

DATED

2014

OPERATING AGREEMENT

- (1) THE HARBOUR MASTER OF JERSEY
- (2) CONDOR LIMITED

(Ref 175962/0001)

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THIS AGREEMENT is made on

2014

BETWEEN

- (1) **THE HARBOUR MASTER OF JERSEY** (the "**Harbour Master**"); and
- (2) **CONDOR LIMITED** (company registered number 738) whose registered office is at New Jetty Offices, White Rock, St. Peter Port, Guernsey GY1 2LL (the "**Operator**");
- each a "**Party**" and together the "**Parties**".

RECITALS:

- (A) In accordance with the Harbours (Administration) (Jersey) Law 1961 and in particular Regulation 6 of the Harbours (Jersey) Regulations 1962 (the "**Regulations**"), the Harbour Master hereby has the power to enter into this Agreement on the terms and conditions set out herein.
- (B) In recognition of the fact that the Operator needs to make major capital investments, the Harbour Master intends, in accordance with Regulation 6 of the Regulations, to enter into this Agreement so as to provide the Operator with security of a long term arrangement in the manner and upon the terms hereinafter set out for the provision of RoRo freight and passenger services between the Channel Islands, the United Kingdom and France. Following commencement of this Agreement, the Operator will make a capital investment to purchase the Austal 270 (as defined herein) in order to modernise and maintain strategic ferry links with the Channel Islands for the next 7-10 years. It is noted that a separate agreement, which will be similar in substance to this Agreement, will be entered into between the Operator and the States of Guernsey (the "**Guernsey Agreement**"). For the avoidance of doubt, the States of Guernsey can make no representation or binding legal commitment until legislation is enacted and such agreement is entered into.

1 Definitions and Interpretations

- 1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

Affected Party	shall have the meaning given to such term in clause 28.1 (<i>Force Majeure</i>);
Agreement	means this agreement as may be amended or restated from time to time in accordance with the terms set out herein;
Alternative Schedule	has the meaning given to such term in clause 25.2.2 (<i>Contingency Plan</i>);

Austal 270	means the Austal vessel carrying hull number 270;
Average Annual Volume	means the average annual volume in a given Sector during a calendar year, calculated by reference to volumes for the preceding three calendar years and, as at the date of this Agreement, calculated by reference to annex 1, paragraph 13 (<i>Service Requirements – Current Annual Demand</i>);
Bank Holidays	means all public and bank holidays recognised in Jersey from time to time;
Base Schedule	means the minimum Sailings schedule set out in annex 1, paragraph 5 (<i>Service Requirements – Capability and Scheduling</i>) which shall apply to the Operator only in the event of an Entrant commencing the provision of the Designated Services;
CEDR	shall have the meaning given to such term in clause 39.5;
Change Analysis	shall have the meaning given to such term in annex 5, paragraph 3 (<i>Service Change Procedure</i>);
Change in Law	means the coming into effect after the Commencement Date of any Law, which was not reasonably foreseeable at the Commencement Date;
Change of Control	shall have the meaning given to such term in clause 18 (<i>Change of Control</i>);
Change Notice	shall have the meaning given to such term in annex 5 (<i>Service Change Procedure</i>);
Commencement Date	means the date upon which the Condition Precedent has been satisfied;
Comprehensive Service Review	shall have the meaning given to such term in clause 9 (<i>Comprehensive Service Review</i>);
Condition Precedent	means the condition precedent set out in clause 3

(*Condition Precedent*);

Confidential Information

means any information which has been designated as confidential by any Party verbally or in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of any Party, all personal data and sensitive personal data within the meaning of the Data Protection (Jersey) Law 2005. It shall also include all information which is implicitly confidential at law, all trading information relating to the business of the Operator and all financial and due diligence information provided under this Agreement which is not publicly available;

Contingency Plan

means a contingency plan implemented in response to a Disruption Event in accordance with clause 25 (*Contingency Plan*) and which shall be based on the Generic Contingency Plan, with such amendments as the Operator deems reasonably necessary having regard to the nature of the relevant Disruption Event;

Core Clauses

means clauses 3.1 (*Provision of Services*), 6.5, 6.6, 6.7 and 6.8 (*Duration*), 7.1, 7.3 and 7.4 (*New Entrants*), 8 (*Service Requirements*), 13 (*Passenger and Private Vehicle Prices*), 14 (*Freight Prices*) and 18 (*Change of Control*);

Current ROACE

shall have the meaning given to such term in annex 6 (*ROACE*);

Designated Services

means the provision of Ferry Services across all Sectors, specifically excluding:

- (a) LoLo freight services;
- (b) services to and from the Cotentin peninsula; and
- (c) inter-Island and Southern Route foot passenger only services; and
- (d) Southern Route Freight unless the Average Annual

Volumes on this Sector increase by 100% from the Average Annual Volumes on this Sector as at the Commencement Date (as set out in annex 1, paragraph 13);

Dispute Resolution Procedure

shall have the meaning given to such term in clause 39 (*Dispute Resolution*);

Disruption Event

means a Material Event or an Emergency Event;

DPL

shall have the meaning given to such term in clause 22.1;

Duration

shall be the term of this Agreement as determined in accordance with the terms set out herein;

EBITA

means the Operator's earnings before interest, tax and amortisation;

Emergency Event

means an exceptional event or set of circumstances which results in the temporary material disruption of Lifeline Services such that it is not possible to maintain:

- the supply of essential and critical items to Jersey; or
- essential lifeline passenger travel by sea to and from Jersey,

Entrant(s)

means any person who provide the Designated Services from time to time;

EU Regulation and/or EU Regulation 1177/2010

means EU Regulation 1177/2010 as amended from time to time and/or any regulation that may override and replace EU Regulation 1177/2010 whilst this Agreement is in force;

Exit and Run Off Plan

means an exit and run off plan, the precise terms of which shall be agreed between the Parties having regard to the circumstances then existing and which shall enable the Parties to bring the Services to an end within a reasonable timeframe, and in a manner that minimises the impact of such cessation of Services upon customers so far as reasonably practicable provided that, for the

avoidance of doubt, this Agreement, including the Service Requirements, shall remain in full force and effect for the duration of an Exit and Run Off Plan and, for the purposes of this definition, a "reasonable timeframe" shall mean:

- (a) a minimum period of three years from the seventh anniversary of the Implementation Date in the case of an Exit and Run Off Plan implemented other than pursuant to clause 27 (*Termination and Exit Measures*); and
- (b) a period of one, two or three whole years (as determined by the Party not in default) in the case of an Exit and Run Off Plan implemented pursuant to clause 27 (*Termination and Exit Measures*);

Expert	shall have the meaning given to such term in clause 39.8;
Fault Event	means any event or occurrence where the majority cause arises from: <ul style="list-style-type: none">- the negligence or default (including acts or omissions) of the Operator; or- a material breach by the Operator of the terms of the Agreement; or- a failure by the Operator to act as a Prudent Operator to effectively avoid or manage the event;
Ferry Services	means ferry services provided using a RoRo vessel, RoPax vessel or a High Speed Craft;
First Ramp Permit	shall have the meaning given to such term in clause 6.5 (<i>Duration</i>);
Fit and Proper Person	shall have the meaning given to such term in clause 18 (<i>Change of Control</i>);
Fleet	means the Operator's vessels deployed to provide the Services as may be altered under the terms of the Agreement from time to time;
FoI Requirements	shall have the meaning given to such term in clause 23.1

(*Freedom of Information*);

Force Majeure

means :-

- i. war, civil war, or threat of or preparation for war or civil war, armed conflict or terrorism, political disturbance, rebellion, revolution, insurrection, invasion, sabotage, civil commotion or riot, criminal damage, government restraint or requisition or pre-emption of materials or services in connection with a public emergency or imposition of sanctions or embargo;
- ii. pressure waves caused by devices travelling at supersonic speeds, or sonic boom;
- iii. act of God, including but not limited to flood, drought, earthquake, storm, tempest, ash cloud or other disaster or extreme weather;
- iv. nuclear, chemical, biological, radioactive or ionizing explosion or contamination;
- v. any viral outbreak, pandemic or epidemic (including but not limited to SARS or SARS-like events, any strain of influenza or Norwalk or similar type of virus or infection);
- vi. fire, explosion or accident;
- vii. lockout of the ports that, in the case of the Operator, would be beyond the reasonable influence or control of a Prudent Operator;
- viii. non-performance by suppliers or subcontractors that, in the case of the Operator, would be beyond the reasonable influence or control of a Prudent Operator;
- ix. any act, restriction, regulation, bylaw, refusal to grant any licence or permission, prohibition or other measure of any kind on the part of any government or regulatory authority;
- x. any import or export regulation or embargo or quarantine restriction;
- xi. interruption or failure of utility service or other

essential supply; or

- xii. any other matter beyond the reasonable influence or control of a Party or beyond the reasonable influence or control of a Prudent Operator;

which is likely to cause a Party to be unable to comply with all or a material part of its obligations under this Agreement, including without limitation the implementation of an effective Contingency Plan, except that where relevant if the event is caused by the negligence or default (including by act or omission) of the Party claiming Force Majeure this shall not constitute Force Majeure;

Forecast ROACE	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);
Freight	means cargo carried for commercial reward as identified in accordance with the methodology used to identify "Freight" for the purposes of annex 1, paragraph 13 (<i>Service Requirements – Current Annual Demand</i>);
Freight Tariff Board	shall have the meaning given to such term in clause 14.1 (<i>Freight Prices</i>);
FSSG	shall have the meaning given to such term in clause 15.1 (<i>Governance</i>);
Generic Contingency Plan	shall have the meaning given to such term in clause 25 (<i>Contingency Plan</i>) and schedule 1 (<i>The Generic Contingency Plan</i>);
Guernsey Agreement	shall have the meaning given to such term in Recital (B);
High Speed Craft	means a vessel capable of performing the Designated Services in accordance with the Service Requirements in respect of the Northern Route Passenger and Vehicle Sector and Southern Route Passenger and Vehicle Sector;
Historic ROACE	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);

Implementation Date	means the date on which the Austal 270 is deployed by the Operator to provide the Services;
Intellectual Property Rights	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the Channel Islands or the United Kingdom) and the right to sue for passing off;
Law	means any international obligation, directive, regulation, enactment, sub-ordinate legislation, including any regulations, order, Order in Council, byelaw, rules, scheme or other instrument passed or made under any such Law as aforesaid, and any binding regulatory policy, binding guidance or binding code, or relevant judgement of a relevant court of law, or maritime convention or requirements of any regulatory body which are applicable in any relevant jurisdiction where services under this Agreement are delivered;
Lifeline Services	shall have the meaning given to such term in annex 1, paragraph 6 (<i>Service Requirements – Capability and Scheduling</i>);
LoLo	means the method by which cargo is loaded onto and discharged from a vessel exclusively by the use of a shore based or ship mounted crane;
Lower Tramline	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);
Macquarie Group	shall have the meaning given to such term in clause 18 (<i>Change of Control</i>);
Material Event	means an event or set of circumstances that has a material impact on the ability of the Operator to provide the Services but which is not an Emergency Event;
Maximum Prices	shall have the meaning given to such term in clause 13.1 (<i>Passenger and Private Vehicle Prices</i>) and references to the " Maximum Prices " shall, as the context requires,

mean the Maximum Prices as the same may be increased from time to time in accordance with clause 13.1;

Mediation Notice	shall have the meaning given to such term in clause 39.5;
Minimum Service Schedule	shall mean the minimum service schedule to be operated by the Operator provided no Entrant has commenced the provision of the Designated Services, as set out in annex 2 (<i>Minimum Service Schedule</i>);
No Fault Event(s)	means any event (which shall include an occurrence or set of circumstances) that is not a Fault Event including but not limited to the examples set out in annex 4 (<i>Example No Fault Events</i>) and, for the avoidance of doubt, including a Force Majeure event;
Northern Route	means Channel Islands to/from any or all ports on the south coast of England including but not limited to Portsmouth, Poole and/or Weymouth;
Operating Agreement	means this Agreement and any operating agreement entered into pursuant to clause 7.1.3 (<i>New Entrants</i>);
Operator	means Condor Limited and any successor entity from time to time;
Operator's Parent Company	means MEIF II Channel Islands Transport Holdings Limited (company registered number 48922), whose registered office is at New Jetty Offices, White Rock, St. Peter Port, Guernsey GY1 2LL;
Parties	means the parties to this Agreement;
Passenger & Vehicle	means passengers and private vehicles, in each case as identified in accordance with the methodology used to identify "Passenger & Vehicle" for the purposes of annex 1, paragraph 13 (<i>Service Requirements – Current Annual Demand</i>);
Peak Season	means: <ul style="list-style-type: none">- in respect of Passenger & Vehicle services, the period covering school summer holidays in the

Channel Islands and the United Kingdom in each calendar year; or

- in respect of Freight, any period of time where Freight volume on a given Sector may reasonably be expected to increase materially above the monthly run rate of Average Annual Volume for that Sector having regard to previous years (including but not limited to the Jersey potato season);

Period 1	shall have the meaning given to such term in clause 6.5;
Period 2	shall have the meaning given to such term in clause 6.5;
Performance Measures	shall have the meaning given to such term in Part A of annex 3 (<i>Performance Measures</i>);
Prospective Entrant	means any person (including but not limited to any body corporate or unincorporate) who wishes to provide any Relevant Services from time to time;
Provider	means the Operator and any Entrant from time to time;
Prudent Operator	means a prudent and competent operator of services similar to the Services, acting reasonably in good faith;
Prudent Operator Test	means a consideration of whether the Operator has acted as a Prudent Operator in any given situation;
Quarterly ROACE	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);
Ramp Permits	shall have the meaning given to such term in clause 6.5;
Regulations	means the Harbours (Jersey) Regulations 1962;
Relevant Services	means any individual element of the Designated Services;
Remediation Event	means a "Remediation Event" as identified in Table D that is a Fault Event;

