

ASSET MANAGEMENT TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

Version V01 – 24 May 2021

CONTRACT TERMS DEFINED BY REFERENCE TO THE CONTENTS OF THE PURCHASE ORDER (the "Purchase Order") SENT TO YOU BY EMAIL WITH THESE TERMS AND CONDITIONS

Purchase Order Number:	As set out in the Purchase Order.
CFL Company:	CalMac Ferries Limited, a company incorporated in Scotland with company number SC302282 and having its registered office at The Ferry Terminal, Gourock, PA19 1QP Email address for notices: [tech.suppliers@calmac.co.uk] (unless a different address is specified in the Purchase Order in which case that address shall be used).
Supplier:	The supplier to which the Purchase Order is addressed.
Supplier's Notice Details:	FAO: The managing director (or equivalent senior representative) of the Supplier; or the representative of the Supplier to which the Purchase Order was sent. Address: The registered or a principal office of the Supplier. Email address for notices: the email address to which the Purchase Order was sent.
Delivery Location:	As set out in the Purchase Order.
Goods:	As set out in the Purchase Order.
Warranty Period	From delivery, the period of [1 year] unless a different period is set out in the Purchase Order in which case that period shall apply.
Services:	As set out in the Purchase Order.
Price:	As set out in the Purchase Order.
Limit of Liability	£5 million unless a different amount is set out in the Purchase Order in which case that limit shall apply.
Additional Schedules	Any additional contract documents of the CFL Company referred to in the Purchase Order.

For the purposes of establishing the Warranty Period, the Limit of Liability and the extent of any Additional Schedules, the content of the Purchase Order shall apply but to the express exclusion of any period, limit or contractual provisions referred to in any terms and conditions of the Supplier which are included or referenced in any document listed in the Purchase Order.

DOCUMENT PART 2 – STANDARD TERMS AND CONDITIONS

CONDITIONS

1. The Contract

- 1.1 The Contract between the CFL Company and the Supplier is made up of the following:
- 1.1.1 The Purchase Order issued by the CFL Company to the Supplier (subject to Clause 1.4);
 - 1.1.2 The Conditions;
 - 1.1.3 Any Additional Schedules specified in the Purchase Order;
- 1.2 Terms defined in the Purchase Order shall have the meanings given to them in that document.
- 1.2.1 If there is any conflict or ambiguity between the terms of the documents listed in clause 1.1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list. The content of the Purchase Order shall take precedence over any document listed in the Purchase Order.
- 1.3 Any published or notified terms and conditions of the Supplier and any terms and conditions which are implied by law, trade custom, practice or course of dealing shall not form part of the Contract. Any terms and conditions of the Supplier which are included or referenced in any document listed in the Purchase Order shall not form part of the Contract.
- 1.4 The Contract will commence when the CFL Company issues to the Supplier the Purchase Order, or the Supplier undertakes any act consistent with fulfilling the Purchase Order.

2. Interpretation

2.1 Definitions

"**Business Day**" means a day other than a Saturday or Sunday, when the banks in Glasgow are open for general business.

"**Conditions**" means these terms and conditions for the provision of goods and services.

"**CHFS Contract**" means the contract between CalMac Ferries Limited and the Scottish Ministers in relation to the provision of ferry services (TS/MTRIPS/SER/2015/01) dated 22 August 2016.

"**Control**" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

"**CFL Company Materials**" means all materials, equipment and tools, drawings, specifications and data supplied by the CFL Company to the Supplier.

"**Deliverables**" means all goods, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

"**Goods Specification**" means any specification for the Goods, including any related plans and drawings, that is referred to in the Purchase Order or is otherwise agreed in writing by the CFL Company and the Supplier.

"**Intellectual Property Rights**" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of,

and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Service Specification" means the description or specification for Services that is referred to in the Purchase Order or is otherwise agreed in writing by the CFL Company and the Supplier.

"UK Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Interpretation:

- 2.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.3 A reference to a party includes its personal representatives, successors and permitted assignees.
- 2.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 2.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.6 A reference to **writing** or **written** includes email.

