

Item: 11

Harbour Authority Sub-committee: 16 March 2021.

1. Recommendations

It is recommended:

1.1.

That the Committee approves the attached minute as a true record.

1.2.

That the Committee considers the recommendations at paragraphs 2.4, 3.5, 3.6, 5.5 and 6.5.

2. Appendix

Draft Minute of the Meeting of the Harbour Authority Sub-committee held on 16 March 2021.

Minute

Harbour Authority Sub-committee

Tuesday, 16 March 2021, 10:30.

Microsoft Teams.



Present

Councillors Graham L Sinclair, Andrew Drever, Robin W Crichton, David Dawson, Magnus O Thomson, Owen Tierney and Heather N Woodbridge.

Clerk

- Angela Kingston, Committees Officer.

In Attendance

- Gavin Barr, Executive Director of Development and Infrastructure.
- James Buck, Harbour Master.
- David Sawkins, Deputy Harbour Master: Strategy and Support.
- Colin Kemp, Corporate Finance Senior Manager.
- Karen Bevilacqua, Solicitor.

Observing

- Lorraine Stout, Press Officer.

Declarations of Interest

- No declarations of interest were intimated.

Chair

- Councillor Graham L Sinclair.

1. Form of Voting

The Sub-committee resolved that, should a vote be required in respect of the business to be considered at this meeting, notwithstanding Standing Order 21.4, the form of voting should be by calling the roll or recorded vote.

2. Miscellaneous Piers and Harbours and Scapa Flow Oil Port

Draft Budgets

After consideration of a joint report by the Executive Director of Development and Infrastructure and the Head of Finance, copies of which had been circulated, and after hearing a report from the Corporate Finance Senior Manager, the Sub-committee:

Noted:

2.1. That the respective budgets for Miscellaneous Piers and Harbours and Scapa Flow Oil Port, as trading activities, should normally be based on an assumption that a surplus could be generated from their activities.

2.2. That, after applying inflationary and budgetary assumptions, the draft revenue budget in respect of the Miscellaneous Piers and Harbours for 2021/22 was indicating a net deficit of £404,800.

2.3. That provision of £1,795,000 had been made within the revenue budget for Miscellaneous Piers and Harbours in respect of maintenance and repair works, to be partially funded in 2021/22 by a contribution of £413,000 from the Miscellaneous Piers Property Maintenance Fund.

The Sub-committee resolved to **recommend to the Council:**

2.4. That the draft revenue budgets for financial year 2021/22, in respect of Miscellaneous Piers and Harbours and Scapa Flow Oil Port, attached as Appendix 1 to the joint report by the Executive Director of Development and Infrastructure and the Head of Finance, be submitted to the Policy and Resources Committee for consideration through the budget setting process.

3. Miscellaneous Piers and Harbours and Scapa Flow Oil Port

Minor Capital Improvement Programmes – Proposed Programmes for 2021/22

After consideration of a report by the Executive Director of Development and Infrastructure, copies of which had been circulated, and after hearing a report from the Corporate Finance Senior Manager, the Sub-committee:

Noted:

3.1. That the Non-General Fund capital programme included annual budget allocations for financial year 2021/22 as follows:

- Miscellaneous Piers and Harbours - £300,000.
- Scapa Flow Oil Port - £150,000.

3.2. That the draft programmes in respect of minor capital improvements for 2021/22 were costed as follows:

- Miscellaneous Piers and Harbours - £620,000.
- Scapa Flow Oil Port - £85,000.

3.3. That, although revenue budgets in respect of the Miscellaneous Piers and Harbours and Scapa Flow Oil Port Accounts for 2021/22 had not yet been set, the draft revenue budgets reflected the associated loan charges in respect of the proposed minor capital improvement programmes.

The Sub-committee resolved, in terms of delegated powers:

3.4. That, subject to an adequate budget being established, the programmes of Minor Capital Improvements for Miscellaneous Piers and Harbours and Scapa Flow Oil Port for 2021/22, attached as Appendices 1 and 2 respectively to this Minute, be approved.

The Sub-committee resolved to **recommend to the Policy and Resources Committee:**

3.5. That the capital allocation within the Non-General Fund capital programme for financial year 2021/22 be increased from £300,000 to £620,000 in respect of minor capital improvement works for Miscellaneous Piers and Harbours.

3.6. That the capital allocation within the Non-General Fund capital programme for financial year 2021/22 be reduced from £150,000 to £85,000 in respect of minor capital improvement works within Scapa Flow Oil Port.

4. Miscellaneous Piers and Harbours

Revenue Maintenance Programme – Proposed Programme for 2021/22

After consideration of a report by the Executive Director of Development and Infrastructure, copies of which had been circulated, and after hearing a report from the Corporate Finance Senior Manager, the Sub-committee:

Noted:

4.1. That provision had been made within the draft budget for 2021/22 in respect of revenue maintenance works for Miscellaneous Piers and Harbours, amounting to £1,795,000, to be part funded from the Miscellaneous Piers and Harbours Property Maintenance Fund.

The Sub-committee resolved, in terms of delegated powers:

4.2. That, subject to an adequate budget being established, the programme of revenue maintenance for Miscellaneous Piers and Harbours for 2021/22, attached as Appendix 3 to this Minute, be approved.

5. Harbour Charges

Proposed Terms and Conditions

After consideration of a report by the Executive Director of Development and Infrastructure, copies of which had been circulated, and after hearing a report from the Harbour Master, the Sub-committee:

Noted:

5.1. That the current Schedule of Charges for the use of facilities and provision of services within the Harbour Area did not contain terms and conditions regarding the provision or otherwise of services.

5.2. That, for commercial reasons and to provide clarity for users regarding their responsibilities as customers of the Harbour Authority, it was considered preferable to set and publish trading Terms and Conditions regarding the provision of Harbour Services.

5.3. That, in December 2020, the Council agreed that the Executive Director of Development and Infrastructure, in consultation with the Solicitor to the Council, should draft a set of comprehensive Terms and Conditions of Trading, and thereafter undertake consultation with stakeholders on the proposed Terms and Conditions of Trading.