Remediation Level	means a "Remediation Level" for a Remediation Event, as identified in Table D;
Remediation Plan	has the meaning given to such term in clause 26 (<i>Remediation</i>);
ROACE	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);
ROACE Calculation	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);
RoPax	means a RoRo freight vessel that has a material passenger capability, usually including passenger cabins, which is certified to carry at least 400 passengers and that is able to power at least 40 refrigerated vehicles;
RoRo	means a shipping vessel designed to carry wheeled cargo (such as automobiles, trucks, semi-trailer trucks and trailers) that are driven on and off the ship on their own wheels via such vessel's built-in ramp and that is able to power in the order of 40 refrigerated vehicles;
Rotation(s)	means a round trip starting and ending in the same region via one or more other ports and incorporating at least two Sailings, carrying Passengers & Vehicles and/or Freight, and includes loading and discharge at both ends;
Sailing(s)	means one port-to-port journey, whether as part of a Rotation or as a stand-alone journey;
Second Ramp Permit	shall have the meaning given to such term in clause 6.5;
Sector	means any of the following: <ul style="list-style-type: none"> - Northern Route Freight; - Northern Route Passenger & Vehicle; - Northern Route Lifeline – RoPax; - Southern Route Passenger & Vehicle; or

- Southern Route Freight;

Services	means the Designated Services provided in accordance with the Service Requirements;
Service Schedule	means the Base Schedule or, prior to the commencement of the provision of the Designated Services by an Entrant, the Minimum Service Schedule;
Service Change Procedure	means the procedure set out in clause 16 (<i>Service Change Procedure</i>);
Service Requirements	means the service requirements set out in annex 1 (<i>Service Requirements</i>);
SoG	means the States of Guernsey and its authorised officers, employees, agents and representatives from time to time;
SoJ	means the States of Jersey and its authorised officers, employees, agents and representatives from time to time;
Southern Route	means Channel Islands to/from St. Malo or any other port agreed under the terms of this Agreement from time to time, either permanently or temporarily;
Specific Change in Law	means a Change in Law which has a material adverse effect on the ability of the Operator to provide the Services and which comes into effect after the Commencement Date that relates specifically to the business of the Operator or the Services;
States	means SoG and SoJ;
Table A	means Table A as set out in paragraph 5 of annex 1 (<i>Service Requirements – Capability and Scheduling</i>);
Table B	means Table B as set out in paragraph 13 of annex 1 (<i>Service Requirements - Current Annual Demand</i>);
Table C	means Table C as set out in annex 2 (<i>Minimum Service Schedule</i>);

Table D	means Table D as set out in Part A of annex 3 (<i>Performance Measures</i>);
Table E	means Table E as set out in Part B of annex 3 (<i>Remediation Process</i>);
Table F	means Table F as set out in annex 6 (<i>ROACE</i>);
Termination Event	has the meaning given to such term in clause 27 (<i>Termination and Exit Measures</i>);
Termination Trigger Event	means a "Termination Trigger Event" as identified in Part 3 of Table D which is a Fault Event;
Tramlines	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);
Upper Tramline	shall have the meaning given to such term in annex 6 (<i>ROACE</i>);
Vessel Maintenance Programme	has the meaning given to such term in clause 11.4 (<i>Re- tonnaging and Maintenance</i>);
Weighted RPI	means the average of the Retail Price Index in each of Jersey, Guernsey and the United Kingdom as at 30 September in each year, weighted 20% Guernsey, 20% Jersey and 60% United Kingdom;
Wind Down Date	shall have the same meaning given to such term in clause 6.1 (<i>Duration</i>); and
Winter Season	means the period from the end of October half term school holidays to the start of the school Easter holidays, with adjustments for peaks in demand during this period.

1.2 In this Agreement except where the context otherwise requires:

- 1.2.1 the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- 1.2.2 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

- 1.2.3 words importing the masculine include the feminine and the neuter;
- 1.2.4 reference to a clause, schedule or annex is to a clause, schedule or annex to this Agreement and is a reference to the whole of that clause, schedule or annex unless stated otherwise;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 references to any person shall include natural persons and partnerships, firms and other incorporated bodies, government bodies and offices and all other persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- 1.2.7 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.8 reference to a "subsidiary" or "holding company" shall be construed in accordance with Article 2 of the Companies (Jersey) Law 1991;
- 1.2.9 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.2.10 annexes and schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the annexes and schedules hereto.

2 Pan Island Co-operation

- 2.1 The Harbour Master agrees that he shall in the application of this Agreement co-operate in good faith with the SoG so as to ensure, to the extent reasonably practicable, that the terms of this Agreement are applied in a consistent and uniform manner, subject to any Island specific issues, with any agreement, licence or commitment or indication of intent relating to the Services entered into or given by SoG such that the Operator has a consistent basis for service provision across the Channel Islands.
- 2.2 Subject to Recital (B) the Operator agrees that the commercial terms of the Guernsey Agreement will, save as set out in this Agreement, be substantially in the form of this Agreement, subject to Guernsey specific legislative requirements and, in particular, it is understood that SoG will provide a reciprocal obligation to that set out in clause 2.1 in the Guernsey Agreement. Without prejudice to the generality of the foregoing, the Operator agrees that the Guernsey Agreement shall not contain any provisions that would invalidate any provision of this Agreement, save with the Harbour Master's prior consent.

- 2.3 For the avoidance of doubt, any variation under clauses 16 (*Service Change Procedure*) or 17 (*Legislation and Change of Law*) or other change to the terms of this Agreement or the Guernsey Agreement shall be made with regard to the provisions of clauses 2.1 and 2.2 above.
- 2.4 The Parties acknowledge that some variation may be necessary in the Guernsey Agreement to reflect applicable Law in Guernsey, and the different commencement date of the Guernsey Agreement.

3 Condition Precedent

- 3.1 It shall be a condition precedent to commencement of this Agreement that the Operator shall procure the provision by the Operator's Parent Company to the Harbour Master of a letter undertaking that if, within the first two years from the Commencement Date, a Change of Control occurs in circumstances where the Operator's Parent Company realises a gain on its total investment in the Operator, the Operator's Parent Company shall make a payment to the Treasurer of the States of Jersey of an amount equal to 3% of such gain (in equity value at the time of such Change of Control) and a payment to the Treasurer of the States of Guernsey of an amount equal to 2% of such gain (in equity value at the time of such Change in Control).
- 3.2 The letter of undertaking to be provided pursuant to clause 3.1 shall be substantially in the form set out in schedule 6.

4 Provision of Services

- 4.1 The Harbour Master authorises the Operator, and the Operator agrees to provide the Services for the Duration and on the terms and subject to the conditions of this Agreement.
- 4.2 This Agreement is entered into pursuant to Article 6 of the Regulations and is an 'agreement' for the purposes thereof.
- 4.3 Notwithstanding anything to the contrary in this Agreement, neither Party shall be required to do anything that would put it in breach of any agreements to which it is a party as at the Commencement Date.

5 Statutory Obligations

Save as otherwise expressly provided, the obligations of the Harbour Master under this Agreement are obligations of the Harbour Master in his capacity as a contracting counterparty and nothing in the Agreement shall in any way fetter or constrain the Harbour Master's statutory powers or be treated as restraining, fettering, constraining or prejudicing SoJ from acting in its function as the government of Jersey or from exercising any statutory or regulatory function, right, power or obligation.

6 Duration

- 6.1 This Agreement shall take effect on the Commencement Date and shall, subject to clauses 6.3 and 6.4 (as applicable), become capable of termination on the seventh anniversary of the Commencement Date (the "**Wind Down Date**") unless it is otherwise terminated in accordance with this Agreement.
- 6.2 The Parties agree that, no later than 12 months before the Wind Down Date, they shall arrange meetings to discuss provision of Ferry Services to Jersey and Guernsey beyond the term of this Agreement.
- 6.3 If no proposals have been agreed pursuant to clause 6.2 by the Wind Down Date, an Exit and Run Off Plan will be implemented to start from the Wind Down Date unless the Parties agree otherwise.
- 6.4 If proposals have been agreed pursuant to clause 6.2 by the Wind Down Date, the term of this Agreement shall automatically be extended for an additional three years ending on the tenth anniversary of the Implementation Date. For the avoidance of doubt, unless the Parties otherwise agree or unless terminated earlier in accordance with this Agreement, this Agreement shall expire automatically on the tenth anniversary of the Implementation Date.
- 6.5 Notwithstanding Regulation 5(8) of the Regulations, the Parties have agreed that, alongside this Agreement, a ramp permit (the "**First Ramp Permit**") will be issued to the Operator by the Harbour Master under Article 5 of the Regulations for the period from the Commencement Date until the Wind Down Date ("**Period 1**") and, unless this Agreement has been terminated in accordance with clause 27 (*Termination and Exit Measures*) prior to the Wind Down Date, a second ramp permit (the "**Second Ramp Permit**" and, together with the First Ramp Permit, the "**Ramp Permits**") will be issued on the Wind Down Date, to cover the remainder of the Duration ("**Period 2**").
- 6.6 Notwithstanding Regulation 5(8) of the Regulations, the First Ramp Permit shall be substantially in the form set out in schedule 5 or with such amendments, if any, as the Parties may agree from time to time.
- 6.7 Without prejudice to the generality of clause 6.6, the Second Ramp Permit shall be substantially in the form of the First Ramp Permit (except as the Parties may otherwise agree) save that, in the event that the Parties are unable to reach agreement on the long term provision of ferry services to the Channel Islands prior to the end of Period 1, the Second Ramp Permit shall contain such additional terms as may be reasonably necessary to reflect the implementation of an Exit and Run Off Plan in accordance with clause 6.3.
- 6.8 For the avoidance of doubt, in the event that either Ramp Permit is withdrawn, revoked or otherwise amended at any time, or any designation made pursuant to the Regulations is amended at any time, such withdrawal, revocation or amendment shall not have any effect on the rights or obligations of any Party under this Agreement and, for the avoidance of

doubt, if any Permit at any time imposes obligations on the Operator beyond those contained in this Agreement, this shall constitute a material breach of this Agreement for the purposes of clause 27.

- 6.9 The Parties agree that, in the event that the Austal 270 is not deployed on the Northern Route by the date that is 18 months from the Commencement Date, this Agreement may at the option of any Party be rescinded without liability for either Party.

7 New Entrants

- 7.1 In the event that a Prospective Entrant wishes to provide any Relevant Services from time to time the Harbour Master agrees that it shall be a condition of granting any authorisation to provide such services that:

7.1.1 such Prospective Entrant commits to providing all Designated Services across all Sectors and in accordance with the Service Requirements;

7.1.2 such Prospective Entrant shall be required to demonstrate that it is able and willing to commit to providing such services on a long term basis and to the standard required by the States;

7.1.3 such Prospective Entrant shall be required to enter into an agreement in a substantially similar form to this Agreement; and

7.1.4 without fettering the Harbour Master's statutory powers, any permit or other authorisation issued to such Prospective Entrant pursuant to the Regulations shall be substantially similar to the Ramp Permits,

provided that the foregoing requirements may be temporarily waived by the Harbour Master where it is reasonably necessary for an Emergency Event in accordance with clause 7.3.

- 7.2 For the avoidance of doubt, where an Entrant commences the provision of the Designated Services, only the terms and conditions set out in this Agreement, and not any subsequent amendments/variations made thereafter, shall be applicable to such Entrant.

- 7.3 The Harbour Master will not proactively seek or encourage a Prospective Entrant to offer the Designated Services except in an Emergency Event where the Operator has demonstrated that it is unable to properly respond to it, or in the event the Harbour Master has reasonable grounds for believing that the Operator will no longer be able to properly respond to such Emergency Event.

- 7.4 Notwithstanding anything to the contrary in this Agreement, where an Entrant commences the provision of the Designated Services, regardless of whether such Entrant subsequently ceases to provide any such services the Operator may revert to the Base Schedule in order to compete and shall no longer be required to comply with the Minimum Service Schedule for the remainder of the Duration.

8 Service Requirements

- 8.1 For the Duration of this Agreement, the Operator shall provide the Designated Services in accordance with the Service Requirements.
- 8.2 There shall be no change to the Service Requirements save pursuant to clauses 16 (*Service Change Procedure*) and 17 (*Legislation and Change of Law*) except that, during an Emergency Event, the Harbour Master may suspend all or part of the Service Requirements for the duration of the Emergency Event.

9 Comprehensive Service Review

- 9.1 The Operator acting in good faith and in co-operation with the Harbour Master shall, in accordance with this clause, undertake periodic Comprehensive Service Reviews covering:
- 9.1.1 the strategic needs of the States as regards to ferry services (having regard to any market consultation);
- 9.1.2 the alignment of the Services offered by the Operator, including product, price and service structure, with such strategic needs; and
- 9.1.3 Operator performance (by reference to the Performance Measures),
- in each case as against the then current financial model for the Services, which may accommodate key alternative economic and service assumptions (a "**Comprehensive Service Review**").
- 9.2 The outcome of each Comprehensive Service Review shall be presented to the FSSG.
- 9.3 A Comprehensive Service Review must be conducted:
- 9.3.1 by 31 January 2017; and
- 9.3.2 by 31 January 2019.
- 9.4 For the avoidance of doubt, any changes suggested as a result of a Comprehensive Service Review shall only be implemented in accordance with the Service Change Procedure.
- 9.5 The Harbour Master shall share his plans and proposals in respect of any proposed or anticipated investment into the ports of Jersey (including but not limited to infrastructure development and the entire experience of the end to end customer journey to and from either port that impacts the provision of the Services) in order to optimise customer experience throughout the Duration.
- 9.6 The terms of reference for each Comprehensive Service Review, to include process, criteria and costs, shall be mutually agreed by the Parties prior to each Comprehensive Service Review.

