

COPY

DATED 30TH JUNE 2021

DEPARTMENT OF INFRASTRUCTURE

and

ISLE OF MAN STEAM PACKET COMPANY LIMITED

**VARIATION AGREEMENT
to the
SEA SERVICES AGREEMENT
dated 31st May 2019**



**Isle of Man
Government**

Reiltys Ellan Vannin



COPY

THIS VARIATION AGREEMENT is dated the 30th day of June 2021

PARTIES

- (1) The **Department of Infrastructure** (a Department of the Isle of Man Government) of Sea Terminal Building, Douglas, Isle of Man, IM1 2RF ("the **Department**") of the first part 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**")

RECITALS

- (A) The Department and the Company entered into the Sea Services Agreement ("the **SSA**") on the 31st May 2019
- (B) H.M. Lieutenant Governor of the Isle of Man issued a Proclamation of Emergency on the 16th March 2020 pursuant to section 3 of the Emergency Powers Act 1936 in response to the Coronavirus pandemic This Proclamation of Emergency was revoked on the 24th June 2020
- (C) Entry to the Island by residents and non-residents was restricted by means of Regulations issued under the Emergency Powers Act 1936 Notwithstanding the revocation of the Proclamation of Emergency, the Regulations restricting entry to the Island remain in force as at the date of this Variation
- (D) The Proclamation of Emergency necessitated an urgent variation to the SSA in order to secure the essential services required by the Island These urgent variations and the continuation of Regulations which restrict entry to the Island have and will have an impact on the financial position of the Company which were not anticipated at the time that the SSA was entered into
- (E) The Department and the Company wish to enter into this Variation Agreement to document the necessary changes to the SSA which occurred as a result of the requirements and impacts of the Emergency Proclamation in order to secure a viable ferry service to and from the Island

AGREED TERMS

1. Terms defined in the Agreement

In this Variation Agreement, expressions defined in the SSA and used in this Variation Agreement have the meaning set out in the SSA

2. Extension of Term

- 2.1. The Department hereby elects to extend the Initial Term of the Agreement by twelve (12) months pursuant to clause 4.2 of the Agreement
- 2.2. The Company hereby elects to extend the Initial Term by a further two (2) Years pursuant to clause 4.3 in respect of the cancellations of the TT Races in the Years 2020 and 2021

3. Consideration

In consideration of the obligations of the Parties as set out in this variation, the Parties agree to amend the Agreement as set out below

4. Variation

The Parties agree the following amendments to the SSA:

- 4.1. In clause 5.2.2 the date '31st December 2022' shall be replaced with the date "31st December 2023" and the date '31st December 2021' shall be replaced by the date "31st December 2022"
- 4.2. In clause 5.2.6.1 the date '31st March 2021' shall be replaced with the date "31st March 2023"
- 4.3. Clause 5.3.1 shall be re-numbered as clause 5.3.2 and the sub-clauses of the current 5.3.1 shall be re-numbered accordingly. The words "remainder of the" shall be inserted immediately prior to the word 'Term' in the new clause 5.3.2
- 4.4. A new clause 5.3.1 shall be inserted to read:
 - "5.3.1 During the Term, the Company will ensure that the Services are provided as follows:
 - 5.3.1.1 For the period from the Commencement Date until the 16th March 2020 in accordance with Schedule 2
 - 5.3.1.2 For the period from the 16th March 2020 until the first anniversary of the Commencement Date or the Border Date (whichever is the later) in accordance with such reasonable requirements of the Department"
- 4.5. A new clause 5.4.1 shall be inserted and clause 5.4.1 and all subsequent clauses and sub-clauses shall be re-numbered accordingly. The new clause 5.4.1 shall read:
 - "5.4.1 The provisions of this clause shall apply for the period from the Commencement Date until the 16th March 2020 and from the 1st January 2021 or the Border Date (whichever is the later) for the remainder of the Term"
- 4.6. Clause 5.7.1 shall be amended so as to include the words "and the Linkspans" after the words 'staff to operate the Access Area'
- 4.7. Clause 5.16.3 shall be amended so as to include the following words to the end of the clause:
 - "Provided Always that the Company shall be under no contractual obligation to expend such Minimum Training Amount during the period from the 16th March 2020 until the Border Date"
- 4.8. Clause 5.17 shall be amended so as to insert the following words to the end of the clause:
 - "Provided Always that the Company shall be under no contractual obligation to provide such Manx Community Assistance during the period from the 16th March 2020 until the Border Date"

