

DATED *31st May* 2019

DEPARTMENT OF INFRASTRUCTURE
and
ISLE OF MAN STEAM PACKET COMPANY LIMITED

SEA SERVICES AGREEMENT



Isle of Man
Government

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Attorney General's Chambers
Douglas

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THIS SEA SERVICES AGREEMENT is made the 31st day of May Two thousand and nineteen (2019)

BETWEEN:

- (1) **DEPARTMENT OF INFRASTRUCTURE** (a department of the Isle of Man Government) of Sea Terminal Building Douglas Isle of Man IM1 2RF ("the **Department**") and
- (2) **THE ISLE OF MAN STEAM PACKET COMPANY LIMITED** a company duly incorporated in the Isle of Man under Company Reference Number 002092V and whose registered office is situate at Imperial Buildings Douglas Isle of Man ("the **Company**")

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

In this Agreement the words and expressions except where the context otherwise requires will have the meanings assigned to them in Part 1 of Schedule 1 and Part 2 of Schedule 1 which apply to the interpretation of this Agreement

2. PREVIOUS AGREEMENTS

On the Commencement Date the following agreements entered into between the Parties shall automatically terminate:

- 2.1. The Agreement dated 19th September 1995 for use of the King Edward VIII Linkspan (as amended by the agreement dated 26th January 1996 the agreement dated 20th February 2002 and the agreement dated 21st December 2004)
- 2.2. The agreement dated 19th September 1995 for use of the Victoria Pier Linkspan (as amended by the agreement dated 20th February 2002 and the agreement dated 21st December 2004)
- 2.3. The Licence dated 21st January 2019 for the siting of vehicle check in units at Circus Beach in Douglas
- 2.4. The agreement dated 19 March 2010 which relates to the addition of Fuel Surcharge/Fuel Rebate to Customer Fares
- 2.5. The agreement dated 30th May 2019 which relates to the setting of Harbour Dues in respect of Passengers and Passengers and Accompanied Vehicles

3. VICTORIA LINKSPAN AND KING EDWARD GANGWAY

- 3.1. The Company warrants that it is the unencumbered owner of the Victoria Pier Linkspan
- 3.2. The Company warrants that it has carried out such capital works as are necessary to ensure that as at the Commencement Date the Victoria Pier Linkspan is structurally adequate for its intended use. The Company further agrees that it will provide such documentary evidence in support of the

warranty contained in this clause 3.1 as the Department shall reasonably require

- 3.3. In consideration for the grant of the Licence set out in clause 4 (LICENCE) of this Agreement the Company conveys the Victoria Linkspan to the Department as at the Commencement Date and the Department shall be the absolute owner (which will include responsibility for replacement at their own cost where necessary) of the Victoria Linkspan from the Commencement Date
- 3.4. The Department warrants that it is the unencumbered owner of the King Edward Gangway
- 3.5. In consideration of the covenants conditions and obligations on the part of the Company herein contained the Department conveys the King Edward Gangway to the Company as at the Commencement Date and the Company shall be the absolute owner (which will include responsibility for replacement at their own cost where necessary) of the King Edward Gangway from the Commencement Date

4. LICENCE AND TERM

- 4.1. Subject to the provisions of this Agreement and in consideration of the payments to be made and covenants conditions and obligations on the part of the Company herein contained the Department grants to the Company the following rights for the Term for the Specified Purposes only and subject at all times to compliance by the Company with the Licence Conditions:
 - 4.1.1. The right to use the Linkspans (subject only to and in common with the Department and all others authorised (directly or indirectly) by the Department under or by virtue of the provisions of clause 12 (EXCLUSIVITY)) and
 - 4.1.2. The right to use the Access Area (subject to and in common with the Department and all others authorised (directly or indirectly) by the Department at any time and for any reason but taking into account the provisions of clause 12.7.2 to this Agreement)
 - 4.1.3. The exclusive right to place and use the Units in and on the Check In Area
- 4.2. The Department may extend the Initial Term for a period of twelve (12) Months by giving to the Company not less than six (6) Months' notice in writing at any time prior to the expiration of the Initial Term
- 4.3. In the event that the TT Races are cancelled in any Year then the Company shall be entitled to elect to extend the Term for a further period of twelve (12) Months (for each cancellation) ALWAYS PROVIDED that:
 - 4.3.1. The Company shall give to the Department notice in writing not less than twenty four (24) Months prior to the expiry of the Initial Term in the event that it decides not to elect to extend the Term (a failure to provide such notice will mean that the Term is extended without further reference to the Parties)

- 4.3.2. this clause shall only apply to a maximum of three (3) cancellations of the TT Races during the Term.
- 4.4. At the expiration of the Term the Company shall forthwith cease to use the Linkspans for the Specified Purposes and for any other purpose whatsoever

5. COMPANY'S COVENANTS AND OBLIGATIONS

In consideration of the rights granted to the Company by the Department and the obligations on the part of the Department herein contained the Company covenants and undertakes:-

5.1. Charges

- 5.1.1. To pay to the Department without any deduction or abatement whatsoever:-
- 5.1.1.1. the Fixed Charge within thirty (30) days of receipt of an invoice by equal quarterly payments in advance without deduction in each Year of the Term and proportionately for any period of less than a Year the first such quarterly payment to be paid on the Commencement Date and be in respect of the three (3) Month period commencing on the Commencement Date
 - 5.1.1.2. Within seven (7) days of any written demand so to do the Harbour Dues
 - 5.1.1.3. Within seven (7) days of any written demand so to do an amount equal to the relevant excess under any policy of insurance effected by the Department in respect of which the Department makes a claim PROVIDED THAT the Company shall not be liable for any such amount if the claim under the appropriate insurance policy is due to any act or neglect of the Department or any third party who is not a Customer or in any other way authorised or under the control of the Company
 - 5.1.1.4. Within seven days (7) of any written demand to do so an amount equal to any amount that the Department is reasonably required to pay to the Mersey Docks and Harbour Company Limited pursuant to the Mersey Deed
 - 5.1.1.5. Value Added Tax (or any general sales tax of a similar nature that may be substituted for it or levied in addition to it) chargeable in respect of any payment made by the Company under any of the terms of or in connection with this Agreement
- 5.1.2. The Fixed Charge shall be increased annually by MCPI on the first and each subsequent anniversary of the Commencement Date
- 5.1.3. For the avoidance of doubt the Fixed Charge shall include all of those items listed in Schedule 9

5.2. Vessels

5.2.1. Notwithstanding any other provisions of this Agreement the Company shall throughout the Term:

5.2.1.1. maintain (by means of ownership charter or other agreements which would allow the Company to secure a Substitute Vessel) adequate Vessels to enable it to meet its obligations under this Agreement and

5.2.1.2. comply with the provisions of this clause 5.2 and the provisions of Schedule 4 in the provision of Vessels

5.2.2. Unless otherwise agreed in writing by the Department the New Vessel Service Date shall be no later than the 31st December 2022. The Company shall use its reasonable endeavours to ensure that the New Vessel Service Date is on or before the 31st December 2021.

5.2.3. Notwithstanding the provisions of clause 5.2.1 but subject to clause 5.2.4 the Company shall ensure that at all times during the Term they have not less than three (3) Vessels available for use in the provision of the Services. Save for instances where the Company is authorised (pursuant to Part 7 of Schedule 4) to use a Substitute Vessel these three (3) Vessels shall comprise:

5.2.3.1. for the period from the Commencement Date until the New Vessel Service Date:

5.2.3.1.1. The Current Ropax Vessel

5.2.3.1.2. The Current Fast Craft Vessel

5.2.3.1.3. The Current Chartered Vessel (which will act as the Back-Up Vessel)

5.2.3.2. for the period from the New Vessel Service Date until the 31st December 2026 (or the date on which the Fast Craft Replacement Vessel commences provision of the Services if sooner):

5.2.3.2.1. The New Vessel

5.2.3.2.2. The Current Fast Craft Vessel

5.2.3.2.3. The Current Ropax Vessel (which will act as the Back-Up Vessel)

5.2.3.3. for the period from the 31st December 2026 (or the date on which the Fast Craft Replacement Vessel commences provision of the Services if sooner) for the remainder of the Term:

5.2.3.3.1. The New Vessel

5.2.3.3.2. The Fast Craft Replacement Vessel

5.2.3.3.3. The Current Ropax Vessel (which will act as the Back-Up Vessel)

5.2.4. The Company shall ensure that the Back-Up Vessel is available for use in the provision of the Services:

5.2.4.1. during the TT Period the Festival of Motorcycling Period Christmas Period and any periods of Scheduled Unavailability of the New Vessel (where such periods of Scheduled Unavailability occur after the date on which the New Vessel comes into Service)

5.2.4.2. at all other times on not less than ninety six (96) hours' notice (which notice shall be triggered by the Company in the event of a Service Need) save that the Company shall be entitled to enter into charter agreements with another provider which results in the Back-Up Vessel not being available within the required ninety six (96) hour period provided that such an agreement:

5.2.4.2.1. allows the Company to comply with its obligations under clause 5.2.4.1 and

5.2.4.2.2. does not last for more than twelve (12) weeks in any consecutive two (2) Years of the Term

5.2.5. Unless otherwise agreed by the Department the Company:

5.2.5.1. must not sell agree to sell transfer or otherwise dispose of the New Vessel or the Current Ropax Vessel and must use the New Vessel in the provision of the Services

5.2.5.2. must not enter into any security document lease or charterparty in respect of any Vessel which does not include provision permitting the novation of the lease or charterparty to the Department in the circumstances set out in clause 19 (CONSEQUENCES OF TERMINATION) or clause 12.2.2 (EXCLUSIVITY) to this Agreement without the consent of the Department (such consent not to be unreasonably withheld or delayed and which can be obtained in advance)

5.2.5.3. (in the event that the New Vessel is unable (because of mechanical or other defect) to provide the Services (other than on a temporary basis) the Company shall permanently replace the New Vessel with a Conventional Vessel which:

5.2.5.3.1. shall be in all material aspects the same as the New Vessel (as determined by the Department acting reasonably) where the permanent replacement is required within five (5) Years from the date of this Agreement or

5.2.5.3.2. shall have a specification which is agreed between the Department and the Company (both

acting reasonably) but which (as a minimum) meets the requirements set out in clauses 5.2.7.2.1 to 5.2.7.2.8 below

5.2.6. The Company shall:

- 5.2.6.1. undertake a Current Fast Craft Refurbishment by no later than the 31st March 2021
- 5.2.6.2. invest no less than two hundred and fifty thousand pounds (£250,000) in completing the Current Fast Craft Refurbishment

5.2.7. The Company:

- 5.2.7.1. shall commission the construction of the New Vessel within such timescales as are necessary to ensure that the Company complies with the provisions of clause 5.2.2 above
- 5.2.7.2. (unless otherwise agreed with the Department) shall when commissioning the New Vessel:
 - 5.2.7.2.1. ensure that the New Vessel has the capability of operating using either marine fuel oil or liquefied natural gas
 - 5.2.7.2.2. ensure that the New Vessel is capable of making Scheduled Crossings in all seasons
 - 5.2.7.2.3. ensure that the New Vessel has a capacity for not less than eight hundred (800) Passengers
 - 5.2.7.2.4. ensure that the New Vessel includes one thousand two hundred and fifty (1,250) lane metres for Freight of which the proportion which exceeds four point eight metres (4.8m) in height shall not be less than one hundred and ten percent (110%) of the current provision for four point eight (4.8) height in lane metres provided by the Current Ropax Vessel Should the design of the New Vessel mean that it is not practicable to provide one hundred and ten percent (110%) of the current provision at four point eight (4.8) lane metres height the Company may submit a Contract Variation Form requesting that the requirements of this clause 5.2.7.2.4 be varied to allow for less provision provided always that the Department shall be entitled to refuse to agree any Contract Variation if the resulting provision is at least equal to that provided by the Current Ropax Vessel

- 5.2.7.2.5. take into account the outcome of the public survey conducted by the Department between 24th September 2018 and 7th October 2018
 - 5.2.7.2.6. pay due regard to the Department policy to reduce emissions
 - 5.2.7.2.7. comply with the 2020 International Maritime Organisation Sulphur Limit Regulation
 - 5.2.7.2.8. include Passenger facilities to a quality comparable with that provided by leading Irish Sea and English Channel ferry companies including the quality and variety of food and beverages furnishing and decoration customer service offered by staff and cleaning and maintenance of all areas
- 5.2.7.3. warrant to the Department from the New Vessel Service Date that the New Vessel meets the Specification Requirements and provide to the Department such documentary evidence in support of the warranty contained in this clause 5.2.7.3 as the Department may reasonably require
- 5.2.8. When acquiring the Fast Craft Replacement Vessel the Company shall:
- 5.2.8.1. commission the Fast Craft Replacement Vessel within such timescales as are necessary to ensure that the Company complies with the provisions of clause 5.2.3.3 above
 - 5.2.8.2. carry out reasonable public consultation as to the Vessel Specification in sufficient time to inform any amendments to the Vessel Specification but in any event not less than eighteen (18) Months prior to the date on which the Company intends to commission the introduction of the Fast Craft Replacement Vessel and provide a copy of the report detailing the result of this public consultation to the Department (together with such supporting documentation as the Department shall reasonably require) as soon as reasonably practicable following completion of the public consultation
 - 5.2.8.3. (Notwithstanding the provisions of clause 5.2.8.1 above) Prior to commissioning the undertaking of the Fast Craft Replacement Vessel the Company shall submit to the Department such indicative plans and/or specifications as are in the reasonable opinion of the Department necessary to adequately describe the specification of the Fast Craft Replacement ("the **Vessel Specification**")
 - 5.2.8.3.1. the Department shall be entitled to make reasonable representations to the Company

(taking into account the provisions of clause 5.2.9 below)

5.2.8.3.2. The Company shall not commission the Fast Craft Replacement Vessel other than in accordance with plans and/or specifications which incorporate any amendments requested by the Department pursuant to clause 5.2.8.3.1 above (if any)

5.2.9. The Company shall invest not less than seventy million pounds (£70,000,000) aggregate in the acquisition of the New Vessel (as referred to in clause 5.2.7) and in the acquisition or lease or charter (with the value of the lease or charter being the capitalised value of the lease or charter) of the Fast Craft Replacement Vessel (as referred to in clause 5.2.8)

5.3. **The Services**

5.3.1. The Company must ensure that the Services are provided throughout the Term in accordance with:

5.3.1.1. The provisions of this clause 5.3 and Schedule 2

5.3.1.2. Applicable Law including but not limited to all Applicable Law relating to the Vessels their registration operation and maintenance all vessel and crew safety requirements and all relevant health and safety requirements

5.3.1.3. All other provisions of Schedules 3 to 5

5.3.2. The Department may require the Company to explain any default or failure in the provision of the Services and such explanation must be given in any manner in such detail and within any reasonable timescale specified by the Department

5.4. **Capacity**

5.4.1. Passenger and Accompanied Vehicle Return Services

5.4.1.1. Subject to the provisions of clause 5.4.1.2 that with respect to Passenger and Accompanied Vehicle Return Services provided by the Company in each Month in performance of its obligations under this Agreement the Company shall ensure:-

5.4.1.1.1. as to Conventional Vessels used in respect thereof the aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity of such Conventional Vessels in each Month shall be equal to or exceed one hundred and fifty percent (150%) of the respective total number of Foot Passengers and Passengers and Accompanied Vehicles transported by Conventional Vessel on Return Services between Douglas and the

appropriate other Port in the same Month in the immediately preceding Year and

5.4.1.1.2. as to Fast Craft used in respect thereof the aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity of such Fast Crafts shall be equal to or exceed one hundred and fifteen percent (115%) in respect of each of the Months June July August and September and one hundred and thirty percent (130%) in respect of all other Months of the respective total number of Foot Passengers and Passengers and Accompanied Vehicles transported by Fast Craft on Return Services between Douglas and the appropriate other Port in the same Month in the immediately preceding Year

5.4.1.2. PROVIDED THAT:-

5.4.1.2.1. for the purpose of the calculation in accordance with clause 5.4.1.1.1 if the Company shall have used Fast Craft in the same Month in the immediately preceding Year and in the same Month in the current Year is to use Conventional Vessels then the aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity of Conventional Vessels in the corresponding Month in the then current Year shall be equal to or exceed one hundred and fifty percent (150%) of the respective total number of Foot Passengers and Passengers and Accompanied Vehicles transported by Fast Craft on Return Services between Douglas and the appropriate other Port in the same Month in the immediately preceding Year and

5.4.1.2.2. for the purpose of the calculation in accordance with clause 5.4.1.1.2 if the Company shall have used Conventional Vessels in the same Month in the immediately preceding Year and in the same Month in the current Year is to use Fast Craft then the aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity of Fast Craft in the corresponding Month in the then current Year shall be equal to or exceed in respect of each of the Months June July August and September one hundred and fifteen percent (115%) and in respect of all other Months one hundred and thirty percent (130%) of the respective total number of Foot Passengers and Passengers and Accompanied Vehicles transported by Conventional Vessel on Return

Services between Douglas and the appropriate other Port in the same Month in the immediately preceding Year

5.4.1.2.3. for the purpose of calculation under clauses 5.4.1.1.1 and 5.4.1.1.2 if the Company shall have used a combination of both Conventional Vessels and Fast Craft in the same Month in the preceding Year then the Company will in the corresponding Month in the current Year either:-

5.4.1.2.3.1. if it maintains the same combination of both Conventional Vessels and Fast Craft provide aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity in line with the increased capacity for each type of vessel calculated in accordance with clauses 5.4.1.1.1 and 5.4.1.1.2 above

5.4.1.2.3.2. if it uses Conventional Vessels it will provide aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity in the corresponding Month in the then current Year equal to or exceeding one hundred and fifty percent (150%) of the total number of Foot Passengers and Passengers and Accompanied Vehicles transported by Conventional Vessels and Fast Craft in the same Month in the immediately preceding Year

5.4.1.2.3.3. if it uses Fast Craft it will provide aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity in the corresponding Month in the then current Year equal to or exceeding in respect of each of the Months June July August and September in the then current Year one hundred and fifteen percent (115%) or in respect of every other Month in the then current Year one hundred and thirty percent (130%) of the total number of Foot Passengers and Passengers and Accompanied Vehicles transported by Conventional Vessels and Fast

Craft in the same Month in the immediately preceding Year

5.4.1.3. notwithstanding the provisions of clause 5.4.1 the Company shall ensure that in each week or appropriate part thereof during each TT Period and Easter Period the aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity of all Vessels providing the Return Services during each such Week or appropriate part thereof shall be not less than that required to meet the aggregate number of Foot Passengers and Passengers and Accompanied Vehicles who used the corresponding Return Service in the same Week or appropriate part thereof in the then immediately preceding TT Period or Easter Period as appropriate Provided that if the then immediately preceding TT Period included a Bank Holiday but such Bank Holiday is not included in the current TT Period the Company shall be entitled to make due allowance for any reasonably anticipated reduction in Foot Passengers and Passengers and Accompanied Vehicles caused thereby

5.4.1.3.1. if during the same Month or the TT Period or Easter Period in the immediately preceding Year there was disruption (whether by Force Majeure Weather conditions Industrial Action or otherwise) to the Return Services then for the purposes of calculating capacity in accordance with clause 5.4.1 read in conjunction with and subject to the provisions of clause 5.4.2.2 the words "in the next before preceding Year during which there was no disruption (whether by Force Majeure Weather conditions Industrial Action or otherwise)" shall be substituted for the words "in the immediately preceding Year" in clause 5.4 (Capacity) the words "in the next before preceding TT Period and Easter Period (as appropriate) during which there was no disruption (whether by Force Majeure Weather conditions Industrial Action or otherwise)" shall be substituted for the words "in the then immediately preceding TT Period or Easter Period as appropriate"

5.4.2. Freight Services

The Company shall ensure that it provides:

5.4.2.1. the Minimum Freight Capacity in each week of the Term

5.4.2.2. for each Month (excluding those Months which include the whole or part of the TT Period) in respect of sailings from Douglas to a Port other than Liverpool Port aggregate freight capacity equal to or exceed one hundred and twelve and a

half percent (112½%) of the respective total freight metrage carried between Douglas and the appropriate other Port in the same Month in the immediately preceding Year

5.4.3. For the avoidance of doubt in calculating the aggregate Foot Passenger and Passenger and Accompanied Vehicle capacity of Conventional Vessel or Fast Craft for the purpose of clause 5.4.1 and for calculating the aggregate freight capacity for the purpose of clause 5.4.2 in respect of the calculations relevant to the first Year of the Term the expression "the immediately preceding Year" shall be construed as the twelve (12) Month period immediately preceding the Commencement Date

5.4.4. Without prejudice to the Company's obligations under this clause 5.4 (Capacity) and subject to the provisions of and compliance by the Company with clause 10.4.3.1 and clause 10.5 and any directions orders or other thing from time to time deemed appropriate in connection with the operation or management of Douglas Harbour or the approaches thereto the Company may provide from time to time any additional Return Services to and from the Isle of Man and the Company shall notify as soon as practicable the Department in writing of any such additional Return Service provided that any additional Return Services shall not conflict or interfere with any other use or proposed use of the Linkspans of which the Company shall have received notice from the Department in accordance with clause 12 (EXCLUSIVITY)

5.5. **Marketing Plan**

The Company must implement the Marketing Plan in accordance with the provisions of Schedule 5 and to the satisfaction of the Department

5.6. **Port Security**

5.6.1. The Company must comply with the ISPS Code and any other reasonable or legal requirements that relate to port security as may be notified to it by the Department ("**Port Security Requirements**").

5.6.2. Save in the case of emergency (where oral notification will be adequate) the Department will provide notification of any reasonable security requirements as referred to in clause 5.6.1 to the Company in writing

5.6.3. The timescale for compliance with Port Security Requirements will be the timescale set out in the notification provided by the Department in accordance with clauses 5.6.1 and 5.6.2 or (where no such timescale is included in the notification) as soon as reasonably practicable following receipt by the Company of the notification

5.7. Access Area Staffing

- 5.7.1. The Company shall provide sufficient staff to operate the Access Area to ensure that:
 - 5.7.1.1. the Company complies with its obligations pursuant to clause 5.6 (Port Security) above in carrying out security checks for Customers vehicles and crew
 - 5.7.1.2. the Linkspans are adequately manned for marshalling purposes to enable the same to be used by the Company for the Specified Purposes
 - 5.7.1.3. that the Company is able to provide adequate customer care services to its Customers
- 5.7.2. The Company shall provide Check In Services to such third party providers as the Department may authorise to use the Linkspans pursuant to clause 12.3.2 or 12.3.3 (EXCLUSIVITY) of this Agreement. The Company shall be entitled to make a reasonable charge for the provision of Check In Services to third party providers in these circumstances
- 5.7.3. The Company shall provide adequate Check In Services to its Customers and in arranging these Check In Services they will:
 - 5.7.3.1. use its best endeavours to minimise the impact of the surrounding road network
 - 5.7.3.2. In any event ensure that the Check In Services are available for use by Customers not less than one (1) hour prior to the scheduled time for departure of each Scheduled Crossing

5.8. Slot Times

- 5.8.1. That in selecting any proposed Slot Time for the purpose of any then proposed Scheduled Crossing of which the Company is required to give the Department notice under clause 10.4.2.1 the Company shall exercise good faith and in particular without prejudice to the generality of the foregoing shall not attempt to frustrate the use of the Linkspans by any other user or proposed user of which the Company shall have received notice from the Department in accordance with clause 12 (EXCLUSIVITY) and
- 5.8.2. that the Company shall ensure (subject to Force Majeure Weather conditions or Industrial Action) that during any Slot Time allocated to the Company the Linkspans shall be used by a Vessel for the purposes of loading and/or unloading such Vessel with Foot Passengers and Passengers and Accompanied Vehicles and/or Freight PROVIDED that without prejudice to the obligations of the Company under Schedule 2 (Services) nothing contained in this clause 5.8 (Slot Times) shall require the Company to ensure that the Linkspans are used for the purpose of loading and/or unloading of a Vessel during a Slot Time which has been identified by the Company for use as a Standby

Sailing whether under clause 10.4.2.1 or as varied in accordance with clause 10.4.3.2.2 and

- 5.8.3. that the Company shall ensure that no Vessel shall berth at either the King Edward VIII Linkspan or the Victoria Pier Linkspan during any period other than a Slot Time unless the Department shall have previously consented (provided always that the Department shall be entitled to make a reasonable charge in return for such consent)

5.9. **Insurance**

5.9.1. The Company shall:

- 5.9.1.1. not do or permit or suffer to be done on or to the Linkspans anything which may cause any insurance on or relevant to the Linkspans or any part thereof to be or become vitiated or whereby the premium payable under any such insurance is liable to be increased other than as a consequence of any claim or increase in premiums generally
- 5.9.1.2. give notice to the Department immediately upon the happening of any event which might affect any insurance policy of or relating to the Linkspans or the premium(s) relevant thereto or upon the happening of any event against which the Department may have insured under this Agreement
- 5.9.1.3. immediately inform the Department in writing of any conviction judgment or finding of any court or tribunal in relation to the Company (whether directly or indirectly) of such a nature as to be likely to affect the decision of any insurer or underwriter to grant or to continue or renew any insurance of the Insured Risks or any part thereof
- 5.9.1.4. effect and continue throughout the Term all proper and appropriate insurance relevant to and in connection with the use (as herein permitted) of the Linkspans by the Company its officers servants agents invitees and licensees (with or without vehicles) including without prejudice to the generality of the foregoing all appropriate public liability and employer's liability insurance in connection therewith and in each Year to produce to the Department all appropriate certificates in respect of each such insurance (and if at any time requested by the Department the original or a copy of any such insurance policy) and the receipted invoice or other written matter evidencing payment of the premium or premiums in respect of the then current insurance Year

- 5.9.2. If and whenever during the Term the Linkspans or any part thereof is damaged or destroyed by an Insured Risk and the insurance money under any policy of insurance effected by the Department is by any act omission or default of the Company its officers servants agents invitees and/or licensees or any of them wholly or partially

irrecoverable immediately and in every such case (at the option of the Department) the Company shall either:

5.9.2.1. rebuild and reinstate at its own expense the Linkspans or the individual Linkspan or the part destroyed or damaged to the reasonable satisfaction and under the supervision of any surveyor from time to time appointed by the Department the Company being allowed towards the expense of so doing upon such rebuilding and reinstating being completed the amount (if any) actually received in respect of such destruction or damage under any such insurance policy or

5.9.2.2. pay to the Department on demand with interest at the Applicable Rate the amount of such insurance monies so irrecoverable in which event the provisions of clause 15 (SUSPENSION OF PRESCRIBED CHARGES) and clause 16 (REINSTATEMENT AND TERMINATION IF PREVENTED) shall apply

5.10. Heysham Terminal

The Company shall undertake works of refurbishment to the interior of the Heysham Terminal for the benefit of Customers and which are sufficient to ensure that the Heysham terminal building includes Customer facilities to a quality comparable with that provided by other terminal facilities in the United Kingdom including the quality of furnishing and decoration and the provision of WiFi facilities. These refurbishment works shall be at the cost of the Company and the Company shall use its best endeavours to ensure that the works are completed prior to the Commencement Date.