10 Performance Measures

- 10.1 The Parties have agreed a set of operational and customer Performance Measures to monitor the Operator's performance of the Services.
- 10.2 Any proposed amendments to the Performance Measures shall, subject to anything to the contrary in this Agreement, be agreed in accordance with the Service Change Procedure.
- 10.3 No Fault Events will be measured separately, but nothing shall be taken to be a breach of the Performance Measures to the extent that, directly or indirectly, it is caused by the occurrence of a No Fault Event.
- 10.4 The Parties will work together in good faith to develop any further key performance indicators that are relevant to the operation of the Services and these will operate as non-binding reference tools for monitoring, consultation and review purposes.

11 Re-Tonnaging and Maintenance

- 11.1 Any replacement vessel introduced to the Fleet from time to time must be capable of meeting the Service Requirements (by reference to the Performance Measures) and providing services on the relevant Sector in accordance with the Services Requirements.
- 11.2 Any re-tonnaging plans from time to time will be discussed with the FSSG.
- 11.3 All vessels in the Fleet will comply with any national and international legislation, class and any other agency standards for deployed vessels for the Duration.
- 11.4 The Operator, acting as a Prudent Operator, shall design and schedule its vessel maintenance programme (the "**Vessel Maintenance Programme**") so as to ensure, with all reasonable foresight, provision of the Services in accordance with the Performance Measures. Without prejudice to the foregoing, it is agreed that each vessel may be withdrawn from service from time to time for planned maintenance or modification as part of the Vessel Maintenance Programme and, whilst it is so withdrawn, the related Performance Measures will be suspended for the duration of such maintenance or modification (as set out in the Vessel Maintenance Programme) and it is understood that any chartered replacement vessel might not have the same capability.
- 11.5 The FSSG will review the Vessel Maintenance Programme for the Fleet annually at the same time as it reviews the Operator's proposed schedules pursuant to annex 1 paragraph 8. The Operator shall provide the FSSG with periodic updates on major vessel capital investment.
- 11.6 The Operator agrees to ensure that a fleet capable of providing the Services shall be maintained by the Operator. Accordingly, SoJ and SoG expect that reasonable investment will be made by the Operator from time to time consistent with a 60 year horizon to ensure that the average age of assets is maintained at least at 25% of their economic life (as identified in schedule 4). The sole purpose of such a requirement is to ensure that the

Operator invests sufficient capital to ensure that a modern, safe and environmentally friendly fleet operates within the Channel Islands.

11.7 The current vessel commitment of the Operator is:

- Condor Rapide
- Condor Vitesse
- Condor Express
- Commodore Clipper
- Commodore Goodwill

11.8 The Parties acknowledge that the Operator will replace Condor Express and Condor Vitesse with the Austal 270, but only once the Austal 270 is fully deployed.

11.9 In the event of a breakdown or maintenance, the Operator, acting as a Prudent Operator, may use an alternative vessel or vessels as temporary backup subject to normal Harbour Master approvals, including vessel size and health and safety requirements and the Operator shall use its reasonable endeavours to ensure that any such vessels are capable of complying with the Service Requirements so far as reasonably practicable.

12 Tramlines

12.1 The Operator's profitability and efficiency shall be measured by reference to ROACE in accordance with this clause.

12.2 By 31 July in each year, the Operator shall calculate/estimate (as the case may be) Historic ROACE, Current ROACE and Forecast ROACE and provide its calculations/estimates to the FSSG for review.

12.3 Without prejudice to the generality of the foregoing, the Operator shall on a quarterly basis provide an estimate of Quarterly ROACE to the FSSG for information only.

12.4 The Operator shall use all reasonable endeavours to ensure that each ROACE Calculation remains within the Upper Tramline and the Lower Tramline.

12.5 In the event that any ROACE Calculation rises above the Upper Tramline or falls below the Lower Tramline in any year:

12.5.1 the Operator and the FSSG shall meet to consult as soon as practicably possible and in any event within two weeks of the date the relevant ROACE Calculation is made;

12.5.2 within two weeks of such consultation the Operator shall provide the FSSG with its written recommendations for bringing such ROACE Calculation within the Tramlines, including:

- (a) where a ROACE Calculation rises above the Upper Tramline, by increasing schedules or reducing prices; and
- (b) where a ROACE Calculation falls below the Lower Tramline, by reducing schedules or increasing prices;

12.5.3 the Harbour Master, acting reasonably and following consultation with the FSSG, shall be entitled, within one month of receipt of such recommendations, to make such reasonable additional recommendations as he sees fit (and the Operator shall include such additional recommendations within its remediation proposals where it is reasonably practicable to do so); and

12.5.4 within a further period of one month the Operator shall implement its proposals for bringing the ROACE Calculation within the Tramlines (including any recommendations adopted pursuant to clause 12.5.3).

12.6 The Operator shall use its reasonable endeavours to ensure that end users of goods receive the benefit of any reduction to freight pricing pursuant to clause 12.5.2(a) to the extent that it is reasonably within the Operator's power to do so.

12.7 In circumstances where Historic ROACE calculated in accordance with clause 12.2 is above the Upper Tramline for two successive financial years of the Operator, the Harbour Master shall be entitled to terminate this Agreement in accordance with clause 27 (*Termination and Exit Measures*).

13 Passenger and Private Vehicle Prices

13.1 Maximum prices (the "**Maximum Prices**") for passenger pricing shall apply to ensure that non-freight customers are not disadvantaged unduly by the grant of a long term commitment given by the Harbour Master to the Operator to provide the Services.

13.2 As at the Commencement Date, Maximum Prices shall be set in accordance with the Operator's existing price thresholds.

13.3 Maximum Prices shall be revised each year in accordance with existing custom and practice and a summary of price revisions for the last three years is set out in schedule 2.

14 Freight Prices

14.1 Maximum freight prices will be subject to a published tariff board (the "**Freight Tariff Board**") made available to all freight customers from time to time and, as at the Commencement Date, the Freight Tariff Board shall be set in accordance with the Operator's existing freight prices.

14.2 The Freight Tariff Board shall be revised from time to time in accordance with existing custom and practice and a summary of price revisions for the last three years is set out in schedule 3.

15 Governance

15.1 A ferry services steering group (the "**FSSG**") shall be set up to review the operation of this Agreement, the Operator's provision of the Services and to provide a forum for discussion. For the avoidance of doubt, the FSSG shall not have any power to bind the Parties or to require any action to be taken, or ceased, in connection with this Agreement.

15.2 The FSSG will be made up of four senior authorised officers from the States (two to represent the SoJ and two to represent the SoG) plus up to three directors of the Operator.

15.3 The Chairmanship of the FSSG will rotate on an annual basis between representatives for the SoG and the SoJ. Meetings of the FSSG shall be held at least quarterly.

15.4 Any proposed amendments to this Agreement shall, subject to anything to the contrary in this Agreement, be agreed in accordance with the Service Change Procedure.

16 Service Change Procedure

16.1 Either Party may, upon notice to the other Party, make changes to or under this Agreement which:

16.1.1 are permitted under the terms of this Agreement;

16.1.2 have no material impact upon the provision of the Services in accordance with this Agreement; or

16.1.3 are reasonably necessary from time to time in order to comply with:

(a) a Change in Law (subject to the provisions of clause 17 (*Legislation and Change of Law*)); or

(b) the Service Requirements.

16.2 Where any Party wishes to introduce a variation, other than pursuant to clause 16.1, it must comply with the procedures set out in annex 5 (*Service Change Procedure*). This shall be without prejudice to the rights of the Harbour Master to make temporary changes in accordance with the terms of this Agreement, in particular during an Emergency Event.

17 Legislation and Change of Law

17.1 The Operator shall ensure that in providing the Services it complies with all applicable current and future Laws that may come into force from time to time.

17.2 If a Specific Change in Law occurs or will occur during the Duration the Operator shall notify the Harbour Master of the likely effects of that change, including whether any change

is required to the terms of this Agreement as a result of such change (including the Service Requirements or Performance Measures).

- 17.3 As soon as practicable after any notification in accordance with clause 17.2, the Parties shall discuss the matters referred to in that clause and any ways in which the Operator can mitigate the effect of the Specific Change of Law, including providing evidence that the Operator has taken reasonable steps to minimise any increase in costs or maximise any reduction in costs, including in respect of the costs of its subcontractors.
- 17.4 Following consultation in accordance with clause 17.3, the Operator shall be entitled to implement any necessary change for a Specific Change of Law in accordance with clause 16.1.3 (*Service Change Procedure*).

18 Change of Control

- 18.1 For the purposes of this clause:

Change of Control

means, in relation to a body corporate, that a person (whether corporate or otherwise) becomes beneficially interested (directly or indirectly) in more than fifty per cent (50%) of the voting shares and securities of such body corporate or acquires the right (directly or indirectly) to appoint a majority of the members of the board of directors of such body corporate or otherwise to direct the management of such body corporate;

Fit and Proper Person

means a fit and proper person (whether corporate or otherwise), which shall include:

- (a) any fund or investment entity managed or advised by any member of the Macquarie Group;
- (b) a financial investor or investors which, either directly or through a professional fund manager, is or are regularly engaged in making investments in infrastructure or maritime assets; or
- (c) an industrial sponsor or sponsors for whom maritime trade is a key focus of activity,

and shall include the beneficial owner or owners of any transferee that is a holding company; and

Macquarie Group

means Macquarie Group Limited and any holding company of Macquarie Group Limited or any

subsidiary of Macquarie Group Limited or such holding company.

18.2 This Agreement shall continue in force following a Change of Control of the Operator provided that the Operator will after such Change of Control be controlled by a Fit and Proper Person that has expressed an intention to continue to support the Operator's provision of the Services, and is able to continue to meet the requirements of the Agreement for the Duration in all material respects.

19 Benchmarking

19.1 The Harbour Master may, at his own cost, from time to time carry out a benchmarking review to assess the performance of the Operator under this Agreement as against the performance that would be expected of a Prudent Operator.

19.2 The purpose of each such benchmarking review shall be made clear to the Operator.

19.3 The Harbour Master shall set out to the FSSG, using a reasonable timeframe, his recommendations for improvements in service following any such benchmarking review and any such changes shall be considered pursuant to the Service Change Procedure.

19.4 The FSSG shall use the results of any benchmarking under this clause as a tool to monitor the Operator's performance of obligations under this Agreement.

20 Information

20.1 All financial information and performance information shall be subject to the provisions of clause 21 (*Confidentiality*).

20.2 The Parties will share data and information as reasonably appropriate to aid the Services and/or encourage tourism to the Channel Islands.

21 Confidentiality

21.1 No Party shall use any other Party's Confidential Information for any purpose other than for a reason related to its obligations under this Agreement. Each Party shall treat all Confidential Information belonging to the other as confidential and safeguard it accordingly.

21.2 No Party shall disclose any Confidential Information to a third party except:

21.2.1 to its employees, officers, representatives or advisers for the purposes of carrying out that Party's obligations under this Agreement, and each Party shall ensure that its employees, officers, representatives or advisers shall not disclose such Confidential Information save in accordance with this clause;

21.2.2 in the case of the Operator, to its lenders and their advisers provided that such disclosure is made subject to a written undertaking on the part of the recipient (and its employees, officers and advisers) to keep such information confidential;

21.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

21.2.4 where such information is or becomes public knowledge (otherwise than by breach of this clause);

21.2.5 where such information was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

21.2.6 where such information is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

21.2.7 where such information is independently developed without access to Confidential Information; or

21.2.8 subject to clause 23, information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Code of Practice on Public Access to Official Information or the Freedom of Information (Jersey) Law 2011 pursuant to clause 23 (*Freedom of Information*).

21.3 Nothing in this clause shall prevent the Harbour Master disclosing any Confidential Information for the purpose of:

21.3.1 the examination and certification of the SoJ's accounts; or

21.3.2 any examination pursuant to Article 36 of the Public Finances (Jersey) Law 2005 of the economy, efficiency and effectiveness with which the Authority has used its resources;

provided that in making such disclosure the Harbour Master discloses only the information which is strictly necessary for the purpose concerned, informs the Operator in writing prior to such disclosure and requires that the information is treated in confidence and that a written confidentiality undertaking is given by the recipient of such information in such form as the Operator may require.

21.4 The Parties acknowledge that some variation to this clause may be necessary in the Guernsey Agreement to reflect applicable Law in Guernsey. Nothing in this clause shall prevent the disclosure of information between SoJ and SoG (whether via the FSSG or otherwise) for the purposes of any matter connected with this Agreement or the Guernsey Agreement.

21.5 The provisions of this clause shall apply during the continuance of this Agreement and for twelve years after its expiry or termination.

22 Data Protection

- 22.1 The Operator shall (and shall procure that any of its employees involved in the provision of services under this Agreement) comply with any notification requirements under the Data Protection (Jersey) Law 2005 (the "**DPL**") and all Parties will duly observe all their obligations to the extent applicable under the DPL which arise in connection with this Agreement.
- 22.2 The provisions of this clause shall apply during the continuance of this Agreement and twelve years after its expiry or termination.

