



Item: 10

Development and Infrastructure Committee: 4 June 2024.

Orkney Ferries Limited – Service Level Agreements.

**Report by Corporate Director for Enterprise and Sustainable
Regeneration.**

1. Overview

- 1.1. Orkney Ferries Limited is owned by Orkney Islands Council and provides the lifeline inter-island ferry services between the Orkney Mainland and the 13 islands served. The main objective of Orkney Ferries Limited is to provide a service of an acceptable standard to the island communities, which is compatible with the level of subsidy received from the Council.
- 1.2. The purpose and objectives of the Service Level Agreements are to define the Council's requirements for the services provided by Orkney Ferries Limited, and to set out the means by which Orkney Ferries Limited will receive financial support from Orkney Islands Council for providing those services.
- 1.3. The Service Level Agreements have been in place for many years and have served their intended purpose well, but a review of the agreements was recommended in an Internal Audit report on Following the Public Pound and several updates to the Service Level Agreements have now been made on account of organisational and other changes that have occurred since the Service Level Agreements were originally approved.
- 1.4. The revised Service Level Agreements will be presented to the next Board Meeting of Orkney Ferries.

2. Recommendations

- 2.1. It is recommended that members of the Committee:
 - i. Delegate powers delegated to the Corporate Director for Enterprise and Sustainable Regeneration, in consultation with the Head of Legal and Governance, to conclude the updated Service Level Agreements between the Council and Orkney Ferries Limited in respect of the lifeline ferry services provided by Orkney Ferries Limited.

3. Service Provision

- 3.1. Orkney Ferries Limited's operation is clearly divided into two service areas:
- i. The first is the services to the six Outer North Isles of Eday, North Ronaldsay, Papa Westray, Sanday, Stronsay and Westray. The waters around the Outer North Isles are classed as open sea area under present MCA regulations. This means that the vessels operated need to be constructed to withstand heavy sea conditions and the crew need to be certificated to the appropriate standard for such an operation.
 - ii. The services to the Inner and South Isles of Egilsay, Flotta, Graemsay, Hoy, Rousay, Shapinsay and Wyre are classified as operating in categorised waters and therefore the vessels operating to these islands are constructed, operated and crewed accordingly.
- 3.2. Due to the distinct differences in the lifeline operations to the Outer North Isles and to the Inner and South Isles, it is appropriate that two separate Service Level Agreements are in place, governing the two aspects of Orkney Ferries Limited's operations. The draft Service Level Agreements are provided at Appendices 1 and 2. The Service Level Agreements specify the services that are to be provided under the agreements, together with accompanying arrangements for staffing, tariffs, consultation, complaints procedures, information provision and service monitoring.

4. Following the Public Pound

- 4.1. In accordance with the Council's approved policy on Following the Public Pound, a written Service Level Agreement is required to be in place between the Council and the external body, covering the requirements of the Code.
- 4.2. Orkney Ferries Limited will receive £15.8m of government grant to run the services outlined in the Service Level Agreements in 2024/25. This grant is awarded to the Council by the Scottish Government and is passed on to Orkney Ferries Limited to pay for delivery of ferry services. The scope of the detailed requirements within the Code is limited to payments made to external bodies, which are not already covered by straightforward contractual relationships. Orkney Ferries Limited currently operate within the terms of Service Level Agreements that were agreed several years ago.

- 4.3. The revised Service Level Agreements will come into force at the date of the last signature and at a variable financial amount: the “revenue grant which may be made in any determined period shall be the amount of the deficit which the Council estimates that the Company is likely to incur in providing approved services during that period.”

For Further Information please contact:

Gareth Waterson, Corporate Director for Enterprise and Sustainable Regeneration, extension 2521, Email gareth.waterson@orkney.gov.uk

Implications of Report

1. **Financial:** The Service Level Agreements regulate the provision of ferry services delivered by Orkney Ferries Limited in return for a subsidy of circa £15.8m per annum.
2. **Legal:** Orkney Ferries Limited operates the ferry services on behalf of Orkney Islands Council under agreements dated 30 May 2008.
3. **Corporate Governance:** The revised Service Level Agreements will place the Council in an improved governance position with agreements in place that reflect current circumstances and organisational structures. The revised agreements will also address an outstanding Internal Audit recommendation.
4. **Human Resources:** None related to the report recommendations.
5. **Equalities:** No equalities implications are anticipated from this report.
6. **Island Communities Impact:** No new differential impacts are anticipated from the recommended Service Level Agreements. There are differing levels of air and ferry provision for certain islands.
7. **Links to Council Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Council Plan strategic priorities:
 - Growing our economy.
 - Strengthening our Communities.
 - Developing our Infrastructure.
 - Transforming our Council.
8. **Links to Local Outcomes Improvement Plan:** The proposals in this report support and contribute to improved outcomes for communities as outlined in the following Local Outcomes Improvement Plan priorities:
 - Cost of Living.

Sustainable Development.

Local Equality.