5.4. That consultation with stakeholders had been undertaken in respect of the draft Terms and Conditions of Trading, with no objections or comments raised.

The Sub-committee resolved to **recommend to the Council:**

5.5. That the Harbour Authority Terms and Conditions, attached as Appendix 4 to this Minute, be approved, to take effect from 5 May 2021.

6. Port Marine Safety Code

Compliance Declaration

After consideration of a report by the Executive Director of Development and Infrastructure, copies of which had been circulated, and after hearing a report from the Harbour Master, the Sub-committee:

Noted:

6.1. That the Maritime and Coastguard Agency required Harbour Authorities, Terminal Operators and Marinas to declare compliance with the Port Marine Safety Code every three years, with the next declaration due by 31 March 2021.

6.2. That Marico Marine Limited, as the Designated Person, had conducted independent audits of Marine Services for the past three years, with those audits showing continued compliance with the Port Marine Safety Code and a continuing trend of improvement.

6.3. That, on 7 and 8 December 2020, the Designated Person undertook the annual audit of compliance, remotely, with the audit report attached as Appendix 1 to the report by the Executive Director of Development and Infrastructure.

6.4. That, in order to declare compliance with the Port Marine Safety Code, a letter of assurance required to be provided to the Maritime and Coastguard Agency prior to 31 March 2021, a draft of which was attached as Appendix 2 to the report by the Executive Director of Development and Infrastructure.

The Sub-committee resolved to **recommend to the Council:**

6.5. That the letter of assurance, referred to at paragraph 6.4 above, be dated and submitted prior to 31 March 2021, to the Maritime and Coastguard Agency confirming continuing compliance by Marine Services with the Port Marine Safety Code.

7. Conclusion of Meeting

At 11:51 the Chair declared the meeting concluded.

Signed: Graham L Sinclair.

APPENDIX 1: Proposed Minor Capital Miscellaneous Piers and Harbours Works for 2021/22

Detail	Budget 2021.22	Details
Miscellaneous Piers & Harbours		
New Flotta Waiting Room	75,000	Partial carry forward from 20/21 - delay due to unforeseen planning iss
Vessel Water Supply Points	40,000	Additional Water Supply Storage Tanks Needed on Piers
Coplunds Dock Wall	55,000	Carry forward from 20/21 - delay due to agreeing specification
Kettletoft Pier Lighting - LED lighting and new columns	160,000	Carry forward from 20/21
Stronsay Pier Lighting & Mains Supply / Earthing upgrade	110,000	Carry forward from 20/21
New Counter Pollution / Waste Pick up as per Council's replacement programme	40,000	Larger size pick up with high towing capacity and small crane fitted
Workshop Operative Van Replacement as per Council's replacement programme	20,000	Replacement
P&H Electrician Van	20,000	New van for new post.
Egilsay & Wyre Ferry Terminal Lighting Upgrade	100,000	Partial Carry forward from 20/21 due to delay in final specification
MP&H Total	620,000	

APPENDIX 2: Proposed Minor Capital Works and Scapa Flow Oil Port for 2021/22

<u>Detail</u>	<u>Budget 2021.22</u>	<u>Details</u>
Scapa Flow Oil Port		
Oil Pollution Equipment - Booms	55,000	New Quick Deployment Boom
Oil Pollution Equipment - Skimmer	5,000	New multi-purpose skimmer
Oil Polluiothn Equipment - Industrial Steam Pressure Washer	25,000	Carry forward from 20/21
SFOP Total	85,000	

APPENDIX 3: Proposed Miscellaneous Piers and Harbours Works for 2021/22

Detail	Budget 2021.22	Details
Nevi skerry beacon re-bolt.	55,000	Carried forward from 2020/21
North Isles carparks and marshalling areas, including white lining/pedestrian markings.	50,000	Carried forward from 2020/21 - Rapness , Loth , Eday and Stronsay.
North Isles fender chains and hydac rubber replacement to Eday, Stronsay and Rapness.	145,000	Carried forward from 2020/21 - 50k per pier
North Isles Surface Dressing to Loth & Rapness	75,000	Ferry Terminal waiting / marshalling areas need surface dressing
Electrical supply / earthing works at inter-island ferry terminals	75,000	Carried forward from 2020/21
Eday Pier Approach Road	15,000	Carried forward from 20/21 although tender documents now ready to issue
Planned Maintenance Hatston Passenger Walkway - swap out hydraulic rams	30,000	Partial carry forward from 20/21, one of three completed.
Repairs to main Hydraulic Ram fixing point - Hatston Ro-Ro Linkspan	100,000	Repairs needed in order that main hydraulic rams can be refurbished
Pier Ladders	30,000	Regular programme of pier ladder replacement on all piers.
Kirkwall Pier capsil rail replacement	110,000	Carry forward from 20/21, plus revised budget
Kettletoft stone deck slab 60m2 and bitmac 150m2	20,000	Carry forward from 20/21, plus revised budget, plus NILP input
Stronsay West Pier bollards and stone deck slabs repair	35,000	Partial Carry forward from 20/21, plus revised work package
Various Car Markings - Ferry Terminals	12,000	Partial carry forward from 20/21, plus revised work package
Kirkwall Linkspan paint	200,000	Revised costs for ongoing linkspan painting throughout Orkney
North Ronaldsay Ferry Terminal / Pier Repairs	25,000	Carried forward from 20/21 although tender documents now ready to issue
Papa Westray Ferry Terminal / Pier repairs	115,000	Railings, fenders and 84m of capsil
Scapa Pier - Electrical Supply & Building	150,000	Main electrical supply to pier - renew equipment and install in building.
Electrical Supply System Repairs to Kirkwall Pier	80,000	Carried forward from 20/21.
Tingwall Ferry Terminal re-lining	6,000	In order to repaint existing lanes and spaces in ferry marshalling area
Rousay Ferry Terminal Car Park drainage flooding to be repaired	9,000	Carried forward from 20/21 - delay due to access problems.
Total	1,337,000	



TERMS AND CONDITIONS OF TRADING

As of
05 May 2021

Orkney Harbour Authority Area





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Part 1 – General

1. Definitions

1.1. In these terms and conditions (“Terms and Conditions”):-

“Agreement” means any agreement entered into by or on behalf of Marine Services, with a Customer, charterer, cargo owner or Shipowner.