23 Freedom of Information

- 23.1 The Operator acknowledges that the Harbour Master is or may become subject to freedom of information legislation or guidance in Jersey, including the requirements of the Access to Information Guidelines and the Freedom of Information (Jersey) Law 2011 (the "**FoI Requirements**").
- 23.2 The Harbour Master shall liaise with the Operator to determine whether Confidential Information:
- 23.2.1 is exempt from disclosure; or
- 23.2.2 is required to be disclosed,
- in accordance with the FoI Requirements.
- 23.3 Notwithstanding the foregoing and to the extent permissible by law, the Harbour Master shall not disclose Confidential Information save with the prior consent of the Operator or following a final and binding direction to do so by any court of competent jurisdiction.

24 Publicity, Media and Official Enquiries

- 24.1 No Party shall make any press announcements or publicise this Agreement or any part thereof in any way, without consulting the other Party.
- 24.2 Each Party shall take all reasonable steps to ensure the observance of the provisions of clause 24.1 by all their servants, employees, agents, professional advisors and consultants. The Operator shall take all reasonable steps to ensure the observance of the provisions of clause 24.1 by its sub-contractors.
- 24.3 The provisions of this clause shall apply, subject to clause 21 (*Confidentiality*), during the continuance of this Agreement and indefinitely after its expiry or termination.

25 Contingency Plan

- 25.1 A draft generic contingency plan for the Services following the occurrence of a Disruption Event is set out in schedule 1 (the "**Generic Contingency Plan**") and the Operator shall

update such draft contingency plan periodically to reflect any changes to the Fleet or the Operator's provision of the Services.

25.2 Following the occurrence of, and for the duration of, a Disruption Event:

25.2.1 the Operator shall, as soon as is reasonably practicable having regard to the circumstances and the nature of the relevant Disruption Event, consult with the FSSG, SoG and the Harbour Master regarding its proposed Contingency Plan (provided that this requirement shall not delay the implementation of the Contingency Plan where, in the reasonable opinion of the Operator, any delay in such implementation would adversely affect its provision of the Services) and provide a copy to the FSSG as soon as reasonably practicable;

25.2.2 the Operator acting reasonably shall be entitled to implement such alternative schedule as a Prudent Operator would deem appropriate having regard to the nature of the relevant Disruption Event (an "**Alternative Schedule**");

25.2.3 subject to clause 25.3 below, the Performance Measures shall be suspended for a period of one week to allow the Operator to implement such Alternative Schedule; and

25.2.4 upon the implementation of such Alternative Schedule, the application of the Performance Measures shall resume by reference to such Alternative Schedule.

25.3 Without prejudice to the generality of the foregoing and notwithstanding anything to the contrary in this Agreement or any Ramp Permit, it is agreed that a Contingency Plan may, if it is reasonable to do so, permit the Operator to meet its obligations on a given Sector using alternative vessels or a combination of vessels (with appropriate amendments to the applicable Service Requirements) or to charter a vessel and it is understood that it may not be possible to charter a vessel with the capability required under the Service Requirements.

25.4 Within a reasonable period of time after the implementation of an Alternative Schedule, the Parties shall in good faith undertake reasonable retrospective testing of whether such Alternative Schedule is reasonable in the circumstances (and having regard to the Prudent Operator Test) and, in the event that such Alternative Schedule is found to be unreasonable in the circumstances (having regard to the Prudent Operator Test):

25.4.1 the Operator may continue to operate such Alternative Schedule, but shall not be exempted from the Performance Measures for the purposes of clauses 25.2.3 and 25.2.4 above and the relevant records of the Operator's performance during such time shall be amended accordingly; or

25.4.2 the Parties acting reasonably shall negotiate in good faith to agree a revised Alternative Schedule, in which case the provisions of clauses 25.2.3 and 25.2.4 shall apply,

but any failure to meet the Performance Measures as a result of the application of clause 25.4.1 shall not be counted towards a Termination Trigger Event save where the Operator fails to return to the normal schedule within a reasonable period of time (having regard to the nature of the relevant Disruption Event).

25.5 Upon the occurrence of a Disruption Event, the Operator shall use all reasonable endeavours to keep any disruption to the Services to a minimum having regard to the circumstances and the nature of the event.

25.6 Where a Contingency Plan is put in place, the Operator shall liaise with the FSSG as appropriate to resolve the applicable issues and return to normal service levels and scheduling in accordance with this Agreement as quickly as possible.

26 Remediation

26.1 Where a Remediation Event occurs, the applicable Remediation Level will be applied and implemented by reference to the table set out in Part B of annex 3 (*Remediation Process*) (the "**Remediation Process Table**") save as otherwise agreed between the Parties.

26.2 Following the occurrence of a Remediation Event that requires a Level 4 response in accordance with annex 3 and the Remediation Process Table, the Operator shall, within a reasonable period of time having regard to the nature of the relevant Remediation Event, provide the Harbour Master and the FSSG with a draft written proposal for remediating the cause of such Remediation Event, (or where such event has been remediated, what action was taken to do so), that is appropriate having regard to the nature of the relevant Remediation Event (a "**Remediation Plan**").

26.3 The Operator shall take account of any reasonable comments made by the other Party on the draft Remediation Plan.

26.4 Following the finalisation of a Remediation Plan, the Operator shall implement such Remediation Plan in accordance with its terms.

26.5 For the avoidance of doubt the occurrence of a Termination Trigger Event shall not give rise to a right to terminate this Agreement insofar as the Operator has implemented and is following an agreed Remediation Plan.

27 Termination and Exit Measures

27.1 Upon the occurrence of a Termination Event, this Agreement may be terminated by written notice by any Party not in default in accordance with the process below.

"**Termination Event**" means:

- A) a "**Financial Distress Event**" in relation to the Operator has occurred, this being where:

1. the Operator is put into liquidation or becomes bankrupt, has a winding up order made (except for genuine amalgamation or reconstruction), or becomes insolvent (including being unable to pay its debts as they fall due (within the meaning of the Bankruptcy (Désastre) (Jersey) Law 1990) or has liabilities greater than assets), is in material unremedied breach (having regard to the provisions of clause 27.2) of any of its banking covenants or thresholds, or takes any informal or voluntary step in relation to the above or with its creditors related to such state of affairs or the likely occurrence of such state of affairs if such steps were not taken;
 2. the Operator suffers any distress or execution levied upon a material part of the Operator's property or assets (tangible and intangible);
 3. the Operator appoints a receiver, administrator, administrative receiver or manager over the whole or any part of its assets, seeks to compound, compounds or makes any arrangement with its creditors; or
 4. the Operator suffers or initiates any analogous process to clauses A1 to A3 above in any jurisdiction;
- B) there is a Change of Control of the Operator not in accordance with clause 18.2 (*Change of Control*);
- C) either Party commits a "Material Breach", being where there has been a material breach (having regard to the provisions of clause 27.2) of any of the provisions of this Agreement, or a series of persistent breaches which amounts to a material breach which is not related to the Performance Measures;
- D) a Termination Trigger Event occurs (subject to the provisions of clause 26.5 (*Remediation*));
- E) a Force Majeure event which is particular to the Operator and would not reasonably be expected to affect another operator of Services continues for more than 20 weeks provided that this paragraph E) shall not constitute a Termination Event where the Operator has implemented a Contingency Plan in response to such Force Majeure event and any Alternative Schedule in respect of such Force Majeure event has not been found to be unreasonable pursuant to clause 25 (*Contingency Plan*);
or
- F) Historic ROACE calculated under clause 12.2 (*Tramlines*) is above the Upper Tramline for two successive financial years.

27.2 Following the occurrence of a Termination Event, the Party not under a Termination Event will allow a reasonable period of time for the Party under a Termination Event (the "**Defaulting Party**") to remediate having regard to the nature of such Termination Event and by reference to the Prudent Operator Test.

- 27.3 Where a Termination Event has not been remedied in accordance with clause 27.2:
- 27.3.1 this Agreement may be terminated with immediate effect by a Party not in default; or
- 27.3.2 a Party not in default may give written notice to the Defaulting Party requiring the implementation of an Exit and Run Off Plan.
- 27.4 For the avoidance of doubt, this Agreement shall remain in full force and effect for the duration of any Exit and Run Off Plan save as may be varied in such Exit and Run Off Plan with the consent of both Parties.
- 27.5 Termination shall be without prejudice to the rights that have accrued to each Party prior to termination save that in the event of a Force Majeure event costs shall fall where they lie.

28 Force Majeure

- 28.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure event (the "**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 28.2 The Affected Party shall:
- 28.2.1 as soon as reasonably practicable after the start of the Force Majeure event, notify the other party of the Force Majeure event, the date on which it started, the likely or potential duration, and the effect of the Force Majeure event on its ability to perform any of its obligations under this Agreement; and
- 28.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure event on the performance of its obligations.

29 Liability

- 29.1 Neither Party excludes or limits liability to any other Party to the extent that such liability may not be so limited under any applicable law including as a result of fraud, fraudulent misrepresentation and death or personal injury caused by a Party's negligence or that of its employees, contractors, agents or other persons for whom that Party is responsible.
- 29.2 The provisions of this Agreement have been negotiated and agreed on the basis that the Parties may limit their liability to each other as set out in this Agreement and the Parties each confirm that they will themselves bear, or insure against, any loss for which the other Party has limited its liability under this Agreement.
- 29.3 Subject always to clause 29.1 and without prejudice to the non-financial obligations of the Parties to remedy any breach of this Agreement, including as set out in clause 26 (*Remediation*) and clause 27 (*Termination and Exit Measures*), the Parties agree that:

29.3.1 in the event of a material breach of this Agreement other than the Core Clauses, liability of either Party (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed the sum of £5,000,000 (Five Million Pounds Sterling); and

29.3.2 in the event of a material and wilful breach of a Core Clause, liability of either Party (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed the maximum amounts set out below (the "**Liability Cap**"):

Date of breach of Core Clause	Liability Cap
Breach prior to third anniversary of Implementation Date	£20,000,000 (Twenty Million Pounds Sterling)
Breach prior to seventh anniversary of Implementation Date	£15,000,000 (Fifteen Million Pounds Sterling)
Breach prior to tenth anniversary of Implementation Date	£5,000,000 (Five Million Pounds Sterling)

29.4 For the purposes of the table set out in clause 29.3.2 above, the date of breach shall be determined by the Party alleging breach, acting reasonably.

29.5 Notwithstanding the other rights or remedies that either Party may have under this Agreement (including but not limited to clause 29.3 above), the Parties acknowledge that damages alone may not be an adequate remedy for a breach of the Core Clauses. Accordingly, in the event of such breach either Party shall be entitled to the remedy of injunction or other equitable relief for any actual or threatened breach of the Core Clauses.

29.6 Subject always to clause 29.1, in no event shall any Party be liable to the other for indirect or consequential loss or damage.

30 Insurance

30.1 The Operator shall effect and maintain with a reputable insurance company a policy of insurance which, as a minimum, complies with the requirements set out in paragraph 12 of annex 1.

30.2 The Operator shall produce to the Harbour Master, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

30.3 If, for whatever reason, the Operator fails to give effect to and maintain the insurances required by this Agreement, the Harbour Master may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Operator.

30.4 The terms of any insurance or the amount of cover shall not relieve the Operator of any liabilities under this Agreement.

31 Assignment and Sub-Contracting

31.1 Subject to clause 31.2, no Party shall assign, sub-contract or in any other way dispose of this Agreement or any part of it without prior approval of the other Party provided that nothing in this clause shall prevent the Operator from chartering a vessel on a time charter or bare-boat charter basis for the purposes of performing its obligations under this Agreement.

31.2 Clause 31.1 shall not apply to any assignment of the benefit of this Agreement for the purposes of granting any security for a loan made to the Operator in relation to the Services and which is consistent with the terms of this Agreement or to any novation or assignment regarding public sector restructuring pursuant to which applicable powers or responsibilities of the Harbour Master are transferred to another officer of SoJ, or to another public body within SoJ or pursuant to a change of Law.

31.3 Sub-contracting any part of this Agreement shall not relieve the Operator of any obligation or duty attributable to the Operator under this Agreement. The Operator shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

32 Remedies, waivers, and consents

32.1 A waiver of any right or remedy under this Agreement or by law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting Party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the Party giving it from subsequently relying on the relevant provision.

32.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

32.3 The rights and remedies provided under this Agreement are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

33 Industrial Action

33.1 The Operator shall immediately inform the Harbour Master and the FSSG of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform the Operator's obligations under this Agreement. In the event of industrial action either by employees of the Operator or by the

employees of the Operator's suppliers or service providers, the Operator shall keep the Harbour Master and the FSSG fully informed as to negotiations and developments.

- 33.2 If the Operator is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business and provided the Operator has used all reasonable endeavours to investigate the effect or resolve such industrial action (to a standard expected of a Prudent Operator), the Harbour Master shall make an appropriate temporary variation to the Performance Measures to ensure that the Operator is not in breach of any part of this Agreement as a result of such disruption.
- 33.3 In the event that the Harbour Master deems industrial action as an Emergency Event, he/she may solicit other operator(s) to provide the Services on a temporary basis and until such time as the industrial action ceases to the extent if any that the Operator is unable to provide alternative provisions.

34 Entire Agreement

- 34.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

35 Scope of Agreement

- 35.1 Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between either of the Parties.

