same and if reasonably practical to do so, remove same</li> <li>2. Ensure a warning is broadcast to mariners</li> <li>3. Inform the Harbour Master as soon as reasonably practicable and in any case within 24hrs of discovery of the obstruction</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Conservancy	Maintenance Dredging	PMSC Common Law Harbours Act 1964	Maintenance dredging is carried out as required for satisfactory underkeel clearance. <ul style="list-style-type: none"> <li>Any areas where depths are less than the designated minimum for the berth</li> <li>Any trends which indicate where depths are likely to become less than the designated minimum</li> </ul>	The requirement to dredge is governed by the safety of navigation. This will be informed through the analysis of hydrographic survey results and navigational incidents	<ol style="list-style-type: none"> <li>Analyse the results of hydrographic surveys to establish the need for maintenance dredging</li> <li>Undertake maintenance dredging as required</li> </ol>	✓		
Conservancy	Quays and Docks maintenance	PMSC Common Law Health and Safety at Work etc. Act 1974 Harbours Act 1964	Maintenance of the harbour berths and structures through periodic inspection of quays and berths. Periodic inspection will include the condition of any supporting structure. The frequency of inspection is subject to review on the basis of conditions found. Ensuring that premises are provided in a structurally safe and fit-for-purpose condition.	Planned and responsive maintenance and repair of harbour key infrastructure: <ul style="list-style-type: none"> <li>Quays, dolphins and other marine structures</li> <li>Port mooring equipment.</li> <li>Fendering.</li> <li>Link-spans</li> <li>PAS</li> <li>Area lighting</li> <li>Associated fixtures, fittings and equipment</li> </ul> Advising on provision, design, etc. of the above.	<ol style="list-style-type: none"> <li>Responsible for planned and responsive maintenance and repair of harbour key infrastructure.</li> <li>Commissioning of consultant inspections and reports.</li> <li>Process day-to-day information and keep records for the above.</li> <li>Consult with the Harbour Operator and take cognisance of comments made.</li> <li>Carry out work in accordance with good industry practice in accordance with all necessary permissions or consents and engage competent contractors.</li> <li>Where practicable, provide the Harbour Operator with 5-days' notice in writing of CMAL's intention to carry out harbour works and where practicable, provide the Harbour Operator with dive plan/method statement and risk assessments at least 4-days prior to commencement of works</li> </ol>	✓		

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Conservancy	Quays and Docks emergency works	PMSC Common Law Health and Safety at Work etc. Act 1974	Supervision and management of the harbour berths and structures through periodic inspection of quays and berths with particular attention to: <ul style="list-style-type: none"> <li>• Quays, dolphins and other marine structures</li> <li>• Port mooring equipment.</li> <li>• Fendering.</li> <li>• Link-spans</li> <li>• PAS</li> </ul> Ensuring that premises are in a safe and fit-for-purpose condition.	Emergency response where there has been an infrastructure failure due to an accident or other emergency at a harbour	<ol style="list-style-type: none"> <li>1. Where there has been damage, destruction or failure of harbour infrastructure that could adversely and directly affect the safety of persons or vessels using the harbour, the Harbour Operator shall ensure the harbour is made safe as soon as reasonably practicable</li> <li>2. As soon as reasonably practicable, and in any case within 24hrs of the occurrence, inform CMAL</li> </ol>		✓	
Dangerous Substances in Harbours	Statutory plans	Dangerous Substances in Harbours Area Regulations 1987	The Dangerous Substances in Harbour Area Regulations 1987 defines the meaning of a dangerous substance and sets out the requirements for entry into the harbour area.	Requirements to notify entry of dangerous goods into harbours, provisions regulating loading and unloading of dangerous substances, requirements for harbours to put in place emergency arrangements.  To protect the health & safety of harbour users, those in the vicinity of the	<ol style="list-style-type: none"> <li>1. Maintain strategic and operational oversight, review and direction as necessary of the harbour Operator's compliance with DSHAR 1987.</li> </ol>	✓		

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
				harbour and environment.				
Dangerous Substances in Harbours	Statutory plans	Dangerous Substances in Harbours Area Regulations 1987	The Dangerous Substances in Harbour Area Regulations 1987 defines the meaning of a dangerous substance and sets out the requirements for entry into the harbour area.	Requirements to notify entry of dangerous goods into harbours, provisions regulating loading and unloading of dangerous substances, requirements for harbours to put in place emergency arrangements.  To protect the health & safety of harbour users, those in the vicinity of the harbour and environment.	<ol style="list-style-type: none"> <li>1. In consultation with the emergency services and any other body considered appropriate, prepare and maintain Port Emergency Plans</li> <li>2. Arrangements should be made to test plans periodically, preferably by means of a full scale exercise.</li> <li>3. Review the plans at regular intervals.</li> <li>4. Manage harbour regulatory requirements under DSHAR</li> <li>5. Prohibit the entry into a harbour of any vessel carrying dangerous goods, if the condition of those goods, or their packaging, or the vessel carrying them is such as to create a risk to health and safety</li> <li>6. Similarly, control the entry on to dock estates of dangerous substances brought from inland</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Dangerous Substances in Harbours	Explosives in harbours	Dangerous Substances in Harbours Regulations 1987 Reg. 37	To ensure the security of explosives in transit through harbour areas	Appoint a Harbours Explosives Security Officer.	<ol style="list-style-type: none"> <li>1. Appoint a Harbours Explosives Security Officer</li> <li>2. Liaise with HSE and maintain Harbour Area Explosives Licences and Safeguarding Plans and make same available to the Harbour Operator</li> <li>3. Maintain strategic and operational oversight, review and direction as necessary on all aspects of explosives in harbours</li> </ol>	✓		
Dangerous Substances in Harbours	Explosives in harbours	Dangerous Substances in Harbours Regulations 1987 Reg. 37	To ensure the security and recording of explosives in transit through harbour areas	<p>Appoint an Explosives Security Officer.</p> <p>Maintain accurate 5-year records of explosives handled and transferred through harbour areas</p>	<ol style="list-style-type: none"> <li>1. Appoint a Harbours Explosives Security Officer</li> <li>2. Comply with the requirements and restrictions defined by individual Harbour Areas Explosives Licences and Safeguarding Plans</li> <li>3. Maintain accurate and secure records of explosives in transit through ports and retain for 5-years</li> <li>4. Provide the Harbour Master with a monthly report summarising the explosives that have transited through harbour areas</li> </ol>		✓	
Berthing and Mooring	Control and direction of vessel movements	Harbours, Docks and Piers Clauses Act 1847 Sec 52	Powers of (special) direction to regulate the time and manner of ships' entry to, departure from and movement within harbour waters, and related purposes.	Regulate the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour, dock, or pier, and within the prescribed limits, if any, and its position, mooring or unmooring, placing and removing, whilst therein.	<ol style="list-style-type: none"> <li>1. Maintain strategic and operational oversight, review and direction as necessary on activities of vessels within statutory harbour limits</li> <li>2. Delegate powers of the Harbour Master to the Harbour Operator</li> <li>3. Issue Notice to Mariners as required</li> </ol>	✓		