“Bulk Commodity” means any homogenous liquid or solid carried in a vessel without any intermediate form of containment (such as oil, ores, or sand).

“Cargo Handling Services” means the Services of discharging, loading, receiving and delivering of Services performed or provided by Marine Services at the port estate, and operations ancillary thereto.

“Containerised Cargo” means any cargo shipped in either 8’ 10’ 20’ 30’ 40’ or 45’ containers which complies with International Shipping Order standards (and for the purposes of this Agreement includes empty containers).

“Customer” means any person for whom Services are performed or provided by Marine Services, including:-

1. where used in relation to any Goods; the owner, consignor, shipper, consignee, receiver or other person in charge of the Goods or other respective agents (other than Marine Services) in relation thereto.
2. where used in relation to any road or rail vehicles; the owner, agent, operator, driver or other person in charge of the vehicle.

“Dangerous Substances” means any substance as defined in Section 3 of the Dangerous Substances in Harbour Areas Regulations 2016.

“Data Protection Legislation” means all applicable data protection legislation, regulations and guidance including, without limitation the Data Protection Act 2018, the GDPR (Regulation (EU) 2016/679) (as amended or re-enacted from time to time and including any replacement or subordinate legislation). Terms in these Terms and Conditions shall, so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation.

“Goods” means any goods, cargo, commodities, livestock, articles and things of every description (including any containers, crates or packaging within which such Goods may be contained) but excluding stores and bunkers.

“Harbour” means the ports in the harbour area of Orkney as defined in the Orkney County Council Act 1974 (including the approaches thereto), bridges, wharves, quays, berths, roads, and other property and works of every description and nature, and the buildings, structures and erections thereon, at the ports in the harbour area of Orkney for the time being owned, occupied or managed by Marine Services and Orkney Island Council.

“Harbour Authority” means Orkney Islands Council as the statutory harbour authority and competent harbour authority for the Orkney Islands.

“Harbour Master” means the harbour master appointed by the Orkney Islands Council and includes his authorised deputies and assistants and any person authorised by Marine Services to act in that capacity.

“Length Overall” (LOA) means the extreme length of the Vessel as declared on the Vessel’s international tonnage certificate 1969 or in Lloyds Register.

“Marine Services” means the marine services department of Orkney Island Council having its main place of business at:

The Harbour Authority Building, Scapa, Orkney, KW15 1SD.

“Master” means in relation to any Vessel, any person, (whether or not the Shipowner and whether or not acting lawfully), having or taking command, charge, management or conduct of the Vessel for the time being

“Package” means a bag, bale, bundle, carton, cage, case, cask, carboy, crate, cylinder, drum, net, tank, pallet or other receptacle. It also includes an empty package.

“Passenger” means any person using the Harbour as the point of embarkation or disembarkation in connection with travelling on a Vessel.

“Pilotage Area” means the harbour area as defined in the Orkney County Council Act 1974.

“Schedule of Published Charges” means ‘the Orkney Islands Council Marine Services Schedule of Charges’ booklet, or any booklet(s) in substitution or replacement therefor, published by Marine Services in relation to statutory charges (including conservancy and berth charges) on Vessels calling at the port, and goods loaded, discharged and stored at the port.

“Services” means any service or operation of whatsoever nature performed or provided by Marine Services.

“Shipowner” means the owner of any Vessel to which these Terms and Conditions relate and any part owner charterer Master or other person in charge of the Vessel disponent owner consignee or mortgagee in possession is to be construed accordingly.

“Timber Cargo” means packaged timber, logs, forest products, kiln dried timber and panel products (including all by-products thereof), together with any packages or containers within or by which the said Timber Cargo may be contained or carried.

“Vehicle” means any vehicle, including any motor car, motorcycle, lorry, trailer, tractor, steam roller, excavator, agricultural machine or other machine on wheels or tracks.

“Vessel” means any vessel, including any hovercraft, hydrofoil vessel and anything constructed or used to carry persons, goods or cargo by water.

1.2. The headings to clauses are for ease of reference only and shall not affect the construction thereof.

1.3. Unless the context otherwise requires, the singular shall include the plural and vice versa and words importing gender shall include any other gender.

1.4. Reference herein to any statutory provision includes reference to any consolidation, re-enactment or modification thereof.

1.5. Reference to clauses or schedules are references to the clauses and schedules of these Terms and Conditions unless otherwise stated.

2. General Conditions

2.1. All quotations, orders and Agreements of Marine Services are subject to these Terms and Conditions. Any variations to these Terms and Conditions are of no effect unless agreed in writing by Marine Services.

2.2. Part 1 of these Terms and Conditions shall apply to every Agreement entered into and to the provision of all Services by Marine Services to a Customer or Shipowner. Part 1 of these Terms and Conditions shall be read in conjunction with such other Parts of these Terms and Conditions as are applicable to the particular Agreement. Where there is any conflict between Part 1 of these Terms and Conditions and any other Part of these Terms and Conditions, then the Terms and Conditions in the other Part shall take precedence over those contained in Part 1 hereof.

2.3. Any Agreement shall be between the Customer and/or the Shipowner as the case may be and Marine Services.

2.4. Marine Services may amend or vary these Terms and Conditions from time to time in such manner and in such respects as Marine Services may see fit.

2.5. These Terms and Conditions prevail over any terms and conditions proposed by the Customer (whether in writing or otherwise) and any terms implied by trade, custom or practice unless specifically agreed to in writing by Marine Services.