5.11. Information Technology Requirements

The Company will maintain at all times a website that is accessible to its Customers (both domestic and Freight) ("the **Website**") which meets the Minimum Website Requirements.

5.12. Tourist Information

The Company shall provide adequate space (whether this be physical space or slots on digital/broadcast media) at each Terminal and on each Vessel to enable the Department or the DfE to provide relevant tourist information to Customers.

5.13. Information

In addition to any other requirement set out in this Agreement the Company will provide to the Department:

5.13.1. access to its management accounts (or equivalent information as may be required by the Department acting reasonably) at any time upon not less than twenty four (24) hours' notice for the purposes of inspection thereof by the Department.

- 5.13.2. a compliance report upon each of the Compliance Dates in a format and to include the Compliance Requirements and the KPIs together with such evidence as the Department shall reasonably require
- 5.13.3. such information as the Department shall reasonably require in order for the Department to provide information to the DfE and the Cabinet Office to assist the DfE and Cabinet Office in understanding the performance of the Island's visitor economy
- 5.13.4. such information as the Department shall reasonably require regarding punctuality (compared to the times set out in the Sailing Schedule) and crossing times (compared to Crossing Times)
- 5.13.5. such information and assistance as the Department shall reasonably require in order to properly reply to Parliamentary questions Where information and/or assistance is requested pursuant to this clause 5.13.5 the Company shall use its best endeavours to provide this information and/or assistance within the timescales reasonably required by the Department
- 5.13.6. the Department agree that it shall treat all information received by it pursuant to clauses 5.13.1 and 5.1.1.1 as confidential (subject to its obligations pursuant to the Freedom of Information Act 2015)

5.14. Pre-Expiry

- 5.14.1. The Company must throughout the Term collect and preserve and upon the request of the Department made at any time during the last eighteen (18) Months of the Term (or if the Department shall have given notice under clause 18 (TERMINATION – GENERAL PROVISIONS) at any time after the date of such notice) supply the Department with all such information regarding the Services including (without limitation) the Vessels and their operation employees Customer numbers and other matters (including the like information as regards key subcontractors and key Customers) which the Department may require (of which the Department will be the sole judges) for all purposes connected with the operation of clause 19 (CONSEQUENCES OF TERMINATION) and/or for purposes connected with the inviting of tenders from persons interested in becoming the incoming company and for the purposes of evaluating any such tender
- 5.14.2. The Company shall provide on reasonable notice to the Department and/or (subject to any potential incoming companies entering into reasonable written confidentiality undertakings) to any potential incoming company access to the Vessels and any other facilities employed in the provision of the Services for the purposes of inspection and carrying out due diligence (including for the avoidance of doubt the carrying out by any potential incoming company of Passenger surveys) provided that such rights of access and inspection do not interfere with the performance by the Company of its obligations under this Agreement

- 5.14.3. Where the Department has appointed an incoming company the Company must cooperate with the Department and the incoming company to ensure smooth handover and uninterrupted provision of the Services
- 5.14.4. The Company will deliver to Department on request a Handover Assistance Plan which sets out the Company's proposed methodology during the Transfer Assistance Period for achieving an orderly transition of Services from the Company to the Department and/or its proposed incoming company on the expiry or termination of this Agreement and which complies with the requirements set out clause 5.14.5 below Within thirty (30) days after the submission of the Handover Assistance Plan each Party will use its respective reasonable endeavours to agree the contents of the Handover Assistance Plan If the Parties are unable to agree the contents of the Handover Assistance Plan then such dispute shall be resolved in accordance with clause 24 (ARBITRATION)
- 5.14.5. The Handover Assistance Plan will contain as a minimum:
- 5.14.5.1. separate mechanisms for dealing with expiry and early termination the provisions relating to early termination being prepared on the assumption that the Company may be unable to provide the full level of assistance which is required by the provisions relating to expiry and in the case of early termination provision for the supply by the Company of all such reasonable assistance as the Department shall require to enable the Department or its subcontractors to provide the Services
 - 5.14.5.2. the management structure to be employed during both transfer and cessation of the Services on expiry and early termination and
 - 5.14.5.3. a detailed description of both the transfer and cessation processes including a timetable applicable in the case of expiry or an early termination procedures
 - 5.14.5.4. a mechanism for the Company to notify its staff
- 5.14.6. The Company will review and (if appropriate) update the Handover Assistance Plan in the first Month of each anniversary of the date on which the first Handover Assistance Plan is approved in accordance with clause 5.14.4 to reflect any changes in the Services Following such update the Company will submit the revised Handover Assistance Plan to the Department for review Within thirty (30) days following submission of the revised Handover Assistance Plan the Parties shall use reasonable endeavours to agree the contents of the revised Handover Assistance Plan based on the principles set out in this clause and any changes that have occurred in the Services since the Handover Assistance Plan was last agreed If the Parties are unable to agree the contents of the revised Handover

Assistance Plan within that thirty (30) day period such dispute shall be resolved in accordance with clause 24 (ARBITRATION)

5.14.7. Upon termination or expiry of this Agreement the Company shall implement the Handover Assistance Plan in accordance with its terms to the satisfaction of Department

5.15. **Indemnity**

The Company will indemnify and keep indemnified the Department from and against all liability of any kind to any person persons firm or body corporate owner or owners tenants occupiers or local or other Authority in respect of all losses damages actions proceedings suits claims demands costs liability and expenses whatsoever in respect of any injury to or the death of any person damage to or destruction of any property moveable or immoveable by reason of or arising in anyway directly or indirectly out of the use by the Company its officers servants agents invitees and/or licensees of the Linkspans or any breach or non-compliance with or non-observance of any of the covenants conditions or obligations on the part of the Company herein contained and from all proceedings actions costs claims damages demands of whatsoever nature in respect of any such liability or alleged liability

5.16. **Employment**

5.16.1. The Company shall ensure that:

5.16.1.1. not less than fifty percent (50%) of the Executive Directors of the Company and not less than fifty percent (50%) of the Non-Executive Directors of the Company from time to time shall be ordinarily resident in the Isle of Man and the majority of the Executive Directors shall work at the Company's offices in the Isle of Man ensuring local contribution input and consultation with the Department other Government Departments Isle of Man businesses and residents

5.16.1.2. the majority of all of its employees are resident for tax purposes in the Isle of Man (this requirement excludes shore based employees who permanently work in Ports outside of the Isle of Man)

5.16.1.3. from the New Vessel Service Date all crew members serving on the Back-Up Vessel shall be engaged upon terms and conditions which provide (as a minimum) that the crew members shall be paid at a rate which is equivalent to (pro rata for hours worked) the Minimum Wage applicable in the Isle of Man for the time being in force Provided that this provision shall only apply to any period that the crew member is working on a Vessel whilst it is providing the Services pursuant to this Agreement All crew members serving on Vessels other than the Back-Up Vessel will be engaged on terms as agreed in the collective bargaining agreements entered into between the Company

and such Union or Unions as shall be recognised by the Company for the purposes of collective bargaining during the Term

5.16.2. Where practicable the Company shall actively seek to recruit suitably qualified/experienced employees on the Isle of Man

5.16.3. The Company shall ensure that throughout the Term it:

5.16.3.1. expends not less than the Minimum Training Amount on Qualifying Training Spend. Minimum Training Amount shall be certified by the Company's auditors and a certificate stating the Revenues will be supplied to the Department PROVIDED that the Department shall be entitled at their discretion to accept a warranty from the Company's Finance Director in lieu of the auditor's certificate; and

5.16.3.2. Has in its employ at least one apprentice

5.16.4. The Company shall use its reasonable endeavours to ensure wherever practicable they will provide maritime and other professional training on the Isle of Man for seafarers and shore-based staff

5.17. **Manx Community Assistance**

The Company will continue to provide Manx Community Assistance to organisations whose aims are to: (i) improve the quality of life of Manx residents or (ii) assist Manx based or international charitable organisations or good causes. The level of assistance to each organisation and selection of which organisations to assist will be at the discretion of the Company

5.18. **Branding**

The Company shall continue to use "**Isle of Man Steam Packet Company**" as a brand name (or derivatives thereof previously in use by the Company or as agreed in writing by the Department) on Vessels and/or advertising of the Services

6. **HARBOUR DUES**

6.1. The Department agrees to exercise its powers under regulation 6A of the Regulations for the calculation and collection of Passenger Dues

6.2. For the avoidance of doubt clause 6.1 shall not apply to the calculation of any Dues payable pursuant to the Regulations save for Passenger Dues. All other Dues will remain payable in accordance with the Regulations

6.3. The Company must retain the accurate records detailing the following ("the **Revenues**"):

6.3.1. Gross Foot Passenger revenue (before deduction of commissions)

6.3.2. Gross vehicle Passenger revenue (before deduction of commissions)

- 6.3.3. Gross private vehicle revenue (before deduction of commissions)
 - 6.3.4. Cabin revenues received
 - 6.3.5. Revenue received from any executive or premium upgrades
 - 6.3.6. Dog revenues
 - 6.3.7. The gross revenue allocated to the Company from sail and rail tickets or Land Bridge Fares using third party ferry company
 - 6.3.8. Provisions of Passenger travel and breakdown insurance income
 - 6.3.9. Specific charter sailings to or from the Isle of Man
- 6.4. For the avoidance of doubt the obligation set out in clause 6.3 does not require the Company to retain records of:
- 6.4.1. Freight vehicle revenue
 - 6.4.2. Any non-ferry business in relation to the operations of inclusive holidays
 - 6.4.3. Retail and entertainment services (including the sale of food and drink) on board a Vessel operated by the Company
 - 6.4.4. Specific charter sailings not to or from the Isle of Man
 - 6.4.5. Non Isle of Man sailings or services (e.g. Liverpool – Dublin service)
 - 6.4.6. Any other revenue unrelated to the use by the Company of harbours in the Isle of Man
- 6.5. Throughout the Term the Company must provide to the Department a report detailing the Monthly Revenues received together with such supporting documentation (which may include inter alia the documentation referred to in clause 6.3 above) as the Department shall reasonably require
- 6.6. The amount payable by the Company to the Department in respect of Passenger Dues shall be either:
- 6.6.1. Five point two eight percent (5.28%) of the Revenues received for the preceding Year ("the **Fixed Percentage**") or
 - 6.6.2. One million and ninety one thousand five hundred and twenty six pounds (£1,091,526) (as adjusted annually by MCPI on the first and each subsequent anniversary of the Increase Date) ("the **Minimum Sum**")
- whichever shall be the greater
- 6.7. If the Fixed Percentage is more than the Minimum Sum for any Year of the Term then the Fixed Percentage shall be certified by the Company's auditors and a certificate stating the Revenues will be supplied to the Department PROVIDED that the Department shall be entitled at their discretion to accept

a warranty from the Company's Finance Director in lieu of the auditor's certificate

- 6.8. The Department shall give to the Company not less than two (2) Months prior written notice of any proposed increase in Freight Harbour Dues and to consider in respect of any such proposal any written representations made by the Company to the Department within fourteen (14) days from receipt by the Company of any such notice before finally determining any proposed increase in Freight Harbour Dues. For the avoidance of doubt any increase above MCPI will be deemed an exceptional increase which the Company is entitled to recover from its Customers or entitled to reduce services to compensate with prior agreement of the Department
- 6.9. The Company shall keep confidential and not to disclose (save as required by law or to enable the Company to take proper professional advice thereon provided such professional advisers are under a binding duty of confidentiality to the Department prior to such disclosure) or permit to be disclosed (whether by itself or by any of the Company's officers servants or agents) any proposals (including all information relevant thereto) by the Department to increase Freight Harbour Dues of which the Company shall receive notice under clause 6.8 above

7. BENCHMARK FARES AND CHARGES

For the purpose of this Agreement the Department hereby acknowledges that the Company's published Standard Passenger and Standard Freight Fares for the Year 2019 ("the **Benchmark Year**") are to be treated as the benchmark against which the Company's future obligations hereunder are to be measured

8. FARES AND CHARGES

- 8.1. Notwithstanding any other provision hereof the Company shall ensure that at all times during the Term the Standard Passenger and Freight Fares and Charges are only increased or altered in accordance with the provisions of this clause 8 and Schedule 3
- 8.2 Passenger Fares
- 8.2.1 Subject to the provisions of Schedule 3 the Standard Passenger Fares are the maximum Fares that the Company may charge for services offered to Foot Passengers and Passengers with Accompanied Vehicles (excluding Freight Passengers). Standard Passenger Fares shall be increased in accordance with Schedule 3 (Fares)
- 8.2.2 The Company shall not increase the Special Offer Fares offered to Foot Passengers during the Foot Passenger Offer Period beyond the level at which they were offered in the Benchmark Year
- 8.2.3 The Company will offer a minimum number of Special Offer Fares to Passengers (excluding Freight Passengers) as follows:

- 8.2.3.1 Not less than four hundred and fifty thousand (450,000) Foot Passenger or Passenger and Accompanied Vehicle offer seats ("**Special Offer Seats**") of which one hundred thousand (100,000) will be offered at a discount of not less than fifty percent (50%) of the Standard Passenger Fare at the time being in force and the remaining three hundred and fifty thousand (350,000) Special Offer Seats will be offered at a discount of not less than twenty five percent (25%) of the Standard Passenger Fare at the time being in force
- 8.2.3.2 Special Offer Fares for all children under the age of sixteen (16) Years at a rate of not more than fifty percent (50%) of the equivalent adult Standard Passenger Fare
- 8.2.3.3 Special Offer Foot Passenger Fares for all Students in full time education at a rate of not more than fifty percent of the equivalent adult Standard Passenger Fare
- 8.2.3.4 Weekend Supplements will not be applied to Fares (excluding Standard Freight Fares) during the period between 1st October and 31st March in each Year
- 8.2.3.5 General provisions concerning Special Offer Fares:
 - 8.2.3.5.1 Special Offer Fare discounts set out in clauses 8.2.2 8.2.3.1 8.2.3.2 and 8.2.3.3 above shall exclude the addition of Weekend Supplements and Fuel Surcharge and Fuel Rebates if applicable
 - 8.2.3.5.2 The number referred to in clause 8.2.3.1 above shall:
 - 8.2.3.5.2.1 not include the number of Special Offer Fares referred to in clause 8.2.3.4 and
 - 8.2.3.5.2.2 be reduced pro rata if the total annual Passenger numbers in the previous Year fall below five hundred and fifty thousand (550,000) UNLESS such falling Passenger numbers is due (in the reasonable opinion of the Department) to exceptional circumstances
 - 8.2.3.5.3 Special Offer Seats shall be made available on every Service provided by the Company except

for those provided during the TT Period or the Festival of Motorcycling Period (unless the Company elects to provide Special Offer Seats on selected sailings from time to time during the TT Period or the Festival of Motorcycling Period) Number of Special Offer Seats will vary sailing to sailing and over time as offers are sold out or space adjusted and restrictions and special offer terms and conditions will apply

8.2.4 Notwithstanding the provisions of clause 13.1 (STRATEGIC RESET) the Department and/or the DfE shall be entitled to require that the Company provides Additional Special Offer Fares at any time during the Term as follows:

8.2.4.1 the Department or the DfE (as appropriate) shall give the Company not less than one (1) Month's notice in writing ("the **Notice**") setting out the details of the Additional Special Offer Fares to be made available on a particular sailing (including inter alia the eligible Passengers the amount of the discount the duration of the special offer and the financial cap on the Additional Special Offer Fares (if any))

8.2.4.2 In order for a Valid Notice to be issued by the DfE it must be signed by a person duly authorised by the DfE (and counter signed by the Chief Executive Officer of the Department or person duly authorised by him to signify the approval of the Department to the issue of the Notice) and shall form an enforceable contract between the Company and the DfE for the purposes of enforcing delivery of the Additional Special Offer Fares stipulated in the Notice and the payment of the Discount Cost upon the terms set out in clause 8.2.4.5 below

8.2.4.3 The Department or the DfE (as appropriate) shall consult with the Company as to the manner in which the Additional Special Offer Fares are to be allocated (e.g. by means of a "special offer code" to be entered by eligible Passengers)

8.2.4.4 The Company shall provide all information required by the Department or the DfE (as appropriate) in order to market the Additional Special Offer Fares as soon as reasonably practicable following receipt of the Notice referred to in clause 8.2.4.1 above

8.2.4.5 The Department or the DfE (as appropriate) shall reimburse to the Company the Discount Cost as follows:

8.2.4.5.1 The Company shall invoice the Department or the DfE (as appropriate) for the amount of the Discount Cost as soon as possible following the Relevant Sailing (or the final sailing within the relevant offer period as set out in the relevant notice if more than one sailing during the relevant offer period offers Additional Special Offer Fares)

8.2.4.5.2 The Company shall provide such documentary evidence in support of its invoice as the Department or the DfE (as appropriate) shall reasonably require

8.2.4.5.3 The Department or the DfE (as appropriate) shall pay any invoice properly due within thirty (30) days of receipt

8.2.5 For the avoidance of doubt:

8.2.5.1 Additional Special Offers shall not count towards the Special Offer Seats referred to in clause 8.2.3.2 above but existing offers discounted further will still count as per the original discount

8.2.5.2 Nothing in the provisions of clause 8.2.4 shall prevent the Company from increasing the number of Special Offer Seats from the number anticipated by the Company in clause 8.2.5.2 notwithstanding that they have not received a Notice provided that in these instances the Company shall not be entitled to recover the Discount Cost (if any) from the Department or the DfE

8.2.6 Freight Fares

8.2.6.1 The Standard Freight Fares apply to Standard Height Trailers only The maximum Fare that the Company can charge for High Trailers is one hundred and fifty percent (150%) of the relevant Standard Freight Fare (provided always that the offering of Fares for High Trailers at less than one hundred and fifty percent (150%) of the relevant Standard Freight Fare will not be included within the lane metres referred to in clause 8.2.6.3.1 below unless the level of discount means that the Fare offered is less than one hundred percent (100%) of the relevant Standard Freight Fare)

- 8.2.6.2 Subject to the provisions of Schedule 3 the Standard Freight Fares are the maximum Fares that the Company may apply for Freight services Standard Freight Fares shall be increased in accordance with Schedule 3 (Fares)
- 8.2.6.3 The Company shall offer the following Special Offer Fares to its Freight Customers:
- 8.2.6.3.1 not less than three hundred thousand (300,000) HGV Freight lane metres per Year at a discount The level of discount will be related to volume shipped by any relevant Customer in the preceding Year and contractual terms entered into between the Company and the relevant Customer at the time being in force (provided always that the contractual terms referred to comply with the provisions of clause 8.2.6.3.3 below)
 - 8.2.6.3.2 discounts at the same level as was offered by the Company in the Benchmark Year (uplifted annually on each anniversary of the Commencement Date by MCPI) and including a requirement that the Company shall provide such evidence as the Department shall require in order to demonstrate its compliance with this clause 8.2.6.3.2
 - 8.2.6.3.3 the discounts provided for in clauses 8.2.6.3.1 and 8.2.6.3.2 above must not be primarily designed to adversely impact the continuing operation of any business on the Isle of Man whose main business is the transportation of third party freight by sea
 - 8.2.6.3.4 the metrage referred to in clause 8.2.6.3.1 above shall be reduced pro rata if the total annual HGV Freight lane metrage sold in the previous Year falls below four hundred and ten thousand (410,000) Freight lane metres UNLESS such falling lane metrage is due (in the reasonable opinion of the Department) to exceptional circumstances
 - 8.2.6.3.5 the Company will provide such evidence in commercial confidence as the Department shall

reasonably require to confirm its compliance with clause 8.2.6.3.3

9. FUEL SURCHARGE/FUEL REBATE

9.1. The Company shall be entitled to levy a Fuel Surcharge on its Fares and shall be obliged to apply a Fuel Rebate on its Fares in accordance with the provisions of this clause 9 and Schedule 11 to this Agreement

9.2. The Fuel Surcharge will be calculated quarterly on each Fuel Surcharge Date and will be based upon a baseline cost of fuel ("**Fuel Cost**") calculated as follows:

fifty percent (50%) x the Weighted Average Fuel Cost incurred by the Company over the immediately preceding three (3) Month period + fifty percent (50%) x the Weighted Cost Estimated to be incurred by the Company over the three(3) Month period immediately following the date of calculation

9.3. The Company shall be required to absorb the sum of three million four hundred thousand pounds (£3,400,000) (adjusted annually by Company MCPI plus one quarter percent (¼%) on the first anniversary and each subsequent anniversary of the Increase Date) ("the **Company Share**") of the Fuel Cost per annum

9.4. Where Company Share is less than the Fuel Cost the Company shall be entitled to levy any amount of the Fuel Cost which is in excess of the Company Share by way of a Fuel Surcharge

9.5. Where the Company Share is more than the Fuel Cost the Company shall be obliged to apply a rebate the amount of the Company Share which is in excess of the Fuel Cost by means of Fuel Rebate

10. SAILING SCHEDULES

10.1. The Company must throughout the Term publish the Sailing Schedule for the Services which will apply for each Year in accordance with the provisions of Schedule 2 The Sailing Schedule for the period from the Commencement Date until the 2020 Sailing Schedule Renewal Date shall be the Interim Sailing Schedule

10.2. At all times during the subsistence of this Agreement the Company shall ensure that its published Scheduled Crossings do not breach any obligation on the part of the Company under clause 5 (COMPANY'S COVENANTS AND OBLIGATIONS) and that the same are sufficient and appropriate to meet the reasonable requirements of its Customers (whether relevant to Foot Passengers Passengers and Accompanied Vehicles Freight or otherwise)

10.3. The Company will undertake consultation with hauliers Customers and the general public in relation to its Sailing Schedules within the twelve (12) month period prior to any Review Date The Company shall ensure that the results of this consultation is made available to the Department on each Review Date

10.4. Subject to compliance at all times during the subsistence of this Agreement with the Company's obligations in accordance with clause 5 (COMPANY'S COVENANTS AND OBLIGATIONS) and clause 10.2 and subject to clause 10.5:-

10.4.1. Not less than one (1) Month before finalisation by the Company of its proposed Sailing Schedules the Company shall invite the Department in writing to make suggestions (being by way of change variation addition deletion or otherwise) for the Company's Scheduled Crossings for the next ensuing Year commencing on the immediately next following January or such other twelve (12) Month period as the Company shall notify in writing to such Department. The Department shall notify the Company in writing within twenty one (21) days of any such invitation of any such suggestions and the Company shall endeavour subject to practicability and viability to incorporate such suggestions into the Company's proposed schedule of sailings

10.4.2.

10.4.2.1. not less than one (1) Month before finalisation by the Company of its proposed Sailing Schedules the Company shall provide the Department with its draft proposed Sailing Schedules from which the Department can derive the proposed Slot Times and each Vessel proposed to occupy the Linkspans during each such proposed Slot Time for the next ensuing Year commencing on the immediately next following Sailing Schedule Renewal Date and the Company shall also simultaneously notify the Department in writing of any change between the proposed Scheduled Crossings and/or proposed Slot Times and the Company's last published Sailing Schedule and/or Slot Times then used by Vessels. The Department shall notify in writing the Company as soon as practicable or in any event within twenty one (21) days of any such notice of any suggested changes (being by way of change variation addition deletion or otherwise) by the Department and the Company shall endeavour (subject to practicability and viability) to comply with such suggestions. Provided That the Company shall be required to change any proposed Slot Time which breaches clause 10.5 or which conflicts or interferes with any other user or proposed user of the Linkspans of which the Company shall have received notice from the Department in accordance with clause 12 (EXCLUSIVITY) and Provided Further that in the event the Department does not respond within the said twenty one (21) day period the Department shall be deemed not to require any changes to the proposed Sailing Schedule.

10.4.2.2. if subsequent to the provision by the Company of draft proposed Sailing Schedules and/or proposed Slot Times (including identification of each Standby Sailing and each

Vessel proposed to occupy the Linkspans during each proposed Slot Time) to the Department in accordance with clause 10.4.2.1 the Company desires to make any changes of substance to such proposed Sailing Schedules and/or any changes to any proposed Slot Time (including any Vessel previously identified in accordance with the foregoing provisions of clause 10.4.2.1) then the Company shall immediately notify the Department in writing of such proposed changes and invite the Department within twenty one (21) days (or if impracticable such lesser period as shall in all the circumstances be practicable) to notify the Company in writing of any suggestions by the Department relevant to such proposed changes and the Company shall endeavour (subject to practicability and viability) to incorporate such suggestions Provided That the Company shall not be permitted to make any change relevant to any Slot Time if the proposed change would breach clause 10.5 or conflicts or interferes with any other user or proposed user of the Linkspans of which the Company shall have received notice from the Department in accordance with clause 12 (EXCLUSIVITY)

10.4.2.3. notwithstanding the provisions of clause 10.4.2.1 or clause 10.4.2.2 the Company shall be required to alter its proposed Sailing Schedules and/or any Slot Time if the Department notifies the Company in writing within the appropriate periods that it requires one (1) or more changes by reason of harbour operational or management requirements

10.4.3.

