



T: [REDACTED]  
E: [REDACTED]

Kevin Hobbs  
Chief Executive  
Caledonian Maritime Assets Ltd  
Municipal Buildings  
Fore Street  
Port Glasgow  
Inverclyde  
PA14 5EQ

30/03/2022

Dear Kevin,

## OFFER OF VOTED LOAN - PROCUREMENT OF TWO NEW VESSELS INTENDED FOR ISLAY ROUTES

The Scottish Ministers in exercise of their powers under Section 70 of the Transport (Scotland) Act 2001, as amended by the Transport (Scotland) Act 2005 hereby offer to give to Caledonian Maritime Assets Ltd (CMAL) (“the Grantee”) a Voted loan of up to £105,000,000 (one hundred and five million pounds STERLING), payable over the financial years 2021/22 to 2025/26, in connection with the construction and delivery of two Islay Class vessels of around 95 meters in length, with capacity for 100 standard cars and 450 passengers and intended for use on the Clyde and Hebrides ferry network within initial deployment expected on the existing Islay routes, which is more particularly described in Part 1 of [SCHEDULE 1](#) (“the Project”) and subject to the following terms and conditions:

### 1. Definitions and Interpretation

- 1.1 In these Conditions, the words and expressions set out in [SCHEDULE 4](#) shall have the meanings ascribed to them in that Schedule.
- 1.2 In these Conditions unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.3 The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or taken into account in their interpretation.
- 1.4 Except as otherwise provided in these Conditions, any reference to a clause, paragraph, subparagraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions. The schedules are intended to be contractual in nature. They form part of the Agreement and should be construed accordingly.
- 1.5 This Agreement shall not be varied except by an instrument in writing signed by both parties.

## 2. Purposes of the Voted Loan

- 2.1 The Voted Loan is made to enable the Grantee to carry out the Project.
- 2.2 The Voted loan shall only be used for the purposes of the Project and for no other purpose whatsoever.
- 2.3 No part of the Voted Loan shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 2.4 The main objectives/expected outcomes of the Voted Loan are:
- CMAL to purchase two new ferry vessels around 95 meters in length with capacity for 100 standard cars and 450 passengers
  - The new vessels are intended for use on the Clyde and Hebrides ferry network within initial deployment expected on the existing Islay routes
  - CMAL to lead on the procurement, supervision and delivery of the two new vessels and all works necessary for the vessels to gain certification from the Maritime and Coastguard Agency to operate in UK waters
- 2.5 The targets/milestones against which progress in achieving objectives/expected outcomes shall be monitored are:
- **See SCHEDULE 5**
- 2.6 The eligible costs for which the Voted loan can be claimed are:
- Costs incurred by the Grantee in completion of construction and delivery of the two new vessels and all associated project costs up to a maximum value of £105,000,000 (one hundred and five million pounds) comprising of:
  - (i) base construction costs of the two vessels around £94,200,000 including budget for contract variations agreed with the Scottish Ministers, spares and tools supplied with the vessels; and
  - (ii) additional costs for contract allowances, passage of the two vessels to Scottish waters and all associated CMAL and CalMac Ferries Limited project management costs up to £10,800,000
- 2.7 The eligible costs exclude:
- Any Value Added Tax (VAT) reclaimable by the Grantee

## 3. Payment of Voted Loan

- 3.1 The Voted Loan shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of Part 2 of **SCHEDULE 1** attached.
- 3.2 The Grantee shall within two months following the end of each financial year in respect of which the Voted loan has been paid, submit to the Scottish Ministers a statement of compliance with the Conditions of the Voted loan using the form of words provided in

**SCHEDULE 3.** The statement shall be signed by the Grantee’s duly authorised officer.

- 3.3 In the event that the amount of the Voted loan paid by the Scottish Ministers to the Grantee at any point in time is found to exceed the amount of the expenses reasonably incurred by the Grantee in connection with the Project, the Grantee shall repay to the Scottish Ministers the amount of such excess within 14 days of receiving a written demand for its return from or on behalf of the Scottish Ministers. In the event that the Grantee fails to pay such amount within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest.
- 3.4 The Scottish Ministers shall not be bound to pay to the Grantee, and the Grantee shall have no claim against the Scottish Ministers in respect of, any instalment of the Voted loan which has not been claimed by the Grantee by 31 March of the applicable financial year as set out in Part 2 of **SCHEDULE 1**, unless otherwise agreed in writing by the Scottish Ministers.
- 3.5 This offer of the Voted loan is provided on the basis that CMAL is the procuring authority for the vessel construction and delivery and that CMAL has followed all required legislation and appropriate guidance in completing these processes.
- 3.6 In the event that the construction and delivery of the vessels is not completed to provide appropriate vessels for deployment on the Clyde and Hebrides Ferry Services network as per the terms of this agreement then this offer of the Voted loan will be withdrawn and all payments made under this agreement will be returned to Scottish Ministers by CMAL within three months of such withdrawal.