1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Berthing and Mooring	Control and direction of vessel movements	Harbours, Docks and Piers Clauses Act 1847 Sec 52	Powers of (special) direction to regulate the time and manner of ships' entry to, departure from and movement within harbour waters, and related purposes.	Regulate the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour, dock, or pier, and within the prescribed limits, if any, and its position, mooring or unmooring, placing and removing, whilst therein.	<ol style="list-style-type: none"> <li>1. Using the powers of direction, regulate and monitor activities of vessels within statutory harbour limits</li> <li>2. Recommend any additional powers of direction CMAL may require to ensure the safe operation of any harbour</li> <li>3. Provide CMAL with all information and support CMAL may require when applying for a new or revised power of direction</li> <li>4. Using the powers of direction regulate and monitor activities of vessels using non-statutory harbour facilities</li> <li>5. Provide and maintain marine VHF communications at staffed locations with a nominated and published harbour communications channel</li> <li>6. Provide competent and qualified pier staff to undertake the duties of berthing and unberthing of vessels</li> <li>7. Require production of and review pilotage plans and berthing arrangements in line with the requirements of the Terms and Conditions of Harbour Use, sect 28.4</li> <li>8. Liaise with the Harbour Master as required</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Port Waste Management	Statutory plans	Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 Merchant Shipping Act 1995 Sec.130B	Every harbour authority and terminal operator is required by the Regulations to provide waste reception facilities adequate to meet the needs of ships normally using the harbour or terminal in question, without causing undue delay to ships.	Port Waste Management Plans with respect to the provision and use of waste reception facilities are required at appropriate harbours.  Provide adequate harbour compounds for waste reception facilities	<ol style="list-style-type: none"> <li>1. Maintain strategic and operational oversight, review and direction as necessary on provision of waste facilities and operational standards</li> <li>2. In harbour locations that have been assessed by the Harbour Operator as requiring Port Waste Management Plans, provide harbour compounds to accommodate waste reception facilities</li> </ol>	✓		
Port Waste Management	Statutory plans	Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 Merchant Shipping Act 1995 Sec.130B	Every harbour authority and terminal operator is required by the Regulations to provide waste reception facilities adequate to meet the needs of ships normally using the harbour or terminal in question, without causing undue delay to ships.	Assess the need for Port Waste Management Plans and where applicable prepare and implement such plans in respect of the provision and use of harbour waste reception facilities; and submit the plans to the Secretary of State for approval.  Provide adequate waste reception facilities	<ol style="list-style-type: none"> <li>1. Identify the harbour areas which require Port Waste Management Plans</li> <li>2. Prepare and implement MCA approved plans</li> <li>3. Provide adequate reception facilities to receive the types and quantities of waste from vessels normally using the harbour or terminal</li> <li>4. Engage licenced contractors to dispose of waste</li> </ol>		✓	
Accident reporting and investigation	Reporting of marine accidents and incidents	Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 MGN 458 (M+F)	The Regulations apply generally to all ships, including all commercial fishing vessels and (except for reporting exceptions) to pleasure vessels.	Any accident which meets the criteria established by the MAIB is to be reported to the chief inspector and any other appropriate authorities, by the quickest means available.	<ol style="list-style-type: none"> <li>1. Harbour Operator shall so far as is reasonably practical, ensure that the circumstances of every marine accident are reported to the MAIB by the quickest means available</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Accident reporting and investigation	Role of CMAL in accident investigation	Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 MGN 458 (M+F)	Where appropriate Harbour Authorities must, so far as is reasonably practical, ensure that the circumstances of every accident are examined and reported.	Harbour authorities have a responsibility to investigate marine incidents in harbour waters and the Safety Management System should contain clear guidelines on the levels and purposes of accident and incident investigations that will be expected of a harbour authority. Those guidelines should also identify who will be responsible for carrying out the investigations.	<ol style="list-style-type: none"> <li>1. Maintain strategic and operational oversight, review and direction as necessary of marine accident investigations</li> <li>2. Receive reports of marine accidents and incidents and report same to the CMAL Board</li> </ol>	✓		
Accident reporting and investigation	Role of the harbour operator in accident investigation	Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 MGN 458 (M+F)	Where appropriate Harbour Authorities must, so far as is reasonably practical, ensure that the circumstances of every accident are examined and reported.	Harbour authorities have a responsibility to investigate marine incidents in harbour waters and the Safety Management System should contain clear guidelines on the levels and purposes of accident and incident investigations that will be expected of a harbour authority. Those guidelines should also identify who will be responsible for carrying out the investigations.	<ol style="list-style-type: none"> <li>1. Where the accident occurs within or adjacent to the limits of any harbour the Harbour Operator is to comply with legislative requirements and record all incidents</li> <li>2. CMAL is to be informed of all harbour accidents/marine incidents within 24hrs of the occurrence</li> <li>3. The Harbour Master is to receive copies of any subsequent reports as soon as reasonably practicable</li> <li>4. Where the report contains recommendations to avoid or minimise the reoccurrence of accidents/incidents, following consultation with and approval by CMAL, the Harbour Operator shall implement such recommendations within agreed timescales</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Accident reporting and investigation	Joint role in accident investigation	Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 MGN 458 (M+F)	Where appropriate Harbour Authorities must, so far as is reasonably practical, ensure that the circumstances of every accident are examined and reported.	Harbour authorities have a responsibility to investigate marine incidents in harbour waters and the Safety Management System should contain clear guidelines on the levels and purposes of accident and incident investigations that will be expected of a harbour authority. Those guidelines should also identify who will be responsible for carrying out the investigations.	1. Accidents classified as serious marine casualties and marine incidents will be investigated by the harbour operator with CMAL Harbour Master as a member of the investigation team..			✓
Maritime Security Measures	Port Security	ISPS Code	To implement the responsibilities that the ISPS Maritime Security Measures place on port facilities.	Assist to provide a secure and safe working environment. The security of premises and assets is important to business continuity.	1. Maintain strategic oversight, review and direction as necessary of port security. 2. Appoint a Port Facility Security Officer 3. Provide and maintain physical and technological security measures as required 4. Report all significant security breaches, threats and incidents to the Board 5. Participate as a member of Oban Port Facility Authority 6. Participate as a member of the West of Scotland Port Security Committee	✓		

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Maritime Security Measures	Port Security	ISPS Code	To implement the responsibilities that the ISPS Maritime Security Measures place on port facilities.	Provide a secure working environment and to take measures to prevent unlawful acts against people and property. The security of people is integral with their safety an element of safety management. The security of premises and assets is important to business continuity.	<ol style="list-style-type: none"> <li>1. Compilation, approval and management of port facility security plans</li> <li>2. Appoint Port facility security officers</li> <li>3. Provide and maintain any necessary security equipment required in addition to the physical and technological security measures provided by CMAL</li> <li>4. Monitor and maintain access control measures to the harbour facilities and port at a level commensurate with the prevailing risk and security level</li> <li>5. Monitor the activities of people and cargo</li> <li>6. Promote security awareness amongst harbour operations staff</li> <li>7. Ensure security communications are readily available</li> <li>8. Implement and maintain any additional security measures when required</li> <li>9. Report all significant security breaches, threats and incidents to the Harbour Master as soon as reasonably practicable and in any case within 24hrs of the occurrence</li> <li>10. Liaise with shipping agents/ masters and where practicable facilitate calls by vessels to which ISPS applies</li> <li>11. Participate as a member of Oban Port Security Authority</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Harbour Dues	Collection of Harbour Dues	Harbours, Docks and Piers Clauses Act 1847, Sec 33 Harbours Act 1964 Sec 26	The Harbours Act 1964 is the central piece of primary legislation governing the imposition of harbour dues by statutory harbour authorities. In addition, other primary legislation such as the Harbours, Docks and Piers Clauses Act 1847 apply to each statutory port.	Save in the case of users of the Harbours who have direct charging agreements, ensure all applicable harbour dues in respect of the third party users of any of the harbours are collected by the Harbour Operator. Review all charges on an annual basis  Where CMAL is not the SHA but is the harbour facilities owner/lessee, the relevant fees for the shipping/unshipping of goods and the embarking / landing of passengers will be collected.	<ol style="list-style-type: none"> <li>1. Maintain strategic oversight, review and direction as necessary of the harbour dues collection process</li> <li>2. Annually review and publish CMAL terms and conditions for harbour use</li> <li>3. Publish CMAL schedule of berthing dues and harbour charges</li> <li>4. Annually review harbour dues charges.</li> <li>5. Contact any third party harbour users to audit the accuracy of any harbour dues report</li> <li>6. Where the Harbour Operator has been unable to recover applicable harbour dues, use all reasonable means to identify the vessel and its owner/operator/association membership and recover the applicable harbour dues</li> </ol>	✓		
Harbour Dues	Collection of Harbour Dues	Harbours, Docks and Piers Clauses Act 1847, Sec 33 Harbours Act 1964 Sec 26	With exemption of vessels in her Majesty's or the public service, where CMAL is SHA, maintain the harbour, dock, and pier open to all persons for the shipping and unshipping of goods and the embarking and landing of passengers and to collect the relevant dues for same.  Where CMAL is not the SHA but is the harbour facilities owner/lessee, to collect the relevant fees for the shipping and unshipping of goods and the embarking and landing of passengers using the facilities will be	Save in the case of users of the Harbours who have direct charging agreements, collect all applicable harbour dues in respect of the third party users of any of the harbours	<ol style="list-style-type: none"> <li>1. Publish CMAL terms and conditions for harbour use</li> <li>2. Publish CMAL schedule of berthing dues and harbour charges</li> <li>3. In-so-far as is practicable and using all available means, compile full and accurate records of all vessels using the harbours and the extent of use at all times</li> <li>4. Where this is not possible use all reasonable means to identify the vessel and its owner/operator/association membership and recover the applicable harbour dues</li> <li>5. Collect all applicable third party harbour dues and deliver same to CMAL to be received within the first seven business days of each month</li> </ol>		✓	

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
			collected.		6. Implement an 'out of hours' solution to collect all applicable third party harbour dues and deliver same to CMAL 7. Compile a third party harbour dues monthly summary report and deliver same to CMAL Finance Department to be received within the first seven business days of each month			

1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Oil Pollution	Statutory plans	Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998 Merchant Shipping (Reporting of Pollution Incidents) Regulations 1987. Pollution Prevention and Control Act 1999 MCA MGN 110 Merchant Shipping Act 1995 Sec 136	A statutory duty has been imposed on harbour authorities, ports and oil handling facilities to respond to marine pollution incidents in their waters to underpin a national duty accepted by the UK Government to respond to such pollution incidents.  The statutory duty of harbour authorities relates specifically to responding to pollution from ships in their waters and on structures and land which they own.	Harbour areas within which the provisions of OPRCC Regulation 3 apply must have Oil Spill Contingency Plans.  All oil spills observed must be reported immediately to the relevant authorities.  Every oil tanker over 150gt and every ship over 400gt must carry a S.O.P.E.P. onboard the vessel  If any oil or mixture containing oil is discharged from a ship into the waters of a harbour or is found to be escaping or to have escaped from a ship into any such waters the owner or master of the ship shall forthwith report the occurrence to the harbour master.	<ol style="list-style-type: none"> <li>1. Maintain strategic oversight, review and direction as necessary of the harbour OSCP and response.</li> <li>2. Train appropriate CMAL staff to a relevant level.</li> <li>3. Receive oil spill notifications and reports.</li> </ol>	✓		