10.4.3.1. Subject to compliance by the Company with the provisions of clauses 10.4.1 and 10.4.2 and subject to clause 10.6 and to Weather conditions the Company shall not in any Year reduce its sailings below the published Scheduled Crossings for that Year or any part thereof so as to cause the Company or likely to cause the Company to be in breach of any of its obligations under Schedule 2 (Services) for that Year PROVIDED THAT if at any time in any Year the Company desires to include additional Scheduled Crossings then the Company shall ensure that the Company does not breach its obligations under clause 5.4.4 or breach the provisions of clause 10.5 or otherwise conflict or interfere with any other user or proposed user (of which the Company shall have received notice from the Department in accordance with the provisions of clause 12 (EXCLUSIVITY)) of the Linkspans and subject thereto shall give to the Department not less than fourteen (14) days prior written notice or if impracticable so to do such notice as

is reasonable in the circumstances of any such additional Scheduled Crossing and the proposed Slot Time and also identifying the Vessel proposed to berth at the Linkspans during such Slot Time but the Department may refuse any such proposed Slot Time of any such additional sailing if the same conflicts with any harbour operational or management requirements or breaches clause 10.5 or conflicts or interferes with any other user or proposed user of the Linkspans of which the Company shall have received notice from the Department in accordance with clause 12 (EXCLUSIVITY)

10.4.3.2. Subject to compliance by the Company with the provisions of clauses 10.4.1 10.4.2 and 10.4.3.1 and subject to Weather conditions the Company shall not in any Year change any Slot Time (including any Vessel previously identified to the Department in accordance with the provisions of clause 10.4.2 or clause 10.4.3.1) or otherwise use the Linkspans other than during any Slot Time determined in accordance with clause 10.4.2 or clause 10.4.3.1 or change any Standby Sailing designated as such under clause 10.4.2.1 Provided That:-

10.4.3.2.1. if the Company merely desires to change the Vessel so identified for another Vessel then the Company shall be required to give not less than twenty four (24) hours prior notice to the Department of the identity of the other Vessel and

10.4.3.2.2. if the Company desires to change any Standby Sailing designated under clause 10.4.2.1 then subject to compliance by the Company with its obligations under Schedule 2 (Services) the Company shall be entitled to designate any other Scheduled Crossing in substitution for a designated Standby Sailing by giving to the Department not less than twenty four (24) hours prior notice

10.5. Notwithstanding any other provision contained in this clause 10 (SAILING SCHEDULES):-

10.5.1. the Company shall not be entitled under clause 10.4.2 to seek or request to change any Slot Time other than for or during the then next ensuing Year or twelve (12) Month period referred to in clause 10.4.2.1 PROVIDED THAT:-

10.5.1.1. such restriction shall not apply if the Company requires any specified Slot Time to enable the Company to comply

with any of its obligations under Schedule 2 (Services) and:-

10.5.1.1.1. the Company specifies in writing to the Department the appropriate obligation and

10.5.1.1.2. the Company satisfies the Department that the Company requires such Slot Time to enable the Company to complete one (1) part of the Return Service relevant to such obligation and

10.5.1.1.3. the Company has contracted with the appropriate Port outside the Isle of Man to use a Slot Time or the equivalent thereof to enable the Company to comply with such obligation as is referred to in clause 10.5.1.1.1 and such Slot Time or the equivalent thereof cannot be changed and

BUT if such restriction shall not apply in accordance with the provisions of this clause 10.5.1.1 then the period of non-application shall be limited to the period of the contract referred to in clause 10.5.1.1.3

10.5.2. The Company shall not be entitled to seek any additional Slot Time then proposed to be used for any published Scheduled Crossing other than during the current Year or more than six (6) Months prior to the date of any such additional sailing

10.5.3. In respect of each day during the subsistence of this Agreement between 06.00am and 8.00pm (inclusive) the Company shall ensure that there is a consecutive period of not less than four (4) hours (or with the prior agreement of the Department (which if the Department shall not agree shall not be subject to arbitration under clause 24 (ARBITRATION)) not less than two (2) x two (2) hour periods) during which no Slot Time shall be sought by the Company and during which no Vessel shall berth at each of the Linkspans (unless authorised by the Harbour Master (or any person or persons for the time being performing similar functions to the Harbour Master)) and the Linkspans shall not be used for the Specified Purposes

10.6. Subject to clause 10.5 if under clause 10.4.2.1 the Company with good and substantial reason proposes for the then next ensuing Year commencing on the immediately next following January or such other twelve (12) Month period as the Company shall notify in writing to the Department to use a Slot Time for the purposes of performing any of its obligations under Schedule 2 (Services) and such Slot Time shall interfere with any other user or proposed user of the Linkspans of which the Company shall have received notice from the Department in accordance with clause 12 (EXCLUSIVITY) or the Company cannot use the proposed Slot Time by virtue of notice given by the Department under clause 10.4.2.3 and

- 10.6.1. the Company cannot reasonably be expected to change such Slot Time and
- 10.6.2. the Company is not able to use any other harbour facility (whether provided by the Department or owned or leased by or otherwise available to the Company) and
- 10.6.3. the Company (upon being requested so to do by the Department and upon being offered by the Department the appropriate Rebated Sum) does not unreasonably refuse to permit any harbour facility then owned leased occupied or able to be used by the Company to be used by such third party user and
- 10.6.4. the Department notifies the Company in writing that having considered all matters the Department refuses the Company the right to use the appropriate Slot Time

then but only then if such Slot Time shall be required to be used by the Company as part of an obligatory Return Service under Schedule 2 (Services) the Company shall be entitled not to undertake such Return Service and shall not be deemed to be thereby in breach of this Agreement

- 10.7. The provisions of this clause shall not be deemed to inhibit or restrict the ability of the Harbour Master (or any person or persons for the time being performing similar functions to the Harbour Master) to issue any directions orders or other thing from time to time deemed appropriate in connection with the operation or management of Douglas Harbour or the approaches thereto

11. DEPARTMENT'S OBLIGATIONS

- 11.1. In consideration of the covenants obligations and undertakings on the part of the Company herein contained but subject to the Company not at any time being in breach of any covenants conditions or obligations on its part herein contained the Department covenants and undertakes:
- 11.2. To maintain (fair wear and tear excepted) the structure of the Linkspans
- 11.3. To maintain the navigational approach channel to both Linkspans each with associated manoeuvring area and each of six (6) metre depth below Admiralty Chart Datum and to maintain a berth of five (5) metres depth in front of Berth 1 Linkspan and to maintain a berth of six and a half (6.5) metres depth in front of Berth 5 Linkspan The Department will use its best endeavours to ensure that the depth in front of Berth 1 is increased to six and a half (6.5) if reasonable required by the Company and upon reasonable notice The Department shall use its best endeavours to ensure the approach channel is clear of fishing gear obstructions
- 11.4. That if at any time for the purposes of maintenance of the Linkspans or other justifiable reason the Department shall consider it necessary to suspend the Company's rights to use either the King Edward VIII Linkspan or the Victoria Pier Linkspan or shall consider it necessary to remove either the King Edward VIII Linkspan or the Victoria Pier Linkspan then:-

- 11.4.1. if the Department shall determine to leave the relevant Linkspan in situ but that it is necessary to suspend the use of the relevant Linkspan the Department shall consult (save in case of emergency) with the Company with a view to agreeing with the Company the most convenient time of such suspension but in the event of the Company and the Department failing to agree within seven (7) days of commencement of such consultation then the Department may give not less than fourteen (14) days written notice to the Company of the date of the proposed suspension but shall restrict the period of the suspension to such period as is reasonably practicable in all the circumstances and exercising due diligence or
- 11.4.2. if the Department shall determine that it is necessary to remove the relevant Linkspan then the Department (save in case of emergency) shall consult with the Company with a view to agreeing with the Company the most convenient time for such removal but in the event of the Company and the Department failing to agree within seven (7) days from commencement of such consultation then the Department may give to the Company not less than one (1) Month's written notice of the date upon which the relevant Linkspan shall be removed and upon expiration of such notice (or without notice in case of emergency) remove the relevant Linkspan and shall return the same as soon as reasonably practicable in all the circumstances and exercising due diligence
- 11.5. To insure the Linkspans and the Units (unless such insurance shall be vitiated or limited in any way by any act omission or default of the Company its officers servants agents invitees and/or licensee's or any of them) against the Insured Risks
- 11.6. If the Company desires to use a Port which the Company considers meets the appropriate criteria specified in paragraph 1 of Part 3 of Schedule 2 but having used all reasonable endeavours the Company experiences difficulties in commencing or progressing negotiations with appropriate persons having control of such Port then the Department upon being requested so to do (but without the Department being liable to incur any expense on its part and subject to the Department being satisfied that such Port will meet the appropriate criteria specified in paragraph 1 of Part 3 of Schedule 2 will afford to the Company such assistance (if any) as the Department considers appropriate
- 11.7. The Department shall undertake works of refurbishment to the baggage area and interior of the Douglas Terminal for the benefit of Customers and which are sufficient to ensure that the Douglas terminal building includes Customer and baggage facilities including weigh scales to a quality comparable with that provided by other terminal facilities in the United Kingdom including the quality of furnishing and decoration and the continuation of existing WiFi facilities These refurbishment works shall be met by the Department and shall be completed prior to the second anniversary of the Commencement Date

12. EXCLUSIVITY

- 12.1. If the Department shall permit any third party to use the Linkspans in accordance with the provisions of clauses 12.3 or 12.4 then the Company shall be entitled to charge the third party a reasonable charge for the use of the relevant Linkspan
- 12.2. If the Company shall be in breach of any of its obligations under Schedule 2 (Services) or shall be prevented by Force Majeure or Industrial Action from complying with any of its obligations under Schedule 2 (Services) or during the period of any suspension of this Agreement under clause 22 (FORCE MAJEURE) then on each such occasion the Department shall be entitled in the best interests of the Island its inhabitants and visitors (having consulted with the Company) for such period as the Department shall deem necessary in the circumstances (the Department using its reasonable endeavours to limit such period to the period of the breach or suspension (as appropriate) and one (1) Month thereafter) to :
- 12.2.1. permit any other person to use the Linkspan or Linkspans for the provision of such substituted Return Services or other services between the Isle of Man and elsewhere as the Department shall consider appropriate PROVIDED THAT
- 12.2.1.1. during any period that the Department so permits any other person to use the Linkspan or Linkspans in accordance with the provisions of this clause 12.2.1.1 the Company shall not be obligated to provide any of the services under Schedule 2 (Services) which are so provided by such other person but for the avoidance of doubt this clause 12.2.1.1 shall not be construed so as to be deemed to be cessation by the Company of any breach of its obligations under Schedule 2 (Services) and
- 12.2.1.2. in instances where the Department has entered into an agreement or arrangement with a third party for use of the Linkspan or Linkspans ("the **Third Party Agreement**") and that Third Party Agreement is capable of termination or assignment as anticipated by clause 12.2.1.4 then not later than seven (7) days from the date of receipt by the Department of notice by the Company that the Force Majeure or Industrial Action has ceased or not later than seven (7) days following cessation of any breach of any of the Company's obligations under Part 2 of Schedule 2 (Services) or cessation of the suspension of this Agreement under clause 27.4.2.2 the Company shall be entitled to resume usage of the Linkspans at the Slot Times previously allocated to the Company relevant to its then current published Sailing Schedule relating to Services or any part thereof under Schedule 2 (Services) and
- 12.2.1.3. in instances where the Department has entered into a Third Party Agreement which is not capable of

termination or assignment as anticipated by clause 12.2.1.4 the Company shall be entitled to resume usage of the Linkspans at the Slot Times previously allocated to the Company relevant to its then current published Sailing Schedule relating to Services or any part thereof under Schedule 2 (Services) from the date notified to it by the Department (being the date on which the relevant Third Party Agreement shall terminate)

12.2.1.4. if the Department has entered into any agreement or arrangement with any third party as contemplated by clause 12.2 for use by the third party of the Linkspans and such third party is by virtue of any arrangement or agreement entitled to continue to use the Linkspans subsequent to the expiration of seven (7) days from: (a) the receipt of any notice given by the Company under clause 12.2.1.2 or (b) cessation of any breach of any of the Company's obligations under Part 2 of Schedule 2 or (c) cessation of the suspension of this Agreement under clause 27.4.2.2 then:-

12.2.1.4.1. if by virtue of any such arrangement or agreement the Department has the right to terminate the same the Department shall do so when called upon by the Company PROVIDED THAT the Company shall pay to the Department forthwith on demand being made by the Department all monies (including but not limited to all fees costs charges penalties damages and expenses) required to be paid by the Department to such third party relevant to such termination or

12.2.1.4.2. if any such arrangement or agreement is capable of assignment by the Department then subject to the Department receiving from the Company all costs and expenses reasonably incurred or to be incurred by the Department in connection with any such proposed assignment and the Company entering into such form of indemnity as the Department shall reasonably require and the Department obtaining all necessary consents to such assignment the Department shall assign such arrangement or agreement to the Company if and when called upon by the Company so to do

12.2.2. require that the Company enters into a lease or charterparty with the Department which shall allow the Department to use such of the Vessels then used by the Company in the provision of the Services

as are stipulated by the Department in writing to the Company
PROVIDED THAT:

- 12.2.2.1. the terms of the lease or charterparty shall be agreed between the Parties (both Parties acting reasonably)
 - 12.2.2.2. the lease or charterparty shall not require the Department to make payment for the use of the Vessels for the period of Force Majeure or Industrial Action
- 12.3. Notwithstanding the provisions of clause 12.2 the Department (subject to the provisions of clause 12.5.1) on giving prior written notice as soon as practicable (but in any event not less than seven (7) days prior notice unless circumstances do not permit) to the Company (which notice may refer to one (1) or more services more particularly referred to in this clause) may permit:-
- 12.3.1. In connection with a Foot Passenger and/or Passenger and Accompanied Vehicle service operated by any person between two (2) Ports outside the Isle of Man permit any vessel (conventional or otherwise) owned leased or operated by any such person to use the Linkspans en route but as part of the journey subject to such use not being granted in the aggregate more than twenty four (24) times in any one (1) Year and not exceeding twice in any week
 - 12.3.2. Any person providing a Passenger and Accompanied Vehicle Return Service (and for the purposes of this clause 12.3.2 "**Vessel**" in the definition of "**Passenger and Accompanied Vehicle Return Service**" shall be deemed to be a vessel (conventional or otherwise) for the time being owned leased chartered or operated by or in conjunction with such person) to use at any time the Linkspans in connection with such service provided that any such service shall be from or to a Port not situate in or between Holyhead in Wales and the most northerly Port in North West England or subject to clause 12.3.3 any Ports situate on the East Coast of the Republic of Ireland or Northern Ireland
 - 12.3.3. Notwithstanding clause 12.3.2 any person providing a Passenger and Accompanied Vehicle Return Service from or to any Port situate on the East Coast of the Republic of Ireland or Northern Ireland to use the Linkspans at any time during the period from 2.00am on the Saturday of the third weekend in September until 11.00pm on the Sunday of the last weekend in March in each Year
 - 12.3.4. Any vessel (conventional or otherwise) owned leased chartered or operated by any person providing carriage by sea of Passengers Accompanied Vehicles and Freight or Passengers or Accompanied Vehicles or Freight or a mixture thereof to and/or from any offshore structure or platform situate in the Irish Sea to use at any time the Linkspans for the purposes of loading and/or unloading embarkation and/or disembarkation of Passengers Accompanied Vehicles and/or Freight

- 12.3.5. Without prejudice to clause 12.3.2 any vessel (conventional or otherwise) owned leased chartered or operated by any person providing carriage by sea of Passengers Accompanied Vehicles and Freight or Passengers or Accompanied Vehicles or Freight or a mixture thereof to and/or from any Port or place not situate within the British Isles to use at any time the Linkspans for the purposes of loading and/or unloading embarkation and/or disembarkation of Passengers Accompanied Vehicles and/or Freight
- 12.3.6. Cruise liners carrying vehicles and operating non-scheduled services
- 12.4. Notwithstanding the provisions of clause 12.3 the Department upon giving not less than twenty four (24) hours prior written notice to the Company may permit any person to use the Linkspans in connection with any specialist or one-off arrivals or departures provided that such uses shall not exceed twelve (12) in any one (1) Year
- 12.5.
- 12.5.1. If the Department shall desire to permit any person to use either the King Edward VIII Linkspan or the Victoria Pier Linkspan in accordance with the provisions of clause 12.3 or clause 12.4 then the Department shall if there is reasonable time so to do consult with the Company as to such proposed use but:-
- 12.5.1.1. the Department shall not be required to identify such person to the Company or to provide any other information to the Company save and except the proposed date(s) and time(s) during which such person requires to either the King Edward VIII Linkspan or the Victoria Pier Linkspan and
- 12.5.1.2. the requirement (if practicable) of the Department to consult with the Company shall merely be for the purposes of enabling the Department to ascertain whether the Company would wish to use the relevant Linkspan at the same time or during a period which would conflict with such other persons proposed use and shall not impose any duty or obligation upon the Department to refuse such other person's request or relieve the Company of the performance of any of its obligations under this Agreement
- 12.5.2. Any person permitted by the Department in accordance with the provisions of clause 12.3 or clause 12.4 to use either the King Edward VIII Linkspan or the Victoria Pier Linkspan shall use the same at such times which do not interfere with any Slot Time then allocated to the Company in connection with the Company's Scheduled Crossings for the then current Year relevant to the performance by the Company of its obligations under Schedule 2 (Services) or do not interfere with any Slot Times allocated to the Company relevant to any additional sailing of which the Department has been given notice by the Company: (a) prior to the Department

consulting with the Company in accordance with clause 12.5 or (b) if consultation shall be impracticable by reason of constraint of time prior to notification by the Department to the Company of such other persons proposed use of the Linkspans under clause 12.3 or clause 12.4

- 12.6. The Department shall not permit any person (other than the Company) to use either the King Edward VIII Linkspan or the Victoria Pier Linkspan for any period whether in the then current Year or any subsequent Year which coincides with a Slot Time allocated to the Company and to which Slot Time the provisions of clause 10.5.1.1 apply but the restriction upon the Department under this clause 12.6 shall only apply during the appropriate contract period more particularly referred to in clause 10.5.1.1.3
- 12.7. The Department acknowledge that this Agreement will impose obligations upon the Company that the Company would not undertake were they to only consider the commercial benefits In recognition of this the Department agree as follows:
- 12.7.1. that it will not install nor consent to the installation of any Linkspan within any harbour or Port in the Isle of Man capable of use by Conventional Vessels or Fast Craft similar to those for time being used by the Company other than in instances where the installation of a Linkspan is required to replace either the King Edward VIII Linkspan or the Victoria Pier Linkspan for whatever reason and
- 12.7.2. that they will pay due regard to the obligations referred to in this clause 12.7 when considering whether to permit other sea Freight transport services to operate using Douglas Harbour and will consult reasonably with the Company in relation thereto

13. STRATEGIC RESET

- 13.1. Within six (6) Months of each Review Date the Department shall be entitled to issue a Contract Variation Notice to the Company requiring a variation to the provisions set out in clauses 5.2 5.3 5.4 5.5 5.11 8 (FARES AND CHARGES) 9 (FUEL SURCHARGE/FUEL REBATE) or 10 (SAILING SCHEDULES) of this Agreement or any one or more of them ("the **Variations**")
- 13.2. The Parties shall comply with the provisions of Part 2 and Part 3 of Schedule 10 in the Evaluation and negotiation of the Contract Variation Notice referred to in clause 13.1 above
- 13.3. Notwithstanding the provisions of Part 2 of Schedule 10 the Company shall be obliged to implement Variations included within any Contract Variation Notice issued by the Department pursuant to clause 13.1 above PROVIDED:
- 13.3.1. the Department give the Company not less than six (6) Months' notice in writing of the proposed Variations ("the **Notice**")
- 13.3.2. the Department consult with the Company as to the proposed Variations prior to the issue of the Notice

- 13.3.3. the overall package of Variations can be achieved within the Neutral Cost Envelope unless the Department agree to meet any additional costs that would be incurred by the Company as a result of the Variations which is not met within the Neutral Cost Envelope
- 13.3.4. the proposed Variations are operationally practical for the Company (taking into account the provisions of clause 13.3.3)
- 13.4. the implementation of all Variations which are contained within the Contract Variation Notice referred to in clause 13.1 and which comply with the requirements of clause 13.3 above will be in accordance with Part 6 of Schedule 10 (Change Control Procedure)
- 13.5. Should any dispute disagreement or claim arise between the Parties (hereinafter referred to as "the **dispute**") concerning the cost of the required Variations (as referred to in clause 13.3.3) or operational practicality of the Variations (as referred to in clause 13.3.4) the Parties shall attempt to resolve the dispute by negotiation. Should the Parties fail to reach agreement or should for any reason the dispute remain unresolved after the period of thirty (30) days after the initial request by the Department the Parties shall refer the matter for arbitration in accordance with the provisions of clause 24 (ARBITRATION)
- 13.6. Ireland Reset
 - 13.6.1. Upon providing a Contract Variation Notice giving not less than six (6) Months' notice to expire within the Ireland Review Period the Department shall be entitled to vary the provisions of paragraph 3 of Schedule 2 ("the **Ireland Variations**")
 - 13.6.2. The Parties shall comply with the provisions of Parts 2 and 3 of Schedule 10 in the Evaluation negotiation of the Contract Variation Notice referred to in clause 13.1 above
 - 13.6.3. Notwithstanding the provisions of Part 2 of Schedule 10 the Company shall be obliged to implement Variations included within any Contract Variation Notice issued by the Department pursuant to clause 13.1 above PROVIDED:
 - 13.6.3.1. the Department having due regard to the social and economic needs of the Isle of Man shall consult with the Company as to the proposed Ireland Variations prior to the issue of the Contract Variation Notice referred to in clause 13.6.1 above
 - 13.6.3.2. the Ireland Variations can be achieved within the same Neutral Cost Envelope (unless the Department agree to meet any additional costs that would be incurred by the Company as a result of the Ireland Variations which is not met within the Neutral Cost Envelope)
 - 13.6.3.3. the proposed Ireland Variations are operationally practical for the Company (taking into account the provisions of clause 13.6.3.2)

- 13.6.4. In the event that the Ireland Variations include the removal or suspension of Scheduled Crossings to Ireland the Contract Variation Notice may include variations to the provisions of clause 12.3.3 of this Agreement
- 13.7. Should any dispute disagreement or claim arise between the Parties concerning the cost of the Ireland Variations (as referred to in clause 13.6.3.2) or whether the Ireland Variations are operationally practicable (as referred to in clause 13.6.3.3) the Parties shall attempt to resolve the dispute by negotiation Should the Parties fail to reach agreement or should for any reason the dispute remain unresolved after the period of thirty (30) days after the initial request by the Department the Parties shall refer the matter for arbitration in accordance with the provisions of clause 24 (ARBITRATION)
- 13.8. Company Variations
- 13.8.1. In the event that there is a Material Event the Company shall be entitled to issue a Contract Variation Request to the Department
- 13.8.2. The Contract Variation Request issued by the Company must specify the relevant Material Event(s) and the variations requested by the Company as a direct result of the occurrence of the Material Event in sufficient detail to allow the Department to properly consider the Contract Variation Request
- 13.8.3. As soon as reasonably practicable after the Department receives a Contract Variation Request from the Company the Parties shall meet to discuss the contents of the Contract Variation Request and shall attempt to agree whether the Agreement should be amended and if so the terms of any Contract Variation Notice
- 13.8.4. The Company may not issue more than one Contract Variation Request in every three (3) Year period
- 13.8.5. If the Parties do not agree as to the provision of a Contract Variation Notice or the terms thereof then the matter will be resolved in accordance with clause 24 (ARBITRATION)

14. LIQUIDATED ASCERTAINABLE DAMAGES

- 14.1. If the Company fails to meet the KPI Target for reasons other than Weather conditions tides an act or omission of the Department a third party not under the control of the Company or Force Majeure the Company shall indemnify the Department on demand by way of liquidated damages reflecting the losses of the Department in respect of the failure to meet the KPI Target by reference to the Liquidated Damages Amount payable by the Company within thirty (30) days of receipt of an invoice issued by the Department (or until this Agreement is terminated whichever shall be the sooner)
- 14.2. In the event that the failure to meet the KPI Target is solely due to an act or omission of the Department a third party not under the control of the Company or Force Majeure the KPI Target shall be varied for that Year so that it reasonably reflects the impact of the Weather condition tides the act

or omission or the Force Majeure which has resulted in the failure by the Company to meet the KPI Target. In the event that the Parties are not able to agree the revised KPI Target under the provisions of this clause then the matter shall be determined pursuant to clause 24 (ARBITRATION). Once a revised KPI Target has been agreed by the Parties or determined pursuant to clause 24 (ARBITRATION) it shall be deemed to be the KPI Target for that Year for the purposes of clause 14.1.

- 14.3. The Company and the Department agree and intend that the liquidated damages amounts which the Company may become liable to pay pursuant to this clause 14 (LIQUIDATED ASCERTAINABLE DAMAGES) are not a penalty but rather a genuine pre-estimate of the loss which the Department will suffer as a result of a failure by the Company in meeting the KPI Target.