#### **4. Inspection and Information**

- 4.1 The Grantee shall keep the Scottish Ministers fully informed of the progress of the Project in the form of monthly reports. Details shall include actual expenditure to date compared with profiled expenditure and any change to estimated expenditure for the financial year and/or the Project as a whole, the reasons for any such changes and progress in achieving objectives/outcomes.
- 4.2 Subject to the provisions of this Agreement, the Parties shall agree on milestones/objectives/targets and any relevant timescale for its delivery and list them in writing. If the Grantee anticipates that it will be unable to meet the objectives/milestones/targets or any agreed timescales for any reason other than a Force Majeure event, it shall immediately notify the Scottish Ministers of the reason(s) for not meeting the objectives/milestones/targets or timescales and propose the earliest reasonable alternate date by which it can attain this and future objectives/milestones/targets. Revisions to objectives/targets/milestones and timescales against which progress in achieving objectives/outcomes are monitored shall be subject to the written agreement of the Scottish Ministers.
- 4.3 The Grantee shall, on completion of the Project, submit a report to the Scottish Ministers summarising the outcomes and performance and delivery of the Project. Such a report shall include such statistical and other detailed information relating to the delivery and impact of the Project as required by the Scottish Ministers.
- 4.4 The Grantee shall also provide any other information that the Scottish Ministers may reasonably require to satisfy themselves that the Project is consistent with the Agreement. The Grantee shall

provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.

- 4.5 The Grantee shall keep and maintain for a period of: six years after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of the Voted loan. The Grantee shall afford the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time, such access to those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.
- 4.6 In the event of the Grantee becoming aware of or suspecting any irregular or fraudulent activity that may have any impact on the Project or on the use of the Voted loan, or any part of it, the Grantee shall immediately notify the Scottish Ministers of such activity and provide such other information as the Scottish Ministers may reasonably require in relation to the impact on the Project and the use of the Voted loan.
- 4.7 The grantee shall immediately inform the Scottish Ministers of any change in its management and/or constitution for example, but not limited to, a change in status from one type of body corporate to another.

## 5. Confidentiality and Data Protection

- 5.1 The Grantee will respect the confidentiality of and hold confidential any commercially sensitive information that they have access to as a result of the Project.
- 5.2 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.
- 5.3 The Grantee shall ensure that all requirements of the Data Protection Laws are fulfilled in relation to the Project.
- 5.4 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments

over £25,000. The Grantee should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of voted loan) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

## 6. Disposal of Assets

The Grantee shall not, without prior written consent of the Scottish Ministers, dispose of any asset funded, in part or in whole, with Voted loan funds during the lifetime of the asset. During that period the Scottish Ministers shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of Voted loan funding used in connection with the acquisition or improvement of the asset against the whole proceeds. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale.

## 7. Publicity

The Grantee shall where reasonably practicable acknowledge in all publicity material relating to the Project the contribution of the Scottish Ministers to its costs. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.

## 8. NOT USED

## 9. Default and Recovery etc. of Voted Loan

- 9.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Voted loan or any part of it in the event that:
- 9.1.1 The Grantee commits a Default;
  - 9.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Voted loan was awarded warrants an alteration in the amount of the Voted loan;
  - 9.1.3 The Grantee fails to carry out in full the Project;
  - 9.1.4 In the Scottish Ministers' opinion, the progress on the Project is not satisfactory;
  - 9.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy; or
  - 9.1.6 In the Scottish Ministers' opinion they or the Project will suffer significant uncompensated economic, reputational or operational harm from a delay in delivering the Project.
- 9.2 If the Voted loan (or any part or condition thereof) does not comply with applicable Subsidy Control obligations, Scottish Ministers may require immediate repayment of the Voted loan or any part of it together with interest at such rate and on such basis as may be determined from time to time in accordance with law.
- 9.3 The Scottish Ministers may withhold the payment of the Voted loan if at any time within the duration of the Agreement:

- 9.3.1 The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 9.3.2 Where the Grantee is an individual, if a petition is presented for the Grantee's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Grantee; or the Grantee makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
- 9.3.3 A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver.
- 9.4 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 9.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest.
- 9.5 Notwithstanding the provisions of this clause 9, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 9 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.
- 9.6 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 9.1 to 9.3 shall not be construed as a waiver of such right or remedy.