9. **Environmental and Climate Risk:** None directly related to the recommendations in this report. The internal ferry service is however recognised as one of the major contributors to carbon emissions in Orkney.
10. **Risk:** The revised Service Level Agreements will address a governance shortcoming identified through an Internal Audit report.
11. **Procurement -** None directly related to the recommendations in this report.
12. **Health and Safety:** None directly related to the recommendations in this report.
13. **Property and Assets:** None directly related to the recommendations in this report.
14. **Information Technology:** None directly related to the recommendations in this report.
15. **Cost of Living:** None directly related to the recommendations in this report.

List of Background Papers

None

Appendices

Appendix 1 – Service Level Agreement: Inner and South Isles.

Appendix 2 – Service Level Agreement: Outer North Isles.

Service Level Agreement

between

Orkney Islands Council

and

Orkney Ferries Ltd

for

Inner and South Isles Services



Orkney Ferries



RECORD OF AMENDMENTS

A/L No.	Amendment Incorporated	Initials	Date
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Orkney Islands Council (hereinafter referred to as “**the Council**”) and Orkney Ferries Ltd., (hereinafter referred to as “**the Company**”), make this Service Level Agreement (SLA) under Section 153 of the Local Government (Scotland) Act 1973 empowering the Council to “acquire, provide, maintain, improve and operate any ferry situated wholly or partly within their area”. In addition, Section 153 (c) of the 1973 Act empowers the Council to enter into arrangements with another person for the operation of a ferry by that person on their behalf. Section 153 (3) (d) empowers the Council to fix fares and charges for any ferry, giving adequate publicity as to those fares and charges. This SLA specifically refers to the provision of lifeline services in an area to be known as “**Inner and South Isles**” (ISI) which includes the Isles and sea areas around Shapinsay, Rousay, Egilsay, Wyre, Hoy, Flotta and Graemsay.

Given that:

- i); Orkney Islands Council is incorporated under the Local Government (Scotland) Act 1973 as amended and the Local Government etc (Scotland) Act 1994 and having its principal offices at School Place, Kirkwall, Orkney. KW15 1NY, and
- ii): Orkney Ferries Ltd., is a Company incorporated in Scotland with register number SC036770 and having its registered office at Council Offices, Kirkwall, Orkney. KW15 1NY.

AND WHEREAS the Company by their execution hereof have agreed to comply with and observe the various terms and conditions hereinafter specified;

NOW THEREFORE, in exercise of the powers conferred upon it the Council and with agreement of the Company, hereby makes the following SLA:-

GENERAL

Advances

1. (a) For the purposes of maintaining and improving lifeline sea transport services serving the Orkney Islands, the Council hereby undertakes, in accordance with the provisions of this SLA, to make advances to the Company by way of grant or loan (or partly in one those ways and partly in the other) and, in respect of advances by the way of grant, such advances may be partly or wholly by way of revenue grant and partly or wholly by way of capital grant. In addition, the vessels under the ownership of the Council, as detailed in Schedule Part C, are made available to the Company as part of this SLA.
- (b) The advances referred to in Article 1(a) are for the support of lifeline sea transport services provided by the Company which are to be used in connection with the Council’s powers under the Local Government (Scotland) Act 1973 (as stated above) and which the Council may approve

under this SLA (referred to as “**Approved Services**” and as generally specified in Schedule Part A and using vessels owned, leased or chartered by the Council as specified in Schedule Part C of this SLA)

2. The advances which may be made by way of revenue grant by the Council from time to time, to the Company and shall be made in support of approved lifeline services in respect of which the Council is satisfied that –
 - (a) in any period of not less than one year or as may be agreed by the Council from time to time (“**a Determined Period**”), the Company will be likely to incur a deficit in providing such services during that period and;
 - (b) that deficit could not be eliminated except by increasing the charges to be made in respect of those services in that period to an extent which would be unacceptable to the Council in their absolute discretion.
3. For the purposes of assisting the Council to estimate the amount of any deficit which the Company is likely to incur in providing approved lifeline services during a determined period, the Company shall submit to the Council, not less than three months before the commencement of that period, estimates in respect of that period which shall have been prepared in accordance with such methods and principles and in such information as may be agreed from time to time between the Council and the Company.

Revenue grant

4. (a) Subject to the provisions of this SLA, the amount of a revenue grant which may be made in any determined period shall be the amount of the deficit which the Council estimates that the Company is likely to incur in providing approved services during that period.
- (b) The Scottish Government has committed to providing essential support for the ferry services operated by Orkney Ferries Limited through deficit funding, paid as a specific grant to Orkney Islands Council. The Scottish Government ensures that the full cost of operation is covered, alleviating the financial burden on the local community.
- (c) Revenue grant in respect of any determined period shall be payable in such instalments during that period as may be agreed between the Council and the Company.

Capital grant or loan.