2.6. Special conditions may be made by Marine Services from time to time relating to specific Goods, Vessels, Services or events. Any such special conditions are supplemental to, and apply in conjunction with, these Terms and Conditions.

2.7. Use of the Harbours and/or Services by the Customer and/or Shipowner shall be deemed to constitute notice of and agreement to these Terms and Conditions provided that prior to such use Marine Services shall take all reasonable steps to ensure that the Customer and/or Shipowner, as appropriate, is aware of these Terms and Conditions and that copies of the same are available on request.

2.8. Marine Services may collect and process information relating to the Customer or Shipowner in accordance with the privacy notice which is available on the Orkney Islands Council Marine Services website. Each Party agrees to comply with their respective obligations under the Data Protection Legislation.

3. Vessel Approval

3.1. It shall be the responsibility of the Master of the Vessel or his authorised agent to obtain approval from Marine Services for the arrival, departure or movement of that Vessel in any part of the Harbour.

4. Charges

4.1. Charges and dues for Services performed or provided by Marine Services shall be payable by the Customer and/or the Shipowner, as appropriate, in accordance with Marine Services Schedule of Published Charges, as published and revised from time to time, or at such other rates as shall be agreed from time to time between Marine Services and the Customer and/or Shipowner, as appropriate.

4.2. Marine Services Schedule of Charges refer to Services performed or provided during Marine Services normal working hours and in Marine Services normal manner. If Marine Services performs or provides Services outside its normal working hours, or if by reason of an emergency or the nature and condition of any Goods, the construction, condition and readiness of any Vessel or Vehicle, the availability of crew, or for any other reason Marine Services performs or provides Services that, in its opinion, are beyond or in a different manner to those for which the standard charges and dues refer, the Customer or the Shipowner as appropriate shall pay an additional charge to cover the increased or additional costs thereby incurred by Marine Services.

4.3. The Shipowner shall pay to Marine Services such charges as are applicable from time to time in connection with the provision and operation of a ship's waste reception facility managed by Marine Services, as required pursuant to the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003.

4.4. Charges and dues published in the Schedule of Published Charges or otherwise quoted by Marine Services are exclusive of Value Added Tax. Where such tax or any other tax substituted for it is payable, the same shall be paid by the Customer or Shipowner, as appropriate, to Marine Services.

4.5. The Schedule of Published Charges is subject to revision by Marine Services without formal notice at any time.

5. Payment Terms

5.1. Payment is due on the date of invoice for all charges and dues as set out in the Schedule of Published Charges unless credit facilities have been granted in which case payment is due 30 calendar days from date of invoice.

5.2. Marine Services reserves the right:-

5.2.1. to charge interest on overdue accounts at 5% above the then prevailing Bank of England Base Rate calculated on a day to day basis;

5.2.2. to recover such legal and other costs incurred in the recovery of monies outstanding to Marine Services;

5.2.3. to suspend Services where there is a breach of credit facilities;

5.2.4. to exclude the payment of harbour dues, pilotage, boarding and landing from the 30 day credit facility payment period at the Harbour Master's discretion;

5.2.5. to refuse entry into any of the Harbours where there remains a debt which has not prescribed.

5.3. All charges shall be paid in full without reduction or deferment on account of any claim, counter claim or set off.

5.4. The said charges shall be payable by the Customer or the Shipowner as appropriate on demand unless otherwise agreed by Marine Service.

5.5. Notwithstanding the aforementioned provisions of this Clause, Marine Services may if it thinks fit, require any Customer or Shipowner liable or likely to become liable to pay any charges or dues to provide Marine Services with security for any such charges or dues or the estimated amount thereof in a form satisfactory to Marine Services before the commencement of such Services and failing receipt of which such Services will not be commenced.

6. Cancellation

6.1. Should the Customer and/or Shipowner cancel the Agreement at any time, Marine Services at its sole discretion shall be entitled to invoice the Customer and/or Shipowner with the full agreed charge or any lesser amount, which charge or amount shall be due and payable on the date of invoice.

7. Lien on Goods and Vessels

7.1. Marine Services shall be entitled to refuse to allow cargo discharged from a Vessel to leave the Harbour until:-

7.1.1. all charges claimed by Marine Services for Cargo Handling Services whether in relation to that cargo (wherever performed) or to other cargo of the Customer have been paid or secured to the satisfaction of Marine Services, and

7.1.2. security to the satisfaction of Marine Services has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Customer in relation to that cargo (whether or not such claims arise in relation to that cargo and any other cargo of the Customer).

7.2. Marine Services shall be entitled to refuse to allow a Vessel to leave the Harbour until:-

7.2.1. all charges claimed by Marine Services for Cargo Handling services and payable by the Shipowner whether in relation to that Vessel (whenever performed) or to other Vessels of the Shipowner have been paid or secured to the satisfaction of Marine Services, and

7.2.2. security to the satisfaction of Marine Services has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Shipowner (whether or not such claims arise in relation to that or another Vessel).

7.3. Marine Services shall have the absolute right to suspend the provision of any Services for the Customer or Shipowner until all amounts payable to Marine Services by such Customer or Shipowner, as appropriate, have been paid in full. Where such a right is exercised, charges (including interest) shall continue to accrue until payment in full is made.

8. Landing and Embarkation of Passengers

8.1. Marine Services shall be entitled to refuse to allow Passengers discharged from a vessel to leave the Harbour until:-

8.1.1. all charges claimed by Marine Services in respect of Services for Passengers (wherever performed) or Passengers of the Customer have been paid or secured to the satisfaction of Marine Services, and

8.1.2. security to the satisfaction of Marine Services has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Customer in relation to those Passengers (whether or not such claims arise in relation to those Passengers or any Passengers of the Customer).

8.2. Marine Services shall be entitled to refuse to allow a Vessel to leave the Harbour until:-

8.2.1. all charges claimed by Marine Services in respect of Services for Passengers and payable by the Shipowner whether in relation to that Vessel (whenever performed) or to other Vessels of the Shipowner have been paid or secured to the satisfaction of Marine Services, and

8.2.2. security to the satisfaction of Marine Services has been given in relation to claims for indemnity pursuant to these Terms and Conditions against the Shipowner (whether or not such claims arise in relation to that or another Vessel).