- 4.9. Clause 6.6 shall be amended so as to add the words "Provided Always that the provisions of clause 6.6.2 shall not apply for the period from the 16th March 2020 until the Border Date" to the end of the clause
- 4.10. Clause 8.2.3.5.2.2 shall be amended so as to insert the words "for the first Year or for the period from the Commencement Date until the Border Date (whichever is the later) to take into account the reduction of the number of Sailings and for any other Year of the Term" after the words 'be reduced pro rata'
- 4.11. Clause 8.2.6.3.1 shall be amended so as to insert the words "for each Year or part thereof from the first anniversary of the Commencement Date or the Border Date (whichever is the later) until end of the Term" immediately after the words 'per Year'
- 4.12. The words "subject to the provisions of clause 9.6" shall be inserted at the beginning of clauses 9.1, 9.4 and 9.5
- 4.13. A new clause 9.6 shall be inserted to read:
- "9.6 The provisions of clauses 9.4 to 9.5 shall:
- 9.6.1 not apply during the period from the 31st March 2020 until the Border Date
- 9.6.2 be modified for the period from the Border Date until the Recommencement Date in that the calculation at clause 9.2 shall be based upon the Weighted Average Fuel Cost and the annualised full service level consumptions and 2019 volumes
- 9.6.3 apply in full for the period from the Recommencement Date and for the remainder of the Term"
- 4.14. A new clause 10.1 shall be inserted and the remainder of clause 10 shall be re-numbered accordingly. The new clause 10.1 shall read:
- "For the period from the Commencement Date until the 1st January 2021 or the Border Date (whichever shall be the later) the Sailing Schedule shall be in a form which is agreed between the Parties (both acting reasonably) The IOMSPC will use its reasonable endeavours to publish the Sailing Schedule and changes thereto as they are agreed between the Parties from time to time"
- 4.15. Clause 11.5 shall be amended so that the words 'second anniversary' shall be replaced with the words "third anniversary"
- 4.16. A new clause 13.9 shall be inserted to read:
- "13.9 In the event that the Border Date does not occur prior to the Recommencement Date the Parties shall attempt to agree such changes to this Agreement as are appropriate to reflect the circumstances that are reasonably foreseeable as at the Recommencement Date. Both Parties shall act reasonably in attempting to agree these changes"
- 4.17. A new clause 18.12 shall be inserted to read:
- "18.12 By either Party upon not less than twelve (12) months' notice if the Parties are unable to reach agreement pursuant to clause 13.9 of this Agreement within [three (3)] months of the Recommencement Date"

4.18. In Schedule 1 the definition of 'Festival of Motorcycling Period' shall be amended to insert the words "applies from 2022 onwards and" at the beginning of the definition

4.19. In Schedule 1 the following new definitions shall be inserted to read:

"Border Change" means the introduction of a statutory requirement for a Passenger or class of Passengers to produce their passport or other form of written identification on or prior to arrival in the Isle of Man"

"Border Date" means the later of:

- (a) the date on which all persons are able to travel to the Island without restriction or the need to quarantine or self-isolate upon arrival
- (b) thirty (30) days from the Border Opening where such an announcement is made less than thirty (30) days prior to the date scheduled for Border Opening
- (c) the date on which the average number of the number of Passengers travelling over the preceding three (3) months immediately preceding is within ten percent (10%) of the average number of Passengers travelling in the equivalent three (3) month period in the Year commencing the 1st January 2019"