5. Any capital grant or any loan which the Council may make to the Company shall be made –

- (a) in respect of the acquisition, provision or improvement of a facility (“**Approved Facility**”); and
 - (b) on such terms and conditions as are specified by the Council when approving a facility in accordance with paragraph (a) above.
6. The amount of any capital grant or any loan shall be determined in each case by the Council by reference to suitable reports and details as required by the Council’s Financial Regulations and the Capital Project Appraisal system, together with availability of any external funding. The Scottish Government agreed in principle during 2023, through meetings of the Orkney Internal Ferry Replacement Task Force, to fund the further development of the business case to investigate replacing the internal ferry fleet in Orkney. The expectation is however that any new vessels will be procured by the Council and made available to Orkney Ferries Limited for delivery of the ferry service.
7. The amount of any capital grant or any loan shall not be payable by the Council to the Company until the approved facility, in respect of which the capital grant or the loan is made, has been contractually committed to by the Company, with expenditure beginning to be incurred on acquisition, or improvement as the case may be and has been brought into use by the Company:

Provided always that the Council may, before the date when any grant or loan is payable in terms in Article 7, pay to the Company instalments at such times and of such amounts and on such conditions as the Council determines.

TERMS AND CONDITIONS

Application of advances

8. The Company shall apply any grant, or any loan received under this SLA for the purposes of maintaining or improving approved services during the determined period in respect of which the grant or loan is made.
9. (a) The Company shall operate the approved lifeline services for the purposes of this SLA. In doing so the Company shall ensure that sufficient personnel, suitably trained, qualified and experienced are employed to provide the approved services. For the avoidance of doubt, the Company’s sea-going personnel shall not be deemed to be employees or agents of the Council and the Company shall at all times be liable for their actions and shall indemnify the Council in respect thereof.

The Service Manager (Ferry Operations) is an employee of the Council. All actions taken (on behalf of the Company) by the person in this post, shall be deemed to have been taken solely on behalf of the Company - the Company

shall at all times be liable for their actions and shall indemnify the Council in respect thereof.

- (b) If the Company proposes to discontinue any approved lifeline services or to make any alteration in the places to be served by any approved service any such proposal shall not be put into effect without the written consent of the Council, which consent may be given subject to such terms and conditions, including suspension or termination of any obligation to make advances to the Company, reduction in the amount of those advances and repayment of the whole or part of those advances, as the Council may specify. An exception to this would be the scheduling of additional services to address capacity constraints or previous weather related disruptions and amendments to services to assist Scottish Ambulance Service/NHS Orkney with transporting patients for medical purposes.
- (c) The Company shall ensure that adequate insurance is held for employer's liability and personal accident insurance for all its employees. Any vessels, vehicles or equipment used in connection with the provision of the approved service shall also be fully insured. The company on request will provide the Council evidence that all such cover has been purchased and all due premiums have been paid.

Accounts

- 10. The Company shall present to the Council, as soon as possible after the end of every accounting year of the Company, a copy of the annual accounts of the Company for that accounting year together with an Auditors Report.

Information

- 11. The Company shall furnish the Council with such information as the Council may reasonably require from time to time relative to any approved service.
 - (a) All documents and information received by the Company from the Council or its agent or representative in connection with the provision of the approved services shall be held in confidence. Such documents or information shall not be disclosed by the Company or anyone acting on its behalf to any other person without the consent of the Council, unless a duty to disclose to that person is imposed by statute or court order. The provisions of this paragraph and clause shall survive termination of this agreement.
 - (b) The Company accepts and understands that the Council is a Public Authority within the meaning of the Freedom of Information (Scotland) Act 2002, and that, notwithstanding the terms of this SLA, may be required to disclose information in response to a request in terms of that Act; which information pertains to the Company or the affairs of the Company. The Council

undertakes to notify the Company on receipt of any such request, provide the Company with copies of all correspondence relative to such request, and take account of any representations made by the Company to the Council in determining how to deal with such a request.

Monitoring and Review Arrangements

12. (a) The Company will co-operate with any inspection, monitoring or evaluation process reasonably required by the Council to ensure satisfactory standards or quality and output in connection with the approved lifeline services.
- (b) This SLA will be reviewed annually by the Company and the Council. The reviews are to be undertaken during the month of June. The review will consider the provision of the approved lifeline services under this SLA and may lead to their amendment. Standards of expected lifeline service are contained within Schedule Part B of this SLA.

Resolution of Disputes

13. (a) If any dispute shall arise between the parties hereto in respect of the implementation of this SLA, the parties shall use all reasonable endeavours to resolve such dispute by negotiation.
- (b) If either party considers that such dispute cannot be resolved by negotiation, the matter shall be referred to a mutually agreed independent expert or, failing such agreement, to an expert nominated by the Sheriff of Grampian, Highlands and Islands at Kirkwall on the application of either party, and the decision of such expert shall be final and binding on both parties.