1. Discharging statutory duties						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Oil Pollution	Statutory plans	<p>Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998</p> <p>Merchant Shipping (Reporting of Pollution Incidents) Regulations 1987.</p> <p>Pollution Prevention and Control Act 1999</p> <p>MCA MGN 110</p> <p>Merchant Shipping Act 1995 Sec 136</p>	<p>A statutory duty has been imposed on harbour authorities, ports and oil handling facilities to respond to marine pollution incidents in their waters to underpin a national duty accepted by the UK Government to respond to such pollution incidents.</p> <p>The statutory duty of harbour authorities relates specifically to responding to pollution from ships in their waters and on structures and land which they own.</p>	<p>Prepare and maintain Oil Spill Contingency Plans for harbour areas within which the provisions of OPRCC Regulation 3 apply.</p> <p>All oil spills observed must be reported immediately.</p> <p>Every oil tanker over 150gt and every ship over 400 gt must carry a S.O.P.E.P. onboard the vessel</p> <p>If any oil or mixture containing oil is discharged from a ship into the waters of a harbour or is found to be escaping or to have escaped from a ship into any such waters the owner or master of the ship shall forthwith report the occurrence to the harbour master</p>	<ol style="list-style-type: none"> <li>1. Prepare and implement approved oil spill contingency plans to ensure that contingency procedures are in place in the event of an oil spill.</li> <li>2. OPRC guidelines require the plan to be reviewed on at least an annual basis in order to remain valid and accurate. All revisions must be submitted to MCA for approval.</li> <li>3. The Harbour Operator must fully review its oil spill plan every five years but where any major change occurs which could affect the validity of the plan or its effectiveness then the plan must be reviewed, amendments made and resubmitted for MCA approval within 3 months of such a change occurring.</li> <li>4. Ensure all qualifying visiting vessels have SOPEP in place as required.</li> <li>5. Train appropriate harbour operations staff to a relevant level.</li> <li>6. Supply a level of oil spill equipment at individual locations commensurate with OSCP and sufficient to provide a Tier 1 response.</li> <li>7. Maintain a contract with a Tier 2/3 responder.</li> <li>8. All oil spills must be reported to the Harbour Master as soon as reasonably practicable and in any case within 24hrs of the occurrence and provide copies of any subsequent reports</li> </ol>		✓	

## ANNEX B – Tasks

### Harbour Operations - other

2. Harbour Operations						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Port Safety and Security	Consolidated European Reporting System (CERS)	The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (Statutory Instrument No.2004/2110) as amended MGN 438 (M+F) MSN 1831 (M+F)	The MCA requires notifications to be made to the relevant port authority and requires port authorities to pass the appropriate information to CERS.	In compliance with MSN 1831 the port authority is required to pass the requisite information as applicable within the notice, to the MCA, on receipt, by whichever method is available. If the port authority's preferred method of reporting is unavailable then another method should be used in the interim to ensure mandatory reporting requirements are fulfilled.	1. Maintain strategic oversight, review and direction as necessary of the compliance with legislation	✓		
Port Safety and Security	Consolidated European Reporting System (CERS)	The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (Statutory Instrument No.2004/2110) as amended MGN 438 (M+F) MSN 1831 (M+F)	The MCA requires notifications to be made to the relevant port authority and requires port authorities to pass the appropriate information to CERS.	In compliance with MSN 1831 the port authority is required to pass the requisite information as applicable within the notice, to the MCA, on receipt, by whichever method is available. If the port authority's preferred method of reporting is unavailable then another method should be used in the interim to ensure mandatory reporting requirements are fulfilled.	1. Comply with the legislative requirements		✓	

2. Harbour Operations						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
General Directions	Application to obtain powers of general directions	The Marine Navigation Act 2013	The Port Marine Safety Code (PMSC) recommends harbour authorities to review and be aware of their existing powers to ensure they are still relevant to the safe operation of a harbour. It recommends that additional powers should be sought by a harbour authority, if a risk assessment concludes that this would be advisable. This may include securing powers of general directions to support the effective management of vessels within the harbour, if a harbour authority does not already have them.	As a result of the Marine Navigation Act 2013, harbour authorities may now, on application, be designated with the power to make harbour directions. This power may be sought as a response to the review of powers recommended by the PMSC.	1. Annually or following a marine incident CMAL will review and be aware of their existing powers to ensure they are still relevant to the safe operation of a harbour	✓		
General Directions	Application to obtain powers of general directions	The Marine Navigation Act 2013	The Port Marine Safety Code (PMSC) recommends harbour authorities to review and be aware of their existing powers to ensure they are still relevant to the safe operation of a harbour. It recommends that additional powers should be sought by a harbour authority, if a risk assessment concludes that this would be advisable. This may include securing powers of general directions to support the effective management of vessels within the harbour, if a harbour authority does not already have them.	As a result of the Marine Navigation Act 2013, harbour authorities may now, on application, be designated with the power to make harbour directions. This power may be sought as a response to the review of powers recommended by the PMSC.	1. Annually or following a marine incident the Harbour Operator will consult with CMAL to confirm or prompt a review of the existing powers to ensure they are still relevant to the safe operation of a harbour		✓	

2. Harbour Operations						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Management responsibilities	Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997	These regulations address one particular area of risk - injury from manual handling of loads. They supplement and expand on the general duties contained in the MS and FV (Health and Safety at Work) Regulations 1997.	The Regulations apply to United Kingdom ships and to other ships when they are in United Kingdom waters, except where the Management of Health and Safety at Work Regulations 1992 apply.	1. Although neither CMAL or the Harbour Operator have responsibilities as an employer of persons in seagoing vessels, they should ensure that if vessels are contracted they meet the requirements of these regulations			✓
General Health Issues	Manual Handling	Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998	These regulations address one particular area of risk - injury from manual handling of loads. They supplement and expand on the general duties contained in the MS and FV (Health and Safety at Work) Regulations 1997.	These regulations state the obligation of employers to avoid where possible, or otherwise assess the risks from manual handling operation on board vessels. They are directly analogous to the Manual Handling Operations Regulations.	1. Although neither CMAL or the Harbour Operator have responsibilities as an employer of persons in seagoing vessels, they should ensure that if vessels are contracted they meet the requirements of these regulations			✓
Management of Health and Safety	Workboats	Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998 The Safety Of Small Workboats & Pilot Boats Code of Practice	The PMSC states that Harbour Authorities should ensure that commercial workboats up to 24 metres load line length used at sea in their harbours comply with Merchant Shipping (Small Workboats and Pilot Boats) Regulations, 1998, and the associated Code of Practice for the Safety of Small Workboats and Pilot Boats and they are "fit for purpose" for any use to which they are put.	The harbour authority must ensure that qualifying work boats used in the Harbour comply with the Merchant Shipping (Small Work Boats) Regulations 1998 and the associated Safety of Small Work Boats and Pilot Boats Code of Practice and that they are fit for purpose for any use to which they are put.	1. Maintain strategic oversight, review and direction as necessary of the compliance with legislation	✓		

2. Harbour Operations						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Workboats	Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998 The Safety Of Small Workboats & Pilot Boats Code of Practice	The PMSC states that Harbour Authorities should ensure that commercial workboats up to 24 metres load line length used at sea in their harbours comply with Merchant Shipping (Small Workboats and Pilot Boats) Regulations, 1998, and the associated Code of Practice for the Safety of Small Workboats and Pilot Boats and they are "fit for purpose" for any use to which they are put.	A harbour authority may set its own standards for small commercial craft within its jurisdiction which do not proceed to sea.  Small commercial craft which go to sea (i.e. beyond categorised waters) should be in possession of a valid Small Commercial Boat Certificate and the crew should be qualified in accordance with the appropriate codes of practice (Red, Yellow, Blue or Brown) or the harmonised code of practice under MGN 280.  In either case owners/ operators of small commercial craft should conduct a formal risk assessment of their procedure in accordance with MGN 20	<ol style="list-style-type: none"> <li>1. The Harbour Operator is responsible for ensuring that workboats used in CMAL harbours are 'fit for purpose' for any use to which they are put and that they comply with the Merchant Shipping (Small Work Boats and Pilot Boats) Regulations 1998 and the associated Safety of Small Work Boats and Pilot Boats a Code of Practice.</li> <li>2. The Harbour Operator should use risk assessment to identify where hazards exist and what mitigation measures are required. This process should apply equally to any activity undertaken by a workboat within the harbour</li> <li>3. are and submit to the Harbour Master an annual status report on Pilot Boat, Tugs and Workboats and small passenger vessels operating in the Harbours</li> </ol>		✓	

2. Harbour Operations						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Dangerous substances	Major accident prevention	Control of Major Accident Hazards (COMAH) Regulations 2015	<p>COMAH applies to anyone who has duties under the COMAH Regulations 2015, particularly operators of establishments, and also others such as local authorities and emergency services.</p> <p>The aim of the Regulations is to prevent and mitigate the effects on people and the environment of major accidents involving dangerous substances.</p> <p>The guidance on the COMAH Regulations 2015 gives advice on the scope of the Regulations and the duties imposed by them.</p>	<p>COMAH is applicable to any establishment storing, or otherwise handling, large quantities of industrial chemicals of a hazardous nature, including warehouses, production facilities and some distributors.</p> <p>The principal aim of the regulations is to reduce the risks of potential major accidents involving dangerous substances, such as chlorine, liquefied petroleum gas and explosives.</p>	1. Maintain strategic oversight, review and direction as necessary of the compliance with legislation	✓		
Dangerous substances	Major accident prevention	Control of Major Accident Hazards (COMAH) Regulations 2015	<p>COMAH applies to anyone who has duties under the COMAH Regulations 2015, particularly operators of establishments, and also others such as local authorities and emergency services.</p> <p>The aim of the Regulations is to prevent and mitigate the effects on people and the environment of major accidents involving dangerous substances.</p> <p>The guidance on the COMAH Regulations 2015 gives advice on the scope of the Regulations and the duties imposed by them.</p>	<p>COMAH is applicable to any establishment storing, or otherwise handling, large quantities of industrial chemicals of a hazardous nature, including warehouses, production facilities and some distributors.</p> <p>The principal aim of the regulations is to reduce the risks of potential major accidents involving dangerous substances, such as chlorine, liquefied petroleum gas and explosives.</p>	<p>1. Identify any harbour having any dangerous substance specified in Schedule 1 present at or above the qualifying quantity that is subject to the Regulations</p> <p>2. Once it has been determined that the Regulations apply to any harbour, ensure all dangerous substances present or likely to be present are considered in respect of all duties imposed by these Regulations, for example major accident prevention policies and safety reports</p>		✓	