8.3. Marine Services shall have the absolute right to suspend the provision of any Services for the Customer or Shipowner until all amounts payable to Marine Services by such Customer or Shipowner, as appropriate, have been paid in full. Where such a right is exercised, charges (including interest) shall continue to accrue until payment in full is made.

9. Warranties

9.1. The Customer or Shipowner as applicable warrants that it has capacity to enter into the Agreement and that it has obtained all necessary approvals to do so either as principal or as agent in which event the Customer or Shipowner is fully authorised to legally bind both the Customer or Shipowner or its principal as the case may be and to accept these Terms and Conditions on behalf of itself and of its principal. Unless otherwise expressly agreed in writing with Marine Services, any Customer acting as agent for or on behalf of any other person shall accept joint and several liability with his principal for all charges dues and other sums payable to Marine Services.

9.2. The Customer shall ensure that any Agreement, contract or other arrangement made between the Customer and (i) the Shipowner, (ii) the owner or operator of any Vehicle, (iii) the supplier of any transportation services, (iv) the owner of (or person or persons interested in) any Goods, or (v) any other sub-contractor or agent of the Customer in connection with which or to whom Services are performed or provided by Marine Services contains similar terms, conditions and limitations of liability as are expressed herein, for the benefit of the Customer both on its own behalf and as agent for Marine Services. Where any Customer fails to comply with this provision, the Customer shall indemnify Marine Services against all proceedings claims and expenses (including legal costs on a full indemnity basis) arising out of or pursuant to such failure to comply.

10. Indemnities

10.1. The Shipowner or the Customer in respect of the Goods and Passengers as the case may be shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever howsoever arising from the use of or presence of his Vessel or Goods and Passengers at the Harbour and will indemnify Marine Services against all proceedings and claims by third parties and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or presence or of any act neglect or default of the Master of the Vessel or the Shipowner or the Customer as the case may be, their respective contractors agents or servants (other than Marine Services) or of any inherent quality or defect of any Vessel, or of any Goods and Passengers at the Harbour or on the Vessel. Such indemnity shall not apply if the death, personal injury or damage is caused by the negligence of Marine Services.

10.2. The Shipowner or the Customer shall pay to Marine Services full compensation for all damage done to or suffered by the Harbour and other property of Marine Services and arising as aforesaid.

11. Force Majeure

11.1. Marine Services shall not be liable for any failure to commence or continue to perform or complete the Services nor for any delay, deficiency, loss, mis-delivery and or damage arising or resulting from Act of God; casualty (including fire or explosion) unless caused by the negligence of Marine Services, its servants or agents; damage; breakdown; any consequence of war or hostilities (whether war be declared or not); riots; civil commotions or invasions; strikes, lockouts, industrial disputes or actions of any nature, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural physical disaster; act of any government or other regulatory restrictions; difficulty or increased expense in obtaining workmen, equipment or transport or other circumstances affecting the supply or performance of the Services by Marine Services normal methods or means; or any other cause or event which could not be avoided and the consequence whereof could not be prevented by the exercise of reasonable care by Marine Services.

12. Reservation of Rights

12.1. Marine Services reserves the right to refuse to accept Goods and Passengers for any reason and/or to provide Services subject to any agreement between the parties.

13. Legal

13.1. These Terms and Conditions are governed by Scots Law and the Customer or Shipowner submits to the exclusive jurisdiction of the Scottish courts, and where applicable Admiralty Law as governed by the Administration of Justice Act 1956 (as amended) and any other amendment or re-enactment thereof..

13.2. Nothing in these Terms and Conditions shall affect the provisions of the Orkney County Council Act 1974 (and amendments) and/or any byelaws made thereunder, or any other relevant statute or statutory regulations in force from time to time.

14. Risk and Insurance

14.1. All Goods at or on the Harbour are the sole responsibility of the Customer in every respect and shall at all times remain at the entire risk of the Customer. The Customer is advised to make appropriate comprehensive insurance arrangements in respect thereof.

15. Bye Laws & Regulations

15.1. All Customers and/or Shipowners, as appropriate shall at all times comply with and ensure that all Goods, Vessels, Vehicles and persons under their control and using the Harbour comply with:-

15.2. All bye-laws, regulations and directions made by Marine Services as are from time to time in force in respect of the Harbour.

15.3. All instructions and directions given by Marine Services from time to time in connection with the proper, efficient and safe operation and management of the Harbour.

16. Bill of Lading

16.1. The Shipowner for a Vessel which it is intended to sail to or from the Harbour shall be the agent of Marine Services for the purposes of agreeing with the Customers in his usual contract of carriage to exempt or limit the liability inter alia of Marine Services whether as agent sub-bailee stevedore or independent contractor or otherwise howsoever.

16.2. The Shipowner shall, in his bills of lading, shipping notes and notices to shippers regarding conditions for carriage or receiving, use his best endeavours to provide that whether or not Marine Services is acting solely for the Shipowner:-

16.2.1. Marine Services shall have the benefit of all provisions therein exempting or limiting the liability of the Shipowner,

16.2.2. such provisions so far as relating to Marine Services shall be applicable to the period that Goods are at the Harbour or on a Vessel thereat.

16.3. Provided that nothing herein shall prevent Marine Services, at its discretion, from being the principal of the Shipowner in relation to provisions exempting or limiting liability.

16.4. Marine Services hereby accepts the benefit of such provisions and appoints the Shipowner as Marine Services agent for the purpose of entering into contracts of carriage evidenced by the bill of lading and the shipping note.

16.5. If such bills of lading, shipping notes or notices to shippers do not so provide then the Shipowner shall, without prejudice to any other rights of Marine Services herein, indemnify Marine Services against all proceedings claims and expenses (including legal costs on a full indemnity basis) arising out of or in consequence of the failure of such bills of lading, shipping notes or notices to shippers so to provide.