15. SUSPENSION OF PRESCRIBED CHARGES

- 15.1. If and whenever both the King Edward VIII Linkspan and the Victoria Pier Linkspan are damaged or destroyed so that both of the Linkspans are unfit for use and:-

15.1.1. if such damage or destruction is covered by any of the Insured Risks provided payment of the insurance monies is not refused in whole or in part by reason of any act omission or default of the Company or any of its officers servants agents licensees and/or invitees or

15.1.2. if such destruction or damage is not caused by any act omission or default of the Company or any of its officers servants agents licensees and/or invitees

then the provisions of clause 15.2 shall have effect

- 15.2. When the circumstances contemplated in clause 15.1 arise the Fixed Charge or a fair proportion thereof according to the nature and extent of the damage sustained shall cease to be payable until the not less than one of the Linkspans shall have been rebuilt or reinstated so that there is available to the Company a Linkspan fit for the Specified Purposes or until the expiration of three (3) Years from the date of such destruction or damage whichever period is the shorter the amount of such proportion and the period during which the Fixed Charge or a proportion thereof shall cease to be payable to be determined in case of any dispute between the Department and the Company by arbitration in accordance with the provisions of clause 24 (ARBITRATION) hereof

16. REINSTATEMENT AND TERMINATION IF PREVENTED

- 16.1. If and whenever during the Term:-

16.1.1. the King Edward VIII Linkspan or the Victoria Pier Linkspan or any part of either Linkspan is damaged or destroyed and

16.1.2. any such damage or destruction is not caused by any act omission or default of the Company or any of its officers servants agents licensees and/or invitees or

- 16.1.3. if any such damage or destruction is caused by any of the Insured Risks the payment of insurance money is not refused in whole or in part by reason of any act omission or default by the Company or any of its officers servants agents licensees and/or invitees

then the Department shall use its best endeavours to obtain all permissions and consents that may be required to enable the Department to rebuild and reinstate the relevant Linkspan(s) (such permissions and consents being in this clause referred to as "the **Permissions**") and subject to the provisions of clause 16.2 and clause 16.3 the Department shall as soon as the Permissions have been obtained or immediately where no Permissions are required rebuild or reinstate the relevant Linkspan(s) in accordance with the Permissions (if any) and shall apply all money (if any) received in respect of such insurance (except sums in respect of Loss of Fixed Charges) in rebuilding or reinstating the relevant Linkspan or any part thereof so destroyed or damaged

- 16.2. For the purposes of this clause the expression "**Supervening Events**" means:
- 16.2.1. The Department has failed despite using its best endeavours to obtain the Permissions or any of them or
- 16.2.2. Any of the Permissions have been granted subject to a lawful condition with which in all the circumstances it would be unreasonable to expect the Department to comply or
- 16.2.3. Some defect deficiency or obstruction in the site upon which the rebuilding or reinstatement is to take place would mean that the same could only be undertaken at a cost that would be unreasonable in all the circumstances or
- 16.2.4. The Department is unable to obtain access to the site for the purposes of rebuilding or reinstating or
- 16.2.5. The rebuilding or reinstatement is prevented by Force Majeure or Industrial Action or
- 16.2.6. Any other circumstance beyond the control of the Department
- 16.3. The Department shall not be liable to rebuild or reinstate the relevant Linkspan if and so long as such rebuilding or reinstatement is prevented by Supervening Events
- 16.4. If upon the expiry of a period of eighteen (18) Months commencing on the date of the damage or destruction of the Linkspans the same shall have not been rebuilt or reinstated so as to be fit for the Specified Purposes either Party may by notice served at any time within six (6) Months of the expiry of such period invoke the provisions of clause 16.5

16.5. Upon service of a notice in accordance with clause 16.4:

16.5.1. The Term will absolutely cease but without prejudice to any rights or remedies that may have accrued to either Party against the other

16.5.2. All money received in respect of the insurance effected by the Department in pursuance of its obligations hereunder shall belong to the Department

17. FURTHER SUSPENSION OF PRESCRIBED CHARGES

If the Department in accordance with the provisions of clause 11.4 shall either suspend the use by the Company of either or both of the Linkspans or remove either or both of the Linkspans then during such period of suspension or removal a fair proportion of the Fixed Charges shall cease to be payable by the Company and in default of agreement as to the proportion of the Fixed Charge which shall so cease to be payable any dispute between the Department and the Company shall be determined by arbitration in accordance with the provisions of clause 24 (ARBITRATION)

18. TERMINATION - GENERAL PROVISIONS

This Agreement may be terminated:

18.1. At any time by mutual agreement in writing between the Department and the Company or

18.2. If pursuant to paragraph 2.3 and paragraph 3 of Part 2 of Schedule 2 the Company at any time shall select and use a Port which is determined by the Arbitration Tribunal not to meet the criteria specified in paragraph 1.1 and paragraph 1.2 of Part 3 of Schedule 2 then the Department at any time after such determination by the Arbitration Tribunal (notwithstanding that the Company may be entitled to select another Port under paragraph 3 of Schedule 2) shall be entitled to terminate this Agreement by giving not less than six (6) Months' written notice to that effect

18.3. If and whenever the Company shall fail after receipt of the appropriate invoice or demand to pay any monies due and payable by the Company to the Department in accordance with the provisions of this Agreement within the period specified or if no period be specified within twenty eight (28) days of the same becoming due and payable (whether demanded or not) then the Department shall be entitled to terminate this Agreement upon giving to the Company not less than one (1) Month's prior written notice or

18.4. With immediate effect if the Company shall be in breach of clause 20 (BRIBERY) and/or clause 21 (DATA PROTECTION) or

18.5. Without prejudice to any other provision of this Agreement in the event of a breach by the Company of any of its obligations under Schedule 2 (Services) the Department may serve written notice on the Company requiring the breach to be remedied within not more than fourteen (14) days (allowance being made for Weather conditions Force Majeure or Industrial Action preventing compliance within the fourteen (14) days) from the giving of the

notice and if the Company shall fail to comply with the terms of any such notice then the Department may terminate this Agreement upon giving not less than fourteen (14) days prior further written notice to the Party in default or

- 18.6. Without prejudice to the provisions of any other clause of this Agreement if either Party in any period of twelve (12) consecutive Months shall be in breach of any one (1) or more of the provisions of this Agreement for a continuous or cumulative period of thirty (30) days then the other Party may terminate this Agreement by giving to the defaulting Party not less than six (6) Months' prior written notice PROVIDED THAT if the defaulting Party shall within twenty one (21) days of receipt of such notice disagree with the same then the dispute as to whether or not the Party serving the notice shall be entitled to terminate this Agreement in accordance with the provisions of this clause shall be referred to arbitration in accordance with the provisions of clause 24 (ARBITRATION) and pending the outcome of such arbitration this Agreement shall continue in full force and effect or
- 18.7. Upon not less than three (3) Months' written notice if the Department reasonably believe that the Company does not have adequate financial resources and management expertise to meet its financial and other obligations under this Agreement
- 18.8. If the Company goes into liquidation either compulsory or voluntary or if a receiver or manager is appointed in respect of the whole or any part of the Company's assets or if the Company makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things or if judgment and execution is entered against the Company (being not capable of appeal or subject to an appeal by the Company) and such judgment and execution remains unsatisfied for twenty one (21) days after the same shall be sought to be enforced then the Department may terminate this Agreement immediately upon giving written notice to the Company
- 18.9. With immediate effect upon written notice if the Proposed Lease shall be terminated for breach
- 18.10. With immediate effect on written notice if the Company breach the Specified Purposes provisions in relation to Freight as contained within the Proposed Lease (whether or not the Proposed Lease is terminated)
- 18.11. If there is a Change of Control of the Company save than where the Department has provided written approval for the Change of Control upon written notice of not more than twenty four (24) Months For the purposes of this clause 18.11 "**Control**" (in relation to the Company) means the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:
 - 18.11.1. means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate or
 - 18.11.2. as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate

and a "**Change of Control**" occurs if a person who controls the Company ceases to do so or if another person acquires Control of it

19. CONSEQUENCES OF TERMINATION

19.1. In the event that this Agreement is terminated pursuant to clauses 16 (REINSTATEMENT AND TERMINATION IF PREVENTED) 18 (TERMINATION – GENERAL PROVISIONS) 20.2.1 (BRIBERY) 22 (FORCE MAJEURE) or 27.4 (Illegality) (unless termination is by the Company as a result of a breach of the terms of this Agreement by the Department) and at the end of the Term the Department shall be entitled to:

19.1.1. purchase all or any of the Vessels for market value at that time owned by the Company as follows:

19.1.1.1. the Department shall serve a notice stipulating the Vessel or Vessels that it wishes to purchase ("**Vessel Notice**")

19.1.1.2. the Vessel Notice shall be served by the Department simultaneously with the notice to terminate or receipt of a notice to terminate or within a period of not more than twelve (12) Months from the date of the relevant notice of termination or the end of the Term as appropriate

19.1.1.3. the Vessel or Vessels stipulated in the Vessel Notice shall be purchased by the Department at market value

19.1.1.3.1. In order to assess the market value of the Vessel or Vessels the Company shall provide to the Department the Vessel Documentation relevant to the Vessel or Vessels stipulated in the Vessel Notice

19.1.1.3.2. The Parties shall agree the market value for the Vessels stipulated in the Vessels Notice but in the event that the Parties are unable to agree the market value of the Vessel or Vessels within twenty eight (28) days of the date of the Vessel Notice the Parties shall refer the valuation to the Ships Valuer pursuant to clause 19.1.1.4 below

19.1.1.4. the Ships Valuer

19.1.1.4.1. The Parties will agree to the appointment of a Ships Valuer but in the event that they are unable to agree the Ships Valuer within seven (7) days from the date referred to in clause 19.1.1.3.2 above the Parties agree to submit the issue to the Council of the Isle of Man Law Society

which will appoint a Ships Valuer on behalf of the Parties

- 19.1.1.4.2. The Ships Valuer shall be required to assess the market value of the Vessels at the time being in force and shall be entitled to take into account the Vessel Documentation in assessing this market value
- 19.1.1.4.3. The Ships Valuer shall produce a report detailing the market value as soon as practicable following appointment pursuant to clause 19.1.1.4.1 above ("the **Valuation Report**") The Department will confirm to the Company within twelve (12) Weeks from the date of receipt of the Valuation Report whether it wishes to proceed to purchase the Vessel or Vessels at the market value set out in the Valuation Report
- 19.1.1.4.4. In the event that the Department confirms to the Company that it does not wish to purchase the Vessel or Vessels or fails to respond within twelve (12) Weeks from the date of receipt of the Valuation Report the Department's right to purchase the Vessel's pursuant to this clause 19 (CONSEQUENCES OF TERMINATION) shall cease
- 19.1.1.4.5. The costs of Ships Valuer shall be met equally by the Department and the Company
- 19.1.1.5. In instances where the Parties agree market value pursuant to clause 19.1.1.3.2 or clause 19.1.1.4.3 the Parties will complete such documentation as is required to ensure the transfer of the Vessels to the department within not more than six (6) Months from the date on which the market value is agreed

require the Company to novate to it the charterparty (or lease or similar document by which the Company contracts for the use of the relevant Vessel) for any Vessel then chartered or leased by the Company and used in the provision of the Services In this regard the Company shall be required to ensure that all charterparty (or lease) documentation entered into by it during the Term allows for the charterparty (or lease) to be novated to the Department as required by this clause (and provide copies of such lease or charterparty to the Department upon reasonable request) In the

event that the Department wishes to exercise its right pursuant to this clause 19.1 the following provisions shall take effect:

- 19.1.1.6. the Department shall serve a notice stipulating the charterparty or lease or equivalent document that the Department requires be novated to it ("**Charterparty Notice**")
- 19.1.1.7. the Charterparty Notice shall be served by the Department simultaneously with the notice to terminate or receipt of a notice to terminate or within a period of not more than twelve (12) Months from the date of the relevant notice of termination or end of the Term as appropriate
- 19.1.1.8. The Parties will complete such documentation as is required to ensure the novation of the charterparty or lease or other relevant document stipulated in the Charterparty Notice to the Department within not more than twelve (12) Weeks from the date of the Charterparty Notice

ALWAYS PROVIDED that the Company shall be under no obligation to novate a charterparty and/or lease if any security document over the Vessel the subject of the charterparty and/or lease shall prevent novation without the written consent of the party holding the benefit of such security document and such written consent cannot be obtained by the Company on reasonable terms

- 19.1.2. require the Company to charter to the Department the Vessels stipulated in the Vessels Notice or the Vessels to whom the charterparty relates as are stipulated in the Charterparty Notice for the period from the date of the Vessels Notice or Charterparty Notice (as applicable) until the date of transfer of the Vessels in accordance with clause 19.1.1.5 or novation of the charterparty in accordance with clause 19.1.1.8 The consideration for the charter shall be one pound (£1)

- 19.1.2.1. Should the Department elect to charter a Vessel stipulated in a Vessel Notice but then elect not to purchase the Vessel as provided for in clause 19.1.1.4.4 the Department shall:

- 19.1.2.1.1. Return the Vessel to the Company within not less than twelve (12) Weeks from the date of expiry of the period referred to in clause 19.1.1.4.3 above

- 19.1.2.1.2. Pay to the Company a charter fee calculated at market rate for the period from the date on which the charter commenced pursuant to clause 19.1.2

until the date on which the Vessel is returned pursuant to clause 19.1.2.1 such payment to be made within one (1) Month of the date on which the Vessel is returned to the Company pursuant to clause 19.1.2.1

- 19.1.2.1.3. In the event that the Parties are unable to agree the market rate for the charter fee referred to in clause 19.1.2.1.2 the Parties shall refer the dispute for determination in accordance with clause 24 (ARBITRATION)

ALWAYS PROVIDED that the Company shall be under no obligation to charter or lease a Vessel to the Department if any security document over the Vessel the subject of the charterparty and/or lease shall prevent such charter or lease without the written consent of the party holding the benefit of such security document and such written consent cannot be obtained by the Company on reasonable terms

20. BRIBERY

- 20.1. The Company warrants that it has not offered or given or agreed to give to any employee agent servant or representative of the Department (or any other Isle of Man Government department statutory board or other Isle of Man Government body) any gift or consideration of any kind as an inducement or reward for doing refraining from doing or for having done or refrained from doing any act in relation to the obtaining or execution of this Agreement or any other agreement with the Department or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such agreement Attention is drawn to the criminal offences under the Bribery Act 2013 and the Company's obligations thereunder including as described in the guidelines issued by the Department of Home Affairs (a Department of the Isle of Man Government)
- 20.2. Where the Company or its employees servants suppliers agents or anyone acting on the Company's behalf has breached clause 20.1 or is convicted of any offence whatsoever under the Bribery Act 2013 (or equivalent legislation elsewhere including the Bribery Act 2010 (of Parliament)) the Department shall have the right to:
- 20.2.1. terminate this Agreement and as appropriate recover from the Company the amount of any loss suffered by the Department resulting from the termination
 - 20.2.2. recover from the Company the amount or value of any such gift consideration or commission and
 - 20.2.3. recover in full from the Company any other loss sustained by the Department in consequence of any breach of this clause 20 (BRIBERY) whether or not this Agreement has been terminated

21. COMPLIANCE

The Parties shall in the performance of its obligations under this Agreement comply with all applicable statutes regulations and orders at the time being in force.

22. FORCE MAJEURE

If the Company or the Department shall be prevented from performing or observing any covenant condition or obligation on its part by reason of Force Majeure or Industrial Action then the Company or the Department (as appropriate) shall not be deemed to be in breach of this Agreement nor shall the Department or the Company (as appropriate) be entitled to receive damages therefor but all dates or periods mentioned herein shall be correspondingly postponed until the Force Majeure or Industrial Action shall cease Provided that:

22.1. if the period of postponement by reason of Force Majeure shall be prolonged for a period equal to or more than two (2) Months or

22.2. if the period of postponement by reason of Industrial Action shall be prolonged for a period equal to or more than six (6) Months

then either Party on or at any time after the appropriate period but during the continuance of the Force Majeure or Industrial Action (whichever is appropriate) may give to the other written notice whereby this Agreement shall cease and determine forthwith but in any case without prejudice to any rights or remedies that may have accrued to one (1) Party against the other up to the date of termination

23. CONTINUANCE OF AGREEMENT DURING PERIOD OF NOTICE OF TERMINATION

23.1. If either Party shall serve upon the other notice of termination in accordance with any of the provisions of this Agreement then both Parties shall continue to observe and perform the covenants conditions and obligations on its respective part up to and including the date of termination of this Agreement

23.2. Notwithstanding any other provision of this Agreement it is hereby agreed that the obligations of the Company to pay any money to the Department in respect of any period or periods up to and including the date of termination and all relevant clauses and schedules in connection therewith shall remain in full force and effect notwithstanding termination of this Agreement

24. ARBITRATION

24.1. Each dispute or difference between the Parties in connection with this Agreement shall be referred to a separate tribunal to be established hereunder and determined by arbitration in the Isle of Man

24.2. The tribunal shall consist of three (3) arbitrators none of whom shall be officers servants or agents of the Parties and the tribunal shall be constituted as follows:

24.2.1. The claimant shall nominate an arbitrator and may by notice in writing call on the other Party to nominate an arbitrator within fourteen (14) days of the notice failing which such arbitrator shall at

the request of the claimant be appointed by the Council of the Isle of Man Law Society PROVIDED THAT if the Company shall serve notice upon the Department paragraph 1 of Schedule 3 or paragraph 2 of Schedule 3 the Company shall be entitled (notwithstanding that any matter or matters referred to in any such notice shall not proceed to arbitration) simultaneously to notify in writing the Department of the identity of the arbitrator nominated by the Company if any matter or matters the subject of any such notice proceeds to arbitration under paragraph 1 of Schedule 3 or paragraph 2 of Schedule 3 (as applicable) and the Department shall within twenty eight (28) days of such latter notice (or such longer period as the Company and the Department shall agree) nominate an arbitrator failing which such arbitrator shall at the request of the Company be appointed by the Council of the Isle of Man Law Society

- 24.2.2. The third arbitrator who shall serve as President of the tribunal shall be appointed by agreement between the two (2) arbitrators appointed under clause 24.2.1 above or in default of agreement within fourteen (14) days of the appointment of the second arbitrator on the nomination of His Excellency the Lieutenant Governor of the Isle of Man at the written request of either or both Parties
- 24.2.3. Should a vacancy arise because any arbitrator dies resigns refuses to act or in the opinion of his fellow arbitrators becomes incapable of performing his function the vacancy shall be filled by the method by which that arbitrator was originally appointed
- 24.3. The procedure to be followed shall be agreed by the Parties or in default of agreement determined by the tribunal
- 24.4. In the event of default by either Party in respect of any procedural order made by the tribunal the tribunal shall have power to proceed with the arbitration in the absence of that Party and to deliver its award
- 24.5. In respect of any arbitration arising out of a disagreement under clause 8 (FARES AND CHARGES) or Schedule 3 (Fares) the tribunal without prejudice or in any way limiting the tribunal's power to consider any matter shall allow a reasonable level of profit for the Company in respect of the compliance by the Company of its obligations under Schedule 2 (Services)
- 24.6. Any award or procedural decision or determination of the tribunal shall if necessary be made by a majority vote. In the event of no majority vote being formed the President or Chairman of the tribunal shall make an award or procedural decision or other determination as if he were sole arbitrator. The award or procedural decision or determination of the Tribunal shall be final and binding on the Parties hereto
- 24.7. In the absence of any determination by the tribunal the fees of the tribunal shall be paid jointly by the Department and the Company

25. TRANSPARENCY

- 25.1. The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the content of this Agreement is not confidential information. The Department shall determine whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Department may consult with the Company to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 25.2. Notwithstanding any other provision of this Agreement the Company hereby gives its consent for the Department to publish to the general public this Agreement in its entirety including any changes to this Agreement agreed from time to time.
- 25.3. The Company shall assist and co-operate with the Department to enable the Department to publish this Agreement.

26. FREEDOM OF INFORMATION

- 26.1. The Company acknowledges that the Department is subject to the requirements of the FOIA. The Company shall:
 - 26.1.1. provide all necessary assistance and cooperation as reasonably requested by the Department to enable the Department to comply with its obligations under the FOIA (provided always that this shall not require the Company to provide any documentation or information that the Company is not otherwise required to provide under the provisions of this Agreement)
 - 26.1.2. transfer to the Department all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt
 - 26.1.3. provide the Department with a copy of all Information belonging to the Department requested in the Request For Information which is in its possession or control in the form that the Department requires within five (5) Working Days (or such other period as the Department may reasonably specify) of the Department's request for such Information and
 - 26.1.4. not respond directly to a Request For Information unless authorised in writing to do so by the Department
- 26.2. The Company acknowledges that the Department may be required under the FOIA to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Company. The Department shall take reasonable steps to notify the Company of a Request For Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Department shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA.

27. MISCELLANEOUS

27.1. Interest

In the event that the Company fails to pay on invoice (with or without demand) or written demand on the due date any monies payable hereunder to the Department interest shall be payable at the Applicable Rate (as well after as before judgment) thereon by the Company to the Department from the date of default up until the date of actual payment such interest to be calculated on a daily basis

27.2. Time of the Essence

Time shall be deemed to be of the essence of this Agreement

27.3. Entire Agreement

This Agreement shall constitute the entire Agreement and understanding between the Department and the Company with respect to all matters which are referred to and shall supersede any previous agreement between the Department and the Company in relation to the matters referred to in this Agreement

27.4. Illegality

27.4.1. If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected PROVIDED THAT if the illegality or unenforceability of such term or provision or part of this Agreement in the opinion of either Party negates or is likely to negate the Central Purpose then either Party may give to the other written notice that it seeks to invoke the provisions of this clause 27.4 and seeks to terminate this Agreement at the expiration of three (3) Months from the date of service of such notice PROVIDED THAT if the recipient Party shall within twenty one (21) days of receipt of such notice disagree with the same then the dispute as to whether or not the Party serving the notice shall be entitled to terminate this Agreement in accordance with the provisions of this clause shall be referred to arbitration in accordance with the provisions of clause 24 (ARBITRATION) and subject to clause 27.4.2 pending the outcome of such arbitration this Agreement shall continue in full force and effect

27.4.2. If the Company shall seek to invoke the provisions of this clause 27.4 by reason that the illegality or unenforceability requires the Department to permit any third person to use the Linkspans other than in accordance with clause 12 (EXCLUSIVITY) then the Company shall serve written notice upon the Department which notice shall specifically refer to this clause 27.4.2 and shall set forth the reasons of the Company for such invocation then:-

27.4.2.1. if the Department shall agree with the Company this Agreement shall terminate at the expiration of one (1) Month from the date of service of such notice or

27.4.2.2. if the Department shall within fourteen (14) days of receipt of such notice disagree with the same then the dispute as to whether or not the Company shall be entitled to terminate this Agreement in accordance with the provisions of this clause (with particular reference to this clause 27.4.2) shall be referred to arbitration in accordance with the provisions of clause 24 (ARBITRATION) and pending the outcome of such Arbitration this Agreement shall be suspended after the expiration of one (1) Month from the service of notice by the Company under clause 27.4.2 until the matter has been determined by such arbitration and if such determination resolves that the Company is not entitled to terminate this Agreement under the provisions of this clause 27.4.2 then the period of suspension shall cease and this Agreement shall continue in full force and effect

27.4.3. For the purposes of this clause:-

27.4.3.1. no term or provision or any part of this Agreement shall be deemed to be illegal or unenforceable by rule of law unless any judgment relevant thereto is final (not being capable of appeal or subject to appeal) and binding upon the Department or the Company

27.4.3.2. For the purposes of this clause 27.4 (Illegality) "**Central Purpose**" means the removal or nullification of any term or provision or part of this Agreement which in the reasonable opinion of the Party seeking to invoke the provisions of this clause 27.4 (Illegality) negates the benefits to that Party of entering into or continuing this Agreement

27.5. **Variation of Agreement**

No variations to this Agreement shall be effective unless agreed in accordance with the provisions of Schedule 10

27.6. **Assignment**

This Agreement is personal to the Department and the Company and may not be assigned at law or in equity without the prior written consent of the other Party

27.7. **Waiver and release**

Any waiver or release by either Party shall not affect or prejudice the rights and remedies of that Party in respect of any future or other breach of the covenants conditions or obligations on the part of the other Party contained in this Agreement

28. NOTICES

- 28.1. Any notice to be given by or to either Party to this Agreement shall be in writing and shall be deemed duly served if delivered personally or sent by pre-paid recorded delivery post to the addressee at the address herein stated or at such other address as the Party to be served may have notified in accordance with the provisions of this clause for the purposes of this Agreement provided that in the case of the Company all such notices shall be marked for the attention of the Company Secretary and in the case of the Department all such notices shall be marked for the attention of the Chief Executive
- 28.2. Any notice served by pre-paid recorded delivery post shall be deemed served forty eight (48) hours after posting. In proving the service of any notice it will be sufficient to prove in the case of pre-paid recorded delivery post that the notice was properly stamped addressed and posted or delivered or left at the current address if delivered personally

29. THIRD PARTY RIGHTS

- 29.1. Unless otherwise expressly provided in clause 29.2 below or in other provisions of this Agreement this Agreement does not by virtue of the Contracts (Rights of Third Parties) Act 2001 or otherwise confer any rights or benefits on any person or class of persons existing now or in the future who is not a party to this Agreement except that a Party's assignee or successor will be deemed to be a Party to this Agreement. In any event this Agreement may be varied or rescinded by agreement of the Parties without the consent of any third parties
- 29.2. It is expressly agreed by the Parties that the DfE may enforce the provisions of clause 8.2.4 against the Company

30. RELEVANT LAW

This Agreement shall be governed by and construed in accordance with the laws of the Isle of Man and the Parties submit to the non-exclusive jurisdiction of the High Court of Justice of the Isle of Man and agree that in the event of any action being commenced in respect of this Agreement the process by which it is begun may be served on them in accordance with clause 28 (NOTICES)

31. STATUTORY AND INTERNATIONAL OBLIGATIONS

Notwithstanding any other provision of this Agreement but subject to the rights of the Company under clause 27.4 (Illegality) the covenants conditions and obligations on the part of the Department are subject to the Department's obligations from time to time under any International Treaty Agreement or Convention Directive Regulation or other binding matter for the time being having force and to which the Department or the Isle of Man Government or the Isle of Man may be a Party or subject

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

Part 1 – Definitions

- "Access Area"** means the area hatched green and hatched blue on the Plan
- "Accompanied Vehicle"** means a road vehicle (including a motorbike) whether or not designed to carry Passengers with its personal effects and which vehicle is accompanied by one (1) or more persons of whom one (1) is the driver but such persons shall not include a driver with or without crew of a commercial vehicle being then used for commercial purposes
- "Additional Special Offer Fares"** means seats offered by the Company to Customers pursuant to clause 8.2.4 which are at a level that is lower than the Special Offer Fares notified by the Company to the Department or the DfE (as appropriate) pursuant to clause **Error! Reference source not found.** or are at the same level as are notified but are for a number of seats which is in excess of the number of seats for the particular Special Offer Fare which is notified by the Department or the DfE (as appropriate) pursuant to clause **Error! Reference source not found.**
- "Additional Term"** means any period of extension to the Initial Term pursuant to clause 4.2 or clause 4.3 of this Agreement
- "Agreement"** means this Sea Services Agreement to include all schedules and appendices hereto (if any)
- "Agreement for Lease"** means the agreement for lease for the Liverpool Lease which is entered into between the Parties on the date hereof
- "Applicable Law"** means regulation legislation practice or concession or official directive ruling request notice guideline statement of policy or practice by any relevant legislative authority governmental local international national or other competent authority or agency (whether or not having the force of law in respect of which compliance or ship owners and operators is generally customary)
- "Applicable Rate"** means the base rate of interest quoted publicly from time to time by the Isle of Man Bank plus two percent (2%) which for all purposes under this

	Agreement shall be evidenced by a certificate signed by a manager of such bank whose appointment or designation it shall not be necessary to prove
"Back-Up Vessel"	means the Vessel referred to in clause 5.2.3.1.3 or the Vessel referred to in clause 5.2.3.2.3 and clause 5.2.3.3.3 as appropriate
"Bank Holiday"	means any holiday which is a public holiday in the Isle of Man
"Benchmark Year"	has the meaning set out in clause 7 (BENCHMARK FARES AND CHARGES) to this Agreement
"Berth 1"	means the berth adjacent to the Victoria Pier Linkspan as shown hatched yellow on the Plan
"Berth 5"	means the berth adjacent to the King Edward VIII Pier as shown hatched purple on the Plan
"Cabinet Office"	means the Cabinet Office (a Department of the Isle of Man Government)
"Calculations"	has the meaning as set out in paragraph 1 of Schedule 11 to this Agreement
"Charges"	means charges payable by the Customer in addition to the Fare but excluding Fuel Surcharge/Fuel Rebate
"Charterparty Notice"	has the meaning given to it in clause 19.1.1.6
"Check In Area"	means that part of the Access Area as is shown hatched blue on the Plan
"Check In Services"	means the services to be provided by the Company to check in Customers for each Scheduled Crossing
"Christmas Period"	means the period from the 17 th December to the following 4 th January (both dates inclusive) in each Year
"Commencement Date"	means the 1 st January 2020
"Commercially Sensitive Information"	has the same meaning as is defined or described in the FOIA
"the Company"	means the said The Isle of Man Steam Packet Company Limited
"Company MCPI"	means the amount of increase that the Company applies to its Standard Fares in the Year

immediately following the relevant anniversary of the Commencement Date

"Company Share"

has the meaning set out in clause 9.3 of this Agreement

"Company Wages"

means wages, salary and allowances (but excluding employer pensions contributions) paid by the Company to its employees.