## 10. Assignment

The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

## 11. Termination

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

## 12. Corrupt Gifts and Payments of Commission

The Grantee shall ensure that its employees shall not breach the terms of the Bribery Act 2010 in relation to this or any other grant. The Grantee shall ensure that adequate controls are in place to prevent bribery.

### 13. Continuation of Conditions

13.1 These Conditions, except for Condition 6, shall continue to apply for a period of 5 years after the end of the financial year in which the final instalment of the Voted loan was paid.

13.2 Condition 6 shall continue to apply until the end of the period referred to in that Condition.

### 14. Compliance with the Law

The Grantee shall ensure that in relation to the Project, they and anyone acting on their behalf shall comply with the relevant law, for the time being in force in Scotland.

### 15. Governing Law

This contract is governed by the Law of Scotland and the parties hereby prorogate to the exclusive jurisdiction of the Scottish Courts

### 16. Interest and Repayment of Voted Loan

16.1 Interest at Public Works Loan Board rates (25 year rate) will be charged on the outstanding loan and Transport Scotland shall inform the Grantee of the applicable interest rate as each loan tranche is drawn down. Following the final loan drawdown the instalments will be consolidated into a single term loan for the vessel.

16.2 Loan repayments will commence on the first scheduled repayment date notified by Transport Scotland to the Grantee and being a date after the date of entry into service of the vessels. Interest accrued up until the first scheduled repayment date shall be added to the capital amount due.

16.3 The term loan plus accrued interest will be repayable over 25 years. The loan plus accrued interest will be repaid on an annuity basis in 50 instalments payable twice yearly together with applied interest on 31 March and 30 September of each year of the Voted Loan. Transport Scotland will send the Grantee a schedule detailing both principal and interest payments when the term loans are finalised.

If you wish to accept the offer of this Voted loan on the whole terms and conditions as set out in the letter and annexed Schedules, you should sign and date both copies of the Voted loan Acceptance below and return one copy of the offer of Voted loan and Schedules to me at [REDACTED] in writing at; Transport Scotland, Aviation, Maritime, Freight and Canals, Ferries Unit, Buchanan House 58 Port Dundas Road, Glasgow, G4 0HF. You should retain the second copy of the offer of Voted loan and Schedules for your own records.

Yours Sincerely

[REDACTED]  
30/03/2022

## VOTED LOAN ACCEPTANCE

On behalf of CMAL, I accept the foregoing offer of Voted Loan by the Scottish Ministers dated 30/03/2022 on the whole terms and conditions as set out in the letter and annexed Schedules. I confirm that CMAL is solvent. I confirm that I hold the relevant signing authority.

Signed:

Print Name:

Position in Organisation of Person Signing:

Date:

Place of Signing:

Signed:

Witness Name:

Address:

Date:

Place of Signing:



## SCHEDULE 1

### PART 1: THE PROJECT

The Islay vessel project was initiated to consider options for replacing one of the two vessels currently serving the routes, namely the life expired MV Hebridean Isles. The key challenges for communities served by the Islay routes are reliability and capacity of these vessels.

Further consideration of network wide resilience and fleet replacement pressures, the project team presented updated information on costs, potential benefits and longer term implications for the CHFS network of confirming one or two vessels of the same specification within the Invitation to Tender (ITT). In September 2021 Ministers agreed that CMAL should continue with the procurement process, confirming two vessels within the ITT.

Caledonian Maritime Assets Ltd awarded the NEWBUILDCON contracts dated 28 March 2022 to the Cemre Marin Endustri A.S. shipyard in Turkey for two new vessels (Hulls NB1092 and NB1093) around 95 meters in length, with capacity for 100 standard cars and 450 passengers and intended for use on the Clyde and Hebrides ferry network within initial deployment expected on the existing Islay routes.

The Grantee confirms that the NEWBUILDCON requires that the Builder shall carry out the contracts in accordance with good international shipbuilding and marine engineering practice for vessels intended for delivering safe passenger and motor vehicle ferry service in the United Kingdom.