36 Notices

- 36.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.
- 36.2 Any notice or other communication which is to be given by one Party to the another shall be given by letter (sent by hand, post, registered post or by recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed in the manner referred to below. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 business days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 36.3 For the purposes of clause 36.2, the address of each Party shall be:

36.3.1 (a) For the Harbour Master:

Jersey Harbours
Maritime House
La Route Du Port Elizabeth
St. Helier
Jersey JE1 1HB

For the attention of: The Harbour Master

Tel: 01534 447788

36.3.2 For the Operator:

New Jetty Offices, White Rock, St. Peter Port, Guernsey GY1 2LL

For the attention of: the Chief Executive Officer

Tel: 01481 728620

36.4 Either Party may change its address for service by serving a notice in accordance with this clause.

37 Third Party Rights

37.1 Without prejudice to clause 2 (*Pan-Island Cooperation*), except as expressly provided in this Agreement, the rights of the Parties to rescind or agree any amendment or waiver of this Agreement are not subject to the consent of any other person and no other persons may enforce this Agreement.

38 Governing Law and Jurisdiction

38.1 The law of Jersey shall govern the validity construction and performance of this Agreement.

38.2 All disputes, claims or proceedings between the parties relating to the validity construction or performance of this Agreement shall, subject to clause 39 (*Dispute Resolution*), be subject to the exclusive jurisdiction of the Royal Court of Jersey.

39 Dispute Resolution

39.1 Any dispute that arises between the Parties as to this Agreement or the performance of the Parties' respective obligations under this Agreement shall first be referred to the FSSG for discussion and, if possible, resolution.

39.2 During any dispute, including a dispute as to the validity of this Agreement, and during any period of negotiation and or mediation, it is mutually agreed that the Operator shall continue its performance of the provisions of this Agreement (unless the Parties agree otherwise).

39.3 If the FSSG fails to resolve the dispute then either Party, by notice in writing to the other, may enter into an alternative Dispute Resolution Procedure in accordance with clauses 39.4 - 39.7 (the "**Dispute Resolution Procedure**").

- 39.4 Recourse to the Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for each Party's rights to seek interlocutory relief in the courts, neither Party may commence legal proceedings under the jurisdiction of the courts until 21 days after the Parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 39.5 The mediation shall be conducted in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") latest Model Mediation Procedure. To initiate mediation the Parties may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The Parties shall use all reasonable endeavours to ensure that the mediation commences within 28 days of the Mediation Notice being served. The Parties will co-operate with any Person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.
- 39.6 If with the assistance of a mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representatives of the parties, shall remain binding on the Parties.
- 39.7 The Parties shall bear their own legal costs of the Dispute Resolution Procedure but the costs and expenses of the mediation shall (in the absence of agreement in the mediation to the contrary) be borne by the Parties equally.
- 39.8 In the event that the dispute is not settled by mediation either Party shall have a right to refer any dispute in connection with this Agreement to an independent expert (the "**Expert**") who shall be nominated in the absence of agreement, on the application of either Party, by the President for the time being of the Law Society of Jersey.
- 39.9 The Expert shall provide a written decision within 28 days and the Expert's written decision on the matters referred to him shall be final and binding on the Parties in the absence of manifest error or fraud.
- 39.10 The Parties shall be entitled to make written submissions to the Expert and shall provide the Expert with such assistance and information as the Expert reasonably requires for the purposes of reaching a decision. The Expert shall be entitled to seek advice from third parties in respect of the matter under consideration. The Expert shall act as an expert and not as an arbitrator and shall have full regard to the terms of this Agreement. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties equally or in such other proportions as the Expert shall direct. However the Expert may

direct that any legal costs and expenses incurred by a Party in respect of the determination shall be paid by the other Party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs.

39.11 No Party shall have recourse to legal action until such time as the dispute resolution process has come to an end.

39.12 There shall be no appeal from the Expert's decision except on a point of law or in the case of fraud or manifest error.

40 Counterparts

40.1 This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

40.2 No counterparts shall be effective until each Party has executed at least one counterpart.

IN WITNESS WHEREOF the Parties have signed this Agreement in the presence of the undersigned witnesses the day and year first above written.

The Harbour Master of Jersey)
)
)

For and on behalf of Condor)
Limited)
)

Director/Company Secretary

ANNEX 1 – SERVICE REQUIREMENTS

1. Introduction

The States of Guernsey and States of Jersey have agreed a common aim for sea links, namely:-

To maintain and develop year round, long-term, reliable, robust and reasonably priced roll on/roll off passenger, car and freight ferry services. These services should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.

2. Current Service Provision

- 2.1 As at the Commencement Date, the Northern Route (currently Portsmouth, Poole and Weymouth) is of strategic importance to the Islands because it is the Islands' main freight supply and logistics link and is of particular importance given increasing reliance on "just in time" methods of provisions supply. The Northern Route is also of strategic importance to the Islands' visitor economy and local residents, i.e. what is in the main the 'leisure traveller'. The Northern Route is part of a network of services that extend from ports on the south coast of the UK Mainland to Guernsey, to Jersey and St Malo. It has been successfully served by a combination of High Speed Craft and conventional ferries, the latter including, as an essential requirement, a RoPax vessel that provides weather proofing.
- 2.2 The Southern Route (St. Malo) makes a substantial contribution to Jersey's visitor economy and a smaller, but nevertheless valuable contribution to Guernsey's as well as providing local residents with excellent lifestyle and leisure opportunities. Car and foot passenger services are served by High Speed Craft with heavy freight carryings being served by a conventional 'freight only' RoRo vessel.

3. Service Requirements

- 3.1 The Islands' requirements are not expected to substantially change in the foreseeable future, although achieving growth, particularly in the leisure market, is an ongoing aim. The Islands' needs will, therefore, continue to be best served through a service network delivered via a combination of vessels with the capability to provide the Designated Services in accordance with the service requirements set out in this annex 1 (the "**Service Requirements**"). In providing the Designated Services, any Provider will therefore be required to comply with the Service Requirements.
- 3.2 Any changes to the Service Requirements shall be made via the Service Change Procedure and such changes shall be deemed incorporated into the Service Requirements and shall apply to all Providers.

4. Routes

- 4.1 Every Provider shall provide Services on the Northern Route, whether or not respectively via Jersey or Guernsey.
- 4.2 Every Provider shall provide Services on the Southern Route, whether or not respectively via Jersey or Guernsey.
- 4.3 Any change in ports will be varied in accordance with the procedure set out in clause 16 (*Service Change Procedure*). Such approval shall not be unreasonably withheld or refused where the relevant Provider has taken reasonable steps to ensure port consistency and such change is necessary or desirable in connection with a No Fault Event including but not limited to any closure or inability to access a particular port.
- 4.4 A Provider may use an alternative port in an Emergency Event without prior approval, but only for the period of that Emergency Event. It is the responsibility of such Provider to notify the FSSG and the Harbour Master of any such Emergency Event with the minimum of reasonable delay.

5. Capability and Scheduling

- 5.1 For the purposes of this paragraph 5:

Annual Capacity Requirement means the highest Annual Volume on the relevant Sector over the preceding three calendar years and, as at the date of this Agreement, calculated by reference to annex 1, paragraph 13 (*Service Requirements – Current Annual Demand*);

Annual Volume means total volume carried on the relevant Sector during each calendar year, being as at the date of this Agreement as set out in annex 1, paragraph 13 (*Service Requirements – Current Annual Demand*) as provided by the Harbour Master;

Base Schedule the minimum number of Rotations per week to be operated in each Sector as a continuum from Winter Season to Peak Season, as set out in Table A below;

Capability means the minimum weather and operational capability of vessels deployed on this Sector;

Marine Regulator any competent body that regulates shipping from time to time; including but not limited to the Maritime and Coastguard Agency in the UK, the Affaires Maritimes in France and the relevant Channel Islands bodies

from time to time;

Maximum Journey Time

means the maximum time a Provider may take to provide the specified services on the relevant Sector;

Peak Capacity Requirement

means the highest Peak Volume on the relevant Sector over the preceding three calendar years and, as at the date of this Agreement, as set out in annex 1, paragraph 13 (*Service Requirements – Current Annual Demand*);

Peak Period

means, in respect of the relevant Sector, the period of four weeks in any calendar year during which volumes are highest; and

Peak Volume

means the total volume carried on the relevant Sector over a Peak Period, being as at the date of this Agreement as set out in annex 1, paragraph 13 (*Service Requirements – Current Annual Demand*).

- 5.2 Any Provider committing to provide the Designated Services will be obliged to do so across all Sectors in accordance with the minimum requirements set out below, including for the avoidance of doubt Table A, the Base Schedule and the Annual Average Volumes requirement set out below. Table A may be revised following each Comprehensive Service Review by mutual agreement between the Parties and in accordance with the Service Change Procedure.
- 5.3 The Base Schedule excludes the two weeks over Christmas and New Year, and over Bank Holidays, when this frequency reduces, but pursuant to a reasonable holiday schedule that is submitted to the FSSG in advance.
- 5.4 The Base Schedule may be superseded by any Contingency Plan.
- 5.5 The Designated Services must be provided in the most cost effective way possible without undermining the Service Requirements.
- 5.6 Any Provider committing to provide the Designated Services shall be required to commit a fleet of ships (including up-to-date permits for these ships) to perform the Service Requirements (including the Base Schedule) for the Duration (or remainder thereof).
- 5.7 Any Provider committing to provide the Designated Services must be capable of carrying at least the Annual Capacity Requirement and the Peak Capacity Requirement on each Sector in any given calendar year.

Table A

Sector	Maximum Journey Time	Base Schedule (Number of Rotations)		Capability	Other requirements
		Peak Season	Winter Season		
Northern Route Freight	Rotation UK-Channel Islands (Guernsey and Jersey)-UK in 24 hours (including loading time)	5 per week (RoRo)	5 per week (RoRo)	Capable of operations (including port manoeuvring) in at least 40 knots of wind Marine Regulator approved weather capability of at least 3.5m significant wave height	Vessels on this Sector must be capable of supplying adequate external power for at least 40 refrigerated vehicles
Northern Route Passenger & Vehicle	UK to Channel Islands (where a stop over in Guernsey within 5 hours including turnaround time at each port)	7 per week	2 per week	Marine Regulator approved weather capability of at least 3.5m significant wave height	Any Provider must be licensed by the Department for Environment, Food and Rural Affairs in the UK under the Pet Passport Scheme
Northern Route Lifeline – RoPax¹	Rotation UK – Channel Islands (Guernsey and Jersey) – UK in 24 hours including loading time	5 per week	5 per week	Capable of operations (including port manoeuvring) in at least 40 knots of wind Marine Regulator approved weather capability of at least 3.5m significant wave height	Any Provider must be licensed by the Department for Environment, Food and Rural Affairs in the UK under the Pet Passport Scheme
Southern Route Passenger & Vehicle	St. Malo – Jersey in 1.5 hours	12 Jersey – St. Malo direct per week	3 Jersey – St. Malo per week on different days	Marine Regulator approved weather capability of at least 3.5m significant wave height	Any Provider must be licensed by the Department for Environment, Food and Rural Affairs in the UK under the Pet Passport Scheme and

¹ These are additional to the Northern Route Freight sailings and cannot be satisfied by one sailing covering both Sectors

Sector	Maximum Journey Time	Base Schedule (Number of Rotations)		Capability	Other requirements
		Peak Season	Winter Season		
	St. Malo – Guernsey in 2.5 hours (in respect of direct sailings)	7 Guernsey – St. Malo direct per week)	2 Guernsey – St. Malo		also the French equivalent

6. Lifeline Service

- 6.1 Any Provider shall at all times (save as required from time to time for normal maintenance, repairs and refit requirements in accordance with clause 11 (*Re-Tonnaging and Maintenance*)) be required to include within its regular fleet on one or more Sectors at least one RoPax vessel that is capable of operating in all weathers to provide 'lifeline' services for the Channel Islands in the event of bad weather or other material disruption to normal scheduling (the "**Lifeline Service**").
- 6.2 Vessel(s) used to provide the Lifeline Service shall be certified to carry in the order of 400 passengers and be able to power in the order of 40 refrigerated vehicles

7. Applicable Laws

Any Provider shall ensure that the Services comply with all applicable current and future Law that comes into force from time to time. This includes any low sulphur emissions regulations which are due to come into force whilst this Agreement is in force.

8. Schedule Submission and Publication

- 8.1 In each year, every Provider shall, at or before the time that it submits its pricing proposals to the FSSG, provide the FSSG and the Harbour Master with its operating schedules (which includes ramp scheduling requirements and slot times) for the following year (i.e. for services commencing on or around 1 April). Where such schedules are substantially similar to those for the preceding year and compliant with the relevant Service Schedule, such schedule shall be implemented from the following April. In setting its schedules each Provider shall take into account any reasonable comments received from time to time from the Harbour Master or the FSSG.
- 8.2 Each Provider shall be entitled to amend its schedule from time to time (for example to account for tide times or for reasons of market demand, commercial or economic viability or operational necessity) provided such amendments do not take such Provider's schedules below the relevant Service Schedule.
- 8.3 Where, from one year to the next, a permanent change in journey or substantial re-scheduling is proposed, the case for any such change must be discussed with the FSSG and shall be dealt with via the Service Change Procedure. Any substantial pan-Island issues of concern will be considered by the FSSG.
- 8.4 Prior to the publication of timetables, customers will be able to reserve space on a passage on the nearest equivalent date and time based on expected schedules, (this is known as a pre-registration). Alternatively, each Provider will maintain a rolling annual timetable so at all times customers will be able to reserve a space on a passage up to a year in advance.