2. Harbour Operations						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Vehicle and Pedestrian Traffic management	Health and Safety at Work etc. Act 1974 Dangerous Substances in Harbour Areas Regulations 1987; Loading and Unloading of Fishing Vessels Regulations 1988. Road Traffic Act 1988	Employers have a legal duty to ensure that the health and safety of their employees, contractors and members of the public are not put at risk as a result of the work they do. Employees and the self-employed also have a duty to look after their own health and safety and that of anyone who might be affected by their work.	Segregating pedestrians and vehicles is a fundamental safety principle of RoRo/Cruise operations and should be at the forefront of operating procedures. The safe and efficient operation of the terminal is dependent on the cooperation between all parties. Effective control of vehicle movements and communication between ship and shore are essential. Traffic management plans should consider: <ul style="list-style-type: none"> <li>• interface between vehicles and pedestrian</li> <li>• lane management</li> <li>• parking /ships plans</li> <li>• set down areas e.g. drop trailer management</li> <li>• walkways</li> <li>• passenger control</li> <li>• signage, including emergency procedures and muster points</li> </ul>	<ol style="list-style-type: none"> <li>1. Maintain strategic oversight, review and direction as necessary of the compliance with legislation</li> <li>2. Provide outdoor traffic routes within harbour areas similar to those required for public roads</li> <li>3. Where reasonably practicable make sure they are wide enough for the safe movement of the largest vehicle</li> <li>4. Ensure surfaces are suitable for the vehicles and pedestrians using them</li> <li>5. Where practicable provide suitable physical traffic management arrangements to separate pedestrians from vehicles and other hazards</li> <li>6. Ensure traffic routes are clearly marked and signposted.</li> <li>7. Keep traffic routes properly maintained</li> <li>8. Provide CCTV systems for the monitoring and recording of traffic movements within harbour areas</li> <li>9. Provide a defect and damage reporting system via CMAL IT reporting system</li> </ol>	✓		

2. Harbour Operations						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation/Code	Overview of Standards and Requirements	Key Requirements	Required Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Vehicle and Pedestrian Traffic management	Health and Safety at Work etc. Act 1974 Dangerous Substances in Harbour Areas Regulations 1987; Loading and Unloading of Fishing Vessels Regulations 1988. Road Traffic Act 1988	Employers have a legal duty to ensure that the health and safety of their employees, contractors and members of the public are not put at risk as a result of the work they do. Employees and the self-employed also have a duty to look after their own health and safety and that of anyone who might be affected by their work.	Segregating pedestrians and vehicles is a fundamental safety principle of RoRo/Cruise operations and should be at the forefront of operating procedures Ro-Ro, passenger and cruise operations should be planned and executed in a way that minimises risks to those involved in the operation, including direct employees, non-permanent employees, ship's crew and passengers. While the handling of various types of cargo is to a great extent routine, consideration of the impact and presence of passengers in the operational environment must be taken into account. In these situations a suitable and sufficient risk assessment will be required.	<ol style="list-style-type: none"> <li>Undertake a risk assessment and consider the risks – not only to permanent employees but also to others including non-permanent employees (NPE's), ship's crew, passengers and visitors that may be affected by the activity</li> <li>The appropriate control measures must be introduced and should consider collective measures ahead of personal or individual measures</li> <li>Produce traffic management plans that must fully reviewed by the Harbour Operator every five years.</li> <li>Where any major change occurs which could affect the validity of the plan or its effectiveness then the plan must be reviewed and amendments made within 3 months of such a change occurring.</li> <li>Ensure there is an auditable record of effective planning, organisation, control, monitoring and review of the measures put in place</li> <li>Appoint competent persons with the necessary skills, knowledge and experience to manage harbour traffic</li> <li>Provide employees with information and training</li> <li>Co-ordinate and co-operate with other employers sharing harbour areas</li> <li>Keep traffic routes clear of obstructions</li> <li>Use CMAL CCTV for the monitoring and recording of traffic movements within harbour areas</li> <li>Report defects or damage to traffic routes asap via the CMAL IT reporting system</li> </ol>		✓	



# ANNEX C – Legislation

## Health Safety and Environmental Legislation Register

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
construction	Construction	Construction (Design & Management) Regulations 2015	Safe systems of work for construction projects To ensure compliance when construction activities are undertaken within CMALs area of responsibility, whether on or offshore.	<p>The key elements, include:</p> <ul style="list-style-type: none"> <li>managing the risks by applying the general principles of prevention;</li> <li>appointing the right people and organisations at the right time;</li> <li>making sure everyone has the information, instruction, training and supervision they need to carry out their jobs in a way that secures health and safety;</li> <li>duty holders cooperating and communicating with each other;</li> <li>coordinating their work; and,</li> <li>consulting workers and engaging with them to promote and develop effective measures to secure health, safety and welfare.</li> </ul>	<p>1. As Client make suitable arrangements for managing a project.</p> <p>This includes making sure:</p> <ul style="list-style-type: none"> <li>Other duty holders are appointed</li> <li>Sufficient time and resources are allocated</li> </ul> <p>Make sure:</p> <ul style="list-style-type: none"> <li>Relevant information is prepared and provided to other duty holders</li> <li>The principal designer and principal contractor carry out their duties</li> <li>Welfare facilities are provided</li> </ul>			✓

