



COPY

THIS AGREEMENT is made the 21st day of December 2004

BETWEEN:

(1) DEPARTMENT OF TRANSPORT (a Department of the Isle of Man Government) Sea Terminal Building Douglas Isle of Man ("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 73 and whose Registered Office is situate at Imperial Buildings Douglas Isle of Man ("the Company")

WHEREAS :-

(1) By an agreement ("the User Agreement") dated the 19th September 1995 and made between the Department of the one part and the Company of the other part the Department granted to the Company the right to use the Department's Linkbridge during the Licensed Period for the Specified Purposes (such terms being respectively defined in the User Agreement) subject to the terms and conditions more particularly set forth and contained in the User Agreement

(2) References herein to the User Agreement shall include variations thereto by the supplemental agreements referred to in recital (3)(iii) and (iv) below

(3) This Agreement is supplemental to the User Agreement and to

- (i) a Licence dated the 19th September 1995 and made between the Department and the Company in respect of the Victoria Linkspan ("the Licence") and
- (ii) an agreement dated the 26th January 1996 ("the 1996 Agreement") and made between the Department of the one part and the Company of the other part whereby the Department and the Company agreed that with reference to then proposals by the Company relevant to the Company's then published fares and charges but only with reference to such proposals the one month period

referred to in clause 5.3.3 of the User Agreement should be deemed to have commenced on the 31st December 1995

- (iii) An agreement (“the Supplemental Agreement”) dated the 20th day of February 2002 and made between the Department and the Company and being supplemental to the User Agreement
 - (iv) An agreement dated the 20th day of February 2002 and made between the Department and the Company and being supplemental to the Licence
 - (v) Any other supplemental agreements made between the Department and the Company
- (4) Clause 18.6 of the User Agreement provides that no variations to the User Agreement shall be effective unless in writing and signed on behalf of each of the parties to the User Agreement by a Director or other authorised person
- (5) The Department and the Company have agreed to vary the User Agreement and the Licence in manner hereinafter appearing

NOW IT IS HEREBY AGREED as follows:-

- 1. In this Agreement
 - 1.1 Save and except as defined in this Agreement or unless inconsistent with the context words and expressions that are defined in the User Agreement have the meaning specified therein;
 - 1.2 Reference to any statute or statutory provision includes a reference to:-
 - 1.2.1 that statute or statutory provision as from time to time amended extended re-enacted or consolidated and
 - 1.2.2 all Statutory Instruments Bye-Laws Directions Regulations Orders or subordinate legislation made pursuant to it

- 1.3 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
- 1.4 Unless the context otherwise requires reference to any clause or sub-clause is to a clause or sub-clause (as the case may be) of or to this Agreement
- 1.5 The headings in this Agreement are inserted for convenience only and shall not affect the construction or interpretation of this Agreement
- 1.6 Unless the context otherwise requires reference to the User Agreement shall include the Schedules thereto
2. The Department and the Company HEREBY AGREE that the User Agreement and the Licence shall be extended and varied with effect from the 1st day of January 2005 as follows:-

2.1 Variations to Existing Clauses and Schedules of the User Agreement

- 2.1.1 Reference in the First Schedule of the User Agreement to the annual fluctuating charge shall be replaced by an annual fixed charge of SIXTY THOUSAND POUNDS (£60,000.00) per annum to be reviewed every THREE (3) years from the date of this Agreement by reference to any increase in the Manx Retail Prices Index ("the Index") percentage figure on the date of this Agreement as compared to the Index percentage figure on the date of the relevant review ("the Index Linked Review")
- 2.1.2 The fixed annual charge calculated in accordance with Part I and Part II of the Fifth Schedule of the User Agreement and subject to the Index linked review will continue AND the Company will continue to pay ONE HUNDRED AND FIFTY THOUSAND POUNDS (£150,000.00) per annum to the Department in respect of the Licence Fee as referred to in the Licence subject to the Index Linked Review as calculated in the Fifth Schedule of the User Agreement

2.1.3 In addition to the expenditure referred to in clause 3.15 of the User Agreement the Company will invest a further TWENTY SIX MILLION POUNDS (£26,000,000.00) in a Vessel or Vessels by no later than the 31st December 2015 ALWAYS PROVIDED THAT not less than EIGHTEEN MILLION POUNDS (£18,000,000.00) of such TWENTY SIX MILLION POUNDS (£26,000,000.00) shall be invested by the Company by no later than the 31st December 2012

2.1.4 In clause 3.11.1.3(b) and (c) clause 3.11.1.2 and clause 3.1.11.3 (c)(iii) of the User Agreement references to Fast Craft capacity during the peak summer months June July August and September will be increased from ONE HUNDRED AND TEN PER CENT (110%) to ONE HUNDRED AND FIFTEEN PER CENT (115%) and additionally the Company will be required to provide a regular overnight passenger service (overhaul periods and scheduled maintenance evenings excluded which shall not exceed twenty (20) evenings in any twelve (12) month period) PROVIDED THAT the Company may withdraw such overnight passenger service if it is able Department's reasonable satisfaction that it is no longer commercially viable to provide the same