Commencement and manner of determination and termination

14. (a) This SLA shall come into force on the date of the last signature and subject to the following provisions of this Article shall continue in force until determined in the manner hereinafter provided.
- (b) If the Company at any time when the SLA is in force, ceases to be eligible for assistance, the SLA shall thereupon be deemed to be determined.
- (c) This SLA may be determined by agreement between the Council and the Company, or by not less than six months' prior notice in writing given either by the Council to the Company, or by the Company to the Council.
- (d) In the event of any failure by the Company to comply with any of the obligations which are imposed upon it by or by virtue of provisions of this SLA the Council may –

- (i) overlook such failure; or
 - (ii) determine the SLA; or
 - (iii) terminate any obligation upon it under this SLA to make advances of any nature to the Company.
- (e) Any notice to be given under or in connection with this SLA shall be in writing and shall be served by sending it by pre-paid recorded delivery or registered post to the address given at the beginning (parts (i) and (ii)) of this SLA document. They should be addressed for the attention of the Service Manager – Transportation in connection with the Council and the Company Secretary in connection with the Company – or any other address and/or contact name communicated to the other party in writing after the date of this SLA.
- (f) Any such notice shall be deemed to have been received if sent by recorded delivery or registered post, 48 hours from the date of posting.

In the event of any determination or termination under this paragraph, it shall be sufficient for the Council to give to the Company, notice in writing to the effect that the SLA is determined or the obligation is terminated as the case may be from such date as may be specified in the notice, which date shall not be earlier than the date on which the failure occurred, or, in the case of a continuing failure, the date on which the failure first occurred.

Effect of determination or termination

15. (a) In the event of this SLA being determined by agreement between the Council and the Company, or, in the event of any obligation of the agreements, the effect of such determination or termination, as the case may be, shall be as agreed between the Council and the Company.
- (b) Subject to the foregoing paragraph, in the event of this SLA being determined at a time when a revenue grant is payable or in the event of any obligation of the Council to make a revenue grant being terminated –
- (i) the obligation of the Council to pay any further instalments of that revenue grant shall cease immediately upon the date of such determination or termination as the case may be;
 - (ii) the amount of the revenue grant which has been paid in advance in respect of the period before the date of such determination or termination as the case may be, shall not be recoverable by the Council, but without prejudice to the right to recover any amount of the relevant grant which has been paid in advance in respect of any period after such date;

(iii) the amount of the revenue grant which is payable in respect of the period before the date of such determination or termination as the case may be, shall be recoverable by the Company; and

(iv) the amount of the revenue grant which is payable in respect of the period before the date of such determination or termination as the case may be, shall be recoverable by the Company; and

(v) the determined period in relation to which the revenue grant was payable shall be deemed to have terminated.

Interpretation

16. (a) In this SLA, except insofar as the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them:-

“approved lifeline services” shall have the meaning assigned to it in Article 1(b);

“determined period” shall have the meaning assigned to it in Article 2;

“facility” shall include (but without prejudice to the generality of that expression) a vessel employed or to be employed in an approved service, or any other vehicles, services or equipment required to operate the approved service to the standards expected by the Council; and

“year” means any period of twelve months.

(b) Any reference in this SLA to an Article shall be taken as referring to an Article of this SLA.

(c) The Interpretation Act 1978 (a) shall apply for the interpretation of this SLA as it applies for the interpretation of an Act of Parliament.

(d) This SLA, with the exception of the overriding interpretation contained within Article 16 (c), in general shall be governed by and construed in accordance with the law of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents consisting of this and the six preceding pages are executed as follows:

For and on behalf of ORKNEY FERRIES LIMITED by:

..... (Director's signature)

..... (Print name)

..... (Director's signature)

..... (Print name)

At Kirkwall on 2024

For and on behalf of ORKNEY ISLANDS COUNCIL by:

..... (Chief Executive)

..... (Print name)

At Kirkwall on 2024

Seal of Orkney Islands Council

This is the Schedule referred to in the foregoing Service Level Agreement between Orkney Islands Council and Orkney Ferries Ltd.

Schedule Part A

Service Specification for Orkney Ferries Ltd

1: “Approved Lifeline Services”

Orkney Ferries Ltd (the Company) will operate Inter-Isles ferry services to the Inner and South Isles (consisting of services to, from and within the Isles of Shapinsay, Rousay, Egilsay, Wyre, Hoy, Flotta and Graemsay) – these being generally within the group of Islands known as Orkney. These services will be as approved by Orkney Islands Council’s (the Council) Development and Infrastructure Committee and operate for two distinct and timed periods of each year – these being the summer from the first Sunday in May until the last Monday in September, and the remainder of the year being referred to as winter. In order for either of these timetable periods to be approved by the Council’s Development and Infrastructure Committee a recommendation from the Board of the Company must be made via the Council’s Service Manager – Transportation, following a period of consultation with the communities and discussion via the Air and Ferry Forum (January – future Winter Timetable and August – future Summer Timetable)

In normal circumstances a recommendation by the Board of the Company should be made to the Council no later than 10 August (for summer) and 10 March (for winter) each year.

Timetables will be considered by the Development and Infrastructure Committee prior to adoption. Approval of the timetables is also delegated to the Development and Infrastructure Committee.