### PART 2: PAYMENT OF VOTED LOAN

1. The total Voted Loan of up to £105,000, 000 (one hundred and five million pounds) shall be payable by the Scottish Ministers to the Grantee in arrears on receipt of a completed claim for Voted Loan in the form set out in [SCHEDULE 2](#) together with the associated monitoring information set out in paragraph 4.1 of the Offer of Voted loan.
2. The total Voted loan shall be payable over the financial years 2021/22 to 2025/26, The Scottish Ministers shall not be bound to pay any instalment of the Voted loan which has not been claimed by the Grantee by 31 March of the applicable financial year, unless otherwise agreed in writing by the Scottish Ministers.
3. The Grantee shall provide a monthly profile of expenditure of the Voted loan before the start of the financial year. Any change to the profile or to the overall costs of the Project shall be notified to the Scottish Ministers at the earliest opportunity via the claims for Voted loan and monitoring reports.
4. Each claim shall be for an amount equal to the actual reasonable and proper costs incurred by the grantee in connection with the Project.
5. Each claim shall be submitted together with such explanatory or supplementary material as the Scottish Ministers may from time to time require whether before or after submission of the claim.
6. On receipt of each claim (and any required documentation and information), the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee has reasonably and properly incurred in connection with the Project having regard to that claim. The determination shall be based on

the information provided by the Grantee in accordance with this Schedule. The Scottish Ministers shall use their best endeavours (but shall be under no obligation or duty) to pay the amount determined to the Grantee within four weeks of receiving a claim and any required documentation and information relevant to the claim.

7. In order to facilitate the accrual of expenditure of the Voted loan for the financial year the Grantee shall, where appropriate, advise the Scottish Ministers in writing by mid-April the amount of the Voted loan actually expended up to and including 31 March.

**SCHEDULE 2  
VOTED LOAN CLAIM FORM**

**Organisation:**

**Bank details:**

**Project:**

**Total agreed grant for:**

**Latest forecast of expenditure of grant for:**

**Voted loan claimed to date:**

**Completed by:**

**Position:**

**Contact Details:**

**Date:**

**Items of Expenditure**

**Please list in the table below all discrete items of expenditure relevant to the above period and the type of documentary evidence that will be made available on request to substantiate each amount.**

A	B	C	D
Item	Amount (£)	Paid Invoice [Y/N]	Other (please specify, e.g. certificate of payment in kind)
<b>TOTAL*</b>			

\* Note the total should add up to the total expenditure claimed for the period.

### SCHEDULE 3

#### STATEMENT OF COMPLIANCE WITH CONDITIONS OF VOTED LOAN

##### OFFER OF VOTED LOAN FOR CONSTRUCTION AND DELIVERY OF TWO NEW VESSELS INTENDED FOR THE ISLAY ROUTES

This offer of Voted loan is provided on the basis that CMAL are the procuring authority for the vessels and have followed all required legislation and appropriate guidance in completing the procurement process. For the Shipbuilding Contract the Baltic and International Maritime Council (BIMCO) "NEWBUILDCON" International Standard Shipbuilding contracts will be used and associated full refund guarantees will be put in place.

This is to confirm that the Voted loan claimed by CMAL in relation to the above Project during the financial year ended 31 March 2022 was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Voted loan. This statement is supported by the records of CMAL.

Signed:

Name in block capitals:

Position:

Date:

## SCHEDULE 4

### DEFINITIONS

“**Agreement**” means the agreement constituted by the Scottish Ministers’ invitation to apply for a grant, the Grantee’s Application, these Conditions and the Grantee’s acceptance of these Conditions;

“**Conditions**” means these grant conditions;

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

“**Default**” means:

- a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- c) Any breach of any legislation; or
- d) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant, or any other default,

In all cases by either party, its employees, agents or representatives;

“**Financial Year**” means a period from 1 April in one year until 31 March in the next;

“**Voted Loan**” means the Voted loan offered by the Scottish Ministers to the Grantee as specified in the Award Letter, as varied from time to time in accordance with these Conditions;

“**Grantee**” means the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

“**Intellectual Property Rights**” means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or generated as part of the Project by or on behalf of the Grantee.

“**Project/Programme**” means the purpose for which the Grant has been awarded as described in the Offer of Grant;

“**Payment**” means each of the payments specified in Schedule 1 hereto.

“**Subsidy Control**” means the United Kingdom’s international commitments on subsidy control arising from, amongst others, the EU-UK Trade and Cooperation Agreement, World Trade Organisation Membership and commitments arising from international treaties and agreements to which the United Kingdom is a party.

“**UK GDPR**” means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).



**SCHEDULE 5**  
**PAYMENT PROFILE**  
**[Redted]**