2.1.5 Minimum frequency of services --

2.1.5.1 The existing minimum frequency of services under clause 3.3.1 of the User Agreement is increased from SEVEN HUNDRED AND SIXTY FOUR (764) return journeys per year to northwest United Kingdom ports to NINE HUNDRED AND THIRTY SIX (936) return journeys per year to north west United Kingdom ports and

2.1.5.2 Under clause 3.2.1 of the User Agreement (as amended by the Supplemental Agreement) the existing minimum SEVEN THOUSAND (7,000) metres of inbound freight capacity per week shall be increased to a

minimum SEVEN THOUSAND EIGHT HUNDRED (7,800) metres
inbound freight capacity per week and

2.1.5.3 In addition to the provisions of clause 3.3.2 of the User Agreement the services will be operated daily from on or before the 1st day of April to the third week in October each year, and

2.1.5.4 The provisions in clause 3.2 of the User Agreement and the Supplemental Agreement to provide extra freight capacity on a fortnightly basis so that the capacity available exceeds the actual freight sailings in the previous year is increased from the current TEN PER CENT (10%) additional lane meterage to TWELVE AND A HALF PER CENT (12½ %) additional lane meterage

2.1.6 The existing fare control provisions contained in Clause 5 of and the Sixth Schedule to the User Agreement restricting increases to no more than the increase in the Index minus ONE HALF PER CENT (½%) will apply until the 31st December 2009 and thereafter all published Standard Fares and Charges may be increased subject to the Sixth Schedule to the User Agreement and the 1996 Agreement AND any supplementary agreements subsequent to the User Agreement in accordance with any percentage increase in the Index for the relevant period AND the provisions contained in the Supplemental Agreement whereby the Company agrees to offer not less than TWO HUNDRED AND FIFTY THOUSAND (250,000) passenger seats as Special Offer Fares (as defined in the Supplemental Agreement) shall be varied to provide that the Company shall provide Special Offer Fares of not less than the equivalent in number of FIFTY PERCENT (50%) of the previous years total number of passengers carried by the Company on Isle of Man routes

2.1.7 If the reference base used to compile the Index changes after the date of this Agreement the figure taken to be shown in the Index after the changes is to be the figure that would have been shown in the Index if the reference base current at the

date of this Agreement had been retained and it is agreed that in the event that the method and/or manner in which the Index is compiled shall be varied by the Isle of Man Government then the figure taken to be shown in the Index after the changes to the method and/or manner in which the Index is compiled is to be the figure that would have been shown in the Index if the method and/or manner in which the Index is compiled at the date of this Agreement had been retained

2.1.8 Arbitration

If it becomes impossible to calculate an amount for any review period by reference to the Index because of any change in the methods used to compile the Index after the date of this Agreement or for any other reason whatever, or if any dispute or question whatever arises between the parties as to the amount for any review period or the construction or effect of the review provisions of this Agreement, then the amount for any review period or the disputed matter is to be determined by an arbitrator to be appointed by agreement between the parties or, in the absence of agreement by the President for the time being of the Isle of Man Law Society, or any person authorised by him to make appointments on his behalf, on the application of either the Department or the Company AND this is to be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1976 or any statutory re-enactment or modification thereof AND FURTHER the arbitrator is to have full power to determine, on such dates as he considers appropriate, what the increase in the Index would have been had it continued on the basis assumed for the operation of a review and in view of the information assumed to be available for it AND if that determination is also impossible, the arbitrator, having regard to the purposes and intent of the provisions in this Agreement for the review of any amount payable

2.2 Extension of Initial Period

2.2.1 The Initial Period as referred to in the User Agreement and the Licenced Period referred to in the Licence shall be extended for a period TEN YEARS (10) from the 19th day of September 2010 ("the Extended Period") and To 2020

2.2.2 Either the Department or the Company may extend the Extended Period for a further SIX YEARS (6) ("Further Six Years") from the expiry of the Extended Period in 2020 accordance with the provisions of clause 12 of the User Agreement except that references in the said clause 12 to "Licenced Period" shall be substituted by "Extended Period" and "Further Period" to "Further Six Years" and for the avoidance of doubt it is agreed that in the event of the Company exercising the option to extend the Extended Period for the Further Six Years the Department shall extend the Licence and the Licensed Period concurrently with the Further Six Years with the intent that during the Further Six Years the Company shall at all times have a right to use the Victoria Linkspan in accordance with the terms of the Licence

2.3 Additional Provisions

The following additional clauses shall be read and construed as forming part of the User Agreement in the clauses referred to hereinafter:-

2.3.1 References in clause 8 of the User Agreement to third party Alternate Users shall include cruise liners carrying vehicles and operating on non-scheduled services, and

2.3.2 The Company shall not redirect any services pre agreed with the Department from year to year to serve routes other than to and from the Isle of Man unless it is agreed in writing by the Department that such redirection benefits the Isle of Man in some manner and

2.3.3 The Company shall provide a minimum standard of on-board services broadly comparable with United Kingdom passenger ferry operators to the reasonable satisfaction of the Department and allowing for differences in the scale of operations

or other differences applicable PROVIDED THAT if there is a dispute as to the standard then the dispute shall be referred to Arbitration in accordance with clause 17 of the User Agreement, and