17. Limitation of Liability

17.1. Marine Services shall only be liable under these Terms and Conditions for physical loss of or damage to any Vessel or other property of the Shipowner or to any Goods or other property of the Customer and such liability will only apply to physical loss or damage to the extent that such loss or damage exceeds £150 per occurrence or incident. Furthermore, liability is limited to occurrences proved to be caused solely by the acts or omission of Marine Services or its employees acting in the course of their employment during the performance or provision of the Services, including any Cargo Handling Services and dock services provided that:-

17.1.1. Marine Services liability in respect of physical loss or damage to any Vessel or other property of the Shipowner shall not exceed £3,000,000 per occurrence.

17.1.2. In relation to Goods received for shipment by or otherwise handled by Marine Services, Marine Services shall not be liable to the Customer nor to the Shipowner as bailee of the Goods for (i) any mis-delivery due to misleading or faint markings or absence of markings, or (ii) any loss or damage arising from defects in the Goods or the packaging thereof.

17.1.3. Marine Services shall be freed and discharged from all liability in respect of any physical loss or damage to any Vessel or Goods or equipment or any other matter or thing unless notification of a claim in respect of such loss or damage be made in writing (otherwise than upon any of Marine Services documents) to Marine Services within 30 days of the date when the Customer has or ought reasonably to

have learned of the occurrence causing such loss or damage or from which such loss or damage arose (so as to enable Marine Services to forthwith commence investigations into the alleged loss or damage) and the amount of the said loss or damage be submitted in writing to Marine Services within twelve months after the said occurrence.

17.1.4. In the case of latent physical loss or damage to Goods Marine Services shall be discharged from all liability unless notice of such loss or damage and the particular nature thereof has been given to Marine Services immediately after the Customer has been notified of or becomes aware of or should reasonably have become aware of such loss or damage but in any event not later than 40 days after the loading or discharging of the Goods by Marine Services or 14 days after delivery of the Goods to final consignee whichever shall be the earlier.

17.1.5. Marine Services shall in any event be freed and discharged from all liability for any loss or damage to any Vessel, Goods or equipment or any other matter or thing unless suit is brought within twelve months of the said occurrence. In the case of loss of or damage to any Vessel or any other property of the Shipowner, the Shipowner shall grant full and reasonable facilities to Marine Services to survey all such loss or damage.

17.1.6. For the avoidance of doubt it is hereby declared that Marine Services' liability in respect of any physical loss or damage whether in contract or delict shall not extend outside the minimum and maximum limits specified in clause 17.1 and that the Shipowner or the Customer at the discretion of Marine Services will indemnify Marine Services against all proceedings and claims howsoever arising and by whomsoever brought in respect of the liabilities as mentioned under this Clause so far as the amounts so claimed are outside the exclusions or limits prescribed in Clause 17.1.

17.2. Whilst Marine Services will use its reasonable endeavours to collect and bind any loose pieces of Timber Cargo, and other Goods as appropriate, according to mark and will deliver the same to consignee, Marine Services shall not be liable for any loss or damage whatsoever arising out of or consequent on such collection and binding.

17.3. Marine Services shall be under no obligation to rebind such loose Goods to a greater standard than is deemed by Marine Services to be reasonable for the safe onward transportation of such Goods and in particular Marine Services shall not be required to rebind to the same standard as the Goods were in when originally bound.

17.4. Subject to the limits provided in clause 17.1, Marine Services shall not be responsible for any loss or damage whatsoever of or to any Vessel or any other property of a Shipowner or to Goods or any other property of a Customer howsoever caused or arising whether in contract, delict, (including negligence) or otherwise at law, and in particular Marine Services shall not be liable for (a) any claims for loss of use or profits or the loss of a particular market and whether direct or indirect and whether or not foreseeable at the date of coming into force of the Agreement; or (b) indirect or consequential damage.

17.5. Marine Services' charges are determined on the basis of the limits of liability set out in these Terms and Conditions. If any Customer requires a higher limit of liability, Marine Services will endeavour to arrange additional insurance cover, in which event the costs of such additional insurance shall be paid by the Customer.

17.6. Marine Services shall not be responsible to any user of Vehicles for any loss or damage of whatsoever nature of or to, or any demurrage charges in respect of, Vehicles wagons and sheets ropes chains or other similar fittings therefor whatsoever howsoever caused, and the Customer shall be responsible for and indemnify Marine Services against any such loss, damage or charges.

17.7. For the purposes of this clause, the value of the Goods shall be taken to be the market price of Goods of the same kind and quality immediately before the deficiency, loss, damage, mis-delivery or delay arose or took place.

17.8. For the purpose of this clause the limit of liability with regards to Pilotage is as defined within the Pilotage Act 1987.

18. Confidentiality

18.1. Both Marine Services and the Customer undertake that they shall not at any time during or after termination of the Agreement, disclose to any person the details of the Agreement or any confidential information concerning the business affairs, customers, clients or suppliers of the other party, except as provided by Clause 18.2.

18.2. Either Marine Services or the Customer may disclose the other party's confidential information:

18.2.1. to those of its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out that party's obligations under the Agreement. Marine Services and the Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses another Party's confidential information comply with this clause 18; and as may be required by law, court order or any governmental or regulatory authority.

18.3. Neither Marine Services or the Customer shall use any of the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

19. Documents to be Furnished by the Customer, Master or Owner

19.1. Where requested to do so by Marine Services, the Customer, Master or Shipowner of every Vessel discharging or loading cargo must supply to Marine Services the following documents confirming the quantity of cargo discharged or loaded in the Harbour and the days upon which discharging or loading took place:

19.1.1. bills of lading or cargo manifest (indicating the weight of cargo and details of the shippers, consignees and freight payers); and

19.1.2. statement of facts

19.2. Where the quantity of cargo discharged does not match that shown on the relevant bill of lading, then a certified discrepancy report (including details of supporting surveys etc.) must be provided.