The Council introduced the discretionary Local Concessionary Travel Scheme via a smart card on 1 April 2012. Eligible elderly and disabled residents in Eday, Sanday, Stronsay and Westray receive 12 return free trips via the NEC, with entitlement automatically allocated to the card on 1 April each year. Orkney Ferries Ltd will be responsible for administering the Local Concessionary Travel Scheme to eligible residents via a handheld ticket machine. Orkney Ferries Ltd will ensure that all staff are trained to use the system effectively (via the Council’s Transportation Team) and that monthly passenger reports are submitted in conjunction with monthly invoicing.

Orkney Ferries Ltd will be required to work with the Council on any future integrated ticketing projects.

2: Vessels

The vessels to be used to provide the “approved lifeline services” are those owned or leased by the Council or the Company at the time of the timetables being approved by the Council’s Development and Infrastructure Committee and are as specified in Schedule Part C of this SLA These will be suitable and certificated to provide a Roll on – Roll off (Ro-Ro) vehicle and passenger service and a Lift on - Lift off (Lo-Lo) service to the Inner and South Isles.

3: Staff

The Company shall employ staff it deems necessary in order to provide the approved lifeline services using the vessels provide or leased.

Sea Staff shall hold qualifications and standards as set by the Maritime and Coastguard Agency (MCA) in all respects – this being used as the minimum acceptable standard for all sea staff.

Shore staff must be of a suitable standard to provide all management, clerical and pier services as deemed necessary by the Company in order to provide the approved lifeline services.

Regardless of whether staff are employed at sea or on shore the Company should provide all necessary training, support services and systems in order that the Company meets all requirements made by regulation or law for the employment of those staff.

4: The Company

The Company will ensure that it meets all the requirements in order that it can provide the approved lifeline services, this will include, but not necessarily be limited to, the requirements of the Health and Safety Executive and relevant regulations and guidance, the Maritime and Coastguard Agency and relevant regulations and guidance and other International or European rules, regulations or guidance that is, or becomes, applicable to the provision of the approved lifeline services.

5: Tariffs

The Company will ensure that all due tariffs are collected and accounted for. The Council has determined that fare increases should follow the increase applied to Transport Scotland funded ferry services. Any review of Transport Scotland funded ferry services fares may then result in a review of Orkney Ferries fares to ensure that they align. Tariff rates will be published by the Company.

The normal period for review and introduction of revised tariff rates will be 1 April to 31 March each year.

Tariffs rates will form part of the revenue budget setting exercise and lead to the setting of the funding package agreed between the Company and the Council on an annual basis. This is the basis for the detail within Articles 1, 2, 3 and 4 of this SLA and is a fundamental part of the financing of the Company.

In the event of a difference in recommendations from the Board of the Company and approvals from the Council's Development and Infrastructure Committee the over-riding decision remains with the Council at their next available General Meeting after the Development and Infrastructure Committee Meeting.

This is the Schedule referred to in the foregoing Service Level Agreement between Orkney Islands Council and Orkney Ferries Ltd.

Schedule Part B

Standards of Expected Services for Orkney Ferries Ltd

- 1: Consultation
 - (a) The Company will take part in the Inter-Isles Ferry Forum and its meetings organised by the Council, held twice per annum. This will include any consultation and discussions to changes to timetables and provision of service in sufficient time for other members of this Committee to respond. Any other matters raised or requiring a response from the Company will be attended to in good time and via the Council's Service Manager - Transportation.

- 2: Complaints
 - (a) The Company will publish details of and operate a transparent complaints procedure to deal with all written complaints received by the Company. This system will consist of a logging in, investigation, conclusion and action arrangement - with a written response always being sent to the person making the complaint. On an annual basis and after the Company's ISM Management Review meeting, a summary of complaints will be presented to the next meeting of the Ferry Forum.

- 3: Passenger Information Systems
 - (a) The Company will operate and keep up to date, as far as reasonably possible Social Media Platforms, for use in the event of disruptions or cancellations to approved services. For those persons who have a booking on the company's main booking system they should be contacted via text message or telephone to inform them of any disruption to service.
 - (b) The Company will keep their website up to date, this is to include operational notices with all details being posted on their website in the event of disruptions or cancellations to approved services.
 - (c) The Company is to keep the Council's Service Manager - Transportation informed of all disruptions or cancellations to approved services. Likewise, the Council's Service Manager - Transportation is to keep the Company informed of any occurrences or alterations to other transport operators or Council procedures in general which may have an effect on the Company's ability to provide approved services.

- (d) The Company will provide the Council on a monthly basis, passenger and vehicle patronage data on usage of the ferry services on a route-by-route basis. The Company will also provide the Council with monthly usage data of the Council's Concessionary Travel Scheme.

This is the Schedule referred to in the foregoing Service Level Agreement between Orkney Islands Council and Orkney Ferries Ltd.