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Diving	Commercial Inland/Inshore Diving	<p>PMSC</p> <p>Diving at Work Regulations 1997</p> <p>Commercial Diving Projects Inland/Inshore AcoP</p> <p>Management of Health and Safety at Work Regulations 1999</p>	<p>Ensure the safety of marine operations in CMAL harbour waters and approaches.</p> <p>DWR defines commercial diving projects and covers the responsibilities and controls required</p>	<p>Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property.</p> <p>Ensure all commercial diving activity is undertaken in compliance with legislation.</p> <p>Promulgate information to harbour users.</p>	<ol style="list-style-type: none"> <li>1. Maintain strategic and operational oversight, review and direction as necessary of diving in harbour areas.</li> <li>2. Comply with DWR 1997 Regulation 4</li> <li>3. Review and issue annually the CMAL Diving NTM</li> <li>4. Ensure dive plans and risk assessments are filed on the CMAL IT system</li> <li>5. For planned commercial diving projects, issue Notice to Mariners</li> </ol>	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Diving	Commercial Inland/Inshore Diving	PMSC Diving at Work Regulations 1997 Commercial Diving Projects Inland/Inshore AcoP Management of Health and Safety at Work Regulations 1999	Ensure the safety of marine operations in CMAL harbour waters and approaches. DWR defines commercial diving projects and covers the responsibilities and controls required	Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property. Ensure all commercial diving activity is undertaken in compliance with legislation. Promulgate information to harbour users.	<ol style="list-style-type: none"> <li>1. Monitor all harbour activities</li> <li>2. Comply with DWR 1997 Regulation 4</li> <li>3. Comply with CMAL Diving NTM</li> <li>4. Do not allow unauthorised diving activities</li> <li>5. Where CMAL are not the client, copies of dive plans, risk assessments and issued dive permits will be submitted to the Harbour Master for review within 48hrs of the dive project commencing. Electronic versions will be submitted the CMAL IT system. Where this is not possible, faxed copies will be acceptable</li> <li>6. Operate a Dive Permit system</li> <li>7. When circumstances do not allow for a NTM to be issued, the Harbour Operator will broadcast a VHF safety message to harbour users</li> </ol>		✓	
Diving	Recreational or Shellfish Diving	PMSC Diving at Work Regulations 1997	Defines commercial diving projects and covers the responsibilities and controls required	Take reasonable care, so long as the harbour is open for the public use, that all who may choose to navigate in it may do so without danger to their lives or property. Ensure all commercial diving activity is undertaken in compliance with legislation. Promulgate information to harbour users.	<ol style="list-style-type: none"> <li>1. Monitor harbour activities</li> <li>2. Comply with CMAL Diving NTM</li> <li>3. Do not allow unauthorised diving activities</li> <li>4. If commercial diving is identified, comply with requirements as per Commercial Inland/Inshore Diving</li> <li>5. Display and promulgate local harbour information</li> </ol>		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Fire	Fire Precautions	Part 3 of the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006.	Part 3 of the Fire (Scotland) Act 2005, as amended, and related subordinate legislation set out the fire safety duties for the majority of premises in Scotland, with the exception of private dwellings.	Ensure the safety, in the event of fire, of persons (whether they are employees, residents, visitors or others) ,	For relevant premises CMAL shall provide and maintain: <ol style="list-style-type: none"> <li>1. Fixed fire detection equipment</li> <li>2. Fixed emergency lighting</li> <li>3. Fire escapes and signage</li> <li>4. Audible fire alarm system</li> </ol>	✓		
Fire	Fire Precautions	Part 3 of the Fire (Scotland) Act 2005 and the Fire Safety (Scotland) Regulations 2006.	Part 3 of the Fire (Scotland) Act 2005, as amended, and related subordinate legislation set out the fire safety duties for the majority of premises in Scotland, with the exception of private dwellings.  Transport premises will be subject to the Act and related subordinate legislation. In general, the legislation seeks to ensure the safety of persons (whether they are employees, visitors or others) in the premises in respect of harm caused by fire, by setting out fire safety responsibilities.	Ensure the safety, in the event of fire, of persons (whether they are employees, residents, visitors or others) ,	The Harbour Operator shall: <ol style="list-style-type: none"> <li>1. Carry out a fire safety risk assessment of the premises</li> <li>2. Identify the fire safety measures necessary as a result of the fire safety risk assessment outcome</li> <li>3. Implement these fire safety measures using risk reduction principles</li> <li>4. Put in place fire safety arrangements for the ongoing control and review of the fire safety measures</li> <li>5. Provide and maintain portable fire fighting equipment</li> <li>6. Comply additionally with the specific requirements of the fire safety regulations</li> <li>7. Keep the fire safety risk assessment and outcome under review; and</li> <li>8. Maintain record keeping</li> </ol>		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
First Aid	First Aid	Health and Safety (First Aid) Regulations 1981 (as amended)	Covers requirement for the provision of adequate equipment, facilities and personnel to enable first aid to be given to employees	To ensure that the required First Aid equipment is provided to the scale required	The Harbour Operator shall provide, or ensure that there are provided, such equipment and facilities as are adequate and appropriate in the circumstances for enabling first-aid to be rendered to his employees if they are injured or become ill at work.		✓	
General Health Issues	Workplaces	Health and Safety (Display Screen Equipment) Regulations 1992 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002	Sets out requirements for working with Visual Display Units (VDUs)	To conduct risk assessment of work stations and implement controls where necessary	Comply with the necessary legislative requirements		✓	
General Health Issues	Manual Handling	Management of Health and Safety at Work Regulations 1999 Manual Handling Operations Regulations 1992	Requires management to assess the risks from the moving of objects by hand or bodily force	Comply with the risk assessment requirements set out in the Management of Health and Safety at Work Regulations 1999 as well as the requirement in the Manual Handling Operations Regulations 1992 (as amended) (MHOR) to carry out a risk assessment on manual handling tasks	Comply with the necessary legislative requirements		✓	
General Health Issues	Noise	Noise at Work Regulations 2005 Health and Safety at Work etc. Act 1974, Sec 3	The Control of Noise at Work Regulations 2005 (the 'Noise Regulations') requires employers to eliminate or reduce risks to health and safety from noise at work.	The Regulations apply where work activities expose people at work (employees or other workers affected by your work activities) to risks to their health and safety from noise.  The Regulations do not apply where people who are not at work are exposed to risks to their health and safety from noise related to work activities; however, the general duties of section 3 of	Comply with the necessary legislative requirements		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
				the Health and Safety at Work etc. Act 1974 may apply in such cases.				
Hazardous Substances	Drinking water Supply	The Water Supply (Water Fittings) (Scotland) Byelaws 2014 Health & Safety at Work Act 1974 Control Of Substances Hazardous to Health Regulations 2002	Legal requirements to prevent misuse, waste, undue consumption or erroneous measurement of water and, most importantly, to prevent contamination of drinking water	Protect the health and safety of employees and others. Owners and occupiers of premises, and anyone who installs or maintains plumbing systems and water fittings, have a legal obligation to ensure that the systems and fittings meet the requirements of Water Byelaws.	<ol style="list-style-type: none"> <li>Undertake water testing of water supplies provided from surface mounted external water tanks, where provided</li> <li>Provide water to quayside water hydrants at locations mutually agreed with the Harbour Operator</li> </ol>	✓		
Hazardous Substances	Water supply and testing	The Water Supply (Water Fittings) (Scotland) Byelaws 2014 Health & Safety at Work Act 1974 Control Of Substances Hazardous to Health Regulations 2002	Legal requirements to prevent misuse, waste, undue consumption or erroneous measurement of water and, most importantly, to prevent contamination of drinking water	Protect the health and safety of employees and others. Owners and occupiers of premises, and anyone who installs or maintains plumbing systems and water fittings, have a legal obligation to ensure that the systems and fittings meet the requirements of Water Byelaws.	<p>For water supplies within premises the Harbour Operator shall:</p> <ol style="list-style-type: none"> <li>Provide toilets, washing facilities and drinking water for employees</li> <li>Compile Water and Legionella Risk Assessments</li> <li>Undertake water testing</li> <li>Prevent contamination of drinking water</li> <li>Obtain Scottish Water standpipe licences and provide approved standpipes to draw water from harbour hydrants</li> <li>Use quayside water hoses for potable water that are type approved</li> </ol>		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Machinery & Equipment	Electricity	Electricity at Work Regulations 1989 Health & Safety at Work etc. Act 1974	The regulations require precautions to be taken against the risk of death or personal injury from electricity, in work activities.	To ensure that electrical systems are adequately maintained	<ol style="list-style-type: none"> <li>The installation, inspection, testing and preventative maintenance of all external and machinery fixed electrical installations at appropriate periods that comply with legislative requirements.</li> <li>Provision of a defect and damage reporting system via CMAL IT reporting system</li> </ol>	✓		
Machinery & Equipment	Electricity	Electricity at Work Regulations 1989 Health & Safety at Work etc. Act 1974	Requires person in control of electrical systems to ensure they are safe to use and maintained in a safe condition	To ensure that electrical systems are adequately maintained	<ol style="list-style-type: none"> <li>Report electrical system defects or damage without delay via the CMAL IT reporting system</li> <li>Undertake operator checks of electrical systems and submission of completed operator checklist at periods agreed with CMAL</li> </ol>		✓	
Buildings	Electrical fixed electrical system testing	Electricity at Work Regulations 1989 Health & Safety at Work etc. Act 1974	All electrical installations, should be maintained (so far as reasonably practicable) to prevent danger	To ensure that electrical systems are adequately maintained	<ol style="list-style-type: none"> <li>The installation, inspection, testing and preventative maintenance of all internal fixed electrical installations at appropriate periods that comply with legislative requirements.</li> <li>Provision of a defect and damage reporting system via CMAL IT reporting system</li> </ol>	✓		
Appliances	Portable Appliance Testing	Electricity at Work Regulations 1989 Health & Safety at Work etc. Act 1974	To ensure electrical equipment that is provided conforms to Electrical Equipment (Safety) Regulations 1994 and take reasonable steps to ensure ongoing safety.	To ensure that portable appliances continue to be safe for use, regular basic safety checks should be carried out.	<ol style="list-style-type: none"> <li>User checks by employees</li> <li>Annual portable appliance testing (PAT) by someone with the necessary knowledge and experience to carry out a test and interpret the results</li> </ol>		✓	