9. Seasonal definitions

The requirements of Jersey and Guernsey divide the passenger and car carrying High Speed Craft schedule into broad time periods that reflect route demand:-

- Winter (November – March)
- Shoulder (April – late May and October)
- Summer (June – early July and September)
- Peak (Parts of July and August - broadly summer school holidays)

10. Customer Care and Passenger Rights

- 10.1 Every Provider shall maintain published information, in the form of a Customer Charter, or some other format, on the terms and conditions of carriage covering details of operational provisions for passengers (the "**Charter**"). The Charter will include any arrangements for stranded passengers and vehicles as a result of technical issues with the relevant vessel and any arrangements for compensation for delays or cancellations taking into account EU Regulation 1177/2010. Passengers and vehicles must be cleared from the terminal area within 24 hours or by specific arrangement as detailed and requested by the Harbour Master.
- 10.2 Every Provider shall compensate High Speed Craft and RoPax passengers in accordance with EU Regulation 1177/2010. Every Provider shall ensure Compliance with EU Regulation 1177/2010.
- 10.3 The Charter shall incorporate, as a minimum, the requirements of EU Regulation 1177/2010 (concerning the rights of passengers when travelling by sea etc.) that came into effect 18 December 2012. Providers are legally bound by EU Regulation 1177/2010 for services that arrive or depart from the UK or France. Additionally, every Provider will maintain full compliance with EU Regulation 1177/2010 on all inter-Island routes as though, for this purpose, the Channel Islands formed part of the European Union.
- 10.4 Every Provider will have documented and published procedures setting out its arrangement for receiving and addressing passenger complaints, and for the management of passengers in the event of delayed, disrupted or cancelled sailings.
- 10.5 Every Provider shall conduct regular passenger surveys and maintain a record of customer complaints, compliments and satisfaction in accordance with paragraph 4 of annex 3 (*Performance Measures*). Every Provider shall provide the FSSG with an annual summary report by 31 March in each year of customer complaints, compliments and satisfaction.
- 10.6 Each Provider and the Harbour Master shall cooperate to provide sufficient facilities for the handling of any passengers, including any passengers who are physically disabled,

luggage and vehicles, on and between such Provider's vessels and the port terminal buildings. Additionally the Harbour Master expects to work with such Provider to enhance the customer experience.

- 10.7 Every Provider will ensure that their published fare pricing policy does not discriminate on the basis of origin of customer booking.
- 10.8 Every Provider shall be required to comply with the Port Marine Safety Code, the International Ship and Port Facility Security Code as well as the Harbour Masters Directives and shall maintain these safety and security standards whilst using Jersey's ports or within Jersey's territorial limits.

11. Rescheduling, Reliability and Punctuality

- 11.1 Every Provider shall perform the Designated Services in accordance with the Performance Measures.
- 11.2 Every Provider shall maintain a record of service re-scheduling, reliability and punctuality as indicated in annex 3 (*Performance Measures*) and shall:
- (a) provide such records to the Harbour Master on a monthly basis; and
 - (b) publish a summary of performance quarterly on such Provider's website (if any); and
 - (c) provide an annual summary report by 31 March each year to the FSSG.
- 11.3 Every Provider shall seek to observe the normal operating hours for passenger vessels in the port of St Helier from time to time and shall pay any additional charges associated with vessel operations outside these times.
- 11.4 Every Provider shall accurately declare to the Harbour Master all landings in the form required including manifest within 7 days of any landing, and pay all Harbour dues in accordance with the Jersey Harbours' Terms of Credit.
- 11.5 Every Provider shall be required to provide load sheets and manifests when requested to do so by the Harbour Master or his representative.

12. Insurances

- 12.1 Every Provider shall be required to hold as a minimum £25 million level of cover in respect of those risks which a Prudent Operator would in the usual course seek to insure against in connection with its provision of the Services, including but not limited to environmental risks (including oil pollution, wreck removal and spillage risks) that would reasonably be associated with the provision of ferry services.
- 12.2 Such a policy shall be maintained for a minimum of 10 (ten) years following the expiration or earlier termination of such Provider's Operating Agreement.

13. Current Annual Demand

- 13.1 Current annual capacity demand for services as illustrated by the last three years' performance is set out in Table B.
- 13.2 Passenger volumes are measured in total passengers (car and foot passengers) and vehicle volumes are measured as the number of non-Freight vehicles.
- 13.3 Freight volume figures are provided by the Harbour Master with the exception of Southern Freight volumes, which are provided by Condor.
- 13.4 The Jersey/Guernsey split has been analysed on an annual basis with Inter-Island traffic counted against both Islands (approx 10,000 cars and 100,000 foot passengers). On average, Jersey traffic accounts for 60% of Northern Route Freight, 60% of Northern Route Vehicles, 54% of Northern Route Passengers, 80% of Southern Route Vehicles and 78% of Southern Route Passengers, with Guernsey accounting for the remainder on each Sector.

Table B**Current Annual Demand**

Total Volumes to/from CI	2011		2012		2013	
	Peak Volume	Annual Volume	Peak Volume	Annual Volume	Peak Volume	Annual Volume
Northern Route RoRo Freight (tonnes '000)	50.5	448	49.1	406.9	46.2	385.4
Northern Route Total Passengers '000	91.1	578.5	80.5	431.3	95.7	462
Southern Route Total Passengers '000	77	592	97.6	550.6	103.1	559.6
Northern Route Vehicles (non-freight '000)	22	125.1	17.7	111.3	21.1	118.1
Southern Route Vehicles (non-freight '000)	12.1	79.9	13.1	84.1	16.5	85.8

Split By Island

Volumes to/from Jersey	2011		2012		2013	
	Peak Volume	Annual Volume	Peak Volume	Annual Volume	Peak Volume	Annual Volume
Northern Route RoRo Freight (tonnes '000)	35.2	288	34.5	254	33.1	257
Northern Route Total Passengers '000 (including Guernsey)	62	316	53	276	59	290
Guernsey Route Total Passengers '000	23	120	20	107	20	109

Southern Route Total Passengers '000	62.6	393	62.1	373	67.6	379
Northern Route Vehicles (non-freight '000) (including Guernsey)	12.6	76	10.5	66	13.4	71
Guernsey Route Vehicles (non-freight '000)	1.7	12.2	1.6	11.4	2.3	11.9
Southern Route Vehicles (non-freight '000)	9.3	61	7.7	56	10.9	57

Volumes to/from Guernsey	2011		2012		2013	
	Peak Volume	Annual Volume	Peak Volume	Annual Volume	Peak Volume	Annual Volume
Northern Route RoRo Freight (tonnes '000)	15.3	160	14.6	152.9	13.1	128.4
Northern Route Total Passengers '000	29.1	262.5	27.5	155.3	36.7	172.0
Southern Route Total Passengers '000 (Including Jersey)	14.4	199.0	35.5	177.6	35.5	180.6
Jersey Route Passengers '000	23.3	113.3	19.5	100.9	18.0	105.3
Northern Route Vehicles (non-freight '000)	9.4	49.1	7.2	45.3	7.7	47.1
Southern Route Vehicles (non-freight '000) (Including Jersey)	2.8	18.9	5.4	28.1	5.6	28.8
Jersey Route Vehicles (non-freight '000)	1.7	9.7	1.4	9.9	1.6	10.5

Southern Freight Volumes

Tonnes			
Year	St. Malo – Jersey	St. Malo – Guernsey	Total (tonnes)
2011	9,505	3,759	13,264
2012	7,790	4,276	12,066
2013	7,716	4,068	11,784
Metres			

Year	St. Malo – Jersey	St. Malo – Guernsey	Total (metres)
2011	8,678	3,041	11,719
2012	5,778	3,214	8,992
2013	5,359	3,246	8,605

ANNEX 2 – MINIMUM SERVICE SCHEDULE

1. At commencement of this Agreement notwithstanding the provisions of annex 1, the schedule to be operated by the Operator, which exceeds the levels set out in the Base Schedule, shall be, as a minimum, set out in Table C (the "**Minimum Service Schedule**").
2. For the avoidance of doubt and in accordance with clause 7.4 (*New Entrants*), in the event that an Entrant commences the provision of the Designated Services, the Minimum Service Schedule shall cease to apply and the Operator shall instead be required to provide the Designated Services in accordance with the Base Schedule.
3. Capitalised terms in Table C shall, unless otherwise defined or the context otherwise admits, have the meaning given to such terms in paragraph 5.1 of annex 1.
4. The Minimum Service Schedule excludes the two weeks over Christmas and New Year, and over Bank Holidays, when this frequency reduces, but pursuant to a reasonable holiday schedule that is submitted to the FSSG in advance.
5. This Minimum Service Schedule will be reviewed and revised as necessary in accordance with the Service Change Procedure following each Comprehensive Service Review.

Table C

Sector	Maximum Journey Time	Minimum Service Schedule (Number of Rotations)		Capability	Other requirements
		Peak Season	Winter Season		
Northern Route Freight	Rotation UK-Channel Islands (Guernsey and Jersey)-UK in 24 hours (including loading time)	5 per week (RoRo) -	5 per week (RoRo)	Capable of operations (including port manoeuvring) in at least 40 knots of wind Marine Regulator approved weather capability of at least 3.5m significant wave height	Vessels on this Sector must be capable of supplying adequate external power for at least 40 refrigerated vehicles
Northern Route Passenger & Vehicle	High Speed Service: UK to Channel Islands (where a stop over in Guernsey within 5 hours including turnaround time at each port)	7 per week	2 per week	Marine Regulator approved weather capability of at least 3.5m significant wave height	Operator must be licensed by the Department for Environment, Food and Rural Affairs in the UK under the Pet Passport Scheme
Northern Route Lifeline – RoPax	Conventional Service (RoPax) – Rotation UK – Channel Islands (Guernsey and Jersey) – UK in 24 hours including loading time	5 per week	5 per week	Capable of operations (including port manoeuvring) in at least 40 knots of wind Marine Regulator approved weather capability of at least 3.5m significant wave height	Operator must be licensed by the Department for Environment, Food and Rural Affairs in the UK under the Pet Passport Scheme
Southern Route Passenger & Vehicle	St. Malo – Jersey in 1.5 hours	14 Jersey – St. Malo direct per week	4 Jersey – St. Malo per week on different days	Marine Regulator approved weather capability of at least 3.5m significant wave height	Operator must be licensed by the Department for Environment, Food and Rural Affairs in the UK under the Pet Passport Scheme and also the French equivalent
	St. Malo – Guernsey in 2.5 hours (in respect of direct sailings)	10 Guernsey – St. Malo (of which 7 shall be direct)	2 Guernsey – St. Malo		

Sector	Maximum Journey Time	Minimum Service Schedule (Number of Rotations)		Capability	Other requirements
		Peak Season	Winter Season		
Southern Route Freight	Rotation via St. Malo – Guernsey – Jersey – St. Malo	1 per week (RoRo)	1 per week (RoRo)	Capable of operations (including port manoeuvring) in at least 40 knots of wind Marine Regulator approved capability of at least 3.5m significant wave height	Vessels on this Sector must be capable of supplying adequate external power for at least 40 refrigerated vehicles

6. The Minimum Service Schedule sets out the minimum schedule to be operated by the Operator prior to the commencement of the Designated Services by an Entrant.
7. While nothing in this Agreement shall be construed as requiring the Operator to provide any services above the Minimum Service Schedule, it is acknowledged that the Operator may from time to time publish schedules that exceed the Minimum Service Schedule, particularly where it feels there is unmet demand that can be met in a commercially viable manner. For the avoidance of doubt the publication of schedules that exceed the Minimum Service Schedule shall not oblige the Operator to continue such enhanced schedules, and the Operator shall at all times remain entitled to revert to the Minimum Service Schedule.
8. Without prejudice to paragraph 7 above and by way of guidance, set out below is the Operator's proposed schedule for the Winter Season and Peak Season during the period of one year from the Implementation Date (the "**Initial Schedule**"). The Parties acknowledge that the Initial Schedule is not binding on the Operator, which shall be entitled to amend the Initial Schedule as it sees fit provided that at all times the Operator's schedules comply with the Minimum Service Schedule (save as may otherwise be permitted by the terms of this Agreement).
9. The Initial Schedule shall be substantially as follows:

Legend:

● Large High Speed Craft

● St Malo based on Condor Rapide

● Commodore Clipper

FREQUENCY - WINTER

		MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY			SUNDAY			
From	To	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	
Jersey	Poole/Weymouth (1st)		●												●								
	Poole/Weymouth (2nd)																						
	Portsmouth			●			●			●			●			●			●				
	Guernsey (1st)		●												●								
	Guernsey (2nd)																						
	St Malo		●													●	●						●
	St Malo																						

FREQUENCY - PEAK

		MONDAY			TUESDAY			WEDNESDAY			THURSDAY			FRIDAY			SATURDAY			SUNDAY			
From	To	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	Morn	Aft	Eve	
Jersey	Poole/Weymouth (1st)	●				●			●			●		●			●				●		
	Poole/Weymouth (2nd)		●												●			●					
	Portsmouth			●			●			●			●			●			●				
	Guernsey (1st)	●				●			●			●		●			●				●		
	Guernsey (2nd)		●												●			●					

St Malo	●			●			●			●			●			●			●		
St Malo			●			●			●			●			●			●			●

10. Without prejudice to paragraph 7 above, in Peak Season the Operator proposes daily sailings of the Austal 270 on the Northern Route and, where there is sufficient customer demand and it is commercially viable to do so, the Operator proposes double rotations of the Austal 270 on this route on Mondays, Fridays and Saturdays. If implemented, these double rotations will be initially trialled as the following timetable, with boarding from 01h00 and basic sleeping arrangements offered on the Poole/Weymouth Sailing to Guernsey.