19.3. These documents must be supplied by the Customer, Master or Shipowner, or the appointed agent, to Marine Services within two working days of the day upon which the vessel completes discharging or loading as appropriate. The documents must be submitted (as PDF-format attachments) via e-mail to marine.ops@orkney.gov.uk

20. Audit

20.1. Marine Services reserve the right, upon the giving of reasonable notice to the Customer, Master, Shipowner, Vessel agent, operator, cargo receiver or cargo shipper, to require the production of, and to receive, view and / or copy, any relevant document or material within that party's reasonable control that demonstrates and evidences the quantum or movement of any cargo or other throughput that may be received, loaded, discharged, stored or otherwise handled within the Harbour. Such documentation and materials shall be provided to Marine Services upon request, without charge and during Marine Service normal working hours.

20.2. For the purposes of undertaking periodic audits, Marine Services also reserve the right to review any recordings, data, reports, measurements produced from equipment under the control of any party and used to load, discharge or store and monitor cargo e.g. including but not limited to CCTV / ANPR etc.

21. Notice

21.1. Any notice to be given under the Agreement shall be in writing and shall be deemed to be duly given if left or sent by first class registered or recorded delivery post or express or other fast postal service to the address set out at the head of the Agreement.

21.2. Any such notice shall be deemed to be served at the time when the same is left at the office of the Party to be served on the third business day following the day of posting.

22. Termination

22.1. The Agreement may without prejudice to any other rights be terminated at any time by Marine Services if:

22.1.1. The Customer fails to comply with any part of the Agreement or the terms and conditions referred to herein or commits a material breach of the Agreement and fails to remedy such breach (where the breach is capable of remedy) within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied. Any material breach of the Agreement shall be notified in writing in accordance with the provisions of clause 20; or

22.1.2. The Customer enters into liquidation whether compulsory or voluntary or has a receiver or administrator appointed; or

22.1.3. The Customer ceases or threatens to cease to carry on its business or to dispose of the whole or any part of its undertaking to a third party; or

22.1.4. There is a change in control of the Customer. For the purposes of this subclause, "control" means the ability of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person (or persons).

22.2. Termination of the Agreement shall not affect or relieve any Party of any liability or obligation that may have accrued prior thereto.

Part 2 – Cargo Handling and Harbour Operations

23. Customer's Obligations

23.1. Without derogation from any other obligations and duties the Customer may have under the terms of the Agreement, the Customer shall have the following obligations:

23.1.1. The Customer shall ensure that all Goods sent to Marine Services for export are accompanied by the governments standard shipping note stating the gross weight of each consignment. Weights must be verified before despatching Goods to Marine Services and, if the gross weight is omitted on the standard shipping note it will be taken as instruction to Marine Services for the Goods to be weighed at Marine Services premises at the expense of the Customer.

23.1.2. Marine Services will not be responsible for the accuracy of the weighbridge or for any error in entering on the ticket the weight of any Goods weighed. The Customer's representative in charge of the Goods shall examine the ticket and ascertain that it gives the correct weight as shown by the scale of the weighbridge.

23.1.3. Marine Services may check the validity of any declarations and if the weight or bulk proves to be in excess of that declared, all charges will be based on actual gross weight. The Customer will also be liable for the costs of weighing or checking the measurement of the Goods in question.

23.1.4. Except by special arrangement with Marine Services, articles weighing in excess of 3,000 kilos will not be accepted.

23.1.5. The Customer warrants the accuracy of all descriptions values weights and other particulars of any Goods supplied to Marine Services for any purpose whatsoever or marked thereon and shall indemnify Marine Services against all proceedings claims expenses and pecuniary penalties that Marine Services may suffer or incur as a result of any inaccuracy or omission therein.

23.1.6. Customers should take reasonable measures to protect their Goods from loss or damage and shall ensure that at all times their Goods are packed in a proper manner with particular care being taken to protect fragile goods.

23.1.7. The Customer shall ensure that each package has stencilled on it all identifying marks and numbers in characters of not less than 10cms in height together with a final destination and port of discharge which shall be stencilled immediately below the shipping mark.

23.1.8. It shall be the Customer's responsibility to prepare the necessary documentation for the clearance of Goods through Border Force & HM Revenue & Customs, to obtain such clearance and to comply with all Customs' formalities.

24. Release of Goods

24.1. No Goods shall be available for delivery by Marine Services until such time as Border Force and HM Revenue & Customs clearance has been obtained in respect thereof.

24.2. On no account will Goods be delivered by Marine Services without production of a delivery order issued by or on behalf of the Shipowner in his usual form authorising such delivery and in the case of sub- orders issued by or on behalf of the Customer named in the original delivery order and being in a form satisfactory to Marine Services and authorising such delivery.

24.3. If the document of title is lost, or there is an irregularity, Marine Services will not deliver the Goods until it is satisfied that the person claiming delivery is entitled to delivery and against an indemnity by a bond or otherwise as Marine Services may require by or on behalf of the person taking delivery of the Goods.

25. Documentation

25.1. Every order for the delivery or sampling of Goods shall be lodged by or on behalf of the Customer at Marine Services offices at Harbour Authority Building, Scapa, Orkney and must detail:

25.1.1. Vessel's name;

25.1.2 The port of loading and bill of lading number;

25.1.3 Marks, quantity and description of Goods; The person to whom charges are to be rendered; and must be signed by or on behalf of every person in whose name the Goods stand in the books of Marine Services.

25.2. All manifests, shipping notes/advices, consignment notes, packing lists documents of title and instructions and orders concerning Cargo Handling Services must be lodged in writing with Marine Services not less than 72 hours (excluding bank or other national holidays) before the relevant Service is required to be or is to be performed or provided.

25.3. Any tally of Goods prepared by Marine Services in connection with the loading or discharging of any Vessel or Vehicle shall be the property of Marine Services which shall not be under any obligation to disclose such document to any other party. The accuracy of any document based whether wholly or partially upon such tallies shall not be presumed by any other party unless and until such accuracy is confirmed in writing by Marine Services in respect of the document in question.