Schedule Part C

Vessels to be Used for the Provision of Inner and South Isles Services

Vessel Name	IMO / Official Number
mv Hoy Head	719652
mv Thorsvoe	719645
mv Shapinsay	710152
mv Eynhallow	710149
mv Graemsay	728892
mv Nordic Sea	177773

Service Level Agreement

between

Orkney Islands Council

and

Orkney Ferries Ltd

for

Outer North Isles Services



Orkney Ferries



RECORD OF AMENDMENTS

A/L No.	Amendment Incorporated	Initials	Date
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Orkney Islands Council (hereinafter referred to as “**the Council**” and Orkney Ferries Ltd., (hereinafter referred to as “**the Company**”, make this Service Level Agreement (SLA) under Section 153 of the Local Government (Scotland) Act 1973 empowering the Council to “acquire, provide, maintain, improve and operate any ferry situated wholly or partly within their area”. In addition, Section 153 (c) of the 1973 Act empowers the Council to enter into arrangements with another person for the operation of a ferry by that person on their behalf. Section 153 (3) (d) empowers the Council to fix fares and charges for any ferry, giving adequate publicity as to those fares and charges. This SLA specifically refers to the provision of lifeline services in an area to be known as “**Outer North Isles**” (ONI) which includes the Isles and sea areas around Westray, Sanday, Eday, Stronsay, Papa Westray and North Ronaldsay.

Given that:

- i); Orkney Islands Council is incorporated under the Local Government (Scotland) Act 1973 as amended and the Local Government etc (Scotland) Act 1994 and having its principal offices at School Place, Kirkwall, Orkney. KW15 1NY, and
- ii): Orkney Ferries Ltd., a Company incorporated in Scotland with register number SCO36770 and having its registered office at Council Offices, Kirkwall, Orkney. KW15 1NY.

AND WHEREAS the Company by their execution hereof have agreed to comply with and observe the various terms and conditions hereinafter specified;

NOW THEREFORE, in exercise of the powers conferred upon it the Council and with agreement of the Company, hereby makes the following SLA:-

GENERAL

Advances

1. (a) For the purposes of maintaining and improving lifeline sea transport services serving the Orkney Islands, the Council hereby undertakes, in accordance with the provisions of this SLA, to make advances to the Company by way of grant or loan (or partly in one those ways and partly in the other) and, in respect of advances by the way of grant, such advances may be partly or wholly by way of revenue grant and partly or wholly by way of capital grant. In addition the vessels under the ownership of the Council, as detailed in Schedule Part C, are made available to the Company as part of this SLA.
- (b) The advances referred to in Article 1(a) are for the support of lifeline sea transport services provided by the Company which are to be used in connection with the Council’s powers under the Local Government (Scotland) Act 1973 (as stated in this SLA) and which the Council may approve

under this SLA (referred to as “**Approved Services**” and as generally specified in Schedule Part A and using vessels owned, leased or chartered by the Council as specified in Schedule Part C of this SLA)

2. The advances which may be made by way of revenue grant by the Council from time to time, to the Company and shall be made in support of approved lifeline services in respect of which the Council is satisfied that –
 - (a) in any period not less than one year or as may be agreed by the Council from time to time (“**a Determined Period**”), the Company will be likely to incur a deficit in providing such services during that period and;
 - (b) that deficit could not be eliminated except by increasing the charges to be made in respect of those services in that period to an extent which would be unacceptable to the Council in their absolute discretion.

3. For the purposes of assisting the Council to estimate the amount of any deficit which the Company is likely to incur in providing approved lifeline services during a determined period, the Company shall submit to the Council, not less than three months before the commencement of that period, estimates in respect of that period which shall have been prepared in accordance with such methods and principles and in such information as may be agreed from time to time between the Council and the Company.

Revenue grant

4. (a) Subject to the provisions of this SLA, the amount of a revenue grant which may be made in any determined period shall be the amount of the deficit which the Council estimates that the Company is likely to incur in providing approved services during that period.

- (b) The Scottish Government has committed to providing essential support for the ferry services operated by Orkney Ferries Limited through deficit funding, paid as a specific grant to Orkney Islands Council. The Scottish Government ensures that the full cost of operation is covered, alleviating the financial burden on the local community.

- (c) Revenue grant in respect of any determined period shall be payable in such instalments during that period as may be agreed between the Council and the Company.

Capital grant or loan

5. Any capital grant or any loan which the Council may make to the Company shall be made –

- (a) in respect of the acquisition, provision or improvement of a facility (“**Approved Facility**”); and
 - (b) on such terms and conditions as are specified by the Council when approving a facility in accordance with paragraph (a) above.
6. The amount of any capital grant or any loan shall be determined in each case by the Council by reference to suitable reports and details as required by the Council’s Financial Regulations and the Capital Project Appraisal system, together with availability of any external funding. The Scottish Government agreed in principle during 2023, through meetings of the Orkney Internal Ferry Replacement Task Force, to fund the further development of the business case to investigate replacing the internal ferry fleet in Orkney. The expectation is however that any new vessels will be procured by the Council and made available to Orkney Ferries Limited for delivery of the ferry service.
7. The amount of any capital grant or any loan shall not be payable by the Council to the Company until the approved facility, in respect of which the capital grant or the loan is made, has been contractually committed to by the Company, with expenditure beginning to be incurred on acquisition, or improvement as the case may be and has been brought into use by the Company:

Provided always that the Council may, before the date when any grant or loan is payable in terms in Article 7, pay to the Company instalments at such times and of such amounts and on such conditions as the Council determines.