- 2.3.4 The Company agree to continue to provide a Fast Craft in its fleet on Isle of Man routes of at least a similar speed to the 1991 constructed SeaCat Isle of Man 74.4 metre Incat Fast Craft unless otherwise agreed in writing by the Department in circumstances where similar ferry passenger operators using best industry practice cease to use Fast Craft, and
- 2.3.5 The upper age limit of a replacement Vessel used by the Company will be TWENTY FIVE (25) years from the date of the launch of such replacement Vessel (other than temporary short term cover), and
- 2.3.6 The Company agree that as part of the quality and level of provision of obligations under clause 3.13.1 and 3.13.3 of the User Agreement the Company is required to ensure that all replacement Vessels with a passenger capacity of over ONE HUNDRED (100) passengers shall have a ramp and/or lift as far as practicable principally for the use of disabled passengers leading to the main passenger lounge AND that all replacement Vessels with a passenger capacity of over ONE HUNDRED (100) passengers in regular service shall have catering facilities retail facilities childrens play area a first class or similar standard lounge television monitors for passenger entertainment external deck space disabled toilets and other appropriate facilities (collectively "the Facilities") PROVIDED THAT if a replacement Vessel without the Facilities were brought into permanent service by the Company then the Facilities would be installed at the first dry docking of the replacement Vessel, and
- 2.3.7 The Company has Marketing Expenditure (as provided for in clause 3.14 of the User Agreement) in respect of off Isle of Man advertising and agrees that in respect of

Marketing Expenditure a minimum of THREE HUNDRED THOUSAND POUNDS (£300,000.00) shall be expended in off Isle of Man advertising as opposed to the other methods of expenditure provided for in clause 3.14 of the User Agreement AND PROVIDED THAT the Marketing Expenditure will be increased by reference to the Index percentage figure for the relevant period

- 2.3.8 In addition to the services pre-agreed with the Department from year to year and other sailings referred to in the User Agreement the Company will provide appropriate special excursion sailings in order to market the Company and the Isle of Man PROVIDED THAT the Company will not be required to provide such special excursions if it can show to the reasonable satisfaction of the Department that they are not commercially viable or operationally practicable, and
- 2.3.9 In addition to the Marketing Expenditure provisions of clause 3.14 of the User Agreement the Company shall continue to use the “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 Company’s services described in or referred to in the User Agreement and/or the Licence AND FURTHER the Company will maintain at all times regular Board Meetings administrative office premises and a senior management presence in the Isle of Man the latter meaning that not less than one half of the Directors of the Company from time to time shall be resident on the Isle of Man and the majority of the executive Directors shall work at the Company’s offices on the Isle of Man ensuring local contribution input and consultation with the Department other Government Departments Isle of Man businesses and residents and
- 2.3.10 The Company will produce and maintain a clear and professionally presented brochure and will introduce a web site providing (inter alia) an ability to make

passenger bookings on-line which a potential customer of the Company can navigate use and understand and which clearly shows the lowest available fares for any available journey AND the Company will introduce a system to enable it to allocate some seats when potential customers are booking the same or checking in for a sailing for which a reasonable charge may be made, and

2.3.11: In the event that the TT Races are cancelled in any year then the Company shall be entitled to an extension of this Agreement by a further TWELVE (12) months ALWAYS PROVIDED that this clause shall only apply to a maximum of THREE (3) cancellations of the TT Races

3. The provisions of clause 20 of the User Agreement are to apply to all notices served under or in connection with this Agreement

4. Within one (1) year of the Company introducing a replacement Vessel with disabled access from the vehicle deck (in accordance with clause 2.3.6 hereof) the Department shall consider providing appropriate disabled facilities at Douglas Harbour Quayside (“ the Quayside”) as far as practicable and provided that the replacement Vessel is compatible with the gangway onto the Quayside and the cost of providing the same is not excessive in the reasonable opinion of the Department for disabled passenger access to Vessels such facilities to be provided as far as practical to accommodate all tidal conditions AND PROVIDED THAT the relevant United Kingdom and Republic of Ireland Port Authorities ensure that comparable disabled facilities are provided at destination ports to allow for disembarkation from the said Vessels

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 for Transport in the
presence of:-

[Handwritten signature]

[Handwritten signature]

33 Oak Hill Close

Douglas

EXECUTED and DELIVERED by
the Company in the presence of:-

[Handwritten signature]

DOUGLAS ROAD
SHAW TALLA
THE PROMENADE
PORT ST MARKS
ISLE OF MAN
IM9 5DE

[Handwritten signature]

[Handwritten signature]

Dated 21st December 2004

(1) DEPARTMENT OF TRANSPORT

and

(2) THE ISLE OF MAN STEAM PACKET
COMPANY LIMITED

A G R E E M E N T

to vary and extend Agreement dated
19th September 1995 in respect of
the Linkspan and a Licence dated
19th September 1995 in respect
of Victoria Pier Douglas

H.M. Attorney General,
DOUGLAS.