3. Supply of Goods

- 3.1 The Supplier shall ensure that the Goods shall:
 - 3.1.1 correspond with their description and any applicable Goods Specification;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose made expressly known in the Goods Specification to the Supplier by the CFL Company;
 - 3.1.3 be free from defects in design, materials and workmanship and remain so for the Warranty Period (fair wear and tear excepted); and
 - 3.1.4 comply with all applicable statutory and regulatory requirements (and / or approvals) relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods including those of the flag state and classification society of any vessel operated by the CFL Company in relation to which Goods and Services are to be provided.
- 3.2 The CFL Company may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.3 If following such inspection or testing the CFL Company considers that the Goods do not comply or are unlikely to comply with the Supplier's obligations in this Contract, the CFL Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. The CFL Company may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that:
 - 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.2 each delivery of the Goods is accompanied by a delivery note which details the Purchase Order Number, the type and quantity of the Goods (including the code number of the Goods, where

applicable), a customs package (comprising: commercial invoice; packing list; export declaration; VAT/EORI number; HS codes and country of origin), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 it states clearly on the delivery note any requirement for the CFL Company to return any packaging material for the Goods to the Supplier. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the date specified in the Purchase Order or, if no such date is specified, then within 30 days of the date of the Purchase Order;

4.2.2 to the Delivery Location at a time agreed with CFL Company; and

4.2.3 during the CFL Company's normal hours of business on a Business Day or as instructed by the CFL Company.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location unless otherwise specified in the Purchase Order, the countersignature by an appropriate representative of the CFL Company of a delivery note or equivalent, and delivery otherwise in accordance with the CFL Company's reasonable instructions. Title and risk in the Goods shall pass to the CFL Company on completion of such delivery.

4.4 The Supplier shall not deliver the Goods in instalments without the CFL Company's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, the instalments delivered may be invoiced and paid for separately.

5. Supply of Services

5.1 The Supplier shall from the date set out in the Service Specification and for the duration of the Contract supply the Services to the CFL Company in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Service Specification or that the CFL Company reasonably notifies to the Supplier.

5.3 In providing the Services, the Supplier shall:

5.3.1 co-operate with the CFL Company in all matters relating to the Services, and comply with all instructions of the CFL Company;

5.3.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;

5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification;

5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

5.3.6 ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the CFL Company, will be free from defects in workmanship, installation and design for the Warranty Period (fair wear and tear excepted); and

5.3.7 hold all CFL Company Materials in safe custody at its own risk, maintain the CFL Company Materials in good condition until returned to the CFL Company, and not dispose or use the CFL Company Materials other than in accordance with the CFL Company's written instructions or authorisation.

- 5.3.8 comply with all applicable statutory and regulatory requirements (and / or approvals) including those of the flag state and classification society of any vessel operated by the CFL Company in relation to which Deliverables and Services are to be provided.

6. CFL Company remedies

- 6.1 **Failure to deliver.** If the Supplier fails to deliver the Goods and/or to perform the Services by the applicable date, or delivers Goods or supplies Services that do not comply with the requirements of the Contract, the CFL Company shall, without limiting or affecting other rights or remedies available to it, have the following rights and remedies:

- 6.1.1 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered;
- 6.1.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.1.3 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 6.1.4 to recover from the Supplier any costs incurred by the CFL Company in obtaining substitute goods and/or services from a third party; and/or
- 6.1.5 to claim damages for any additional costs, loss or expenses incurred by the CFL Company which are in any way attributable to the Supplier's failure.

- 6.2 **Rejection of Goods.** If the Supplier fails to deliver Goods that comply with the requirements of the Contract, the CFL Company shall, without limiting or affecting other rights or remedies available to it, have the following rights and remedies:

- 6.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier which shall uplift them as soon as reasonably practicable at the Supplier's risk and expense;
- 6.2.2 to require the Supplier to repair or replace the rejected Goods at no additional cost to CFL Company;
or
- 6.2.3 to require the Supplier to provide a full refund of the price of the rejected Goods (if paid).