1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Hazardous Substances	Asbestos	Control of Asbestos Regulations 2012 Reg. 4	The duty to manage asbestos is directed at those who manage non-domestic premises: the people with responsibility for protecting others who work in such premises, or use them in other ways, from the risks to ill health that exposure to asbestos causes	Under a tenancy agreement or contract, the owner keeps responsibility for maintenance and repairs, and the owner has control of access by maintenance workers into the building	<ol style="list-style-type: none"> <li>1. Take reasonable steps are taken to find materials in premises likely to contain asbestos and to check their condition</li> <li>2. Maintain a written record of the location and condition of asbestos and/or presumed ACMs is made and that the record is kept up to date</li> <li>3. Ensure the risk of anyone being exposed to these materials is assessed</li> <li>4. Ensure a written plan to manage that risk is prepared and that the plan is put into effect to make sure that: <ul style="list-style-type: none"> <li>• any material known or presumed to contain asbestos is kept in a good state of repair</li> <li>• any material that contains or is presumed to contain asbestos is, because of the risks associated with its location or condition, repaired and adequately protected or, if it is in a vulnerable position and if it cannot be adequately repaired or protected, it is removed</li> <li>• information on the location and condition of the material is given to the Harbour Operator and anyone who is liable to disturb it or is otherwise potentially at risk</li> </ul> </li> </ol>	✓		
Hazardous Substances	Asbestos	Control of Asbestos Regulations 2012 Reg. 4	The duty to manage asbestos is directed at those who manage non-domestic premises: the	Under a tenancy agreement or contract, the owner keeps responsibility for maintenance and repairs,	Where it has been identified CMAL premises are likely to contain asbestos the Harbour Operator shall not contract any licensable or non-licensable work on		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
			people with responsibility for protecting others who work in such premises, or use them in other ways, from the risks to ill health that exposure to asbestos causes	and the owner has control of access by maintenance workers into the building	the premises without consulting with and receiving written permission from CMAL			
Hazardous Substances	Hazardous Substances (Including biological)	Control Of Substances Hazardous to Health Regulations 2002	Requires employers to assess the risks from hazardous substances and to take appropriate precautions	To assess the risks from materials/substance used in processes/activities	Comply with the necessary legislative requirements		✓	
Hazardous Substances	Lead	Control of Lead at Work Regulations 2002	Defines employers responsibilities when work is undertaken which could expose employees to lead at work and the controls required	To assess the risks from any work involving lead	Comply with the necessary legislative requirements		✓	
Hazardous Substances	Radiation	Ionising Radiation Regulations 1999	Covers the responsibilities and control of ionising radiation in the workplace	To ensure that any activities involving use of ionising radiation e.g. NDT using sources, are adequately controlled such that risks are within statutory limits	Comply with the necessary legislative requirements		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Machinery & Equipment	Lifting	Lifting Operations and Lifting Equipment Regulations 1998	Covers the responsibilities and requirements involved with the use of lifting equipment and lifting accessories	To ensure that any operations involving lifting meet the requirements of the legislation with regard to the testing and inspection of such equipment and the conduct of the operations	<ol style="list-style-type: none"> <li>1. Ensure that all equipment they provide for lifting is sufficiently strong, stable and suitable for the proposed use, appropriate for the task and suitably marked.</li> <li>2. Arrange for any lifting equipment, for which they are responsible, to be subject to statutory examination by a competent person</li> <li>3. Provide a defect and damage reporting system via the CMAL IT reporting system</li> <li>4. Provide the operator with operating and maintenance manuals for lifting equipment provided by CMAL</li> </ol>	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Machinery & Equipment	Lifting	Lifting Operations and Lifting Equipment Regulations 1998	Covers the responsibilities and requirements involved with the use of lifting equipment and lifting accessories	To ensure that any operations involving lifting meet the requirements of the legislation with regard to the testing and inspection of such equipment and the conduct of the operations	<ol style="list-style-type: none"> <li>1. Ensure that all equipment they provide for lifting is sufficiently strong, stable and suitable for the proposed use, appropriate for the task and suitably marked.</li> <li>2. Arrange for any lifting equipment, for which they are responsible, to be subject to statutory examination by a competent person</li> <li>3. Not let unauthorised, unqualified or untrained people use lifting equipment</li> <li>4. Before use check the equipment is fit to be used, working properly and all the safety measures are in place;</li> <li>5. Make sure all parts, including attachments, can accommodate the load weight;</li> <li>6. Use the equipment properly and in accordance with the manufacturer's instructions;</li> <li>7. Make sure employees are wearing the appropriate protective clothing and equipment,</li> <li>8. Report defects or damage to CMAL supplied lifting equipment without delay via the CMAL reporting system</li> </ol>		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Machinery & Equipment	Work equipment	Provision and Use of Work Equipment Regulations 1998	Require that equipment provided for use in the workplace (including machinery) is safe.	To ensure that such equipment is safe by means of procurement policies, proper installation, inspection, test, training etc.	<ol style="list-style-type: none"> <li>1. Ensure work equipment they provide is suitable for use, and for the purpose and conditions in which it is to be used;</li> <li>2. Maintained in a safe condition for use;</li> <li>3. Inspected, in certain circumstances, to ensure that it is and continues to be safe for use. Any inspection will be carried out by a competent person.</li> <li>4. Provide a defect and damage reporting system via the CMAL IT reporting system</li> </ol>		✓	
Machinery & Equipment	Work equipment	Provision and Use of Work Equipment Regulations 1998	Require that equipment provided for use in the workplace (including machinery) is safe.	To ensure that such equipment is safe by means of procurement policies, proper installation, inspection, test, training etc.	<ol style="list-style-type: none"> <li>1. Ensure work equipment provided by CMAL is suitable for use, and for the purpose and conditions in which it is to be used</li> <li>2. Maintained in a safe condition for use</li> <li>3. Inspected, in certain circumstances, to ensure that it is and continues to be safe for use. Any inspection will be carried out by a competent person</li> <li>4. Provide a defect and damage reporting system via the CMAL IT reporting system</li> </ol>	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Machinery & Equipment	Work equipment	Provision and Use of Work Equipment Regulations 1998	Require that equipment provided for use in the workplace (including machinery) is safe.	To ensure that such equipment is safe by means of procurement policies, proper installation, inspection, test, training etc.	<ol style="list-style-type: none"> <li>1. Before use check the equipment is fit to be used, working properly and all the safety measures are in place</li> <li>2. Use the equipment properly and in accordance with the manufacturer's instructions</li> <li>3. Make sure employees are wearing the appropriate protective clothing and equipment</li> <li>4. Report defects or damage to CMAL supplied work equipment without delay via the CMAL reporting system</li> </ol>		✓	
Management of Health & Safety	Insurance	Employers Liability (Compulsory Insurance) Act 1968	Requires employers to take out insurance cover against liability for damages arising out of negligent failure to provide safe and healthy premises	To ensure adequate insurance cover provided	CMAL and the Harbour Operator shall insure, and maintain insurance, under one or more approved policies with an authorised insurer or insurers against liability for bodily injury or disease sustained by their respective employees, and arising out of and in the course of their employment as set out in the Harbour Operating Agreement			✓

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health & Safety	Risk assessments	Management of Health and Safety at Work Regulations 1999	Places a duty on all employers "to ensure, so far as is reasonably practicable, the health, safety and welfare at work" of all their employees.	To ensure that an adequate management system is in place to meet the requirements of the regulations. Requires employers to carry out risk assessments, make arrangements to implement necessary measures, appoint competent people and arrange for appropriate information and training.	<ol style="list-style-type: none"> <li>1. Assess the risks to the health and safety of CMAL employees within harbour areas</li> <li>2. Ensure that the necessary control measures have been identified and are being applied</li> <li>3. Ensure arrangements are in place to cover the management of health and safety</li> <li>4. Undertake regular inspection and checking and review as necessary to ensure that standards are being implemented and management controls are working</li> <li>5. When requested, make available to appropriate representatives of CFL for information purposes, all assessments of risks to the health and safety of CMAL employees within harbour areas</li> <li>6. Take all reasonably practicable steps to engage competent contractors</li> <li>7. Submit via CMAL IT system to appropriate representatives of CFL for review, all method statements and assessments of risks to the health and safety of contractor employees engaged by CMAL to undertake works within harbour areas</li> </ol>	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health & Safety	Risk assessments	Management of Health and Safety at Work Regulations 1999	Places a duty on all employers "to ensure, so far as is reasonably practicable, the health, safety and welfare at work" of all their employees.	To ensure that an adequate management system is in place to meet the requirements of the regulations. Requires employers to carry out risk assessments, make arrangements to implement necessary measures, appoint competent people and arrange for appropriate information and training.	<ol style="list-style-type: none"> <li>1. Assess the risks to the health and safety of both employees and non-employees within harbour areas</li> <li>2. Ensure that the necessary control measures have been identified and are being applied</li> <li>3. Ensure arrangements are in place to cover the management of health and safety</li> <li>4. Undertake regular inspection and checking and review as necessary to ensure that standards are being implemented and management controls are working</li> <li>5. When requested, make available to representatives of CMAL for inspection or audit, all assessments of risks to the health and safety of both employees and non-employees within harbour areas</li> <li>6. Take all reasonably practicable steps to engage competent contractors</li> <li>7. Review and comment as soon as reasonably practicable and in any case within two business days, all contractor method statements and assessments that have been submit via the CMAL IT system for the information and attention of appropriate representatives of CFL</li> <li>8. Submit via CMAL IT system to appropriate representatives of CMAL for information/review, all method statements and assessments of risks to the health</li> </ol>		✓	



1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
					<p>and safety of contractor employees engaged to undertake works within harbour areas</p> <p>9. As part of the quarterly Harbours Safety Report, inform CMAL of the results of inspections, reviews or audits</p>			
Management of Health & Safety	Recording and Reporting of Accidents	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995	Requires employers to notify HSE of certain occupational injuries, diseases and dangerous occurrences	To ensure a system is in place whereby notifiable injuries and diseases are properly reported	<p>1. Report and keep records of –</p> <ul style="list-style-type: none"> <li>• work-related accidents which cause deaths</li> <li>• work-related accidents which cause certain serious injuries (reportable injuries)</li> <li>• diagnosed cases of certain industrial diseases; and</li> <li>• certain 'dangerous occurrences' (incidents with the potential to cause harm)</li> </ul> <p>2. Within 24hrs of a qualifying occurrence inform the Harbour Operator of any RIDDOR reports.</p> <p>3. Report any unplanned harbour event that did not result in injury, illness, or damage via the Harbour Operator near miss reporting system.</p>	✓		
Management of Health & Safety	Recording and Reporting of Accidents	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995	Requires employers to notify HSE of certain occupational injuries, diseases and dangerous occurrences	To ensure a system is in place whereby notifiable injuries and diseases are properly reported	<p>The Harbour Operator will:</p> <p>1. Report and keep records of –</p> <ul style="list-style-type: none"> <li>• work-related accidents which cause deaths</li> <li>• work-related accidents which cause certain serious injuries</li> <li>• diagnosed cases of certain</li> </ul>		✓	

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
					industrial diseases; and <ul style="list-style-type: none"> <li>• certain 'dangerous occurrences'</li> </ul> 2. Within 24hrs of a qualifying occurrence inform CMAL of any RIDDOR reports 3. Maintain a near miss reporting system to record any unplanned harbour event that did not result in injury, illness, or damage 4. As part of the quarterly CMAL Harbours Safety Report, summarise details of RIDDOR Reports and near misses			
Management of Health & Safety	Work equipment	Employers Liability (Defective Equipment) Act 1969	Defines employers responsibility for consequences of defects in machines, tools or appliances made available for an employees' use	To ensure that such equipment is selected carefully and inspected through life in accordance with PUWER	This act creates an extension of employer's liability for defective equipment			✓