"Recommencement Date" means the 31st December 2022"

4.20. In Schedule 1 the definition of 'Fixed Charge' shall be replaced with the following words:

"means:

- (a) for the period from the Commencement Date until the Border Date the sum of two hundred and six thousand one hundred and fifty one pounds and fifteen pence (£206,151.15)
- (b) for the remainder of the Term the sum of five hundred and fifteen thousand three hundred and seventy seven pounds and eighty eight pence (£515,377.88) (increased in accordance with clause 5.1.2)"

4.21. In Schedule 1 the definition of 'TT Period' shall be amended to insert the words "applies from 2022 onwards and" at the beginning of the definition

4.22. Paragraph 1.2 of Schedule 2 shall be amended to read:

"1.2 from the Winter Period commencing immediately following the New Vessel Service Date and thereafter during each Winter Period for the remainder of the Term:

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

4.23. In Part 1 of Schedule 4 the words 'maximum age limit of ten (10) Years' shall be replaced with the words "maximum age limit of twelve (12) Years"

- 4.24. In Part 1 of Schedule 5 the words "three hundred thousand pounds (£300,000) for the first and the second Year of the Term and not less than" after the words 'equivalent to not less than'
- 4.25. The Table in Schedule 7 shall be deemed to have been replaced by the Schedule set out in the First Schedule to this Variation Agreement
- 4.26. In paragraph 3 of Schedule 9 the word "operation" shall be deleted
- 4.27. A new paragraph 3 shall be added to Part 2 of Schedule 10 to read:
- "3. Either Party may issue a Contract Variation Notice to the other Party should a Border Change occur at any time after the Recommencement Date"

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FIRST SCHEDULE

SCHEDULE 7

KEY PERFORMANCE INDICATORS

Relevant Compliance Requirement	Part 1 – KPI for Term (excluding Suspension Period)	Part 1 - KPI for the first Year of the Term or until the Border Date (whichever is the later) ("Suspension Period")	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>	None	<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 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 Passenger and Accompanied Vehicle capacity per Month of Conventional Vessel = 115% (for Months June July August and September) and 130% (for Months</p>	<p>KPI (1) – not applicable</p> <p>KPI (2) – not applicable</p> <p>KPI (3) – not applicable</p> <p>KPI (4), KPI (5) and KPI (6) as per column 2 of this table</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 for Term (excluding Suspension Period)	Part 1 - KPI for the first Year of the Term or until the Border Date (whichever is the later) ("Suspension Period")	Part 2 – KPI Target	Liquidated Damages
Availability of Back-Up Vessel	<p>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>		KPI (1) – 100%	KPI (1) – Term Trigger, always subject to reasonable control of Company. Term Trigger will not be applied if

Relevant Compliance Requirement	Part 1 – KPI for Term (excluding Suspension Period)	Part 1 - KPI for the first Year of the Term or until the Border Date (whichever is the later) ("Suspension Period")	Part 2 – KPI Target	Liquidated Damages
	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	appropriate) does not take place in any Year during the Suspension Period	KPI (2) – 100%	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 discount	As per column 2 of this table	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 = 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
	All figure requirements above reduce in accordance with clause 8.2.3.5.2.2			

Relevant Compliance Requirement	Part 1 – KPI for Term (excluding Suspension Period)	Part 1 - KPI for the first Year of the Term or until the Border Date (whichever is the later) ("Suspension Period")	Part 2 – KPI Target	Liquidated Damages
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	As per column 2	Majority employees Majority Directors	None (report only)
Total Marketing Expenditure	£300,000 per annum in first Year of the Term and £750,000 per annum for the remainder of the Term	As per column 2	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 Replacement Vessel**	£70million or more	As per column 2 (if New Vessel and/or Fast Craft Replacement Vessel is purchased in this period	100%	In the first Year of failure to achieve the KPI Target the amount of underspend to be 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

IN WITNESS WHEREOF the Parties have by their duly authorised representative executed this Variation Agreement