"Compliance Dates"

means:

- Annually (meaning each one (1) Year anniversary of the Commencement Date) in respect of the following Compliance Requirements:
 - Total potential capacity (in terms of freight metre and Passengers and/or Passengers and Accompanied Vehicles
 - Availability of the Back-Up Vessel
 - Total number of Special Offer Seats offered
 - Percentage of employees (including Directors) resident in the Isle of Man
 - Total Marketing Expenditure
- Quarterly (meaning each three (3) Month anniversary of the Commencement Date) in respect of the total number of sailings actually undertaken by the Company in the preceding three (3) Months

"Compliance Requirements" means details of:

- The total number of sailings actually undertaken by the Company
- The number of sailings to each Port visited
- The total potential capacity (in terms of freight metre and Passengers and/or Passengers and Accompanied Vehicles)
- the availability and/or use of the Back-Up Vessel
- the total number of Special Offer Seats offered
- Percentage of Executive Directors Non-Executive Directors and employees who are not permanently employed at a Port outside

of the Isle of Man (each shown separately) who are ordinarily resident on the Isle of Man

- Total Marketing Expenditure
- Numbers of Customer complaints and an overview (in terms of theme) of complaints made

"Contract Variation" means a variation to this Agreement as set out in a Contract Variation Notice other than an Operational Variation

"Contract Variation Form" means a form issued by the Department detailing the variations to this Agreement agreed pursuant to Schedule 10

"Contract Variation Notice" has the meaning as set out in Schedule 10

"Contract Variation Request" means a written request submitted by the Company to the Department which sets out the amendments that it requests be made to any one or more of the following clauses to this Agreement: 5.3 (Services) 5.4 (Capacity) 5.5 (Marketing Plan) or 10 (SAILING SCHEDULES)

"Control" and "Change of Control" have the meanings set out in clause 18.11

"Conventional Vessel" means a roll on/roll off ship of conventional design and speed

"Current Chartered Vessel" means the MV Arrow

"Current Fast Craft Vessel" means the HSC Manannan

"Current Fast Craft Refurbishment" means a refurbishment of the Current Fast Craft to be undertaken by the Company in accordance with clause 5.2.6 which will include such works for the benefit of Passenger facilities as are necessary to refurbish the facilities of the Current Fast Craft Vessel to the quality comparable with that provided by leading Irish Sea and English Channel fast craft companies

"Current Ropax Vessel" means the MV Ben my Chree

"Customers" means customers of the Company who have booked passage on a Vessel as a Foot Passenger a Passenger with Accompanied Vehicle or for the transportation of freight or other goods

"Dangerous Goods Crossing"	means a sailing carrying freight which is classified within the IMDG Code as dangerous goods
"Data Processing Agreement"	means the data processing agreement entitled "Data Processing Agreement" entered into between the Department and the Company on the date hereof
"Data Protection Legislation"	means the Data Protection (Application of GDPR) Order 2018 and the Data Protection (Application of LED) Order 2018 and any regulations made thereunder or any other instruments relating to the protection of personal data as implemented in the Isle of Man pursuant to the Data Protection Act 2018 from time to time during the Term
"day"	means where the context so requires the twenty four (24) hour period commencing at 00.01am and ending on the next following 12.00 midnight
"the Department"	means the Department of Infrastructure or any other Department of Government Statutory Board or other entity for the time being responsible for the general management and control of Douglas Harbour or being the owner of the Linkspans whichever shall be appropriate and shall include as the context requires the officers servants personnel and agents of the Department of Infrastructure and such other Department Statutory Board or entity as aforesaid
"Department's Land"	means land owned or occupied by the Department adjoining adjacent to or within the vicinity of the Linkspans the Access Area and the Sea Terminal
"DfE"	means the Department for Enterprise or other such Department of Government Statutory Board or entity for the time being responsible for overall encouragement of visitors to the Isle of Man
"Discount Cost"	means either: <ul style="list-style-type: none"> (a) the lower of: <ul style="list-style-type: none"> i. the difference between the Additional Special Offer Fare and Fare paid by a Customer on the Relevant Sailing for the Relevant Product or ii. the difference between the amount of net revenue that the Company achieved

on the equivalent sailing the Year immediately preceding and the amount of net revenue made by the Company for the sailing which offers the relevant Additional Special Offer Fares

or

(b) such amount (or mechanism for agreeing such an amount) as is agreed in writing by the Department and the Company or the DfE and the Company (as appropriate)

"Douglas Harbour"	means a harbour vested in the Department within the meaning of the Harbours (Isle of Man) Act 2010 and as such term is defined in such Act (to include any Byelaws made thereunder)
"Easter Period"	means the period from the Thursday before Good Friday to the Thursday immediately following Easter Monday (all days inclusive) in each Year
"Evaluation"	has the meaning as set out in Schedule 10
"Executive Directors"	means a director of the Company who is also a full time employee of the Company
"Expiry Date"	means the last day of the Term
"Fare(s)"	means Standard Freight Fares Standard Passenger Fares Special Offer Fares Additional Special Offer Fares or any other fares which may be paid by a Customer to the Company for a Scheduled Crossing
"Fare Schedule"	means the Standard Fare Schedule set out as Appendix 1 to this Agreement
"Fast Craft Replacement Vessel"	is either a Conventional Vessel or Fast Craft Vessel to be acquired by the IOMSPC and which meets the requirements as set out in clause 5.2.8 of this Agreement
"Fast Craft Vessel"	means a High Speed Craft defined in the International Code of Safety for High Speed Craft for the time being having force or other appropriate code for the time being having force and which is similarly recognised
"Festival of Motorcycling"	means the Tourist Motorsport Event which takes place in August and September in each Year

"Festival of Motorcycling Period"	means the period commencing three (3) days before the scheduled commencement of the official practices for the Festival of Motorcycling and expiring at 12.00 midnight on the fourth day after the day of the last scheduled Festival of Motorcycling in each Year
"Fixed Charge"	means the sum of five hundred and fifteen thousand three hundred and seventy seven pounds and eighty eight pence (£515,377.88)
"Fixed Percentage"	has the meaning set out in clause 6.6.1 of this Agreement
"Flag State"	means the jurisdiction in which a Vessel is registered
"FOIA"	means the Freedom of Information Act 2015
"Foot Passenger"	means a Customer who is travelling without a vehicle
"Foot Passenger Offer Period"	means the period from the Commencement Date until the New Vessel Service Date
"Force Majeure"	means act of God strike (not involving employees of the Company) lock-out (not being relevant to Industrial Action as hereinafter defined) mechanical breakdown of any of the Vessels (other than mechanical breakdown resulting from or caused by the default or negligence of the Company or any of its officers servants or agents) fire riot civil commotion national calamity order of public Authority (excluding the Department save and except that any Order direction or other thing given or made by the Harbour Master (or any person or persons for the time being performing similar functions to the Harbour Master) or any relevant Order direction bye-law rule regulation or other thing made issued or given or made by the Department under or by virtue of any Act relevant to security or prevention or detection of terrorism or criminal activities whether applicable generally to Ports and/or harbours in the Isle of Man or specifically (inter alia) to Douglas Harbour or the territorial waters of the Isle of Man shall be respectively deemed an order of a public Authority for the purposes of this definition) enemy action steps taken to repel the same or any other cause similarly beyond the control of the Company or the Department as appropriate

"Freight"	means plant machinery equipment apparatus containers trailers vehicles (other than Accompanied Vehicles) but otherwise of every description propulsion and dimension and its respective contents cargo and other things capable of carriage by sea PROVIDED THAT nothing in this definition shall obligate the Company to afford carriage by sea to any plant machinery equipment apparatus containers trailers or vehicles which by virtue of dimension weight or other thing are not capable of use or carriage on public roads in the Isle of Man or the United Kingdom without the specific consent of any appropriate authority but if the provisions relevant to use or carriage on public roads in the Isle of Man and the United Kingdom shall differ then any plant machinery equipment apparatus container trailer or vehicle which is capable of use or carriage on either Isle of Man or United Kingdom public roads without the specific consent of any appropriate authority shall be deemed (unless at the time of the proposed carriage by sea any such plant machinery equipment apparatus container trailer or vehicle could not by virtue of its dimensions restriction of manoeuvrability or otherwise be carried on board any Vessel then usually used by the Company for the carriage of "Freight") to be "Freight" for the purposes of this definition but nothing in this definition shall restrict or be deemed to restrict the right of the Company at its discretion to afford carriage by sea to any plant machinery equipment apparatus container trailer or vehicle notwithstanding that the same does not comply with the terms of this definition
"Fuel Cost"	has the meaning set out in clause 9.2
"Fuel Proportions"	has the meaning set out in paragraph 2 of Schedule 11 to this Agreement
"Fuel Rebate"	means the fuel rebate to be made by the Company to its Customers and which is calculated in accordance with the provisions of clause 9 (FUEL SURCHARGE/FUEL REBATE)
"Fuel Surcharge"	means the fuel surcharge to be charged by the Company to its Customers and which is calculated in accordance with the provisions of clause 9 (FUEL SURCHARGE/FUEL REBATE)

"Fuel Surcharge Date"	means each three (3) Month anniversary of the Commencement Date to continue throughout the Term
"Fuel Surcharge Period"	means the three (3) Month period ending on each Fuel Surcharge Date
"Handover Assistance Plan"	means a timetable and activity plan for handover assistance with respect to the Services which must include details of all forward bookings and reservations made and deposits received
"Harbour Dues"	means Dues as defined in the Harbours Act 2010
"Harbour Master"	means the Harbour Master and/or such other person or persons who for the time being exercise(s) the functions (statutory or otherwise) and discharge(s) the duties (statutory or otherwise) or any of them at any time previously conferred upon or discharged by or hereafter to be conferred upon or discharged by the Harbour Master
"Heysham Terminal"	means the Passenger terminal building situate at Heysham Port Heysham Lancashire LA3 2XF
"High Trailers"	means trailers with a height of not more than four point eight metres (4.8m) and which are not Standard Height Trailers
"IFRS Standards"	means the standards for financial reporting set by the International Financial Reporting Standards Foundation (IFRS Foundation)
"IMDG Code"	means the International Maritime Dangerous Goods Code
"Increase Date"	means the 1 st April in each Year of the Term
"Industrial Action"	means cessation of work or refusal to work by any of the Company's officers or employees or the Department's officers servants or personnel (as appropriate) or a dispute between the Company and its officers and employees or any of them or the Department and its officers servants or personnel or any of them (as appropriate) which in any such case prevents the Company or the Department (as appropriate) from performing any of its obligations hereunder
"Information"	has the same meaning as is defined or described in the FOIA
"Initial Term"	means the period of twenty five (25) Years from the Commencement Date

"Isle of Man Government"	means all Departments Statutory Boards Offices and other bodies which form the Isle of Man Government for the time being in force
"Insurances"	means all policies of insurance taken out from time to time in respect of any Vessel throughout the Term together with all variations modifications extensions or other alterations thereof
"Insured Risks"	means fire lightning explosion earthquake storm tempest flood riot strike lock-out civil commotion accidental and malicious damage aircraft and aerial devices and articles dropped therefrom and electrical/mechanical breakdown and/or derangement and such other insurable risks as the Department shall from time to time or at any time reasonably deem appropriate to the new replacement value of the Linkspans together with three (3) Years Fixed Charge and such additional costs and expenses including but not limited to architects engineers and/or surveyors' fees together with demolition and site clearing costs and expenses and any other costs charges fees disbursements expenses duties and taxes which are in relation to or in connection with the demolition or rebuilding and/or reinstatement of the Linkspans or any part thereof and any approval required therefor
"Interim Sailing Schedule"	means the Sailing Schedule for the period from the Commencement Date until the Sailing Schedule Renewal Date for 2020
"Ireland Period"	means the period between end of TT and 11.00pm on the Sunday of the first weekend in September in each Year
"Ireland Review Period"	means any date which is: <ul style="list-style-type: none"> (a) within twelve (12) Months from the date on which the UK formally leaves the European Union and/or (b) before the first anniversary of the New Vessel Service Date
"ISPS Code"	means the International Ship and Port Facility Security Code as applied to the Isle of Man under the Port Facility Security Regulations 2007
"King Edward Gangway"	means the gangway for use by Foot Passengers and crew affording access and egress between the King Edward VIII Linkspan and Vessels

"King Edward VIII Linkspan"	means the Linkspan situate on the North side of King Edward VIII Pier in Douglas Harbour
"KPI Period"	means each twelve (12) Month period throughout the Term the first of which commences on the Commencement Date
"KPI Target"	means the Key Performance Indicator Targets set out in Part 2 of Schedule 7 of this Agreement
"KPIs"	means the Key Performance Indicators set out in Part 1 of Schedule 7 of this Agreement
"Land Bridge Fares"	means Fares payable by Customers who make a single booking travelling from the Isle of Man to countries in the Continent of Europe other than England Northern Ireland and Eire
"Linkspan"	means for the purposes of this Agreement a harbour facility being a ramp or bridge and which ramp or bridge can be adjusted to accommodate tidal conditions prevalent to a harbour to enable the loading or unloading of vessels of a tonnage equal to or in excess of one hundred (100) Gross Registered Tonnes which is secured in a harbour and which incorporates a road or way over which Accompanied Vehicles and/or Freight could be driven towed or propelled (in either direction) between the vessel and the shore in the course of loading or unloading the same onto or from the vessel (Provided That any harbour facility which facilitates or is used only in the course of loading or unloading fishing vessels (of every description) and/or vessels for the time being used in the transportation of persons plant machinery equipment apparatus vehicles and/or supplies to or from any off-shore structure or platform situate within the Irish Sea shall not be deemed to be a "Linkspan" for the purposes of this definition or this Agreement)
"Linkspans"	means the King Edward VIII Linkspan and the Victoria Pier Linkspan
"Liquidated Damages Amount"	means the amounts set out in Part 3 of Schedule 7 of this Agreement
"Liverpool Lease"	means the to be entered into between the Parties pursuant to the Agreement for Lease

"Liverpool Port"	<p>means:</p> <ul style="list-style-type: none"> (a) for the period from the Commencement Date to the Liverpool Terminal Handover Date the Princes Dock Landing Stage and (b) from the Liverpool Terminal Handover Date until the end of the Term the Liverpool Terminal
"Liverpool Terminal"	<p>means the ferry terminal situate at Plot COI West Waterloo Dock Liverpool Waters as more particularly described in the Liverpool Lease</p>
"Liverpool Terminal Handover Date"	<p>means the Liverpool Terminal Handover Date as defined in the Liverpool Lease</p>
"Main Vessel"	<p>means the Vessels but excluding the Back-Up Vessel</p>
"Manx Community Assistance"	<p>means the provision of discounts on Fares or prize voucher assistance</p>
"Manx Consumer Price Index" ("MCPI")	<p>means the Isle of Man General Index of Consumer Prices published by the Cabinet Office or any official publication substituted therefor</p>
"Material Event"	<p>means:</p> <ul style="list-style-type: none"> (a) A change in Manx legislation which materially affects the costs incurred by the Company in the provision of the Services (b) A material reduction in its annual number of Customers using the Services this being a reduction of not less than ten percent (10%) compared to the average of the five (5) calendar Years immediately prior to the date of the submission of the Contract Variation Request (c) The permanent construction of windfarms or other infrastructure in either Manx waters or UK waters or Irish waters which materially impacts upon the ability for the Company to meet its obligations pursuant to Part 1 to Schedule 2 to this Agreement (d) The Department permitting other Freight transport operators to operate using Douglas

Harbour which materially impacts on the Company

"Marketing Plan"

means the marketing plan prepared by the Company in accordance with Schedule 5

"Marketing Expenditure"

means expenditure by the Company on marketing and advertising and promotional activity off Island (but including internet and social media radio and/or television broadcast which can be received on Island provided that it is broadcast from off Island including the United Kingdom the Republic of Ireland and the Continent of Europe) designed to promote travel by Passengers with and without Accompanied Vehicles by sea to the Island but including:

- (a) advertising off Island
- (b) payments to public relations media digital and advertising firms organisations or persons for such off-Island promotional work
- (c) marketing employee costs including appropriate apportionment of Company personnel's wages thereto
- (d) costs incurred by the Company of attendance by Company personnel at appropriate exhibitions off-Island
- (e) visiting appropriate travel agents and material or substantial potential Customers
- (f) cost of preparation and distribution of direct mail shots including appropriate apportionment of Company personnel's wages relevant thereto
- (g) expenditure incurred by the Company relevant to any appropriate joint venture with a third party company
- (h) postal and printing costs of appropriate brochures and any one (1) or more of the above
- (i) costs incurred in delivering digital online promotional activity

"Mersey Deed"

means the Deed which is to be entered into between the Department and the Mersey Docks and Harbour Company Limited which relates to the use of the Liverpool Terminal for the transport of

Freight and which shall be in the form set out in Appendix 2 to this Agreement

"Minimum Freight Capacity" means ten thousand (10,000) lane metres in each direction in each Week

"Minimum Sum" has the meaning set out in clause 6.6.2 of this Agreement

"Minimum Wage" means the minimum wage payable to workers as set by the DfE pursuant to the Minimum Wage Act 2001 (as may be amended or superseded)

"Minimum Training Spend" means a sum which is equal to four percent (4%) of the amount expended by the Company on Company Wages in each year of the Term PROVIDED THAT the sum for each year shall be aggregated over a rolling five year period (meaning that the amount shall be calculated by adding an amount which is equal to four percent (4%) of Company Wages in the current and each of the four years immediately preceding and dividing this by 5)

"Minimum Website Requirements"

as a minimum standard the Website must provide such functionality as is provided by leading Irish Sea and English Channel ferry companies at the time being in force. For the period from the Commencement Date until the second anniversary of the Commencement Date the following requirements will be deemed to adequately meet this requirement:

- be mobile responsive
- meet web content accessibility standards (WCAG 2.1 or higher or where replaced equivalent standards)
- function with assistive technology at minimum AA+ level with aim of AAA+
- be HTML compliant (as per <https://validator.w3.org> or equivalent if this is replaced)
- adhere to best website security practices particular in regards to data protection and payments processing (following PCI Security Standards – DSS as may be replaced)

- include provisions for website platform upgrades maintaining ninety nine point nine percent (99.9%) website availability between the hours of 6.00am and 12.00 midnight each day
- include provisions for website platform upgrades maintaining ninety nine point nine percent (99.9%) website availability during the hours of 6.00am to 12.00 midnight each day

"Month"

means calendar month

"Neutral Cost Envelope"

means the overall positive or negative financial impact to the Company of any variation to the provisions of this Agreement arising as a result of the operation of clause 13 (STRATEGIC RESET) calculated as follows:

- Loss or gain in revenues taking into account:
 - the net estimated loss or gain in revenue in instances where a Vessel is taken off a route stipulated in the Agreement prior to the date of the Notice and required to provide Services on another route (taking into account Fares Products and offers)
 - where the Vessel in question is a Back-Up Vessel:
 - the loss of charter revenue (or the gain in charter revenue reasonably anticipated) as a result of the Variations taking into account the average annual charter revenue over the five (5) Years immediately preceding the date of the Notice
 - and/or the net estimated loss or gain in revenue in instances where a Vessel is taken off a route stipulated in the Agreement prior to the date of the Notice and required to provide Services on another route (taking into account Fares Products and offers)
- Additional costs or savings achieved in relation to employee costs other operating costs capital costs and other expenses (as defined by IFRS Standards) provided always that any additional costs are reasonably incurred

"New Vessel"	is a Conventional Vessel to be acquired by the Company which meets the requirements set out in clause 5.2.7.2 of this Agreement
"New Vessel Service Date"	means the date on which the New Vessel commences the provision of Services pursuant to this Agreement
"Operational Variation"	has the meaning as set out in Schedule 10 (CHANGE CONTROL PROCEDURE)
"Parties"	means the Department and the Company and "Party" means either one of them (as appropriate)
"Passenger and Accompanied Vehicle Return Service"	means a Return Service of: <ul style="list-style-type: none"> (a) Foot Passengers and (b) Passengers with Accompanied Vehicles by means in either direction of a Vessel with appropriate Passenger accommodation notwithstanding that such Vessel may also carry Freight
"Passenger Dues"	means that proportion of Harbour Dues which relates to Passengers (including Passenger carrying vehicles which Passengers accompany) disembarking from or embarking onto a Vessel operated by the Company
"Passengers"	means Foot Passengers and Customers travelling with Accompanied Vehicles
"Plan"	means the plan annexed to this Agreement
"Port"	means any port that the Company is required or permitted to sail to pursuant to the provisions of this Agreement
"Princes Dock Landing Stage"	means the landing stage owned by the Mersey Docks and Harbour Company Limited which is situate at Princes Dock Liverpool
"Product"	means an offer available to a Customer subject to specific conditions (e.g. five (5) day short break motorbike with passenger etc.)
"Qualifying Training Spend"	means spend incurred by the Company in the provision of training to its employees and which will include: <ul style="list-style-type: none"> (a) Amounts paid to external training providers

- (b) Costs of the provision of internal training
- (c) Company Wages plus employer pension contributions (if any) paid to apprentices
- (d) Costs of appropriate staff cover

"Rebated Sum"	means the amount of the Fixed Charge divided by 365 and multiplied by the number of days for which the Rebated Sum is payable
"Refurbishment Works"	means the works to be undertaken by the Company to complete the Current Fast Craft Refurbishment
"Regulations"	means the Harbour (Dues and Charges) Regulations 2017 as may be amended or superseded during the Term
"Relevant Product"	means a Product offered on a Relevant Sailing
"Relevant Sailing"	has the meaning set out in the definition of Discount Cost
"Reliability"	means the number of completed sailings as a percentage of the relevant number of Scheduled Crossings
"Requests for Information"	means requests for Information received by the Department pursuant to the FOIA
"Required Number"	has the meaning set out in paragraph 2.1 of Part 2 of Schedule 2 (Services)
"Return Service"	means passage by sea consisting of two (2) sailings one (1) in each direction between Douglas Harbour and a Port outside the Isle of Man with each sailing providing appropriate capacity and standards of service for Foot Passengers Passengers with Accompanied Vehicles or Freight (as the context shall require) whether or not both sailings are made by the same Vessel
"Revenues"	has the meaning as set out in clause 6.3 of this Agreement
"Review Date"	means the fifth tenth fifteenth and twentieth anniversary as appropriate of the Commencement Date
"Sailing Schedule"	means a schedule of Scheduled Crossings which the Company is required to prepare in accordance with

the provisions of clause 10 (SAILING SCHEDULES) of this Agreement

**"Sailing Schedule
Renewal Date"**

means the date on which Greenwich Mean Time alters to British Summertime in each Year of the Term

"Scheduled Crossings"

means those sailings to and from Douglas Harbour as set out in the Sailing Schedule (as may be varied in respect of time or date of crossing in accordance with the terms of this Agreement to take into account Weather or tidal conditions

"Scheduled Unavailability"

means those periods during which a Vessel is undergoing scheduled maintenance

"Sea Terminal"

means the Sea Terminal Building Douglas IMI 2RF

"Service Need"

means at any time when the Company believes or should reasonably believe that the New vessel will not be available for a period of twenty four (24) hours or more to provide the Services for which that New Vessel is scheduled to provide

"Services"

means the Services set out in clause 5.3 and Schedule 2

"Ships Valuer"

means a ships valuer or marine surveyor appointed in accordance with clause 19.1.1.4

"Slot Time"

means a period of time not exceeding four (4) hours and thirty (30) minutes in the aggregate with a specific starting and finishing time which comprises:-

- (a) a period of time not exceeding four (4) hours during which one (1) of the Vessels has the right to berth at the Linkspans for the purpose of loading and unloading Passengers and/or Passengers and Accompanied Vehicles and/or Freight and
- (b) a period of time not exceeding in the aggregate thirty (30) minutes during which period of time the appropriate Vessel undertakes and completes all appropriate manoeuvres and other things to complete the respective berthing of such Vessel at the Linkspans and the removal of such Vessel from the Linkspans and the adjacent berth and all approaches thereto

"Special Offer Fares"	means Fares offered at a discount on Standard Freight Fares or Standard Passenger Fares (as appropriate) which are intended to generate extra traffic and increase the overall Passenger market
"Special Offer Seats"	has the meaning set out in clause 8.2.3.2 of this Agreement
"Specification Requirements"	means those specification requirements which relate to the New Vessel and which are set out in clause 5.2.7.2
"Specified Purposes"	means the traversing over and along the Access Area and the Linkspans of Foot Passengers and crew Passengers and Accompanied Vehicles and Freight for the purpose of embarkation or disembarkation loading or unloading of any Vessel capable of using the Linkspans without necessitating any structural alteration modification or improvement thereto and anything ancillary or incidental thereto
"Standard Freight Fares"	means those Fares stated to be for Freight as set out in columns D and E of the Fare Schedule
"Standard Height Trailer"	means buses and coaches (of whatever height) and all trailers with a height of not more than four point two metres (4.2m)
"Standard Passenger Fares"	means those Fares stated to be for Passengers' cars and motorbikes as set out in columns D and E of the Fare Schedule
"Standby Sailing"	means a Scheduled Crossing or proposed Scheduled Crossing (not exceeding in the aggregate seventy (70) such sailings in any one (1) Year during the subsistence of this Agreement) which Scheduled Crossing or proposed Scheduled Crossing is designated by the Company for the purposes of clause 10.4.2.1 as a Standby Sailing
"Student"	means and adult or child in full time education
"Substitute Vessel"	means a Vessel used by the Company in the provision of the Services in accordance with Part 7 of Schedule 4 (Vessels)
"Summer Period"	means the period (excluding the TT and Festival of Motorcycling Period) between the last weekend in May and the first Monday in September (such weekend and Monday being inclusive) in each Year