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health & Safety	Landlord's Liability - Visitors	Occupiers' Liability (Scotland) Act 1960 Sec. 3 Health and Safety at Work Act 1974 Management of Health and Safety at Work Regulations 1999 PMSC	Landlord's liability by virtue of responsibility for repairs: - Where premises are occupied or used by virtue of a tenancy under which the landlord is responsible for the maintenance or repair of the premises, it shall be the duty of the landlord to show towards any persons who or whose property may from time to time be on the premises the same care in respect of dangers arising from any failure on his part in carrying out his responsibility aforesaid as is required by virtue of the foregoing provisions of this Act to be shown by an occupier of premises towards persons entering on them  The Health and Safety at Work Act 1974 places duties on employers and the self-employed to persons other than employees.	Where a landlord is responsible for the maintenance or repair of the premises, he has to show the same duty of care to persons on the premises as an occupier would.  The erection of warning signs will assist the occupier to evade or minimise his liability under the Act.	<ol style="list-style-type: none"> <li>Where hazards or dangers are identified, technological and physical control measures and notices warning of danger are provided</li> <li>Provide a defect and damage reporting system via the CMAL IT reporting system</li> <li>Provide a harbour improvement request system via the CMAL IT system</li> <li>Undertake a programme of regular structural, mechanical and electrical safety inspections and maintenance of buildings, structures, machinery and other shore assets is undertaken in compliance with legislation</li> <li>Ensure repairs are expedited in accordance with established priority classifications</li> <li>Host bi-monthly meetings between CMAL and the Harbour Operator to discuss defect, damage and harbour improvement requests and harbour projects</li> </ol>	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health & Safety	Occupier's Liability - visitors	Occupiers' Liability (Scotland) Act 1960 Sec. 2 Health and Safety at Work Act 1974 Management of Health and Safety at Work Regulations 1999 PMSC	Occupiers of land and buildings have a general responsibility to take care for the safety of visitors to their premises. Visitors include those invited and those who are unwanted. The duty of care towards visitors is a reasonable one. In other words, the law does not require all steps to be taken to ensure visitors' safety, just reasonable steps.  If the occupier does not take reasonable care to ensure the premises are safe he may be liable for any injury caused to visitors which arises in consequence of that danger.	Take reasonable care to see that a person on the land does not suffer injury.  The erection of warning signs will assist the occupier to evade or minimise his liability under the Act.	To ensure that an adequate management system is in place to meet the requirements of the regulations the Harbour Operator will:  1. Have knowledge of hazards on the harbour landward area 2. Maintain risk assessments of the known hazards 3. Undertake regular shore safety inspections and have an annual frequency programme 4. Have in place a system for dealing with dangers e.g. ice 5. Demonstrate a reasonable anticipation of children's' presence and activities 6. Where hazards or dangers are identified, request CMAL to provide technological and physical control measures and/or notices warning of danger of a type and format approved by CMAL 7. Attend bi-monthly meetings held between CMAL and the Harbour Operator to discuss defect, damage and harbour improvement requests and harbour projects		✓	
Management of Health & Safety	Working Time	Working Time Regulations 1998	The WTR outline basic rights and protections of employees with regard to working hours and rest and holiday requirements. It incorporates elements of both the EC Working Time Directive and the Young Workers Directive.	To undertake assessment of its work requirements to ensure that the requirements of the legislation are met	Both CMAL and the Harbour Operator will comply with legislative requirements.			✓

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Consultation with employees	Health and Safety (Consultation with Employees) Regulations 1996 (as amended)	Employers have a duty to consult with their employees, or their representatives, on health and safety matters.	In workplaces where employees are not in a trade union and/or the employer does not recognise the trade union, or the trade union does not represent those employees not in the trade union, the Health and Safety (Consultation with Employees) Regulations 1996 (as amended) will apply.	CMAL will ensure appropriate means of consultation with their staff regarding: <ol style="list-style-type: none"> <li>1. Introduction of any measure which may substantially affect their health and safety at work</li> <li>2. Arrangements for getting competent people to help them comply with health and safety laws</li> <li>3. Information you must give your employees on the risks and dangers arising from their work, measures to reduce or get rid of these risks and what employees should do if they are exposed to a risk</li> <li>4. Planning and organisation of health and safety training</li> <li>5. The health and safety consequences of introducing new technology</li> </ol>	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Consultation with employees	Safety Representatives and Safety Committees Regulations 1977 (as amended) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended)	Employers have a duty to consult with their employees, or their representatives, on health and safety matters.	<p>In workplaces where the employer recognises trade unions and trade unions are recognised for collective bargaining purposes, the Safety Representatives and Safety Committees Regulations 1977 (as amended) will apply.</p> <p>In workplaces where employees are not in a trade union and/or the employer does not recognise the trade union, or the trade union does not represent those employees not in the trade union, the Health and Safety (Consultation with Employees) Regulations 1996 (as amended) will apply.</p>	<p>The Harbour Operator will ensure appropriate means of consultation with their respective staff regarding:</p> <ol style="list-style-type: none"> <li>1. Introduction of any measure which may substantially affect their health and safety at work</li> <li>2. Arrangements for getting competent people to help them comply with health and safety laws</li> <li>3. Information you must give your employees on the risks and dangers arising from their work, measures to reduce or get rid of these risks and what employees should do if they are exposed to a risk</li> <li>4. Planning and organisation of health and safety training;</li> <li>5. The health and safety consequences of introducing new technology</li> </ol>		✓	
Management of Health and Safety	Confined Spaces	Confined Spaces Regulations 1997	The Confined Spaces Regulations 1997 were made under the Health and Safety at Work etc. Act 1974 (HSW Act). The Regulations apply in all premises and work situations subject to the HSW Act, with the exception of diving operations and below ground in a mine	“Confined space” means any place, including any chamber, tank, vat, silo, pit, trench, pipe, sewer, flue, well or other similar space in which, by virtue of its enclosed nature, there arises a reasonably foreseeable specified risk;	<ol style="list-style-type: none"> <li>1. Maintain strategic oversight, review and direction as necessary of the harbour Operator's compliance with Confined Spaces Regulations 1997.</li> <li>2. Take all reasonably practicable steps to engage competent contractors;</li> <li>3. Submit via CMAL IT system to appropriate representatives of CFL for review, all method statements and assessments of risks to the health and safety of contractor employees commissioned to undertake works within harbour</li> </ol>	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
					areas.			
Management of Health and Safety	Confined Spaces	Confined Spaces Regulations 1997	The Confined Spaces Regulations 1997 were made under the Health and Safety at Work etc. Act 1974 (HSW Act). The Regulations apply in all premises and work situations subject to the HSW Act, with the exception of diving operations and below ground in a mine	“Confined space” means any place, including any chamber, tank, vat, silo, pit, trench, pipe, sewer, flue, well or other similar space in which, by virtue of its enclosed nature, there arises a reasonably foreseeable specified risk;	<ol style="list-style-type: none"> <li>1. Take all reasonably practicable steps to engage competent contractors</li> <li>2. Implement and maintain a permit to work system</li> <li>3. Review and comment as soon as reasonably practical all contractor method statements and assessments that have been submit via the CMAL IT system for the information and attention of appropriate representatives of CFL</li> <li>4. Submit via CMAL IT system to appropriate representatives of CMAL for information/review, all method statements and assessments of risks to the health and safety of contractor employees engaged to undertake confined space works within harbour areas</li> <li>5. As part of the quarterly Harbours Safety Report, provide a summary of harbour works that involved confined spaces</li> </ol>		✓	
Management of Health & Safety	Protective Equipment	Personal Protective Equipment at Work Regulations 1992	Requires employers to provide appropriate protective clothing and equipment for employees	Wherever there are risks to health and safety that cannot be adequately controlled in other ways, the Personal Protective Equipment at Work Regulations 1992 require PPE to be supplied.	CMAL and the Harbour Operator shall conduct risk assessment of their respective activities and provide appropriate PPE for those undertaking them			✓

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Work environment	Premises	Workplace (Health, Safety and Welfare) Regulations 1992	Requires employers to provide a safe place of work and defines minimum standards for environment, safety, housekeeping and the provision of facilities	To provide safe workplace and adequate, appropriate welfare facilities	Comply with legislative requirements		✓	
General Health Issues	Display Screen Equipment	Health and Safety (Display Screen Equipment) Regulations 1992	Requires employers to manage the use of DSE equipment i.e. computers	To carry out an analysis and assessment of the work station.	Comply with legislative requirements		✓	
General Health Issues	Vibration	Control of Vibration at Work Regulations 2005	Requires employers to manage the use of vibrating equipment with the aim of protecting workers from risks to health from vibration. The regulations introduce action and limit values for hand-arm and whole-body vibration	To provide risk assessment for operations involving vibrating equipment	Comply with legislative requirements		✓	
Management of Health and Safety	Permit to Work System	Health and Safety at Work etc. Act 1974	A permit-to-work system is a formal recorded process used to control work which is identified as potentially	Permit-to-work systems should be considered whenever it is intended to carry out work which may	1. Take all reasonably practicable steps to engage competent contractors.		✓	



1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
		Confined Spaces Regulations 1997 Control of Major Accident Hazards Regulations (COMAH) 1999 Control of Substances Hazardous to Health Regulations (COSHH) 2002 Dangerous Substances and Explosive Atmospheres Regulations 2002 Diving at Work Regulations 1997 Electricity at Work Regulations 1989 Ionising Radiations Regulations 1999 Lifting Operations and Lifting Equipment Regulations 1998 Management of Health and Safety at Work Regulations 1999 Pressure Systems Safety Regulations 2000 Provision and Use of Work Equipment Regulations 1998	hazardous. It is also a means of communication between site/installation management, plant supervisors and operators and those who carry out the hazardous work.	adversely affect the safety of personnel, plant or the environment.	2. Ensure that, where any high risk activities are undertaken within CMAL's jurisdiction, the hazard is identified, the risks assessed and adequate controls put in place which will include a permit to work system where necessary.			