Double Rotations PEAK

Route	ARR	DEP
Poole/Weymouth		03:00
Guernsey	06:00	06:30
Jersey	07:30	08:30
Guernsey	09:30	10:00
Poole/Weymouth	13:00	
Poole/Weymouth		14:00
Guernsey	17:00	17:30
Jersey	18:30	19:30
Guernsey	20:30	21:00
Poole/Weymouth	23:59	

ANNEX 3 – PERFORMANCE MEASURES AND REMEDIATION

PART A – PERFORMANCE MEASURES

1. Performance Measures

1.1 The Parties to this Agreement have agreed a set of operational performance and customer satisfaction measures which are set out in this annex 3 to monitor the Operator's performance of the Services. With reference to Table D below, this Agreement will include the following Performance Measures:

- (1) Cancellations (Reliability)
- (2) Schedule Performance (Punctuality)
- (3) Customer Satisfaction

1.2 The Performance Measures are set out in more detail below.

1.3 In the event that the Operator fails to meet the Performance Measures in one or more Sectors due to the occurrence of one or more No Fault Events, such failure will be recorded but will not have the effect of adversely affecting the Operator's performance statistics under the Performance Measures and for the avoidance of doubt will not be included in assessing whether any Remediation Event or Termination Trigger Event has taken place.

1.4 The Operator shall provide the Harbour Master with monthly reports on its performance as against the performance measures set out below (the "**Performance Measures**").

2. Cancellations (Reliability)

2.1 Cancellations are the measure of adherence to the Schedule (as the same may be amended from time to time in accordance with the Agreement). This will be measured across all Sectors on a monthly basis and the Operator shall include all such information in its monthly report to the FSSG and the Harbour Master.

2.2 The Operator will use all reasonable endeavours within its control to limit the impact and duration of any event that causes a Cancellation (including where appropriate deploying a Contingency Plan).

2.3 Together with the FSSG, the Harbour Master shall monitor reliability and any underperformance against the Performance Measures shall permit the Harbour Master to take action in accordance with Table D.

3. Schedule Performance (Punctuality)

3.1 Scheduled Performance (Punctuality) measures punctuality across all Passenger and Vehicle Sectors against the Material Delay and Moderate Delay Performance Measures in accordance with Table D below and the Operator shall include such information in its

monthly report to the FSSG to allow the FSSG to monitor performance in respect of punctuality.

- 3.2 The Operator will use reasonable endeavours to contact all passengers to advise of any short term adjustments to sailing times.
- 3.3 Together with the FSSG, the Harbour Master shall monitor punctuality and any underperformance against the Performance Measures shall permit the Harbour Master to enforce Table D.

4. Customer Satisfaction

- 4.1 Customer Satisfaction measures the general satisfaction of passengers and clients using the Services. This will be measured across all Sectors on a monthly basis and the Operator shall publish its results monthly on its website.
- 4.2 The monthly report shall be used by the Harbour Master to monitor Customer Satisfaction and any underperformance against the Performance Measures shall permit the Harbour Master to enforce Table D as applicable.

5. Service Requirements

The Operator shall publish a quarterly report to the Harbour Master demonstrating the number of sailings and capacities provided in each Sector.

TABLE D Definitions

For the purposes of Table D, the following words shall have the following meanings:

Cancellation	means a Sailing that is not completed on the day it is Scheduled to complete or before 10am the following day and " Cancelled " shall be construed accordingly
Cancellation Event	means an event that is a Fault Event and which causes one or more Cancellations; for the avoidance of doubt, any two or more events that may reasonably be considered to have been caused directly or indirectly by the same issue shall constitute one Cancellation Event
Customer Ratings	means the average of all customer ratings in respect of the Operator's performance (expressed as a score out of 10) over a rolling 12 month average
HSC	High Speed Craft
Material Delay	means a Sailing that is: (a) 1 hour overdue in the case of a scheduled journey of up to 4 hours (i.e. routes Jersey to/from St Malo or Guernsey); (b) 90 minutes overdue in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours; (i.e. routes Jersey to/from UK, in HSC); and (c) 2 hours in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours (i.e. routes Jersey to/from UK in the RoPax vessel, in each case by reference to the Schedule and as a result of a Fault Event
Material Delay Event	means an event that is a Fault Event and causes one or more Material Delays
Moderate Delay	means a Sailing that is: (a) 30 minutes overdue in the case of a scheduled journey of up to 4 hours (i.e. routes Jersey to/from St Malo or Guernsey); (b) 60 minutes overdue in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours; (i.e. routes Jersey to/from UK, in HSC); and

- (c) 90 minutes in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours (i.e. routes Jersey to/from UK in the RoPax vessel,

in each case by reference to the Schedule as a result of a Fault Event

Moderate Delay Event means an event that is a Fault Event and causes one or more Moderate Delays

Schedule is the Service Schedule as rescheduled by the Operator from time to time in accordance with this Agreement (including but not limited to annex 1, paragraph 11, or clause 25 (*Contingency Plan*)) and "**Scheduled**" shall be construed accordingly

The following tables provide the initial Performance Measures for the Operator. While these are based on the current set of measures, the Parties recognise that these may have to be reviewed from time to time and any change made in accordance with the Service Change Procedure.

For the avoidance of doubt, an event shall only count once for the purposes of Table D, regardless of whether or not such event relates to more than one category of vessel (i.e. a breach of the Performance Measures in respect of Freight carried on a RoRo vessel shall not be double counted as a breach of the Performance Measures in respect of a RoPax vessel).

TABLE D

PART 1 - Material Performance Events				
Performance Measure	Event Measured	Events Not Counted (subsets of No Fault Events)	Remediation Event	
Cancellations (Reliability)	Cancellation Event	<ul style="list-style-type: none"> • Cancellation of any Sailing on >48hrs notice • Cancellations a Prudent Operator could not reasonably prevent • Cancellation in accordance with a Contingency Plan or Remediation Plan • Any Cancellation that would not be caught by the EU Regulation • Anything that is a No Fault Event 	<i>RoPax</i>	= 1 Cancellation Event in any quarter
			<i>HSC</i>	> 5 Cancellation Events in any quarter
			<i>Freight</i>	> 2 Cancellation Events in any quarter
Schedule Performance (Punctuality)	Material Delay Event	<ul style="list-style-type: none"> • Sailings delayed on >48hrs notice • Delays that a Prudent Operator could not reasonably prevent • Delays in accordance with a Contingency Plan or Remediation Plan • Any delay that would not be caught by the EU Regulation • Anything that is a No Fault Event 	<i>RoPax</i>	> 1 Material Delay Event in any one year rolling period
			<i>HSC</i>	> 2 Material Delay Events in the Winter Season > 7 Material Delay Events at other times outside the Winter Season
			<i>Freight</i>	> 1 Material Delay Event in any one year rolling period

PART 2 - Moderate Performance Events				
Performance Measure	Event Measured	Events Not Counted	Remediation Event	
Schedule Performance (Punctuality)	Moderate Delay Event	<ul style="list-style-type: none"> Sailings delayed on >48hrs notice Delays that a Prudent Operator could not reasonably prevent Delays in accordance with a Contingency Plan or Remediation Plan Any delay that would not be caught by the EU Regulation Anything that is a No Fault Event 	<i>RoPax</i>	> 5 Moderate Delay Events in any 1 year rolling period
			<i>HSC</i>	> 4 Moderate Delay Events in the Winter Season > 20 Moderate Delay Events at other times outside the Winter Season
			<i>Freight</i>	> 5 Moderate Delay Events in any 1 year rolling period
Customer Satisfaction	Customer Ratings	Ratings will not be included where they relate to circumstances that would be outside the control of a Prudent Operator (including but not limited to No Fault Events and Force Majeure events)		Customer satisfaction drops by 1 point (out of 10) for the preceding rolling year.

PART 3 – Termination Trigger Events				
Performance Measure	Event Measured	Events Not Counted	Termination Trigger Event	
Cancellations (Reliability)	Cancellation Event	<ul style="list-style-type: none"> • Cancellation of any Sailing on >48hrs notice • Cancellations a Prudent Operator could not reasonably prevent • Cancellation in accordance with a Contingency Plan or Remediation Plan • Any Cancellation that would not be caught by the EU Regulation • Anything that is a No Fault Event 	<i>RoPax</i>	12 Cancellation Events in any rolling 1 year period
			<i>HSC</i>	30 Cancellation Events per annum for two consecutive rolling 1 year periods
			<i>Freight</i>	12 Cancellation Events in any rolling 1 year period
Schedule Performance (Punctuality)	Material Delay Event	<ul style="list-style-type: none"> • Sailings delayed on >48hrs notice • Delays that a Prudent Operator could not reasonably prevent • Delays in accordance with a Contingency Plan or a Remediation Plan • Any delay that would not be caught by the EU Regulation • Anything that is a No Fault Event 	<i>HSC</i>	30 Material Delay Events per annum for two consecutive rolling 1 year periods
Schedule Performance (Punctuality)	Moderate Delay Event	<ul style="list-style-type: none"> • Sailings delayed on >48hrs notice • Delays that a Prudent Operator could not reasonably prevent • Delays in accordance with a Contingency Plan or Remediation Plan • Any delay that would not be caught by the EU Regulation • Anything that is a No Fault Event 	<i>HSC</i>	150 Moderate Delay Events per annum for two consecutive rolling 1 year periods

PART B - REMEDIATION PROCESS

Performance Measures

In respect of one or more remediation / termination events outlined in the tables above and subject to the implementation of any Contingency Plan, the following remediation process will be applied:

Table E

Level	Extent of breach	Remedial action
1	A single Remediation Event measure has occurred	The Operator will upon reasonable notice provide the FSSG with an explanation of its proposals for remediating the causes of such breach(es). Generally, this will be pursuant to the periodic performance reporting cycles
2	The Remediation Event measure carries on into a second reporting period (as per Table D) -or- Double the number of Remediation Event measures has occurred in a single reporting period	No later than 2 weeks after the breach the Operator shall provide the FSSG with a written proposal for remediating the cause of such breaches.
3	The Remediation Event measure carries on into a third reporting period -or- Triple the number of Remediation Event measures has occurred in a single reporting period	No later than 2 weeks after the breach the Operator shall provide the Harbour Master and the FSSG with a written proposal for remediating the cause of such breaches. Where the relevant Remediation Event is caused by a Cancellation Event, a Material Delay Event or a Moderate Delay Event and the Operator is failing to act as a Prudent Operator and implement reasonable measures to remedy such Remediation Event, the Harbour Master may notify the

		Operator that such failure may, with the passage of time, be deemed to be a Termination Trigger Event. If following such notice the Operator, acting as a Prudent Operator, fails to implement reasonable remediation measures in respect of such Remediation Event within the next reporting period (as per Table D), the Harbour Master acting reasonably shall be entitled to deem such Remediation Event to be a Termination Trigger Event.
4	A Termination Trigger Event occurs	The Operator will upon reasonable written notice provide the Harbour Master and the FSSG with a written explanation of the causes for the failure and a Remediation Plan which shall identify the cause of such breaches.

ANNEX 4 - EXAMPLE NO FAULT EVENTS

The table below sets out examples of No Fault Events – this table is not exhaustive and is provided for illustrative purposes only.

No Fault Event	Example
Weather/Passenger Safety/Comfort	Cancellation or delay is caused by weather conditions endangering the safe operation of the ship or by extraordinary circumstances hindering the performance of the ferry service which could not have been avoided even if all reasonable measures had been taken.
Health and Safety / International Ship Management System (" ISM ")/ Environmental	Any health and safety, ISM or environmental issue, including but not limited to any medical matter that could not be reasonably managed by a Prudent Operator.
Scheduled maintenance	Any maintenance undertaken by the Operator in accordance with the Vessel Maintenance Programme provided it is to the standard of a Prudent Operator. Significant and or repeated unplanned maintenance may indicate this test has not been achieved and it shall be for the Operator to demonstrate otherwise
Unforeseeable or unmanageable events	<p>Any operational matters that a Prudent Operator cannot take reasonable account of or manage even if foreseen as a possibility, for example attending an SoS call, vehicle breakdown, accident, blocking of major access routes, third party failure, providing assistance to other craft, and most traffic obstructions.</p> <p>This would also extend to a Force Majeure event.</p>

ANNEX 5 – SERVICE CHANGE PROCEDURE

- 1 If either Party requires a variation to the terms of this Agreement or, save as otherwise set out in this Agreement, the provision of the Designated Services pursuant to this Agreement (including but not limited to the Service Requirements), it shall serve a written notice (a "**Change Notice**") on the other Party in accordance with the provisions of this annex 5.
- 2 The Change Notice shall:
 - 2.1 set out the proposed variation required in sufficient detail to enable the other Party to evaluate the proposed variation, and its implications;
 - 2.2 specify the reasons for the proposed variation; and
 - 2.3 specify any applicable time constraints or deadlines relating to the proposed variation.
- 3 Within a reasonable period of time following service of a Change Notice the Operator shall set out a detailed analysis of the proposed variation (a "**Change Analysis**"), to contain:
 - 3.1.1 the anticipated impact of the proposed variation on the provision of the Services by the Operator;
 - 3.1.2 any impact on costs or revenue that may result;
 - 3.1.3 any impact of the proposed variation on SoJ or SoG of which the Operator is actually aware as at the date of the Change Analysis;
 - 3.1.4 any steps the Operator is able to take to mitigate any effects arising from the proposed variation so as to minimise costs;
 - 3.1.5 any other amendments required to this Agreement as a result of such proposed variation; and
 - 3.1.6 a proposed timetable for implementing the proposed variation.
- 4 As soon as practicable after delivery of a Change Analysis the Parties shall meet to consider the proposed variation. Neither Party shall unreasonably refuse or delay consent to a Change Notice where:
 - 4.1 the change requested is upon reasonable grounds and, as is relevant, the Operator, the States and customers are left in a no better no worse position on balance; or
 - 4.2 it is to meet a legal requirement or is to meet reasonable health and safety concerns.
- 5 The Parties shall not act unreasonably in the number or magnitude of Change Notices requested in any year.