"Term"	means the Initial Term plus the Additional Term (if applicable)
"Term Trigger"	means a reduction in the term by one (1) Year for each Year that the KPI Target is not achieved PROVIDED THAT should the Company breach more than one KPI Target in any one (1) Year this shall only result in the reduction of the Term by one (1) Year
"Termination Date"	means the date of termination of this Agreement prior to the Expiry Date
"Tourist Motor Sport Event"	means an event consisting in whole or in part of competition between motor vehicles (of whatsoever kind and whatsoever propulsion) which event is wholly or partly organised sponsored or underwritten by the DfE in any Year
"Transfer Assistance Period"	means the period of twelve (12) Months from the Expiry Date or if earlier the date that the Company becomes aware that the provision of the Services is to cease prior to the Expiry Date until the Expiry Date or Termination Date as appropriate
"TT Period"	means the period commencing three (3) days before the scheduled commencement of the official practices for the TT Races and expiring at 12.00 midnight on the second day after the day of the last scheduled TT Race in each Year
"TT Races"	means the Tourist Motorsport Event which takes place in May and June in each Year
"Units"	means the vehicle check in units shown (for the purposes of identification only) coloured pink on the Plan or such units in such alternative positions as the Department may in its absolute discretion designate on twenty eight (28) days' notice to the Company during the Term
"Urgent Variation"	has the meaning set out in Part 5 of Schedule 10
"Valuation Report"	has the meaning set out in clause 19.1.1.4.3
"Vessel"	means either a Conventional Vessel or a Fast Craft (including a Substitute Vessel) for the time being owned leased chartered or operated by or in conjunction with the Company in the provision of the Services
"Vessel Documentation"	means:

- the bill of sale transferring title in the Vessel to the Company
- evidence by way of transcript from the relevant ship registry that the ship is registered in the name of the Company and is free of any security interests
- certificates of confirmation of the class of the ship free of any recommendations for that class
- copies of the relevant safety certificates and statutory certificates required for the ship dependent on its classification
- a copy of the charter (or charters) applicable to the ship
- copies of technical management agreements and reports dealing with the maintenance repair condition and running of the ship and commercial management agreement dealing with the employment of the ship as appropriate

"Vessel Notice"	has the meaning given to it in clause 19.1.1.1 of this Agreement
"Vessel Specification"	has the meaning set out in clause 5.2.8.3
"Victoria Pier Linkspan"	means the Linkspan located immediately adjacent to the south side of Victoria Pier in Douglas Harbour
"Weather conditions"	means any adverse weather or tidal conditions which prevents any Vessel for the time being used in connection with the performance by the Company of its obligations hereunder from undertaking the appropriate Return Service or part thereof
"Website"	has the meaning set out in clause 5.11 (Information Technology Requirements) of this Agreement
"Week"	means a period of seven (7) days commencing at 00.01am Sunday and terminating at 12.00 midnight on the next following Saturday
"Weekend Supplement"	means a supplement added to a Special Offer Fare where the Scheduled Crossing takes place on a Friday Saturday or Sunday in any Week

"Weighted Average Fuel Cost"

means the total cost expended by the Company in the purchase of fuel for use in the Vessels whilst they are in the provision of the Services in the three (3) Months immediately preceding the Fuel Surcharge Date inclusive of any delivery charge but exclusive of any duty and divided by the total tonnage of fuel purchased over that some period

"Weighted Cost Estimate"

means the estimated cost of the fuel to be purchased by the Company for use in the Vessels whilst they are in the provision of the Services in the three (3) Months immediately following the Fuel Surcharge Date calculated using forward US dollar fuel price provided by Henty Oil Limited or World Fuel Services Corporation (or such similar organisation as is agreed between the Parties acting reasonably) and based on exchange rates set by Barclays Bank plc (or such similar organisation as is agreed between the Parties acting reasonably) including the cost of delivery (based on the delivery charge used in the calculation of the Weighted Average Fuel Cost)

"Weighted Basis"

means the aggregate of the Product of the proposed percentage change in each category of published or proposed published (as applicable) Fare or charge and the volume of traffic in that category of published Fare or charge expressed as a decimal fraction of the total volume of traffic

"Winter Period"

means that part of the Year which is not the Summer Period

"Working Days"

has the same meaning as is defined or described in the FOIA

"Year"

means:

- (a) with reference to the Term **"Year"** or similar wording shall be construed as meaning the period of three hundred and sixty five (365) days (or three hundred and sixty six (366) days if such period includes the 29th February) calculated from but including the Commencement Date or any anniversary thereof as appropriate or
- (b) unless the context shall otherwise require means calendar Year

Part 2 – Interpretation

1. Reference to any statute or statutory provision includes a reference to:-
 - a. that statute or statutory provision as from time to time amended extended or re-enacted or consolidated and
 - b. all Statutory Instruments Bye-laws Directions Regulations Orders or subordinate legislation made pursuant to it
2. Words denoting the singular shall include the plural and vice versa Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa
3. Unless the context otherwise requires reference to any clause is to a clause (as the case may be) of or to this Agreement
4. The headings and Index in this document are inserted for convenience only and shall not affect the construction or interpretation of this Agreement
5. Unless the context otherwise requires reference to this Agreement shall include the Schedules

SCHEDULE 2

SERVICES

Part 1 - Crossing Times

Subject to Weather conditions tides Port congestion safety customer issues and any other safe navigational or operational issues beyond the reasonable control of the Company the Company shall use its best endeavours to ensure that each Scheduled Crossing is completed according to the published timetable Any Passenger compensation for delays to be in accordance with EU 1177 regulations.

Part 2 - Routes and frequency

Subject to Weather conditions the Company must provide:

1 A Return Service between Douglas and Liverpool Port (or for the period from the Commencement Date until the Liverpool Terminal Handover Date such other Port as is reasonably agreed between the Department and the Company in the event that the Company is unable to secure the continued use of Princes Dock Landing Stage or in the event where the charges imposed by the Mersey Docks and Harbour Company Limited for use of the Liverpool Port are increased by more than MCPI (Year on Year using the charges imposed in the Year 2019 as a base) and the Department agrees (in its absolute discretion) that the continued use the Liverpool Terminal is uneconomic for the Company):

1.1 during the Summer Period:

1.1.1 not less than one (1) Return Service per Day (Sunday to Friday) and

1.1.2 two (2) Return Services per Day on a Saturday

with a minimum total of not less than eight (8) Return Services per Week (provided always that should the total number of Passengers travelling to Liverpool Port in the Summer Period fall by an amount which is equal to or more than ten percent (10%) when compared to the Passenger figures for the Summer Period 2018 the total Weekly requirement under this paragraph 1.1 of Part 1 of this Schedule 2 shall be reduced to one (1) Return Service per Day totalling seven (7) Return Services per week)

1.2 during the Winter Period:

1.2.1 two (2) Return Services per Week to take place on a Saturday and Sunday in each Week

2 to a Port in the North West of England:

2.1 not less than nine hundred and forty seven (947) Return Services per Year ("the **Required Number**") which will incorporate daily Freight Return

Services on each Day and twice Daily Freight Return Services for five (5) days of each Week throughout the Year with the exception of periods of Scheduled Unavailability (or other exceptional dates with prior written agreement of Department)

2.2 The Required Number shall include those Return Services set out in paragraphs 1.1 and 1.2 of this Part 2 of Schedule 2

2.3 In respect of those Return Services which are not required pursuant to paragraphs 1.1 and 1.2 of this Part 2 of Schedule 2 the Scheduled Crossings shall be to a Port selected from time to time by the Company

2.4 The Company shall ensure that included within the Required Number are:

2.4.1 sufficient Overnight Crossings to meet the economic and social needs of the Island and

2.4.2 not less than one Dangerous Goods Crossing per two (2) Week period during the Term (unless due to Weather conditions affecting preceding Scheduled Crossings mean that additional Passenger or Freight capacity is required but always subject to the Company liaising with its Dangerous Goods Crossing Customers to ensure that no danger to life will occur as a result of any cancellation or delay to the relevant Dangerous Goods Crossing)

3 To a Port (or Ports) on the east coast of Ireland selected from time to time by the Company not less than two (2) Return Services per Week during the Ireland Period PROVIDED ALWAYS that:

3.1 the total annual number of Return Services shall equal or exceed fifty two (52) Return Services per Year (the "**Ireland Required Number**")

3.2 The Return Services will be scheduled to maximise overall visitor traffic

3.3 Shall be scheduled to sail from such Ports and at times which offer convenience to its Passengers when making travel arrangements

4 The Parties agree that the Required Number and/or the Ireland Required Number may increase if the Company is required to provide additional sailings during a Tourist Motor Sport Event in order to meet their obligations under paragraph 5 of this part 2 of Schedule 2

5 Adequate Return Services between the Ports referred to in paragraphs 1 – 3 (inclusive) of this Part 2 of Schedule 2 (or as may be substituted therefor as the case may be) the Company will meet the reasonable requirements of participants and spectators in connection with any Tourist Motor Sport Event held in any Year

Part 3 – Selection of Ports

1 The Company shall review the selection of all Ports used by the Company to provide the Services ("the **Ports Review**") on each fifth anniversary of the Commencement Date. The Ports Review shall be undertaken in accordance with paragraph 2 of this Part 3 of Schedule 2 to this Agreement.

2 In undertaking the Ports Review or in selecting any new Port to meet the Company's respective obligations under paragraphs 2.3 and 3 of Part 2 of this Schedule 2 the Company shall make reasonable endeavours to ensure that each selected new Port:

2.1 has good accessibility by the public

2.2 has good harbour facilities which facilitate accessibility at all reasonable times notwithstanding tidal conditions and enables timeous berthing of the appropriate Vessel and embarkation and disembarkation of Foot Passengers and Passengers and Accompanied Vehicles and if the selected Port shall be selected by the Company as contemplated by paragraphs 2.3 and 3 of Part 2 of this Schedule 2 such selected Port has or within a period of six (6) Months from commencement of use of the selected Port by the Company will have good Foot Passenger Passenger and Accompanied Vehicle and/or Freight handling facilities (to include the ability to accept coaches and buses) appropriate to the proposed usage of the selected Port by the Company

2.3 Prior to the Company selecting any new Port for use in connection with any of the Services to be provided by the Company under paragraphs 2.3 and 3 of Part 2 of this Schedule 2 the Company the Company shall provide notice in writing of the selection of such proposed new Port and shall confirm to the Department that such Port in the opinion of the Company meets the criteria specified in paragraphs 1.1 and 1.2 of this Part 3 of Schedule 2

2.4 Within one (1) Month of receipt by the Department of any notice given by the Company under paragraph 1.3 of Part 3 of this Schedule 2 the Department shall notify ("**counter-notice**") the Company in writing if it objects to the Port so selected and the Department shall state in such counter-notice the reasons why the Department does not consider such selected Port meets the criteria specified in 1.1 and 1.2 of this Part 3 of Schedule. If within fourteen (14) days from receipt of the counter-notice by the Company the Department and the Company shall fail to agree that the selected Port meets the criteria specified in paragraphs 1.1 and 1.2 of this Part 3 of Schedule or shall fail to reach a binding resolution of the matter then the selection of such Port shall be referred to arbitration in accordance with the provisions of clause 24 (ARBITRATION)

3 For the avoidance of doubt all Ports and facilities used by the Company as at the Commencement Date (to include the required use of the Liverpool Terminal in accordance with the terms of this Agreement) shall be deemed to have the Department's approval pursuant to this Part 3 of this Schedule 2 to this Agreement

4 If the Arbitration Tribunal as more particularly referred to in clause 24 (ARBITRATION) shall determine that the Port selected by the Company does not meet the criteria specified in 1.1 and 1.2 of this Part 3 of Schedule or in the case of paragraph 1.2 will not meet such criteria within the period of six (6) Months then the Company shall be required to select another Port and the provisions of 1.1 and 1.2 of this Part 3 of Schedule PROVIDED THAT

4.1 the nomination of a second Port or any subsequent Port shall be made within two (2) Months or as soon as practicable thereafter from the date of determination by the Arbitration Tribunal that the originally selected Port or any such second port or subsequently nominated port is not acceptable and

4.2 until a Port is nominated which meets the agreement of the Department or is determined to be acceptable by the Arbitration Tribunal the Company shall be entitled to continue to use the Port originally selected by the Company but within six (6) Months from the date of agreement by the Department or approval by the Arbitration Tribunal of any nominated Port the Company shall cease to use the originally selected Port and shall use such nominated Port in substitution therefor

5 Notwithstanding the provisions of paragraph 1 of Part 3 of this Schedule 2 the Company may in case of emergency select and use for a temporary period (which shall not exceed the period of the emergency or so soon thereafter as practicable the Company using its best endeavours to effect the termination of the use of the temporary Port) any Port situate within the geographical confines specified for the appropriate service notwithstanding that such selected Port shall not comply with the criteria specified in paragraph 1 of this Schedule 2

SCHEDULE 3

FARES

Part 1 – Standard Fare Changes

1. If during the Term the Company desires at any time to introduce a new class or classes of published Standard Fares or Charges then the following provisions shall apply:

1.1. the Company shall give to the Department not less than two (2) Months prior written notice of any such proposed introduction of a new class or classes of published Standard Fares or Charges and shall also notify whether or not the Company proposes to increase any of its then published Fares or Charges then in force and:-

1.1.1. shall simultaneously provide the Department with all reasonable details information and calculations of the proposed new class or classes of published Standard Fares or Charges which enable the Department to fully consider the same and in particular without prejudice to the generality of the foregoing shall:-

1.1.1.1. provide the Department with details of the proposed new class or classes of Standard Fares or Charges and whether the same shall apply to Foot Passenger and/or Passenger and Accompanied Vehicle and/or Freight and the Standard Fares or Charges proposed to be charged by the Company in respect of such new class or classes and

1.1.1.2. written explanation for the proposed introduction of such new class or classes and

1.1.1.3. provide the Department with detailed calculations as to the effect such new class or classes would have had if the same had been introduced by the Company during the twelve (12) Month period immediately preceding the receipt by the Department of notice given under paragraph 1.1 of Part 1 of this Schedule 3 and the anticipated effect on the overall Standard Fares and Charges of the Company (on the assumption that no other change is proposed thereto) and the effect on traffic percentages and other relevant matters if the proposed new class or classes of Standard Fares or Charges is introduced for the twelve (12) Month period immediately subsequent to receipt by the Department of such notice (such calculations to include details as exemplified in Part 2 of this Schedule 3) and

1.1.2. if the Company shall have informed the Department that it simultaneously desires to increase any then published Standard Fares or Charges the Company shall furnish the Department with a reasonable written explanation for the proposed increase

1.2. Within twenty one (21) days of receipt by the Department of any notice given and details information and calculations provided by the

Company under paragraph 1.1.1.3 of Part 1 of this Schedule 3 the Department shall inform the Company in writing whether the Department requires any further information calculations or details and if the Department so notifies the Company the Company shall supply the same within twenty eight (28) days of the request to do so by the Department

1.3. Within twenty eight (28) days from the receipt of the notice given and the details information and calculations provided by the Company under paragraph 1.1.1 of Part 1 of this Schedule 3 or from receipt by the Department of any further details information and/or calculations required by the Department under paragraph 1.2 of this Schedule 3:-

1.3.1. the Department shall inform the Company whether or not it agrees with the calculations details and information supplied by the Company and

1.3.2. if the Department shall agree with the calculations details and information supplied by the Company the Department shall inform the Company in writing whether or not:-

1.3.2.1. if the Company does not propose to increase any of its then published Standard Fares or Charges the introduction of the proposed new class or classes of Standard Fares or Charges would in the opinion of the Department constitute an overall excessive increase PROVIDED THAT if the effect of the introduction of the proposed new class or classes of Standard Fares or Charges aggregated with any increase or increases effected in published Standard Fares or Charges and aggregated with any published Fares or Charges reduced or left unchanged during the twelve (12) Month period immediately preceding the receipt by the Department of such notice does not exceed on a Weighted Basis (as exemplified in Part 2 of this Schedule 3) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issuing of any such notice then such increase shall not be deemed to be excessive or

1.3.2.2. if the Company proposes to increase any of its then published Standard Fares or Charges the introduction of the proposed new class or classes of Standard Fares or Charges read in conjunction with any such proposed increase in the opinion of the Department is excessive PROVIDED THAT if the proposed introduction of the new class or classes of Standard Fares or Charges read in conjunction with the proposed increase aggregated with any other increase or increases effected in published Standard Fares or Charges and aggregated with any published Fares or Charges reduced or left unchanged during the twelve (12) Month period immediately preceding the receipt by the Department of such notice does not exceed on a Weighted Basis (as exemplified in Part 2 of this Schedule 3) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately

preceding the issuing of any such notice then such increase shall not be deemed to be excessive and

1.4. If the Department shall give notice to the Company under paragraph 1.3.1 of Part 1 of this Schedule 3 that it does not agree with all or any part of the calculations details and information supplied by the Company relevant to any proposed new class or classes of Standard Fares or Charges or gives notice to the Company under paragraphs 1.3.2.1 or 1.3.2.2 of Part 1 of this Schedule 3 then in any such case the Department and the Company shall endeavour to reach agreement on the matter or matters in issue but if after the expiration of a further period of twenty eight (28) days or such longer period as shall be agreed between the Department and the Company the Department and the Company shall still not agree then (subject to the Department obtaining the approval of the Council of Ministers) the matter or matters in issue shall be referred to arbitration in accordance with the provisions of clause 24 (ARBITRATION) PROVIDED THAT if the Department shall not refer the matter or matters in issue to arbitration within six (6) weeks from the expiration of the twenty eight (28) day period above referred to in this paragraph 1.4 of Part 1 of this Schedule 3 (or such longer period as the Department and the Company shall agree) the Department shall be deemed to have agreed such matter or all matters in issue and

1.4.1. if the Department shall not agree with all or any part of the calculations details and information relevant to the proposed new class or classes of Standard Fares or Charges the arbitration shall determine the effect such new class or classes of Standard Fares or Charges would have had if the same had been introduced as proposed by the Company during the twelve (12) Month period immediately preceding the receipt by the Department of notice given under paragraph 1.1.1 of Part 1 of this Schedule 3 and the anticipated effect on the overall Standard Fares and charges of the Company and the effect on traffic percentages and other relevant matters if the proposed new class or classes of Standard Fares or Charges is introduced for the twelve (12) Month period immediately subsequent to receipt by the Department of such notice (as exemplified in Part 2 of this Schedule 3) and subsequent to or simultaneous with such determination the arbitration shall determine:-

1.4.1.1. if the Company does not intend to increase any of its then published Standard Fares or Charges whether or not the introduction of the proposed new class or classes of Standard Fares or Charges read in conjunction with the then published Fares or charges exceeds on a Weighted Basis (as exemplified in Part 2 of this Schedule 3) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issuing of any such notice or

1.4.1.2. if the Company proposes to increase any then published Standard Fares or Charges whether or not such proposed increase read in conjunction with the proposed new class or classes of Fares or Charges aggregated with any other increase or increases effected in published Standard Fares or

Charges and aggregated with any published Standard Fares or Charges reduced or left unchanged during the twelve (12) Month period immediately preceding the receipt by the Department of notice given under paragraph 1.1.1 of Part 1 of this Schedule 3 exceeds on a Weighted Basis (as exemplified in Schedule 3) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issuing of any such notice and

1.4.2. if the Department shall agree with all calculations details and information supplied by the Company relevant to any proposed new class or classes of Standard Fares or Charges the arbitration shall determine:-

1.4.2.1. if the Company does not intend to increase any of its then published Standard Fares or Charges whether the proposed new class or classes of Standard Fares or Charges when read in conjunction with the then published Fares or charges would exceed on a Weighted Basis (as exemplified in Part 2 of this Schedule 3) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issuing of notice under paragraph 1.1.1 of Part 1 of this Schedule 3 or

1.4.2.2. if the Company proposes to increase any of its then published Standard Fares or Charges whether the proposed introduction of the new class or classes of Standard Fares or Charges when read in conjunction with any such proposed increase(s) aggregated with any other increase or increases effected in published Fares or Charges and aggregated with any published Fares or Charges reduced or left unchanged during the twelve (12) Month period immediately preceding the receipt by the Department of such notice exceeds on a Weighted Basis (as exemplified in Part 2 of this Schedule 3) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issuing of any such

1.5. If any matter or matters shall be referred to arbitration in accordance with the provisions of paragraphs 1.4.1 or 1.4.2 of Part 1 of this Schedule 3 then:-

1.5.1. from the date of such referral up to and including the expiration of twenty eight (28) days therefrom or until notification of the outcome of the arbitration (whichever shall be the earlier) the Company shall be entitled to introduce the proposed new class or classes of Standard Fares or Charges and any such proposed increase(s) to the then published Standard Fares or Charges PROVIDED that each such interim increase shall not exceed (without reference to the Weighted Basis) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issue of any such notice and

1.5.2. if notification of the outcome of the arbitration shall not be given during the referred to period of twenty eight (28) days then from the expiration of such period of twenty eight (28) days until notification of the outcome of the arbitration the Company shall be entitled to introduce the proposed new class or classes of Standard Fares or Charges and any such proposed increase(s) to the then published Standard Fares or Charges

but if the arbitration shall determine:-

1.5.3. that the introduction by the Company of any such new class or classes of Standard Fares or Charges would cause the Company's then published Standard Fares or Charges when read in conjunction with such new class or classes of Standard Fares or Charges to be excessive then the Company shall be required to reduce the Standard Fares or Charges introduced by such new class or classes of Standard Fares or Charges and/or its then published Standard Fares or Charges so as to achieve an overall increase which is not excessive or

1.5.4. that any proposed increase in the then published Standard Fares or Charges read in conjunction with the new class or classes of Standard Fares or Charges is excessive then the Company shall be required to reduce the Standard Fares or Charges of the new class or classes of Standard Fares or Charges and/or not to effect any such proposed increase(s) in the Company's then published Standard Fares or Charges and/or to increase any of the Company's then published Standard Fares or Charges by less than the proposed increase(s) so as to effect an overall increase which is not excessive

then within fourteen (14) days of receipt of notification of determination of the arbitration the Company shall take all appropriate action to effect such reduction or reductions accordingly

2. If during the Term the Company desires at any time without introducing a new class or classes of published Standard Fares or Charges to increase any of its published Standard Fares or Charges then the following provisions shall apply:

2.1. The Company shall give to the Department not less than one (1) Month's prior written notice of any proposed increase and simultaneously furnish the Department with a reasonable written explanation for the proposed increase

2.2. Within fourteen (14) days of receipt of any such notice the Department shall inform the Company in writing whether or not the Department considers such proposed increase to be excessive PROVIDED THAT if the proposed increase aggregated with any other increase or increases effected in published Fares or Charges and aggregated with any published Fares or Charges reduced or left unchanged during the twelve (12) Month period immediately preceding the receipt by the Department of such notice does not exceed on a Weighted Basis (as exemplified in Part 2 of this Schedule 3) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issuing of any such notice then such increase shall not be deemed to be excessive

2.3. If the Department shall so inform the Company that it considers any proposed increase to be excessive then the Department and the Company shall within one (1) Month thereafter seek to agree that there should be no such increase or as to the amount of such increase PROVIDED THAT if no agreement shall be reached between the Department and the Company then on the expiration of such one (1) Month period the Department may (with the approval of the Council of Ministers) refer such proposed increase to arbitration in accordance with the provisions of clause 24 (ARBITRATION) hereof PROVIDED THAT if the Department shall not refer such proposed increase to arbitration within six (6) weeks of the expiration of such one (1) Month period the Department shall be deemed to have accepted such proposed increase

2.4. If the proposed increase shall be referred to arbitration in accordance with the provisions of paragraph 2.3 of Part 1 of this Schedule 3 then:-

2.4.1. from the date of such referral up to and including the expiration of twenty eight (28) days from the date of such referral or until notification of the outcome of the arbitration (whichever shall be the earlier) the Company shall be entitled to levy such proposed increase(s) PROVIDED that each such interim increase shall not exceed (without reference to the Weighted Basis) the annual percentage rate of increase in the MCPI for the twelve (12) Months immediately preceding the issue of any such notice and

2.4.2. from the expiration of the referred to period of twenty eight (28) days until the outcome of the arbitration the Company shall be entitled to levy such proposed increase(s)

but if the arbitration shall determine that there shall be no increase(s) or an increase(s) less than the proposed increase(s) then within fourteen (14) days of receipt of notification of determination of the arbitration the Company shall reduce its Fares or Charges accordingly

3. Reduction in Standard Fares

3.1. If the Company desires at any time during the subsistence of this Agreement to reduce any Standard Fares or Charges then it shall be entitled to do so but shall give to the Department prior written notice of such intention such notice shall specify the dates and services relevant to such proposed reduced Standard Fares or Charges PROVIDED THAT the Company may increase such reduced Standard Fares or Charges back to the level of such Standard Fares or charges which were in force immediately prior to such reduction and upon such reversion shall forthwith give to the Department due written notice thereof Any such reduction in Standard Fares or Charges as aforesaid shall be ignored for the purposes of paragraph 1 of Part 1 of this Schedule 3 or paragraph 2 of Part 1 of this Schedule 3 unless the Company shall inform the Department in writing at the time of the giving of any notice by the Company to the Department under paragraph 1 of Part 1 of this Schedule 3 or paragraph 2 of Part 1 of this Schedule 3 that such reduction in Standard Fares or charges as aforesaid is to continue and that the Standard Fares or Charges so reduced are thenceforth to be deemed to be the appropriate Standard Fares or Charges for the appropriate Services specified

3.2. If the Company desires at any time during the subsistence of this Agreement to publish any Special Offer Fares for a limited period the Company shall be entitled to do so PROVIDED THAT the Company may at any time withdraw the offer of such Special Offer Fares or Charges and revert to its Standard Fares or Charges applicable immediately prior to such publication Any such Special Offer Fares or Charges as aforesaid shall be ignored for the purposes of paragraph 1 of Part 1 of this Schedule 3 or paragraph 2 of Part 1 of this Schedule 3

3.3. If the Company intends at any time to effect any variation(s) and/or abolition(s) of or to the Company's published Standard Fare band(s) relevant to Foot Passengers and/or Passengers and Accompanied Vehicles for sailings during any period compared with the equivalent period in the then immediately preceding Year (due account being taken of corresponding sailings in the latter period) by way of or so as to cause any change from a lower Fare band to a higher Fare band (other than to reflect changes in the calendar of public holidays or sporting events) then such variation(s) and/or abolition(s) shall be deemed to be a proposed increase(s) in the Company's then published Standard charges or Fares and if the Company simultaneously intends to introduce a new class or classes of Fares or charges then paragraphs 1.3.2.1 1.4.1.1 and 1.4.2.1 of Part 1 of this Schedule 3 shall apply but otherwise paragraphs 1.3.2.2 1.4.1.2 and 1.4.2.2 of Part 1 of this Schedule 3 shall apply

3.4. For the avoidance of doubt IT IS HEREBY AGREED that for the purposes of paragraph 1 and paragraph 2 "increase" and "proposed increase" shall be read and construed as meaning not only any actual increase or proposed actual increase but also any abolition(s) or variation(s) the result of which would be to effect an actual increase(s)