TERMS AND CONDITIONS

Application of advances

8. The Company shall apply any grant, or any loan received under this SLA for the purposes of maintaining or improving approved lifeline services during the determined period in respect of which the grant or loan is made.
9. (a) The Company shall operate the approved services for the purposes of this SLA. In doing so the Company shall ensure that sufficient personnel, suitably trained, qualified and experienced are employed to provide the approved services. For the avoidance of doubt, the Company’s sea-going personnel shall not be deemed to be employees or agents of the Council and the Company shall at all times be liable for their actions and shall indemnify the Council in respect thereof.

The Service Manager (Ferry Operations) is an employee of the Council. All actions taken (on behalf of the Company) by the person in this post, shall be deemed to taken solely on behalf of the Company - the Company shall at all

times be liable for their actions and shall indemnify the Council in respect thereof.

- (b) If the Company proposes to discontinue any approved lifeline service or to make any alteration in the places to be served by any approved service any such proposal shall not be put into effect without the written consent of the Council, which consent may be given subject to such terms and conditions, including suspension or termination of any obligation to make advances to the Company, reduction in the amount of those advances and repayment of the whole or part of those advances, as the Council may specify. An exception to this would be the scheduling of additional services to address capacity constraints or previous weather related disruptions and amendments to services to assist Scottish Ambulance Service/NHS Orkney with transporting patients for medical purposes.
- (c) The Company shall ensure that adequate insurance is held for employer's liability and personal accident insurance for all its employees. Any vessels, vehicles or equipment used in connection with the provision of the approved lifeline service shall also be fully insured. The company on request will provide the Council evidence that all such cover has been purchased and all due premiums have been paid.

Accounts

- 10. The Company shall present to the Council, as soon as possible after the end of every accounting year of the Company, a copy of the annual accounts of the Company for that accounting year together with an Auditors Report.

Information

- 11. The Company shall furnish the Council with such information as the Council may reasonably require from time to time relative to any approved lifeline service.
 - (a) All documents and information received by the Company from the Council or its agent or representative in connection with the provision of the approved lifeline services shall be held in confidence. Such documents or information shall not be disclosed by the Company or anyone acting on its behalf to any other person without the consent of the Council, unless a duty to disclose to that person is imposed by statute or court order. The provisions of this paragraph and clause shall survive termination of this agreement.
 - (b) Freedom of Information Act

“The Company accepts and understands that the Council is a Public Authority within the meaning of the Freedom of Information (Scotland) Act

2002, and that, notwithstanding the terms of this SLA, may be required to disclose information in response to a request in terms of that Act; which information pertains to the Company or the affairs of the Company. The Council undertakes to notify the Company on receipt of any such request, provide the Company with copies of all correspondence relative to such request, and take account of any representations made by the Company to the Council in determining how to deal with such a request.”

Monitoring and Review Arrangements

12. (a) The Company will co-operate with any inspection, monitoring or evaluation process reasonably required by the Council to ensure satisfactory standards or quality and output in connection with the approved lifeline services.
- (b) This SLA will be reviewed annually by the Company and the Council. The reviews are to be undertaken during the month of June. The review will consider the provision of the approved lifeline services under this SLA and may lead to their amendment. Standards of expected lifeline service are contained within Schedule Part B of this SLA.

Resolution of Disputes

13. (a) If any dispute shall arise between the parties hereto in respect of the implementation of this SLA, the parties shall use all reasonable endeavours to resolve such dispute by negotiation.
- (b) If either party considers that such dispute cannot be resolved by negotiation, the matter shall be referred to a mutually agreed independent expert or, failing such agreement, to an expert nominated by the Sheriff of Grampian, Highlands and Islands at Kirkwall on the application of either party, and the decision of such expert shall be final and binding on both parties.

Commencement and manner of determination and termination

14. (a) This SLA shall come into force on the date of the last signature and subject to the following provisions of this Article shall continue in force until determined in the manner hereinafter provided.
- (b) If the Company at any time when the SLA is in force, ceases to be eligible for assistance, the SLA shall thereupon be deemed to be determined.
- (c) This SLA may be determined by agreement between the Council and the Company, or by not less than six months' prior notice in writing given either by the Council to the Company, or by the Company to the Council.

- (d) In the event of any failure by the Company to comply with any of the obligations which are imposed upon it by or by virtue of provisions of this SLA the Council may –
- (i) overlook such failure; or
 - (ii) determine the SLA; or
 - (iii) terminate any obligation upon it under this SLA to make advances of any nature to the Company.
- (e) Any notice to be given under or in connection with this SLA shall be in writing and shall be served by sending it by pre-paid recorded delivery or registered post or by facsimile to the address given at the beginning (parts (i) and (ii)) of this SLA document. They should be addressed for the attention of Service Manager – Transportation in connection with the Council and the Company Secretary in connection with the Company or any other address and/or contact name communicated to the other party in writing after the date of this SLA.
- (f) Any such notice shall be deemed to have been received if sent by recorded delivery or registered post, 48 hours from the date of posting.

