

## **GUIDE TO THE USER AGREEMENT**

This document is provided as a factual guide to the background and key components of the Linkspan User Agreement, a commercial contract between the Department of Infrastructure (previously known as the Department of Transport or DOT) and the Isle of Man Steam Packet Company Ltd (IOMSPCo) that provides exclusive use of the Department's linkspan by the IOMSPCo in return for service and price guarantees. The linkspan is the adjustable ramp that is used to allow vehicles to be driven between a ferry's ramp and the pier. This guide does not explore the reasons behind the decisions, actions or terms, instead providing a factual account of the key elements.

The User Agreement came into force in 1995, was extended in 2002 and again in 2004, and currently runs until 2020, with a six-year extension option that can be triggered by either party.

### **The introduction of the User Agreement**

In the years leading up to the introduction of the User Agreement in 1995, the Isle of Man had experienced a number of issues and challenges in relation to its sea services:

- IOMSPCo employees carried out strikes in 1986, 1987 and 1988, leading to no IOMSPCo services (passenger or freight) for a total of 10 weeks
- The Douglas Harbour linkspans were not usable as both were owned by IOMSPCo

It was determined that action was necessary to prevent this situation from occurring in future. In addition, there had been a steady decline in passenger numbers up to 1995, along with constraints on the transportation of roll-on roll-off (ro-ro) freight because the vessel being used did not have the capacity to meet freight demand.

In 1994/1995 the Department of Transport (now Department of Infrastructure or DOI) built the Edward Pier linkspan, which remains in Departmental ownership. The Linkspan User Agreement was agreed and signed in 1995 with Tynwald approval.

### **Overall objectives of the User Agreement**

The User Agreement is a commercial contract aimed at providing long-term stability to the Isle of Man's strategic sea services by:

- Granting preferential use of the Edward Pier linkspan to the IOMSPCo in exchange for a guaranteed minimum service
- Enabling the IOMSPCo to use its commercial knowledge and experience
- Enabling the IOM Government to exert control and influence on the service within terms of the User Agreement
- Providing certainty that the Isle of Man would not be disadvantaged in future by not having a ferry service

### **Key points of the 1995 User Agreement**

The first User Agreement in 1995 was for 10 years, with an option for a 5-year extension, and set out certain requirements, including:

- Securing a minimum scheduled service based at 1993 levels
- Benchmarking fares and charges at the 1995 fare levels (ie increases in fares and charges were calculated against those from 1995)
- Giving DOT influence and control. For example on the schedule provided and standard fare increases
- Requiring IOMSPCo to:-
  - Invest £20 million in fleet (in 1998 the Ben My Chree came into service)
  - Pay capital and revenue costs of new linkspan
- Requiring IOMSPCo to operate to/from defined port ranges

### **The extension of the User Agreement in 2002**

In 2002, the IOMSPCo exercised its option to extend the original 1995 User Agreement. The DOT used this opportunity to secure an increase in minimum service from that previously agreed in order to provide:

- Greater passenger and freight capacity
- Special offer fares became a requirement rather than, as before, an optional requirement

### **The extension of the User Agreement in 2004**

The extension to the User Agreement in 2004 was requested by IOMSPCo, supported by DoT and approved by Tynwald. The new contract:

- Extended the User Agreement from 2010 for a further 10 years to 2020, with one more opportunity for an option to extend for a further six years to 2026. The contract will cease, if the 2020 option is taken, in 2026
- Built on the 1995 Agreement and 2002 Extension in terms of:-
  - Further increases in minimum level of service (which were introduced immediately)
  - Providing a framework for a future £26 million investment by IOMSPCo by the end of 2015 “in a vessel or vessels”
  - Led to the purchase of the Manannan which, including a refit, cost £21 million (part of the £26 million investment required by the IOMSPCo)

### **Level of control and influence afforded to the Department of Infrastructure under the User Agreement**

The User Agreement puts in place specific tasks and controls. It is a legally binding contract, and therefore the parties must comply with the terms or are in breach of contract. If the IOMSPCo is in breach, it must remedy the breach or the DOI can move to the Agreement. The DOI is required to allow the IOMSPCo a “reasonable” time to remedy any identified breaches.