- 6 The Parties may agree a proposed variation in the form set out in a Change Notice or with such modifications if any as the Parties may agree.
- 7 If the Parties cannot agree on a proposed variation then the Party issuing the relevant Change Notice may either:
 - 7.1 withdraw the Change Notice; or
 - 7.2 refer the matter to be determined in accordance with clause 39 (*Dispute Resolution*).
- 8 The Parties shall as soon as reasonably practicable after joint approval of any proposed variation (or Expert determination in favour of the proposed variation in accordance with paragraph 7.2 above) execute all such documents and do all such things as may be necessary to amend the provisions of this Agreement and otherwise give effect to such proposed variation.

ANNEX 6 – ROACE

For the purposes of this annex, the following words shall have the following meanings:

Capital Employed	means Replacement Value plus Net Current Assets plus Other Tangible Assets
Current Financial Year	means the Financial Year in which the ROACE Review Date falls
Current ROACE	means ROACE estimated by reference to the Operator's budget for the Current Financial Year;
Financial Year	means the Operator's financial year, being 1 April – 31 March (inclusive) as at the date of this Agreement
Forecast ROACE	means ROACE estimated by reference to the Operator's forecasts for the Subsequent Financial Year, as set out in the Operator's strategy model from time to time
Historic ROACE	means ROACE calculated by reference to the Operator's audited financial statements for the Previous Financial Year
Inflation	means the annual inflation rate as published by the Bank of England for the previous 12 month period ending in March
Maintenance Costs	means the average of the last three years of costs which are classed as vessel related maintenance capital expenditure by the Operator (excluding any costs relating to conversion to LNG fuel capability)
Management Fee	means [Redacted] in 2014 grown at Inflation annually, for as long as Macquarie provides the Operator with the same services as they did in 2014.
Net Current Assets	means current assets minus current liabilities as reported by the Operator, including debtors and stocks under current assets and trade and other creditors under current liabilities. Current assets and liabilities that are either financing or tax-related are excluded. Condor's net cash position is also included
Other Tangible Assets	means assets, other than vessels, that are owned by the Operator and reported in the statutory accounts including but not limited to leasehold property, plant and machinery, vehicles, computer equipment and fixtures and fittings. The value of these assets will be at historical cost as reported in the Operator's statutory accounts
Previous Financial Year	means the Financial Year immediately prior to the Current Financial Year

Profit	means Earnings before Interest, Tax and Amortisation (“ EBITA ”) as sourced from the Operator’s statutory accounts less Maintenance Costs and less the Management Fee. The cost of depreciation shall be calculated as [Redacted] as at 2014 per Table F below adjusted for inflation on an annual basis, for as long as the fleet has the configuration as set out in Table F.
Quarterly ROACE	a revised estimate of Current ROACE carried out on a quarterly basis throughout the Current Financial Year
Replacement Value	means 50 percent of the replacement value of the Operator's fleet, based on a replacement value of [Redacted] as at 2014 and then grown at Inflation annually, for as long as the fleet configuration is maintained as defined in Table F.
ROACE	means the Operator's return on average capital employed, as calculated or estimated (as the case may be) in accordance with the formula set out below
ROACE Calculation	means each of Current ROACE, Forecast ROACE, Historic ROACE and Quarterly ROACE
ROACE Review Date	means 31 July in each year
Subsequent Financial Year	the Financial Year immediately following the Current Financial Year

1. ROACE for the purposes of this Agreement shall be calculated/estimated (as the case may be) by reference to the following formula:

$$\text{ROACE} = \frac{\text{Profit}}{\text{Capital Employed}}$$

For illustration:

Profit: EBITA – **[Redacted]** (Depreciation) + **[Redacted]** (Macquarie Management Fee) + Maintenance Costs)

Capital Employed: **[Redacted]** + Net Current Assets + Other Tangible Assets

The ROACE will be required to fall within the tramlines as specified below

Lower Tramline: **[Redacted]**

Upper Tramline: **[Redacted]**

2. If the ROACE calculation does not fall within the Tramlines, the amendment procedure outlined in Clause 12 (*Tramlines*) will apply. The Lower Tramline will not apply in financial year ending March 2015 and financial year ending March 2016 while the cost of change of acquiring the Austal 270 occurs.
3. The Capital Employed has been calculated based on Table F below, which most accurately reflects the current valuation of a comparable fleet and is based on independent market valuations. Table F below also reflects current estimated useful lives of the vessels and the depreciation associated.

Table F

Vessel	Asset Life	Fleet Valuation	Depreciation
HSC Small	[Redacted]	[Redacted]	[Redacted]
HSC Large	[Redacted]	[Redacted]	[Redacted]
Conventional RoPax	[Redacted]	[Redacted]	[Redacted]
Conventional RoRo	[Redacted]	[Redacted]	[Redacted]
Service Ready Cost	[Redacted]	[Redacted]	[Redacted]
Total		[Redacted]	[Redacted]

4. For the avoidance of doubt, the interaction between the depreciation used in the formula above and the depreciation of the vessels as stated in the statutory accounts, and their replacement (at the end of their useful life or otherwise) is as follows:
5. Where a vessel reaches the end of its useful life at the same time as it becomes fully depreciated in the accounts, and is sold for scrap value and replaced by a new vessel which has equivalent new market value (in real terms) as the valuation of the scrapped vessel, there are two consequences:
 - (a) The sale of the old vessel and the purchase of the new vessel does not impact EBITA for the purposes of the formula, even if it would impact EBITA in the Operator's statutory accounts.
 - (b) The depreciation used in the formula does not change, even if the depreciation value in the statutory accounts has changed.
6. If a vessel is sold before the end of its useful life, at a price higher than its scrap value and is replaced by a newer, but second hand, vessel, then:

- (a) if the newer vessel has the equivalent market value (in real terms) as the same as the new valuation of the vessel being sold (per Table F above), and
 - (b) if the vessel being sold still has a remaining life of the same length as in Table F above, then
 - (c) the transaction does not impact EBITA, or the depreciation value, used in the formula (see above).
7. In the above two examples, if the new vessel is valued more (or less) new than the new valuation of the vessel being sold, then both the average capital employed and the depreciation value to be used in the formula will be adjusted up (or down) pro-rata. The Tramlines will remain the same.
8. If in the examples above the new vessels have different asset lives (from new) compared to the vessels being scrapped/sold, the parameters of the formula will be recalculated (going forward) to identify new tramlines. These new tramlines will use the same methodology as was used to validate the current Tramlines. Any change to the Tramlines is to be undertaken in accordance with the Service Change Procedure.
9. If, at the end of a vessel's predicted useful life (according to the depreciation schedule in Table F) the vessels have, or are going to have a useful life that is longer than predicted, or if the useful life of the vessels is shorter than the depreciation schedule in Table F, the appropriate depreciation values to be used in the ROACE Calculation shall be recalculated going forward, and a change in the Tramlines may need to be considered by the FSSG. Any change to the Tramlines is to be undertaken in accordance with the Service Change Procedure.
10. If the average of the most recent Historic ROACE as well as the previous two years of Historic ROACE, the Current ROACE and the Forecast ROACE is lower than 0.5% above the Lower Tramline or higher than 0.5% below the Upper Tramline, then the FSSG may review the tramlines to ensure that the fundamental assumptions behind the Tramlines still hold. Any change to the Tramlines is to be undertaken in accordance with the Service Change Procedure.
11. When undertaking the Comprehensive Service Review an analysis of the Tramlines and the Operator's performance must be undertaken so to ensure that the Operator is operating efficiently and effectively. Any changes suggested by the Comprehensive Service Review are to be implemented in accordance with the Service Change Procedure.

SCHEDULE 1 – The Generic Contingency Plan

SCHEDULE 2 – Passenger & Vehicle Price Adjustments

		RPI Adjustment (%)		
		2011	2012	2013
Jersey RPI	20% weighting	5.4	2.8	1.2
Guernsey RPI	20% weighting	3.5	3.0	2.7
UK RPI	60% weighting	5.2	2.4	3.2
Weighted RPI		4.9	2.6	2.7

Single Fare Leg	Price Adjustment (%)		
	2012	2013	2014
<i>UK Route</i>			
Standard car and driver	[Redacted]	[Redacted]	[Redacted]
Motorhome/minibus and driver	[Redacted]	[Redacted]	[Redacted]
Standard car, caravan/high trailer and driver	[Redacted]	[Redacted]	[Redacted]
Motorbike and rider	[Redacted]	[Redacted]	[Redacted]
Additional vehicle passenger	[Redacted]	[Redacted]	[Redacted]
Adult foot passenger	[Redacted]	[Redacted]	[Redacted]
Standard car, driver and adult passenger	[Redacted]	[Redacted]	[Redacted]
<i>France Route</i>			
Standard car and driver	[Redacted]	[Redacted]	[Redacted]
Motorhome/minibus and driver	[Redacted]	[Redacted]	[Redacted]
Standard car, caravan/high trailer and driver	[Redacted]	[Redacted]	[Redacted]
Motorbike and rider	[Redacted]	[Redacted]	[Redacted]
Additional vehicle passenger	[Redacted]	[Redacted]	[Redacted]
Adult foot passenger	[Redacted]	[Redacted]	[Redacted]
Standard car, driver and adult passenger	[Redacted]	[Redacted]	[Redacted]
<i>Inter-Island</i>			
Standard car and driver	[Redacted]	[Redacted]	[Redacted]

Single Fare Leg	Price Adjustment (%)		
Motorhome/minibus and driver	[Redacted]	[Redacted]	[Redacted]
Standard car, caravan/high trailer and driver	[Redacted]	[Redacted]	[Redacted]
Motorbike and rider	[Redacted]	[Redacted]	[Redacted]
Additional vehicle passenger	[Redacted]	[Redacted]	[Redacted]
Adult foot passenger	[Redacted]	[Redacted]	[Redacted]
Standard car, driver and adult passenger	[Redacted]	[Redacted]	[Redacted]

SCHEDULE 3 – Freight Price Adjustments

		<i>Adjustments (%)</i>		
		2011	2012	2013
Jersey RPI	20% weighting	5.4	2.8	1.2
Guernsey RPI	20% weighting	3.5	3.0	2.7
UK RPI	60% weighting	5.2	2.4	3.2
Weighted RPI	-	4.9	2.6	2.7
		2012	2013	2014
Average Freight price increases		<i>[Redacted]</i>	<i>[Redacted]</i>	<i>[Redacted]</i>

SCHEDULE 4 – Fleet Age

[Redacted]

SCHEDULE 5 – The First Ramp Permit

[TBC]

SCHEDULE 6 – The Side Letter

MEIF II Channel Islands Transport Holdings Limited

New Jetty Offices
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Guernsey GY1 2LL

Telephone +44 1481 728620

Doug Bannister
Harbour Master
Jersey Harbours
Maritime House
La Route Du Port Elizabeth
St. Helier
Jersey JE1 1HB

[•] August 2014

Dear Sir,

Operating Agreement (the "Agreement") to be entered into between the Harbour Master of Jersey and Condor Limited (the "Operator")

This letter is provided in satisfaction of the condition precedent contained in clause 3 of the Agreement. Capitalised terms not otherwise defined herein shall have the meaning given to such term in the Agreement, unless the context otherwise admits.

We hereby confirm and undertake that, in the event that the Operator's parent company, MEIF II Channel Islands Transport Holdings Limited ("**MEIF**"), disposes of its interest in the Operator within two years of the Commencement Date (a "**Disposal**") in circumstances where it realises a Gain on its Total Investment in the Operator, MEIF shall make a payment to the Treasurer of the States of Jersey of an amount equal to 3% of such Gain and a payment to the Treasurer of the States of Guernsey of an amount equal to 2% of such Gain.

We hereby also confirm and undertake that MEIF shall use all reasonable endeavours to ensure that the Operator and the MEIF's subsidiaries (in particular all those subsidiaries holding the Operator's assets) shall comply with the terms set out in the Agreement. MEIF further confirms that before a Change of Control (as defined in the Agreement) takes place, any new parent company shall provide a similar undertaking to use all reasonable endeavours to comply with the terms of the Agreement directly to the States of Jersey and the States of Guernsey before a Change of Control takes place.

For the purposes of this letter:

the "**Total Investment**" means MEIF's total investment in the Operator to the date on which any Gain is calculated **[Redacted]**; and

"**Gain**" means the amount, in equity value, by which the total amount received by MEIF (following repayment of any associated debt and other costs, fees or liabilities) upon any Disposal exceeds the Total Investment.

For the avoidance of doubt, the Total Investment may be subject to fluctuation given the acquisition of the Austal 270 remains to be finalised and is subject to exchange rate movements.

This letter is governed by Jersey law and shall be subject to the jurisdiction of the Jersey Courts.

Yours faithfully,

For and on behalf of

For and on behalf of

MEIF II Channel Islands Transport Holdings Limited