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Signage	Health and Safety (Safety Signs and Signals) Regulations 1996 Health and Safety at Work etc. Act 1974 sec. 3 Management of Health and Safety at Work Regulations 1999 reg. 12	Requires employers to use a safety sign where there is a significant risk to health and safety that has not been avoided or controlled by the methods required under other relevant law, provided use of a sign can help reduce the risk. Safety signs are not a substitute for those other methods of controlling risks such as engineering controls and safe systems of work.	Provide adequate signage to highlight hazards and controls (e.g. electricity hazards, fire-fighting equipment, escape routes, etc.  The Regulations require, where necessary, the use of road traffic signs in workplaces to regulate road traffic  Signboards are only effective if they can be seen and understood. If too many signs (including information signs) are placed together there is a danger of confusion or of important information being overlooked.	Following consultation with the Harbour Operator and risk assessment:  1. Provide road traffic signs, as prescribed in the Road Traffic Regulation Act 1984 to regulate road traffic within harbour areas where necessary  2. In response to the risk assessment findings of the Harbour Operator, provide signboards compliant with BS 5378 Safety signs and colours and BS 5499:2002 Graphical Symbols and Signs, taking care to avoid using too many signboards in close proximity  3. Provide Safety Signs, including fire safety signs.  4. Provide suitable illuminated signs and acoustic signals, e.g. fire alarms, to be used where necessary	✓		

1.0 Health and Safety Legislation						Division of Responsibilities		
Topic Area	Aspect Covered	Key Legislation	Overview of Standards and Requirements	Requirements	Tasks	CMAL	Harbour Operator	Applies to Both
Management of Health and Safety	Signage	Health and Safety (Safety Signs and Signals) Regulations 1996 Health and Safety at Work etc. Act 1974 sec. 3 Management of Health and Safety at Work Regulations 1999 reg. 12	Requires employers to use a safety sign where there is a significant risk to health and safety that has not been avoided or controlled by the methods required under other relevant law, provided use of a sign can help reduce the risk. Safety signs are not a substitute for those other methods of controlling risks such as engineering controls and safe systems of work.	Provide adequate signage to highlight hazards and controls (e.g. electricity hazards, fire-fighting equipment, escape routes, etc.  The Regulations require, where necessary, the use of road traffic signs in workplaces to regulate road traffic  Signboards are only effective if they can be seen and understood. If too many signs (including information signs) are placed together there is a danger of confusion or of important information being overlooked.	<ol style="list-style-type: none"> <li>Where there is a significant risk to health and safety that has not been removed or controlled by other methods consult with CMAL in respect of findings of risk assessments that identify the need for additional health and safety signs and signals</li> <li>Do not establish any other signage in harbour areas without consulting with CMAL to seek their agreement and written permission with regards the need, content, format and placement</li> </ol>		✓	

## Consultation Matrix

## SCHEDULE PART 4

### INSURANCE

#### SECTION A – CMAL INSURANCES

##### 1. Piers Package Insurance

**Insured:** Caledonian Maritime Assets Limited and/or subsidiary and/or associated and/or affiliated companies as their respective rights and interests may appear.

**Period:** From: 1 June 2015  
To: 31 May 2016, both days Inclusive British Summer Time.

**Interest:** **Piers Package**

- Section 1 - Piers and/or linkspans and/or other property of the Assured as specified herein.
- Section 1a - Investment Property
- Section 2 - Property (All Risks)
- Section 3 - Liability and/or Fines and/or Errors and Omissions
- Section 4 - Crown Property to be declared
- Section 5 - Terrorism

##### **Deductibles:**

- Section 1 - Property £5,000 any one accident or occurrence
- Section 2 – Property (All Risks) £1,500 any one accident or occurrence
- Section 3a - Liabilities £2,500 any one accident or occurrence or series of accidents or occurrences arising out of one event
- Section 3b – Fines £10,000 any accident or occurrence or series of accidents or occurrences arising out of one event
- Section 3c – Errors and Omissions £10,000 any accident or occurrence or series of accidents or occurrences arising out of one event.
- Section 4 – Crown Property No Crown Property declared
- Section 5 - Terrorism £50,000 any one occurrence at Gourock, £10,000 any one occurrence at all other locations

##### **Limits of Indemnity:**

- Section 1 – Sum Insured: 100% of Values and/or Amounts and/or Limits as specified within.  
Full reinstatement value as per schedule with the maximum amount insured recoverable being £ 25,061,090 any one accident or occurrence unlimited in the aggregate.  
The basis of valuation for property insured hereunder automatically provides for an inflation factor of upto 130% of the declared property reinstatement cost.
- Section 2 - Sum Insured: £4,014,256
- Section 3a) – Sum Insured: £25,000,000
- Section 3b) – Sum Insured: £1,000,000
- Section 3c) – Sum Insured: £1,000,000

- Section 4 – Sum Insured: £1,000,000
- Section 5 as for section 1

## **SECTION B – HARBOUR OPERATOR INSURANCES**

### **1. Property Insurance (Contents, Material and Equipment Insurance)**

**Limit of Indemnity:** The full reinstatement value of the Harbour Operator's property.

### **2. Third Party (Public) Liability and Products Liability Insurance**

**Insured:** The Harbour Operator and all subsidiary companies

**Interest:** Legal liability of the Insured for all sums (including claimants' costs and expenses) in respect of:-

- i) accidental death or bodily injury to or illness or disease contracted by any person;
- ii) accidental loss of or damage to property;
- iii) accidental interference to property or any easement right to air, light, water or way or the enjoyment or use thereof by obstruction, trespass, loss of amenities, nuisance or any like cause;

occurring during the period of insurance and arising out of or in connection with the operation and maintenance of the Harbour Operator's business whether arising under the terms of this Agreement or otherwise.

**Limit of Indemnity:** Not less than £25,000,000 in respect of any one occurrence, the number of occurrences being unlimited but in the aggregate in respect of seepage, pollution, products liability and if applicable completed operations.

**Territorial Limits:** Anywhere in the World.

**Insured Locations:** The Harbour Facilities

#### **Main Exclusions from Limit of Indemnity:**

- Liability for death, illness, disease or bodily injury sustained by employees of the Insured
- Liability arising out of the use of mechanically propelled vehicles in circumstances regulated by the Road Traffic Acts.
- Liability arising from the ownership, possession or use of any aircraft or waterborne vessel
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured
- Liability in respect of loss or damage to property owned by the Insured
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence
- War Perils
- Nuclear Risks
- Date Recognition/Cyber Risks
- Asbestos
- Directors and Officers

#### **Extensions and Conditions:**

- Cross liability clause
- Contingent Motor Liability
- Worldwide Jurisdiction

- Territorial Limits Extension to world-wide (for business, training and inspection trips)
- Consumer Protection Act 1987 (Defence Costs)
- Data Protection Act 1998
- Indemnity to Principals clause
- Health and Safety at Work etc. Act 1974 (Defence Costs)
- Food Safety Act 1990 Prosecution (Defence Costs)
- Defective Premises Act
- Personal Injury to include libel, slander, defamation, false arrest, invasion of privacy, detention or any like cause.
- Including officers, directors and employees as Insured Parties
- Liability to Authorities in respect of fines and penalties as available but excluding criminal acts
- Occupiers legal liability cover
- Liabilities as Harbour Operators

**Excess:** Not to exceed £10,000 each occurrence unless otherwise agreed in writing with CMAL.

### 3. Employer's Liability Insurances

**Insured:** The Harbour Operator and all subsidiary companies.

**Interest:** Legal liability of the Insured for all sums (including claimants' costs and expenses) in respect of accidental death or bodily injury to or illness or disease contracted by any person employed arising out of and in the course of employment by the Insured in its business.

**Limit of Indemnity:** Not less than £25,000,000 in respect of any one event unlimited in the aggregate.

**Territorial Limits:** Anywhere in the World.

**Insured Locations:** The Harbours Facilities

**Main Exclusions:**

- Motor Road Traffic Act liability
- War Perils
- Nuclear Risks
- Data Recognition/Cyber Risks
- Offshore Installations

**Extensions and Conditions:**

- Unsatisfied Court Judgements
- Compensation for Court Attendance
- Costs of legal representation at Coroner's Inquests etc
- Health and Safety at Work Act 1974 (Northern Ireland Order 1978)
- Temporary Work Overseas
- Indemnity to Principals Clause
- Including officers, directors and employees as Insured Parties

**Excess:** NIL unless otherwise agreed in writing.

### 4. Marine Liability Insurance

Liability limit	GBP25,000,000 any one incident or event
Fines limit	GBP1,000,000
Errors and Omissions	GBP1,000,000



**SCHEDULE PART 5**  
**MANAGEMENT OF CONFLICT**

Successful applicants submission to be inserted

**SCHEDULE PART 6**

**CUSTOMER CARE PROCESS**

Successful applicants submission to be inserted

**SCHEDULE PART 7**  
**HEALTH AND SAFETY PLAN**

Successful applicants submission to be inserted

**SCHEDULE PART 8**

**START-UP PLAN**

Successful applicants submission to be inserted

**SCHEDULE PART 9**  
**ENVIRONMENTAL MANAGEMENT PLAN**

Successful applicants submission to be inserted

**SCHEDULE PART 10**

**KEY PERSONNEL AND QUALIFICATIONS**

Successful applicants submission to be inserted

**SCHEDULE PART 11**

**HARBOUR OPERATIONS ORGANISATION STRUCTURE**

Successful applicants submission to be inserted

**SCHEDULE PART 12**  
**OPERATIONS AND SAFETY MANAGEMENT SYSTEM**

Successful applicants submission to be inserted



**SCHEDULE PART 13**

**VARIATION TO SERVICE PROCESS**

Successful applicants submission to be inserted