- 6.3 Clause 6.2 shall apply if any Goods do not remain free from defects in performance, design, materials and workmanship for the Warranty Period. The Contract shall apply to any Goods repaired and/or replaced by the Supplier and the Warranty Period shall apply from the time of completion of repair or delivery of replacement Goods.

- 6.4 Incomplete deliveries of Goods ordered or deliveries which constitute over-supply may be rejected by the CFL Company.

- 6.5 Title and risk in rejected Goods shall pass to the Supplier on rejection.

- 6.6 The CFL Company's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

7. CFL Company's obligations

- 7.1 The CFL Company shall:

- 7.1.1 provide the Supplier with reasonable access at reasonable times (subject to operational constraints and requirements) to the CFL Company's premises for the purpose of delivering the Goods and providing the Services; and
- 7.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

8. Charges and payment

- 8.1 The Price of the Goods shall be inclusive of the costs of packaging and any insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the parties or their authorised representatives.
- 8.2 The Price of the Services shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the CFL Company, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 In respect of the Goods, the Supplier shall invoice the CFL Company on or within 7 days after completion of delivery. In respect of Services, the Supplier shall invoice the CFL Company within 7 days after completion of the Services. Each invoice shall include such supporting information required by the CFL Company to verify the accuracy of the invoice, including the Purchase Order Number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the CFL Company shall pay any undisputed invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by the CFL Company under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the CFL Company, the CFL Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the CFL Company to inspect such records at all reasonable times on request.
- 8.8 The CFL Company may at any time, without notice to the Supplier, set off any present or future liability of the Supplier to the CFL Company against any liability of the CFL Company to the Supplier.

9. Intellectual property rights

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the CFL Company.
- 9.2 All Intellectual Property Rights in or arising out of or in connection with the Goods (other than Intellectual Property Rights in any CFL Company Materials) shall be owned by the Supplier save to the extent the Supplier has provided design work as part of the Services in which case the Intellectual Property Rights in that design shall be owned by the CFL Company.
- 9.3 The Supplier grants to the CFL Company a worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables and the Goods for the purpose of receiving and using the Goods and the Services and the Deliverables.
- 9.4 Where Deliverables include or require the development, licensing or other supply of software or technology ("Software") then:
- 9.4.1 unless otherwise specified in the Goods Specification, the Supplier shall provide the CFL Company free of charge with all releases of the Software or updates to it that correct faults, add functionality or otherwise amends or, upgrades the Software, in perpetuity, to the extent required for the Deliverables to meet the requirements of the Contract;
- 9.4.2 the Supplier agrees that: all data is the sole property of the CFL Company; any functionality of Software allowing data interrogation (including any extraction) by the Supplier shall be conducted only at such times agreed with the CFL Company in advance and subject to the Supplier providing the CFL Company, free of charge, with a copy of any data obtained by the Supplier as part of the interrogation. The Supplier will provide copies of data obtained by it to the CFL Company on request.

9.5 All CFL Company Materials shall remain the property of the CFL Company.

10. Indemnity

10.1 The Contractor shall be liable to the Operator under this Agreement for any loss or damage which has been caused by the act or omission of the Contractor or any and all Sub-contractors or other persons for which it is responsible.

10.2 Subject to clause 10.1 and 10.3, the Supplier shall indemnify the CFL Company against all liabilities, costs, expenses, damages and losses suffered or incurred by the CFL Company arising out of or in connection with:

10.2.1 any claim made against the CFL Company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the CFL Company Materials); and

10.2.2 any claim made against the CFL Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables to the extent caused by the act or omission of the Supplier; and

10.3 The indemnity in clause 10.1 shall not extend to any indirect or consequential losses, loss of profits, or loss of reputation.

10.4 The maximum liability of the Supplier to the CFL Company under or in respect of this Contract shall be the Limit of Liability. This limit on liability shall not apply to liability under clause 10.1.2 in respect of death and personal injury, or under clause 14 in respect of data protection, or under clause 16.4 in respect of employment liabilities.