The IOMSPCo is required to carry out internal compliance checks to meet above obligations and to meet its shareholders requirements. This includes a monthly meeting at Director level, a half-yearly meeting at Board/Minister level and personal, public and political scrutiny at all levels.

### **Determining the ferry schedule**

The User Agreement sets out minimum requirements regarding the schedule of ferry operations, including:

- IOMSPCo must “invite suggestions” regarding the future year’s schedule from the Department of Economic Development (DED)
- The schedule must be approved by DOI in advance of publication

In practice this means the draft schedule is submitted by IOMSPCo to the DOI and is considered by the Department’s operational staff. The two parties enter further discussions and the final schedule is agreed and confirmed by the DOI. IOMSPCo data gives the following changes for service levels:

<b>Service</b>	<b>1996</b>	<b>2015</b>
<b>Liverpool sailings</b>	248	742
<b>Heysham sailings</b>	770	1350
<b>TT capacity (car equivalent units)</b>	361	1100
<b>Freight capacity (lane metres/day)</b>	650	2100

### **Controls over fares and freight charges**

The first User Agreement in 1995 focused on standard fares and charges. Special fares were introduced into the User Agreement following the 2002 extension.

The 1995 fares have been used as a benchmark, from which:

- Increases were capped at not more than Retail Price Index (RPI) minus 0.5% until 2010
- From 1<sup>st</sup> Jan 2011, fare increases could be no more than RPI
- The increases are calculated on a weighted basis (ie The amount of business at any particular fare class)
- The IOMSPCo is free to charge less

IOMSPCo data suggests that had the cheapest 1996 adult single fare been increased with inflation it would currently be set at £43.54 rather than £18 whilst the cheapest car plus 2 passenger return fare would have been £278.27 rather than £118.

### **Controls regarding Special Offer Fares**

The IOMSPCo introduced special fares from 1996 in an effort to grow the market, but did so outside 1995 User Agreement fare control requirements.

In the 2002 extension of the User Agreement, special fare obligations were introduced on the basis that:

- There had to be a minimum 250,000 seats per annum at special fares
- Fares had to be good enough to generate extra traffic. For example, the “Footloose Fare” of £19.00 was introduced from 1 January 2012 (Standard fare being £48.00 including a fuel oil surcharge)

In the 2004 extension of the User Agreement, an increase in the number of special fares was brought in, requiring a minimum increase in the number of special fares available to 50% of the previous year’s actual carrying. This brought the number of passengers travelling on special fares to around 90% of the total in 2015.

### **Benefits of the User Agreement**

Notwithstanding the ongoing issues regarding the level of debt owed to the current beneficial owners of the IOMSPCo, the User Agreement has achieved:

- Investment in modern ships
- Market growth
- Stability and reliability in service to passengers and freight customer
- Lower fares
- Large capacity increase
- The service frequency has increased substantially

### Summary of the main points of the User Agreement

The table below summarises the key changes between the three stages of the User Agreement contract.

<b>Minimum Service Level</b>	<b>1995 Agreement</b>	<b>2002 Extension</b>	<b>2004 Extension</b>
<b>Freight capacity (inbound)</b>	2,600 metres	7,000 metres	7,800 metres
<b>Service Frequency NW UK Ports</b>	382 Return sailings	764 Return sailings	936 Return sailings
<b>Summer period frequency Liverpool port range</b>	3 return sailings / wk end May - Beginning September	7 return sailings/wk end May - Beginning September	Daily service April - 3rd week October
<b>Annual services East Coast of Ireland</b>	63 Return sailings	63 Return sailings	63 Return sailings
<b>Freight capacity (inbound)</b>	2,600 metres	7,000 metres	7,800 metres
<b>Service Frequency NW UK Ports</b>	382 Return sailings	764 Return sailings	936 Return sailings
<b>Summer period frequency- Liverpool port range</b>	3 return sailings / wk end May - Beginning September	7 return sailings/wk end May - Beginning September	Daily service April - 3rd week October
<b>Annual services- East Coast of Ireland</b>	63 Return sailings	63 Return sailings	63 Return sailings
<b>Investment by Company</b>	£20 million (minimum)	N/A	£26 million (minimum)
<b>Standard of vessels</b>	High standard (no detail)	High standard (no detail)	Benchmarked against UK passenger ferry operators
<b>Fast Craft Provision</b>	Optional by Company	Optional by Company	Now a requirement