Part 2 - Example Of Weighted Basis Calculation Information Required

2018 Standard Passenger Single (excl fuel)	Fare £	% of Passengers
A	49.35	
B	49.35	
C	47.35	
D	44.35	
E	41.35	

2019

A	51.10	30%	B	51.10
15%				
C	49.10	18%		
D	46.10	17%		
E	43.10	20%		

Calculation Of Increase

FARE BAND	INCREASE £	% INCREASE	% of PASSENGERS	
A	1.75	3.57	30%	1.07
B	1.75	3.57	15%	0.54
C	1.75	3.70	18%	0.67
D	1.75	3.95	17%	0.67
E	1.75	4.23	20%	0.85
WEIGHTED AGGREGATE				= 3.80

Therefore Weighted Basis for the purposes of simplified example and paragraphs 1.3.2 1.4.1 1.4.2 1.5 2.2 and 2.4 of Part 1 of this Schedule 3 = 3.80%

PROVIDED THAT:-

1. In calculating any percentage increase the percentage shall be determined to the nearest two (2) decimal points on the basis that if the calculation is required to be made to the nearest three (3) decimal points if the third decimal point shall be five (5) or less the calculation shall be rounded down to the nearest two (2) decimal points and if the third decimal point shall be six (6) or more shall be rounded up to the nearest two (2) decimal points and

2. If the annual percentage rate of increase in the MCPI shall be calculated to the nearest one (1) decimal point then the aggregate percentage increase calculated in accordance with this Schedule 3 shall if the second decimal point is five (5) or less be rounded down to the nearest one (1) decimal point and if the second decimal point is six (6) or more be rounded up to the next one (1) decimal point

SCHEDULE 4

VESSELS

Part 1 – Age Limit

Unless otherwise agreed by the Department the Fast Craft Replacement and any Vessel which replaces the Fast Craft Replacement save for Substitute Vessels shall have a maximum age limit of ten (10) Years on the date that they are acquired by the Company

Part 2 – Information and Compliance Undertakings

1. The Company must throughout the Term and so long as any obligations are owing by the Company in terms of the Agreement:

1.1. comply with the terms of the Insurances at all times

1.2. ensure that at all relevant times all licences approvals consents and permits required under Applicable Law which are: (i) required for the use and operation of the Vessel; and (ii) the absence of which would either expose the Department to any risk of any liability or expose the Vessel to any material risk of arrest detention or sale are in each case obtained and maintained in full force and effect and

1.3. furnish the Department promptly with all such information as they may from time to time reasonably require regarding the Vessel her insurance condition and maintenance

Part 3 – Registration

The Company must during the Term do all that may be necessary on its part to register and maintain in force the registration of the Current Ropax Vessel the Current Fast Craft Vessel the New Vessel and the Fast Craft Replacement (as appropriate) as Isle of Man ships. The Company will not do or knowingly or recklessly suffer to be done anything whereby the registration of a Vessel will be forfeited or imperilled

Part 4 – Maintenance and Operation

1. The Company must throughout the Term:

1.1. at its sole cost and expense maintain the Vessel and every part of the Vessel and keep it in a good and efficient state of repair and safe operating condition and seaworthy in all respects and in accordance with good maintenance practice (fair wear and tear excepted and having regard to the age and type of the Vessel) and in accordance with good industry practice for United Kingdom ferry Companies

2. The Company must ensure that at all times:

2.1. the Vessel maintains the classification of the Vessel with the relevant Classification Society and that the Company notify to the Department (as soon as practicable but in any event within thirty (30) days of such

classification) the relevant classification for each Vessel and any changes to that classification as may occur during the Term

2.2. the Vessel complies with all other regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered in the Flag State or otherwise applicable to the Vessel her Master officers and crew (including in relation to the number of crew) wherever the Vessel may proceed or trade and (without prejudice to the generality of the foregoing) at its own expense maintain in force for the Vessel all safety radio loadline and other certificates whatsoever and all licences and permits which may from time to time be prescribed by any legislation in force in the Flag State any relevant Port state or other applicable jurisdiction

2.3. ensure the Company complies at all times with any terms of the Insurances relating to the condition or inspection use and operation of the Vessel

2.4. permit the Department by surveyors or other persons appointed by it for such purpose to board the Vessel at all reasonable times (but no more than twice in any Year during the Term other than in circumstances where an Event of Default has occurred) for the purpose of inspecting her to ensure compliance with the provisions of this Agreement All inspections and surveys of the Vessel will be carried out at such times and in such places and in such manner as to minimise delaying the use and operation of the Vessel but the Department will not be obliged to carry out such inspections

2.5. notify the Department forthwith upon becoming aware of the same by and in reasonable detail of:

2.5.1. the hijacking confiscation seizure impounding arrest taking in execution forfeiture or detention of the Vessel or any major part thereof or any requisition for hire at any time of the Vessel

2.5.2. any requirement or recommendation made by the Classification Society or by any insurer or any competent authority which is not or cannot be complied with in accordance with its terms

2.5.3. any death or serious or potentially serious injury to a third party or substantial damage to property caused by or in connection with the Vessel

2.5.4. any single casualty or other accident or damage to the Vessel which may involve repairs or maintenance costing more than one hundred thousand pounds (£100,000)

2.5.5. any assistance which has been given to the Vessel which has resulted or may result in a lien for salvage being acquired over the Vessel

2.5.6. any collision or other accident or incident involving damage to the Vessel the repair cost of which is likely to exceed one hundred thousand pounds (£100,000) (or the then equivalent in any other currency)

2.5.7. any other event which occurs in connection with the Vessel which affects or may reasonably be expected to affect the provision of the Services by the Company

2.5.8. the occurrence of any litigation involving or criminal proceedings against the Company

2.5.9. any regulatory notices requirements or recommendations made by or on behalf of a governmental or statutory body or agency

2.6. Notify the Department of all/any Scheduled Unavailability periods not less than twelve weeks (12) in advance.

2.7. procure that the Department is not at any time represented by the Company its contractors agents employees representatives and/or subcontractors as carrying goods or Passengers or providing any other service on or from the Vessel or as having any operational interest in or responsibility for the Vessel

Part 5 – Insurance Undertakings

1. The Company hereby covenants and undertakes that throughout the Term it will insure and keep every Vessel insured at its own cost and expense in respect of all matters of whatsoever nature and howsoever arising in respect of which insurance would be maintained by a prudent owner and operator of the Vessel having regard to the situation nature and method of operation of that Vessel

2. The Company hereby covenants that it will not do consent to or permit any act or omission which might invalidate or render unenforceable the whole or any part of the insurances and not (without first obtaining the consent of the insurers to such employment and complying with such requirements as to extra premium or otherwise as the insurers may prescribe) employ any Vessel or suffer any Vessel to be employed otherwise than in conformity with the terms of the insurances (including any warranties expressed or implied therein)

3. Apply all sums receivable under the Insurances which are paid to the Company in repairing all damage and/or in discharging the liability in respect of which such sums have been received

4. In the event of a Vessel becoming a wreck or obstruction to navigation during the Term the Company must indemnify and hold harmless the Department against all costs expenses payments charges losses demands any liabilities claims actions proceedings (whether civil or criminal) penalties fines damages judgements orders or other sanctions which may be made or asserted against the Department by reason that the Vessel becomes a wreck or obstruction to navigation -including (without limitation) in respect of the removal or destruction of the wreck or obstruction under statutory powers

Part 6 – Condition

The Company shall ensure that all Vessels:

1. shall be of a high standard of quality safety and reliability

2. shall be so manned and fitted and in such condition to enable the Company to discharge its obligations under this Agreement and so as to provide reasonable standards of services and facilities to Customers on board the Vessel and during the Vessels loading and unloading and so as to comply with any appropriate certificate of insurance

3. shall provide WiFi to its Customers to the extent that such a service is commercially available from shore based cellular providers The Company shall use its best endeavours to extend the range of the Wi Fi coverage during the Term

4. shall conform to all appropriate national and international agreements conventions regulations directives codes of practice and other appropriate matters for the time being in force

5. shall comply with all existing or future Act or Acts of Tynwald Act or Acts of Parliament or other appropriate statutes or statutory provisions applicable to the Vessel including without prejudice to the generality of the foregoing any statutory instrument byelaw rule regulation direction order or other subordinate legislation made pursuant thereto

Part 7 – Temporary Substitution of Vessels

1. If at any time any Vessel is unable to undertake or complete a sailing for any reason the Company shall provide the Services by employing a vessel or vessels other than the Vessels Any such Substitute Vessel(s) shall meet all relevant regulatory requirements and shall be insured by the Company to a level at least equivalent to that required for the Vessel which is being replaced (or such other level as may be appropriate having regard to the specification of the vessel in question) As soon as the need to employ a replacement or Substitute Vessel arises the Company must provide the Department with all of the following documents in relation to that Substitute Vessel all in form and substance satisfactory to the Department:

1.1. a charterparty or other evidence of the Company's entitlement to the employment of such vessel as contemplated

1.2. evidence of insurance at least equivalent to that required for the Vessel which is being replaced

1.3. all certificates required by any relevant regulatory body and

1.4. such other information as the Department may reasonably require to satisfy itself that the proposed vessel is capable of providing the Services

2. In the event of an emergency or if the need to employ a replacement or Substitute Vessel urgent then the Company must provide to the Department the foregoing documents as soon as reasonably practicable

SCHEDULE 5
MARKETING PLAN

Part 1 – Marketing Expenditure

The Company shall expend either by itself and/or through one (1) or more wholly owned subsidiaries of the Company a sum equivalent to not less than seven hundred and fifty thousand pounds (£750,000) per Year of the Term (appropriately adjusted by reference to the MCPI on the first anniversary and each subsequent anniversary of the Commencement Date)

Part 2 – Marketing Plan

1. Prior to the commencement of each financial year of the Company the Company shall consult with the DfE prior to the allocation of the Company's and/or one (1) or more of its wholly owned subsidiaries Marketing Expenditure for the next following financial year of the Company
2. Following such consultation and within a reasonable time thereafter the Company shall inform the Department and the DfE in writing of the Company's decision as to the amount proposed to be expended by it and/or one (1) or more of its wholly owned subsidiaries on Marketing Expenditure in the United Kingdom Republic of Ireland and the Continent of Europe during such next following financial year and shall simultaneously provide the Department and the DfE with a breakdown of such amount between the broad categories of items on which such Marketing Expenditure is proposed to be spent
3. each Year during the subsistence of this Agreement within fourteen (14) days from the publication of the Company's annual audited accounts the Company shall deliver to the Department and the DfE a certificate signed by the Company's Auditors affirming the actual Marketing Expenditure of the Company (PROVIDED that the Department shall be entitled at their discretion to accept a warranty from the Company's Finance Director in lieu of the auditor's certificate) and/or one (1) or more of the wholly owned subsidiaries of the Company for the financial year to which such annual audited accounts relate and then shall meet with the Department (and the DfE if required by the Department) within one (1) Month thereafter at such time as the Department shall reasonably require to review the amount actually expended by the Company and/or one (1) or more of the wholly owned subsidiaries of the Company in such financial year on Marketing Expenditure in the United Kingdom Republic of Ireland or the Continent of Europe

SCHEDULE 6
LICENCE CONDITIONS

1. Not to use or permit to be used the Linkspans or the Access Area for any purpose other than the Specified Purposes
2. Not to obstruct or permit to be obstructed at any time access to any fire restricting preventing or fighting plant machinery equipment or apparatus or the means of escape from the Linkspans or the Access Area
3. Not to form or permit to be formed or deposited any litter refuse dump rubbish or scrap heap on the Linkspans the Access Area or any part thereof and forthwith to remove any litter rubbish refuse scrap or any other matter from time to time accidentally or otherwise deposited on the Linkspans the Access Area or any part thereof
4. To keep and leave the Access Area (to include the Units) in a clean and tidy condition
5. Not without the prior written consent of the Department (such consent not to be unreasonably withheld) to affix erect attach display exhibit or permit or suffer so to be upon any part of the Linkspans or the Access Area any placard poster notice advertisement name sign mast aerial or any transmitting or receiving device whatsoever PROVIDED THAT the Department shall consent to the affixing to the Linkspans of any necessary and appropriate safety notices which the Company is required to display by law or under its obligations under clause 5.2 (Vessels) hereof but so that each such notice shall be of such size design materials and colours as the Department may require and shall be located in such position on the Linkspans or the Access Area as the Department shall reasonably require
6. Not to overload or permit or suffer to be overloaded the Linkspans or any part thereof (including without prejudice to the generality of the foregoing the floors floor joists supports of any ramp or bridge the structure or mechanism thereof) in any manner which will or may injure strain damage or interfere with the Linkspans or the operation or use thereof
7. To undertake every precaution within the Company's power which may be reasonably necessary to prevent damage by fire or explosion or collision to the Linkspans or any part or parts thereof
8. Not to cause or permit any obstruction or the parking of any vehicle Freight or any other object on any part of the Linkspans or any roads or ways serving the same and to use its best endeavours to ensure that Freight which is parked on the Access Area remains so parked for the minimum period possible and is moved at the reasonable request of the Department
9. Not to do permit or suffer to be done on the Linkspans the Access Area or any part thereof or within Douglas Harbour or any approach thereto any act matter or thing whatsoever which may be or may lead or tend to the disturbance of or interference with or damage to the use or operation of the Linkspans the Access Area Douglas Harbour or the road network serving the same or any respective part

or parts thereof and to indemnify and keep indemnified the Department from and against all actions costs claims damages proceedings expenses demands and liability whatsoever occasioned by or arising out of non-compliance by the Company its officers servants agents licensees and/or invitees of the covenant contained in this paragraph 9

10. Not to permit any Vessel to be berthed at the King Edward VIII Linkspan or the Victoria Pier Linkspan or within such distance from the King Edward VIII Linkspan or the Victoria Pier Linkspan which may interfere with the approach channel to either the King Edward VIII Linkspan or the Victoria Pier Linkspan or the use of the Linkspans by the Department or any duly authorised user of which the Company shall have received notice from the Department in accordance with the provisions of clause 12 (EXCLUSIVITY) PROVIDED THAT this paragraph shall not prohibit the berthing of any Vessel by the Company if such berthing shall not may not or is unlikely to interfere with or delay any other user of the King Edward VIII Linkspan or the Victoria Pier Linkspan for the time being authorised or permitted by the Department in accordance with the provisions of this Agreement or if such berthing is undertaken consequent upon specific direction by the Harbour Master

11. Notwithstanding the provisions of paragraph 10 of this Schedule 6 not knowingly to permit any Vessel or any other thing to interfere with the use and enjoyment of the Linkspans the Access Area or any navigational approach to either the King Edward VIII Linkspan or the Victoria Pier Linkspan by the Department or any person from time to time authorised by the Department

12. Not to obstruct the Departments use of the Access Area or the Department's use of any of the Department's Land

13. In respect of the Units:

13.1. To keep and maintain insurance in respect of the damage or loss to the contents of the Units and in respect of any claims related to the use and operation of the Units

13.2. Not to use the Units in such a way as to cause any nuisance damage disturbance annoyance or inconvenience or interference to the use of the Department's Land or adjoining or neighbouring property or the owners occupiers or users of adjoining or neighbouring property

13.3. Not to do any act matter or thing which would or might constitute a breach of any statutory requirements concerning the Company's use of the Units or which would or might vitiate in whole or in part any insurance effected in respect of the Units from time to time

13.4. Not to impede in any way the Department or its officers servants or agents in the exercise of the Department's rights or possession and control of the Department's land or the Access Area or any part of the Sea Terminal and curtilages

13.5. At the end of the Term (howsoever determined) to forthwith dismantle and remove the Units at its own expense and to reinstate the whole of the Access Area to the satisfaction of the Department

SCHEDULE 7

KEY PERFORMANCE INDICATORS

Relevant Compliance Requirement	Part 1 - KPI	Part 2 – KPI Target	Liquidated Damages
Total number of sailings scheduled by the Company at the beginning of each Year of Term	<p>KPI (1) – 8 Return Services per week to Liverpool Port Summer period excluding TT and Festival of Motorcycling.</p> <p>KPI (2) – 947 Return Services per annum to a Port in the North West of England/North Wales</p> <p>KPI (3) – 52 Sailings to Ireland</p>	<p>KPI (1) – 100%</p> <p>KPI (2) – 100%</p> <p>KPI (3) – 100%</p>	Term Trigger, unless revised sailings numbers were approved by Department during annual schedule consultation process or if Company cannot schedule services for reasons beyond its control including Weather Conditions tides safety or berth availability issues.
Total potential capacity (in terms of freight metre or Passengers and Accompanied Vehicles)	<p>KPI (1) – aggregate Foot Passenger and Accompanied Vehicle capacity per Month of Conventional Vessel = 150% of the amount in the total number sold in the previous Year.</p> <p>KPI (2) - aggregate Foot Passenger and Accompanied Vehicle capacity per Month of Conventional Vessel = 115% (for Months June</p>	<p>KPI (1) – 100%</p> <p>KPI (2) – 100%</p> <p>KPI (3) – 100%</p> <p>KPI (4) – 100%</p> <p>KPI (5) – 100%</p> <p>KPI (6) – 100%</p>	<p>KPI (1) – None (report only)</p> <p>KPI (2) – None (report only)</p> <p>KPI (3) – Term Trigger</p> <p>KPI (4) – None (report only)</p> <p>KPI (5) – None (report only)</p> <p>KPI (6) – None (report only)</p>

Relevant Compliance Requirement	Part 1 - KPI	Part 2 – KPI Target	Liquidated Damages
	<p>July August and September) and 130% (for Months other than June July August and September) of the amount in the total number sold in the previous Year.</p> <p>KPI (3) – Minimum Freight Capacity of 10,000 lane metres in each direction in each Week (but Company will allocate metres to other vehicle types if freight capacity exceeds demand)</p> <p>KPI (4) - aggregate freight capacity per Month for Months which do not include a TT Period = 112.5% of the amount in the total number sold in the previous Year.</p> <p>KPI (5) – Capacity of New Vessel – 800 Passengers*</p> <p>KPI (6) – Capacity of New Vessel – 1,250 lane metres capable of carrying Freight for which the proportion which exceeds 4.8m shall not be less than 110% of that provided by the Current Ropax Vessel.*</p>		

Relevant Compliance Requirement	Part 1 - KPI	Part 2 – KPI Target	Liquidated Damages
Availability of Back-Up Vessel	KPI (1) – availability of the Back-Up Vessel during TT Period, Festival of Motorcycling Period, periods of Scheduled unavailability of the New Vessel, and Christmas period if required KPI (2) – availability of the Back-Up Vessel to cover emergency back-up requirement for New Vessel within 96 hours of Service Need	KPI (1) – 100% KPI (2) – 100%	KPI (1) – Term Trigger, always subject to reasonable control of Company. Term Trigger will not be applied if Company has fully complied with Planned Maintenance System approved by Classification Society but Vessel has unforeseen technical or component failure issue restricting availability KPI (2) – Term Trigger Unless Back-Up vessel cannot be recalled in the agreed 12 weeks period within any two (2) Years
Total number of Special Offer Seats offered	KPI (1) – 100,000 per Year seats at discount of not less than 50% of the Standard Passenger Fare KPI (2) 350,000 per Year seats at a discount of not less than 25% of the Standard Passenger Fare KPI (3) – 300,000 Freight lane metres per Year at a	KPI (1) – 100% KPI (2) – 100% KPI (3) – 100%	KPI (1) – Failure in Year 1 = shortfall added to requirement for following Year. Failure in Year 2 to deliver required number + shortfall = Term Trigger. KPI (2) - Failure in Year 1 = shortfall added to requirement for following Year. Failure in Year 2 to deliver required number + shortfall

Relevant Compliance Requirement	Part 1 - KPI	Part 2 – KPI Target	Liquidated Damages
	discount All figure requirements above reduce in accordance with clause 8.2.3.5.2.2		= Term Trigger. KPI (3) - Failure in Year 1 = shortfall added to requirement for following Year. Failure in Year 2 to deliver required number + shortfall = Term Trigger.
Percentage of employees (including Directors) resident in the Isle of Man	Percentage of employees (including Directors) resident in the Isle of Man for tax purposes	Majority employees Majority Directors	None (report only)
Total Marketing Expenditure	£750,000 per annum	100%	In the first Year of failure to achieve the KPI Target the amount of underspend or shortfall added to marketing requirement for following Year. Should a failure to achieve the KPI Target occur in two consecutive Years of the Term, the Company shall pay the total amount of the underspend (calculated at the end of the second Year of non-compliance) to the Department
Amount expended on the purchase of the New Vessel and the Fast Craft	£70million or more	100%	In the first Year of failure to achieve the KPI Target the amount of underspend to be

Relevant Compliance Requirement	Part 1 - KPI	Part 2 – KPI Target	Liquidated Damages
Replacement Vessel**			spent on vessel and/or terminal facilities refurbishment. Should a failure to achieve the KPI Target occur in two consecutive Years of the Term, the Company shall pay the total amount of the underspend (calculated at the end of the second Year of non-compliance) to the Department

SCHEDULE 8

IMPROVEMENT AND MODIFICATION TO LINKSPANS

1. The Parties agree that subject to the following provisions of this Schedule 8 nothing contained in this Agreement shall require any modification improvement or other work to be carried out to the Linkspans

2. For the purposes of this Schedule 8 the following words and expressions have the following meanings:-

2.1. "**Approval**" means the written approval of the Department whether conditional or unconditional and "**Approve**" and "**Approved**" shall be interpreted accordingly

2.2. "**Completed**" means completed to the reasonable satisfaction of the Department or the Department's surveyors and "**Completed**" and "**Completion**" shall be interpreted accordingly

2.3. "**Consents**" means:-

2.3.1. planning permission under the Town and Country Planning Acts 1934 to 1991 and

2.3.2. the consent of the insurers or underwriters with whom the Linkspans is for the time being insured and

2.3.3. permissions licences certificates consents and approvals required under any statute or statutory provision and "**Consent**" shall be interpreted accordingly

2.4. "**insurers**" means the insurers with whom the Linkspans is for the time being insured

2.5. "**Reinstatement Works**" means the restoration of the Linkspans to the design specification state and condition prior to the commencement of the appropriate Works or to the original design specification state and condition as at the commencement of the Term whichever the Department shall require

2.6. "**Works**" means any improvement modification or other thing desired by the Company to be carried out to the Linkspans to enable Vessels operated or proposed to be operated from time to time by the Company to berth or continue to berth at the Linkspans for the Specified Purposes and any additional modification improvements or other thing ancillary or incidental thereto or required by the Department to be undertaken in consequence thereof

3. If the Company at any time during the Term desires any Works to be carried out to the Linkspans then the Company shall serve written request for the carrying out of the proposed Works upon the Department Such request shall set out in reasonable detail the proposed Works and the reasons therefor The Company shall upon written notice being given to it by the Department furnish the Department with

any information documents plans specifications or other matter which the Department reasonably requires to enable the Department to fully consider the matter As soon as practicable but in any event not later than two (2) Months from the receipt of the written request by the Company or receipt by the Department of all information documents plans specifications or other matter requested by the Department (whichever is the later) the Department will inform the Company in writing whether or not the Department Approves the proposed Works provided that

3.1. the Department shall be entitled to refuse any such request by the Company:-

3.1.1. if the Proposed Works when completed would preclude in the reasonable opinion of the Department the Linkspans being used by third party vessels as contemplated by clause 12 (EXCLUSIVITY) and the Company is not able (for the same consideration (if any) or less than the Department would have charged such third party for use of the Linkspans) to afford such third party vessels such alternate arrangements which in the reasonable opinion of the Department would:-

3.1.1.1. enable any third party vessel as contemplated by clause 12 (EXCLUSIVITY) to use Douglas Harbour and

3.1.1.2. ensure that such arrangements continue during the subsistence of this Agreement or

3.1.2. if the Company is unable to reasonably satisfy the Department that:-

3.1.2.1. during the carrying out of the proposed Works the Company is still able to perform its obligations under clause 5.3 and Schedule 2 (Services) or

3.1.2.2. any contemplated disruption caused by the carrying out of the Works to the performance by the Company of its obligations under Schedule 2 (Services) would not adversely affect the overall security of delivery of Freight to or from the Isle of Man or the passage by sea of Foot Passengers and Passengers and Accompanied Vehicles to and from the Isle of Man as contemplated by Schedule 2 (Services) or

3.1.2.3. during the carrying out of the Works the Company (for the same consideration (if any) or less than the Department would have charged a third party for use of the Linkspans) is able to afford appropriate facilities at the appropriate time(s) within Douglas Harbour for use by any third party of which the Department has given notice to the Company in accordance with the provisions of clause 12 (EXCLUSIVITY) prior to receipt by the Department of the Company's request under paragraph 3.1.2 of this Schedule 8

3.2. The Department shall be entitled to withdraw or withhold its Approval at any time before commencement of the proposed Works:-

3.2.1. if the Company shall not agree to any condition reasonably imposed by the Department in respect of any Approval or

3.2.2. if any Consent is subject to any condition which in the reasonable opinion of the Department:-

3.2.2.1. adversely affects or may affect the management or operation or future management or operation of Douglas Harbour or

3.2.2.2. prohibits or restricts the carrying out of the Reinstatement Works or

3.2.2.3. prohibits or inhibits the use of any then existing facility or the construction of any future facility in Douglas Harbour or

3.2.3. if the Company is in breach of any of its obligations under Schedule 2 (Services) or

3.2.4. if any Consent is withheld or not granted or

3.2.5. if any drawings plans or specifications provided by the Company under paragraph 5.1.2 of this Schedule 8 shall materially differ from any drawings plans or specifications previously supplied by the Company to the Department or shall materially affect the Works or the consequences thereof or

3.2.6. if the Department reasonably objects to any contractor (whether main or subcontractor) Consultant Architect Surveyor Engineer or other person notified by the Company to the Department in accordance with the provisions of paragraph 5.1.4 of this Schedule 8

4. If the Department shall Approve the carrying out of the proposed Works and shall not require the Company to carry out the same then:-

4.1. prior to the commencement of the proposed Works:-

4.1.1. the Department at the sole cost and expense of the Company shall seek either by itself or any agent consultant or other person to obtain all necessary Consents relevant to the Works

4.1.2. the Department at the sole cost and expense of the Company shall effect such insurance as the Department deems reasonably appropriate

4.1.3. the Department shall agree with the Company (such agreement not to be unreasonably withheld or delayed) the estimated costs of carrying out the Works (the Department being entitled to select any contractor or contractors to carry out the Works)