10.5 This clause 10 shall survive termination of the Contract.

11. Insurance

During the term of the Contract and until the expiry of the Warranty Period (and in the case of Services, for 2 years after the end of the term of the Contract) the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, travel insurance, vehicle insurance, and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the CFL Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance (and/or if the CFL Company requests confirmation of insurance in the form of a letter from the Supplier's broker).

12. Confidentiality

12.1 Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority including in the case of the CFL Company under freedom of information laws or laws relating to the publication of expenditure and related information.

12.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13. Compliance with relevant laws and policies

13.1 In performing its obligations under the Contract, the Supplier shall:

13.1.1 comply with all applicable laws, statutes, regulations, approvals, codes and guidance including, without limitation, those of the flag state and classification society of any vessel operated by the CFL Company in relation to which Goods and Services are to be provided, from time to time in force; and

13.1.2 comply with the policies of the CFL Company in published on its website from time to time, in each case in so far as relevant to the Supplier, and which include its [Modern Slavery and Human Trafficking Policy, Corporate and Social Responsibility Policy, Anti-Bribery and Anti-Corruption Policy, Ethics Policy, Health & Safety Policy, Environmental Policy, Data and Privacy Policy, and Security Policy].

13.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

13.3 The Supplier shall observe all health and safety rules and regulations and any other security requirements that apply at or on any of the CFL Company's premises or vessels if access to such premises or vessels is required to fulfil its obligations under the Contract.

14. Data protection

14.1 Both parties will comply with all applicable requirements of UK Data Protection Legislation.

15. Termination

15.1 Without affecting any other right or remedy available to it, the CFL Company may terminate the Contract:

15.1.1 with immediate effect by giving written notice to the Supplier if:

15.1.1.1 there is a change of Control of the Supplier; or

15.1.1.2 the Supplier's financial position deteriorates to such an extent that in the CFL Company's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

15.1.1.3 the Supplier commits a breach of clause 13 (Compliance with relevant laws and policies).

15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 Business Days after being notified in writing to do so;

15.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or any other equivalent or similar step or action occurs in any jurisdiction; or

15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

16. Consequences of termination

16.1 On termination of the Contract, the Supplier shall immediately deliver to the CFL Company all Deliverables whether or not then complete, and return all CFL Company Materials. If the Supplier fails to do so, then the CFL Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

16.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry or to claim under any indemnity in the Contract.

16.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

- 16.4 If as a consequence of termination of the Contract or the cessation or partial cessation of the provision of the Services the employment of any person transfers from the Supplier (or a subcontractor) to any other person (including the CFL Company) the Supplier will indemnify the transferee employer in respect of all employment related liabilities in respect of the period prior to transfer.

17. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 20 Business Days or longer, the party not affected may terminate the Contract by giving no less than further 5 Business Days' written notice to the affected party.

18. General

18.1 Assignment and other dealings.

18.1.1 The CFL Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.

18.1.2 The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the CFL Company.

- 18.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the CFL Company. If the CFL Company consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

18.3 Notices.

18.3.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be

18.3.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

18.3.1.2 sent by email to the email address specified in the Conditions.

18.3.2 Any notice or communication shall be deemed to have been received:

18.3.2.1 if delivered by hand, on signature of a delivery receipt; and

18.3.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and

18.3.2.3 if sent by email, at the time of successful transmission, or, if this time falls outside 0900 to 1700 on a Business Day, at 0900 on the Business Day of successful transmission (if sent before 0900 on a Business Day) or at 0900 on the next Business Day (if sent at another time).

18.3.3 This clause does not apply to the service of any proceedings or other documents in any legal action.

- 18.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 18.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 18.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial

exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 18.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person save that the CFL Company may make Goods or Services available to group or related companies.
- 18.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third-Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 18.9 **Variation.** Except as set out in the Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.
- 18.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Scotland.
- 18.11 **Jurisdiction.** Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.