Signed by Tim Baker MHK

Print name above

for and on behalf of the Department : Tim Baker

Witness : N Mitchell
N MITCHELL
8 ORCHARD VIEW
SADDLESTONE, IM2 1QU

Signed by MARK WOODWARD

Print name above

for and on behalf of the IOMSPC : Mark Woodward

30/6/21

WITNESS

E A SMITH
SOLICITOR / ADVOCATE
ATTORNEY GENERAL'S
CHAMBERS
DUBLIN

DATED 30 SEPTEMBER

2021

DEPARTMENT OF INFRASTRUCTURE

and

ISLE OF MAN STEAM PACKET COMPANY LIMITED

**VARIATION AGREEMENT
to the
SEA SERVICES AGREEMENT
dated 31st May 2019**



**Isle of Man
Government**

Reilrys Ellan Vannin



Attorney General's Chambers
Douglas

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THIS RECTIFICATION AND VARIATION AGREEMENT is dated the _____ day of _____ 2021

PARTIES

- (1) The **Department of Infrastructure** (a Department of the Isle of Man Government) of Sea Terminal Building, Douglas, Isle of Man, IM1 2RF ("the **Department**") of the first part 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**")

RECITALS

- (A) The Department and the Company entered into the Sea Services Agreement ("the **SSA**") on the 31st May 2019. The SSA was amended by a Variation Agreement dated 30 June 2021 ("the Variation Agreement").
- (B) The Variation Agreement did not correctly reflect the agreement of the Parties in relation to the administration of the Fuel Surcharge/Fuel Rebate as set provided for in clause 9 of the SSA.
- (C) The Parties have further agreed that the provisions of clause 9 of the SSA should be further amended to reflect the increase in fuel price that has occurred since the 31st March 2020.
- (D) The Department and the Company wish to enter into this Rectification and Variation Agreement to document the necessary changes to the SSA to rectify the provisions of clause 9 to correctly reflect the original agreement of the Parties and to further vary the provisions of clause 9 to reflect the further agreement of the Parties.

AGREED TERMS

1. Terms defined in the Agreement

In this Variation Agreement, expressions defined in the SSA and used in this Variation Agreement have the meaning set out in the SSA

2. Consideration

In consideration of the obligations of the Parties as set out in this variation, the Parties agree to amend the Agreement as set out below

3. Rectification and Variation

The Parties agree the following amendments to the SSA:

- 3.1. In the first line of clause 9.6 shall be deleted and replaced with the following wording:
"9.6 the provisions of clauses 9.2 to 9.5 shall:

9.6.1 be suspended for the period from the 1st July2020 until the "Trigger Date" , and the Company shall be entitled to levy a fuel surcharge to all Customers at the rate which applied as at the 1st April 2020 ."

9.6.2 be modified for the period from the Trigger Date until the Recommencement Date in that the calculation at clause 9.2 shall be based upon the Weighted Average Fuel Cost and the annualised full service level consumptions and 2019 volumes

9.6.3 apply in full for the period from the Recommencement Date and for the remainder of the Term"

In Schedule 1 the definition of Border Date shall be amended so that the words "Border Opening" is added to the end of sub clause (a) of the definition.

3.2. An additional definition shall be inserted into Schedule 1 to read as follows:

"Trigger Date" means the 1st October 2021.

IN WITNESS WHEREOF the Parties have by their duly authorised representative executed this Variation Agreement

Signed by NOBACOS

Print name above

for and on behalf of the Department

: 

Witnessed by Tracey Woods
signed:

Address: 40 Sea Terminal Building
Occupation: Civil Servant



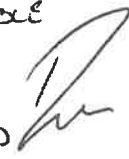
Signed by B. THOMSON

Print name above

for and on behalf of the IOMSPC

: 

WITNESSED BY DANIEL O'DOOLE

ADDRESS C/O IMPERIAL BUILDINGS 

OCCUPATION: CHIEF ACCOUNTANT