26. Shipowner's Obligations

26.1. The Customer shall ensure that the vessel receiving Goods for shipment shall accept same if tendered for loading from the quay.

26.2. The receiving by Marine Services for and on behalf of the Shipowner of Goods for shipment does not imply that such Goods will be shipped. The acceptance or refusal of Goods for shipment is the responsibility of the Shipowner concerned, for whom Marine Services accepts as agent.

26.3. The Shipowner shall permit Marine Services the full use of all lighting, cranes, gantries, winches, derricks, runners and tackle on the Vessel and shall supply full power therefor and for lighting at all times without charge. The Shipowner shall provide all necessary standing and running gear, hatch and winch tents, gear and dunnage.

26.4. All the equipment and gear referred to in clause 26.3 shall be maintained in good working order by the Shipowner and before work commences the Shipowner shall produce to Marine Services a current certificate of test for such equipment and gear showing the same meets the requirements of any statute, order or regulation then in force within the United Kingdom.

26.5. to the extent that the equipment and gear referred to in clause 26.3 is not available to Marine Services or is not maintained or certified in the manner specified in clause 26.4, Marine Services shall be at liberty at its discretion and subject to availability to supply the same at the expense of the Shipowner in accordance with Marine Services standard rates current from time to time.

26.6. The Shipowner shall indemnify Marine Services against any claim in relation to any accident howsoever arising out of or caused or contributed to by any defect in the equipment or gear referred to in clause 26.3.

27. Removal of Goods from Marine Services Premises

27.1. The Customer shall ensure that all Goods delivered to Marine Services by the Customer for export shall be received by the Shipowner within a period of twenty-one days from such date of delivery. If for any reason whatsoever the Goods are not so received by the Shipowner within the said period, then on the expiration of the said period Marine Services may remove the Goods into warehouse at the Customer's expense.

27.2. All imported Goods shall be removed by the appropriate Customer from Marine Services premises within a period of twenty-one days from the date on which the Goods were received from a Vessel or as agreed by Marine Services. If for any reason whatsoever the Goods are not so removed by the Customer, Marine Services may remove the Goods into warehouse at the Customer's expense.

28. Hazardous Goods and Live Animals

28.1. No Goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature or other Dangerous Substances will be handled by Marine Services except with the consent of Marine Services and in accordance with statutory and Marine Services directions, regulations and byelaws governing the handling of such Goods.

28.2. All extra costs charges and expenses incurred by Marine Services in handling Goods of a dangerous, hazardous, poisonous, tainted, infested or contaminated nature or other Dangerous Substances shall be repaid by the Shipowner of the Vessel on which they were or were to be consigned.

28.3. The Customer shall be responsible for and shall indemnify Marine Services against all injury, loss or damage however and whenever caused and against all claims whatsoever made against Marine Services for which they may be or become liable in respect of death or injury to persons or loss of or damage to property or delay arising out of, caused or contributed to by:-

28.3.1. a failure to comply with the conditions, directions and regulations referred to in clause 28.1; or

28.3.2. live animals exported, or intended to be exported, or imported by the Customer.

29. Security

29.1. The provision of any security services or anti-terrorist measures in respect of a Vessel shall be the responsibility of the relevant Shipowner.

29.2. The Shipowner and the Customer shall comply in every respect with the International Ship and Port Facility Security Code (ISPS Code) together with all relevant UK and EU Regulations including in particular Regulation 11 of the Ship & Port Facility (Security) Regulations 2004 (S1 2004/1495) as amended. This also includes compliance with / to any instructions or directions issued by the UK Department for Transport, Maritime Security Division ("MSD") relating to any of the said regulations, and in particular the Shipowner shall at all times comply fully with the instructions of the Port Facility Security Officer (as defined in the ISPS Code) or deputies in accordance with the Port Facility Security Plan (as defined in the ISPS Code) and any other such plan or direction approved from time to time by MSD relating to the Harbour and/or any other property of Marine Services adjacent thereto.

Part 3 – Pilotage Services

30. Pilotage Direction

30.1. In accordance with Section 7 of the Pilotage Act 1987, the Harbour Authority has directed that pilotage be compulsory throughout the Pilotage Area for:

- 30.1.1 All passenger vessels of 65m or great Length Overall.
- 30.1.2. All vessels under tow where the combined overall length of the towing vessel and the tow is over 65m length overall.
- 30.1.3. All vessels using Harbour Authority tugs for berthing, unberthing or any other reason where tugs need to be operated under control of the vessel.
- 30.1.4. All vessels over 300 GT carrying persistent oils.

31. Provision of Service

31.1. The provision of the pilotage service is subject to pilotage directions published by the Harbour Authority (or any notice that supersedes it).

32. Charges

32.1. Pilotage and associated charges are made pursuant to Section 10 of the Pilotage Act 1987 and are based on a combination of Length Overall and actual draught, in accordance with the attached Schedule of Published Charges.

33. Pilotage Exemption Certificates

33.1. Pilotage exemption certificates may be granted to the Master or a certified deck officer, of a compulsory pilotage vessel, trading to and from the Harbour Authority by application, pursuant to section 3(5) of the Pilotage Act 1987, as amended by the Marine Navigation Act 2013 & subsequent pilotage directions promulgated by the Harbour Authority.

34. Liability

34.1. The provision of pilotage services is subject to availability and Marine Services accepts no liability for any delay, loss or damage, directly or indirectly arising out of, or caused or contributed to by an inability to supply or continue to supply such services or for any charges or expenses incurred in such circumstances.

34.2. Limitation of Liability in respect of pilots is covered under Section 22 of the Pilotage Act 1987.

35. Performance of Services

35.1. The charges and tariffs contained in the Schedule of Published Charges hereof shall apply to all quotations, orders, Agreements and contracts entered into by Marine Services for the performance or provision of Services at the Harbour unless otherwise expressly agreed in writing by Marine Services.



Enquiries to:

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