4.1.4. the Department shall agree with the Company (such agreement not to be unreasonably withheld or delayed) the proposed Commencement Date of the commencement of the Works and the estimated completion date

4.1.5. the Company shall provide the Department with adequate security in such form as the Department shall deem appropriate as assurance to the Department that within seven (7) days (or earlier if the circumstance requires) of receipt of written demand by the Department the Company will pay to the Department any monies so demanded relevant to the Works or any particular part of the Works or any insurance effected by the Department under paragraph 4.1.2 of this Schedule 8

4.1.6. the Company shall if required by the Department provide the Department with adequate security in such form as the Department shall deem appropriate as assurance to the Department that upon termination of this Agreement by effluxion of time or otherwise the cost of the Reinstatement Works or any part thereof will be paid within seven (7) days of demand being made by the Department

4.2. Subject to each condition under paragraph 4.1 of this Schedule 8 being complied with the Department shall execute or cause to be executed the Works with all due diligence and in accordance with all terms conditions and requirements of all Consents

5. If the Department shall Approve the carrying out of the Works but shall require the Company to carry out the same then:-

5.1. Prior to the commencement of the Works:-

5.1.1. the Company shall obtain at its own expense all Consents relating to the proposed Works which it is for the time being necessary or desirable to obtain and shall obtain the Approval of the Department to any condition relevant to any such Consent

5.1.2. the Company shall provide the Department with all drawings plans and specifications relevant to the Works prepared by an architect or member of some other profession (who shall supervise the Works throughout to Completion)

5.1.3. the Company shall enter into such covenants and undertakings as the Department may require as to the execution of the Works and shall provide to the Department adequate security in such form as the Department shall deem appropriate as assurance to the Department that: (a) the Works shall be fully Completed and (b) upon termination of this Agreement by effluxion of time or otherwise howsoever that the cost of the Reinstatement Works or any part thereof will be paid within seven (7) days of demand being made by the Department

5.1.4. The Company shall notify the Department in writing of all contractors (whether main or subcontractors) Consultants Architects Surveyors Engineers and all other persons who shall be responsible

for the carrying out or supervision of the Works and shall simultaneously furnish the Department with adequate information relevant to the Work to be carried out by any such Agreement or Consultant Architect Surveyor Engineer or other person and shall furnish in writing to the Department any other information required by the Department relevant to any such Contractor Consultant Architect Surveyor Engineer and/or other person

5.1.5. The Company shall agree with the Department (such agreement not to be unreasonably withheld or delayed) the proposed Commencement Date and completion date of the Works

5.2. if the Company shall comply with the previous provisions of paragraph 5.1 of this Schedule 8 then on the date agreed with the Department the Company shall commence the Works and shall thereafter with all due diligence and expeditiously carry out the Works to Completion

5.3. during the execution of any Works:-

5.3.1. the Company shall keep all plant machinery apparatus and materials in connection with the Works stored within such area or areas as the Department and the Company shall from time to time agree (the agreement of the Department not to be unreasonably withheld or delayed)

5.3.2. the Company shall not cause or permit

5.3.2.1. any damage disturbance annoyance nuisance or inconvenience whether by noise dust vibration the emission of smoke fumes or effluvia or otherwise to the Department or to Douglas Harbour or to the owners or occupiers of any adjoining or neighbouring property or to the operation of or to any user of Douglas Harbour or

5.3.2.2. any damage to or weaken or render unsafe the structure of the Linkspans or any part thereof or

5.3.2.3. any interruption or disturbance to the management or operation of Douglas Harbour

5.3.3. The Company shall not change (without the prior written approval of the Department (such approval not to be unreasonably withheld)) any contractor (whether main or subcontractor) Consultant Architect Surveyor Engineer or other person notified by the Company to the Department in accordance with the provisions of paragraph 5.1.4 of this Schedule 8

5.3.4. The Company shall ensure that the Works and every part thereof are carried out in accordance with all drawings plans and specifications previously supplied by the Company to the Department in accordance with the preceding provisions of this paragraph 5 and shall further ensure that the Works and every part thereof are carried out in compliance with all Approvals and Consents

5.4. the Company shall permit the Department by its personnel and any other person duly authorised by the Department access at all reasonable times to the Linkspans during the course of the carrying out of the Works for any purpose in connection with ensuring compliance by the Company of the provisions of this paragraph 5 or any of the Works

5.5. the Company shall produce to the Department on demand copies of all letters notices applications Consents or other documents sent served received or made by or granted to the Company in connection with any Works and shall supply to the Department on demand such information or evidence as the Department may reasonably require in order to satisfy itself that the provisions of this paragraph 5 have been complied with

5.6. throughout the carrying out of the Works the Company shall insure and keep insured:-

5.6.1. all parts of the Works from time to time executed and all plant machinery equipment apparatus materials goods and other things at the Linkspans intended for use in connection with or as part of the Works from the date of commencement of the Works to the date of Completion in the joint names of the Department and the Company against loss or damage by such of the Insured Risks as the Department shall deem reasonably appropriate and such other risks as the Department may from time to time reasonably require in the full reinstatement or replacement value it being agreed that all monies received under any policy relating to such insurance shall be applied in restoring reinstating and replacing such part of the executed Works plant machinery equipment apparatus materials goods and other things the Company making up any deficiency out of its own money

5.6.2. without prejudice to any other provision of this paragraph from the date of commencement of the Works until completion thereof in the joint names of the Department and the Company in a sufficient sum (to be agreed between the Department and the Company) insurance against all liability actions proceedings costs claims demands and expenses whatsoever in respect of personal injury to or the death of any person and any injury or damage to any property real or personal howsoever arising out of or in the course of or as the result of the execution of the Works or any part thereof and to supply to the Department on demand a copy or copies of the policy or policies relating to such insurance and the receipts or other evidence of payment of the current premium

5.7. the Company shall indemnify the Department against all liability actions proceedings claims demands costs expenses and liabilities whatsoever (including without limitation those in respect of personal injury to or the death of any person or any injury or damage to any property real or personal) howsoever arising whether directly or indirectly as a result of the grant of any Approval by the Department or any failure by the Company to comply with the provisions contained in this paragraph 5 or the commencement or execution of any of the Works or the state and condition of the Linkspans during the carrying out of the Works or the existence

operation or use of any plant apparatus machinery equipment substance goods or other thing on the Linkspans in connection with the Works

6. The Department and the Company agree as follows:-

Any Approval consent instruction or inspection granted given or carried out by or on behalf of the Department under this Schedule 8 shall be granted given or carried out without any liability on the part of the Department or any person authorised by the Department its personnel Surveyors agents or workmen and the Department nor any person as aforesaid shall have no responsibility for any of the Works carried out under paragraph 5 of this Schedule 8 or the design execution or existence thereof nor do they imply warrant or constitute any representation that it is lawful to execute such Works or limit or discharge any of the obligations of the Company under this Schedule 8

6.1. without prejudice to any other remedy of the Department if the Company is in breach of any of its obligations under this Schedule 8 the Department may serve notice on the Company specifying the breach and if such breach is not remedied within a reasonable time specified by the Department it may either serve a notice on the Company requiring the Company to reinstate the Linkspans which the Company shall duly and expeditiously undertake or itself remedy the breach and the cost of such remedial work shall be paid by the Company to the Department on demand

6.2. notwithstanding any other provision of this Schedule 8 all parts of the Works from time to time executed by the Company shall be at the sole risk of the Company until they are Completed

6.3. if the Works are not commenced within fourteen (14) days of the date agreed for commencement of the same then the Company shall be deemed to have withdrawn its request for the carrying out of the Works

7. Notwithstanding any other provision of this Schedule 8 the Company shall pay to the Department on demand and indemnify the Department against all proper costs charges fees disbursements and expenses (including those of professional advisers and agents and including in each case any Value Added Tax) incurred by the Department in connection with any Approval Consents or the Works including (without limitation) those arising from the consideration of any application for and any preparation negotiation and Completion of any Approval and/or Consents and any drawings plans specifications submitted to the Department the inspection of any Works and from the obtaining of the consent or approval of or information from any other person

SCHEDULE 9
ITEMS INCLUDED IN FIXED CHARGE

The costs expenses and outgoings of the Department:-

1 in maintaining and repairing the Linkspans including without prejudice to the generality of the foregoing maintenance and repairs to the structure thereof to any part of any pier quay or anything else to or upon which any part of the Linkspans is attached or rests painting and cleaning the Linkspans the cost of all replacement parts and spares (including replacement anchors and anything not directly forming part of the Linkspans but which is necessary for the siting stability operation or otherwise of the Linkspans)

2 in maintaining and repairing the Access Area

3 the cost of gross remuneration (including any employers national insurance contributions and/or similar employer contributions expenses or outgoings) payment and other expenses as appropriate paid or payable to any officer servant personnel agent contractor or consultant the Department may consider at any time necessary to employ or engage (whether full part-time or otherwise) in the operation maintenance inspection repair removal re-siting of or otherwise relevant to the Linkspans and/or Access Area and administration relevant thereto

4 all rates charges assessments and other outgoings and impositions whatsoever (if any) assessed charged or imposed upon or in respect of the Linkspans (other than income tax)

5 all fees and costs incurred by the Department in respect of the obtaining or continuance of any consent approval certificate or other thing required for the siting or use or continued siting or use of the Linkspans for the Specified Purposes

6 the cost (which shall include all labour contractors and consulting costs) of inspecting maintaining renewing and/or replacing all plant machinery equipment apparatus and any respective parts thereof forming part of or used in connection with the Linkspans

7 the cost of insuring and keeping insured throughout the Term the Linkspans and the Access Area against the Insured Risks

8 without prejudice to the previous paragraphs in this Schedule 9 all costs and expenses including electricity incurred by the Department for the purpose of complying with or in connection with the fulfilment of the Department's obligations under the within Agreement and in particular under clause 11 (DEPARTMENT'S OBLIGATIONS) hereof

SCHEDULE 10

CHANGE CONTROL PROCEDURE

Part 1 – Variations To The Services

1. For the avoidance of doubt the Parties agree that no variation to the Services shall occur or be deemed to have occurred through course of conduct or otherwise but only through the application of the provisions of paragraph 13 and this Schedule 10
2. Operational Variations shall be processed in accordance with Part 4 of this Schedule 10 below. If either Party is in doubt as to whether a variation falls within the definition of a Contract Variation or an Operational Variation it shall be processed as a Contract Variation. Urgent Variations shall be processed in accordance with this Schedule 10 below

Part 2 – Contract Variation

1. The Department may issue a Contract Variation Notice to the Company requiring a variation to the Agreement in accordance with the provisions of clause 13 (STRATEGIC RESET)
2. The Company may issue a Contract Variation Notice to the Department in those instances identified in clause 5.2.7.2.4
3. The Company and the Department may seek to agree a Contract Variation Notice in those instances identified in clause 13 (Strategic Reset)
4. The Contract Variation Notice issued by the Department must specify the Variations in sufficient detail to allow the Company to provide the Evaluation in accordance with Part 3 of this Schedule 10 to the extent that the Department acting reasonably consider to be necessary
5. The Contract Variation Notice issued by the Company must include sufficient detail to allow the Department to ensure that the request complies with clause 5.2.7.2.4
6. In the event that the Company does not agree with the Department's decision under paragraph 4 of Part 2 of this Schedule 10 the matter will be resolved in accordance with clause 24 (ARBITRATION)

Part 3 – Evaluation

1. On receipt of a Contract Variation Notice from the Department the Company shall notify the Department:
 - 1.1 if it reasonably believes that the proposed Contract Variation would not be technically feasible or would infringe any law or be inconsistent with good industry practice. In the absence of such a notification or notwithstanding such a notification where the Department direct that further examination of the Contract Variation Notice should proceed the Company must deliver to the Department a written evaluation (the "**Evaluation**") of

the Contract Variation as soon as practicable and in any event within such reasonable time as the Contract Variation Notice may stipulate. The Evaluation must include at a minimum the following information (in so far as relevant):

1.1.1 details of any effects the Contract Variation may have on costs to be incurred by the Company in the provision of the Services

1.1.2 the proposed programme for the commencement and implementation of the Contract Variation including any proposed amendment (and reason therefor) to any dates set out in the Contract Variation Notice

1.1.3 any changes to the provisions of this Agreement reasonably required as a consequence together with any matters on which implementation of the Contract Variation may be at any time conditional including if appropriate the consent of any other Party

2. As soon as reasonably practicable after the Department receive an Evaluation from the Company the Parties must discuss and identify the issues set out or inferred in the Evaluation

3. In such discussions the Department may modify the Contract Variation Notice and the Company must as soon as practicable after the receipt of such modification and in any event within a timescale stipulated by the Department provide a revised Evaluation with any consequential changes including revisions to the estimated cost of the Contract Variation and any other relevant details

4. If the Parties do not agree the contents of the Evaluation then the matter will be resolved in accordance with clause 24 (ARBITRATION)

5. As soon as reasonably practicable after the contents of the Evaluation have been agreed or otherwise determined in accordance with clause 24 (ARBITRATION) the Department must confirm in writing whether or not they wish (at its sole discretion) to accept the Contract Variation

Part 4 – Operational Variation

1. Any change identified by the Company to improve operational efficiency of the Services (an Operational Variation) may be implemented by the Company without following the Contract Variation Notice procedure provided that it does not:

1.1 have a material impact on the users of the Services

1.2 require a variation to this Agreement

1.3 require the Department to contribute towards any cost of or as a result of the change

2. The Company shall promptly notify the Department of the implementation of any such Operational Variation

3. The Department may request an Operational Variation by issuing a written request for operational variation (RFOV) to the Company which shall include details of the proposed Operational Variation and the timescale for completion

4. The Company shall inform the Department of any impact on the Services which may arise from the Operational Variation

5. The Company shall implement the Operational Variation within the timescale specified for completion in the RFOV and shall promptly notify Department when the Operational Variation is implemented

6. The Company shall implement the Operational Variation within the timescale specified for completion in the RFOV and shall promptly notify Department when the Operational Variation is implemented

Part 5 – Urgent Variation

The Parties acknowledge that there may be circumstances where a variation to the Services requires to be implemented urgently to protect the safety of Passengers crew employees livestock cargo the Vessels and the Ports or to ensure the continued provision of the Services ("an **Urgent Variation**") On the express verbal instructions of the Department's Chief Executive Officer (or person duly authorised by the Department's Chief Executive Officer) an Urgent Variation shall be implemented by the Company without delay and shall be confirmed in writing by Department within seven (7) days and shall be ratified by the Parties in accordance with Part 6 of this Schedule 10

Part 6 – Implementation of a Variation

1. In the event that a Contract Variation has been confirmed in accordance with this Schedule 10

1.1 the Department must issue a Contract Variation Form to be signed by the Company

1.2 this Agreement will be read and construed as varied by the Contract Variation Form and

1.3 the Company must implement the Contract Variation in accordance with the Contract Variation Form except to the extent varied by a Contract Variation Form the whole terms and conditions of the Contract shall remain in full force and effect

2. The Company will not be required to implement any Contract Variation which:

2.1 would cause the Company to breach Applicable Law or

2.2 would materially and adversely affect the health and safety of any person

3. The Company and the Department shall each meet its own expenses in connection with any Contract Variation

SCHEDULE 11
FUEL SURCHARGE PROCEDURE

1. The Company will calculate the Weighted Average Cost and the Weighted Estimate Cost for each Fuel Surcharge Period ("the **Calculations**") and shall email these Calculations to the Department in Excel format. If required by the Department the Company will provide copy invoices to verify the Calculations. The Company will also provide a brief explanation of any fluctuations in the Fuel Cost payable in the current Fuel Surcharge Period when compared to previous Fuel Surcharge Periods at the same time as they provide the Calculations.

2. The Company will also provide to the Department details of how the Fuel Surcharge is to be applied by means of percentages or amounts to be payable by each of the following three (3) classes of Customer:

2.1. Foot Passengers

2.2. Passengers with Accompanied Vehicles

2.3. Freight Customers

This information ("the **Fuel Proportions**") will be provided at the same time as the Company provides the Calculations.

3. The Department will verify the Calculations and will confirm to the Company within ten (10) days that the Calculations and the Fuel Proportions are agreed (or else they will confirm the reasons for their disagreement with the Calculations or suggested Fuel Proportions).

4. The Department shall be entitled to reject the suggested Fuel Proportions if it reasonably believes that the allocation of the Fuel Surcharge or Fuel Rebate between the classes of Customer listed in paragraph 2 above is unreasonable.

5. The Company may not apply any Fuel Surcharge or any Fuel Rebate until such time as it receives confirmation from the Department that the Calculations and Fuel Proportions are agreed but the Calculations will be deemed as verified and accepted by the Department unless the Department notifies the Company in writing within ten (10) days.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as a Deed the day Month and Year first before written

EXECUTED and **DELIVERED** by the Department under the hand of the Minister or a person duly authorised by the Minister for Infrastructure in the presence of:-



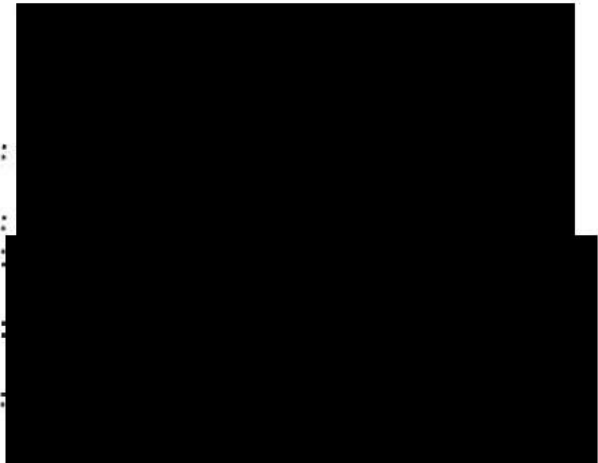
Witness Signature: TS Baker : *Print name:*

Witness Full Name: Timothy Simon Baker : *Position:*

Witness Address: 

Witness Occupation: MHK :

EXECUTED and **DELIVERED** by the Company acting by:-



APPENDIX 1 FARE SCHEDULE

2019 STANDARD FARES - excluding fuel surcharges/rebates

Traffic Type	Fare Type	Tariff	£ 2019
PASSENGERS (Foot and Vehicle)	Standard Single	A	51.25
		B	51.25
		C	49.25
		D	46.25
		E	43.25
	Short Break Return	A	93.50
		B	92.50
		C	87.50
		D	82.50
		E	76.50
	Daytrip return	A	55.00
		B	55.00
		C	53.00
		D	50.00
		E	47.00
CARS	Standard Single	A	172.00
		B	159.00
		C	147.00
		D	124.00
		E	101.00
	Short Break return	A	229.00
		B	207.00
		C	183.00
		D	169.00
		E	137.00
	Daytrip return	A	184.00
		B	171.00
		C	158.00
		D	135.00
		E	112.00
MOTORBIKES	Standard Single	A	85.00
		B	81.00
		C	60.00
		D	48.00
		E	41.00
	Short Break return	A	140.00
		B	138.00

C	108.00
D	93.00
E	73.00

Daytrip return	A	90.00
	B	86.00
	C	66.00
	D	54.00
	E	45.00

COMMERCIAL FREIGHT

Charge each way, excluding fuel surcharges/rebates, weight or height surcharges if applicable.

NON PROPELLED UK > IM (m)	Standard Rate	NPS	Freight	110.81
	Regular Rate	NPS	Freight	83.02
NON PROPELLED IM > UK (m)	Standard Rate	NPS	Freight	39.24
	Regular Rate	NPS	Freight	34.16
SELF PROPELLED (m)	Standard Rate	SP	Freight	100.88
	Regular Rate	SP	Freight	95.73
SELF PROPELLED (Competition) (m)	Standard Rate	SPC	Freight	50.20
	Regular Rate	SPC	Freight	50.20
FLAT DECKS	Ex Hey per m	LFD+SFD	Freight	83.05
	Ex IOM per m	LFD+SFD	Freight	25.26
	Ex IOM Double backed		Freight	85.77
FLAT DECKS (Commodity)	Ex Hey per m	LFC+SFC	Freight	60.06
	Ex IOM per m	LFC+SFC	Freight	25.26
Small Towed Commercial (m)		LT	Freight	62.65
Trade Cars (u)		TC	Freight	178.19
Unaaccomp Private Cars (u)		CAR	Freight	214.63
Small Vans (u)		LV	Freight	260.32
Freight Passengers (u)			Freight	66.45

Charge per metre single unless specified
u = charge per unit

1.1 Definitions:

Contract Rate

interest at 4% per annum above the base rate from time to time of Barclays Bank plc

Headlease

a lease of Princes Dock, East Waterloo Dock and Central Docks Liverpool dated 27 January 2006 and made between (1) The Mersey Docks and Harbour Company and (2) Peel Ports Land and Property Investments Limited (as subsequently varied on or prior to the date hereof) out of which the IOMFT Lease is to be granted;

Index

The All-items index of the Retail Prices Index published by the Office for National Statistics (or its successor body) of the UK Government from time to time

Initial Unit Charge

£60 per unit

IOMFT Lease

a lease of the Isle of Man Ferry Terminal to be entered into between Peel Land and Property (Ports) Limited and Department for Infrastructure (A Department of the Isle of Man Government) and granted pursuant to the terms of agreement for lease dated 4th day of September 2018 and shall include any renewal of that lease or any subsequent lease of the Property or any part of it;

Permitted Use

The Permitted Use defined by the IOMFT Lease and the additional use expressly permitted by the clause 25 of the IOMFT Lease;

Property

The premises demised by the IOMFT Lease;

Rate Book

The Port of Liverpool Port Charges document published by MDHC setting out the schedule of charges payable in respect of the Port (as defined therein) as amended and updated from time to time;

Review Date

1st January 2020 and each anniversary of that date

Revised Unit Charge

The revised unit charge calculated in accordance with clause 3 of this deed;

Unit Charge

the higher of the Initial Unit Charge and the Revised Unit Charge at the date on which the Unit Charge falls due;

VAT

value added tax or any equivalent tax chargeable in the UK or elsewhere

1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.3 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to the Property is to the whole and any part of it.

1.7 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this deed and references to paragraphs are to paragraphs of the relevant Schedule.

1.8 Clause, Schedule and paragraph headings shall not affect the interpretation of this deed.

2. IOM's Covenants

In consideration of MDHC agreeing to vary the Headlease to enable the Property to be used for the Permitted Use, IOM covenants with MDHC that throughout the term of the IOMFT Lease (which obligations shall subsist notwithstanding that IOM's interest in the IOMFT Lease may have been assigned away or otherwise disposed of) that:

2.1 Immediately following the end of each calendar month (and also as soon as practicable following a demand by MDHC at any other time) IOM shall provide to MDHC full details of all freight containers, trailers or goods that have been transported through the Property during the calendar month just ended together with such further information as MDHC shall reasonably request;

2.2 In relation to each unit of such freight containers, trailers or goods:

2.2.1 passing or transported through the Property and/or

2.2.2 loaded or unloaded from vessels at the Property

either outside the provisions of the Permitted Use or in excess of the numbers and/or outside the days set out in clause 25 of the IOMFT Lease, IOM shall pay the Unit Charge to MDHC on demand;

2.2 In the event that IOM shall fail to provide the information required to provide pursuant to clause 2.1 above within 21 days of the required date, then the IOM shall be deemed to have loaded and unloaded the total aggregate maximum freight capacity of all vessels sailing to or from the Property during the relevant calendar month and the charges due pursuant to clause 2.2 shall be calculated by MDHC accordingly;

2.3 All statutory charges customarily levied by MDHC pursuant to the Rate Book are not covered by this agreement and shall be payable pursuant to and in accordance with the Rate Book.

3. Indexation of Unit Charge

3.1 The Unit Charge shall be reviewed and adjusted on each Review Date by applying to the relevant charge appertaining immediately prior to the Review Date the same percentage increase (if any) as that occurring in the movement of the Index in the twelve month period up to and including the month two (2) months prior to the Review Date (and for the avoidance of doubt, if (on any Review Date) the movement of the Index in the said twelve month period results in a decrease then the Unit Charge shall remain at the charge appertaining immediately prior to the relevant Review Date). The Unit Charge thence determined shall be applied as from the relevant Review Date.

3.2 In the event of a change in the base or composition of the said Index or the cessation of publication of the said Index the Parties hereto shall forthwith use all reasonable endeavours to reach agreement on an alternative Index with the object of placing the parties as near as possible in the position in which they would have been had there been no such change or cessation.

3.3 If the parties shall fail to reach agreement on an alternative Index then the alternative Index shall be determined by an expert appointed jointly by the parties and if the parties shall fail to reach agreement on the identity of the person to be appointed as the expert (or to agree on the terms of appointment of the expert) within 10 working days of either party serving details of a proposed expert on the other, then either party shall be entitled to request the President for the time being of the Institute of Chartered Accountants of England and Wales to appoint the expert and/or agree the terms of appointment on behalf of the parties as appropriate

3.4 In the event that in any year the aforesaid adjustment cannot be calculated as provided above as a result of the required Index figures not being available or an alternative index not being agreed upon at the relevant Review Date, then the Unit Charge shall continue to be applied at the rate previously payable and the adjustments shall be made as soon as is reasonably possible after the required Index figures have become available and shall be applied retrospectively as from and including the relevant Review Date and thenceforth until the next Review Date. IOM shall pay to MDHC forthwith upon the Revised Unit Charge being ascertained any shortfall between sums due under this agreement at the Unit Charge previously payable and the sums due under this agreement at the Revised Unit Charge payable up to and on the first day of the preceding month.

4. Joint and Several Liability

Where IOM is more than one person, MDHC may release or compromise the liability of any of those persons under this deed or grant time or other indulgence without affecting the liability of any other of them.

5. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

6. Governing Law

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

7. Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

8. VAT

8.1 Each amount stated to be payable by IOM to MDHC under or pursuant to this deed is exclusive of VAT (if any).

8.2 If any VAT is chargeable on any supply made by MDHC under or pursuant to this deed, IOM pay to MDHC an amount equal to that VAT as additional consideration.

9. Interest on late payment

If any sum due to be paid by IOM under this deed is not paid in full on the due date for payment interest shall be immediately payable and due by IOM to MDHC (in addition to the principal sum due) at the Contract Rate for the period from and including the due date for payment of the principal sum to and including the date of actual payment of that sum.

10. General

10.1 If any term or provision of this deed shall be held to be illegal and unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not

to form part of this deed but the enforceability of the remainder of this deed shall not be affected.

10.2 No variation to this deed will be valid unless agreed and recorded by a deed executed by each of party to it.

10.3 This deed may be executed in more than one copy and shall come into force once each party has executed such a copy in identical form and exchanged it with the other party.

10.4 Each party shall bear their own legal costs in connection with the subject matter of this deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