And in the event of any determination or termination under this paragraph, it shall be sufficient for the Council to give to the Company notice in writing to the effect that the SLA is determined or the obligation is terminated as the case may be from such date as may be specified in the notice, which date shall not be earlier than the date on which the failure occurred, or, in the case of a continuing failure, the date on which the failure first occurred.

Effect of determination or termination

15. (a) In the event of this SLA being determined by agreement between the Council and the Company, or, in the event of any obligation of the agreements, the effect of such determination or termination, as the case may be, shall be as agreed between the Council and the Company.
- (b) Subject to the foregoing paragraph, in the event of this SLA being determined at a time when a revenue grant is payable or in the event of any obligation of the Council to make a revenue grant being terminated –
- (i) the obligation of the Council to pay any further instalments of that revenue grant shall cease immediately upon the date of such determination or termination as the case may be;
 - (ii) the amount of the revenue grant which has been paid in advance in respect of the period before the date of such determination or termination as the case may be, shall not be recoverable by the Council, but without

prejudice to the right to recover any amount of the relevant grant which has been paid in advance in respect of any period after such date;

(iii) the amount of the revenue grant which is payable in respect of the period before the date of such determination or termination as the case may be, shall be recoverable by the Company; and

(iv) the amount of the revenue grant which is payable in respect of the period before the date of such determination or termination as the case may be, shall be recoverable by the Company; and

(v) the determined period in relation to which the revenue grant was payable shall be deemed to have terminated.

Interpretation

16. (a) In this SLA, except insofar as the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them:-

“approved lifeline services” shall have the meaning assigned to it in Article 1(b);

“determined period” shall have the meaning assigned to it in Article 2;

“facility” shall include (but without prejudice to the generality of that expression) a vessel employed or to be employed in an approved service, or any other vehicles, services or equipment required to operate the approved service to the standards expected by the Council; and

“year” means any period of twelve months.

(b) Any reference in this SLA to an Article shall be taken as referring to an Article of this SLA.

(c) The Interpretation Act 1978 (a) shall apply for the interpretation of this SLA as it applies for the interpretation of an Act of Parliament.

(d) This SLA, with the exception of the overriding interpretation contained within Article 16 (c), in general shall be governed by and construed in accordance with the law of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents consisting of this and the six preceding pages are executed as follows:

For and on behalf of ORKNEY FERRIES LIMITED by:

..... (Director's signature)

..... (Print name)

..... (Director's signature)

..... (Print name)

At Kirkwall on 2024

For and on behalf of ORKNEY ISLANDS COUNCIL by:

..... (Chief Executive)

..... (Print name)

At Kirkwall on 2024

Seal of Orkney Islands Council

This is the Schedule referred to in the foregoing Service Level Agreement between Orkney Islands Council and Orkney Ferries Ltd.

Schedule Part A

Service Specification for Orkney Ferries Ltd

1: “Approved Lifeline Services”

Orkney Ferries Ltd (the Company) will operate Lifeline Inter-Island ferry services to the Outer North Isles (consisting of services to, from and within the Isles of Stronsay, Eday, Sanday, North Ronaldsay, Papa Westray and Westray) – these being generally within the group of Islands known as Orkney. These lifeline services will be as approved by Orkney Islands Council’s (the Council) Development and Infrastructure Committee and operate for two distinct and timed periods of each year – these being the summer from the first Sunday in May until the last Monday in September, and the remainder of the year being referred to as winter. In order for either of these timetable periods to be approved by the Council’s Development and Infrastructure Committee a recommendation from the Board of the Company must be made via the Council’s Service Manager – Transportation, following a period of consultation with the communities and discussion via the Air and Ferry Forum (January – future Winter Timetable and August – future Summer Timetable).

In normal circumstances a recommendation by the Board of the Company should be made to the Council no later than 30 August (for summer) and 10 March (for winter) each year.

The provision of a Freight Depot for the trans-shipment of goods to and from the Outer North Isles is included in the approved services specified by the Council. This service is to be tendered by the Company at pre-determined intervals. The detail and specification of this provision will be contained within a tender package agreed between the Company and Council on each occasion that this service is re-tendered.

The provision of a freight plane service to North Ronaldsay, as specified by the Council.

Timetables will be considered by the Development and Infrastructure Committee prior to adoption. Approval of the timetables is also delegated to the Development and Infrastructure Committee.

The Council introduced the discretionary Local Concessionary Travel Scheme via a smart card on 1 April 2012. Eligible elderly and disabled residents in Eday, Sanday, Stronsay and Westray receive 12 return free trips via the NEC, with entitlement automatically allocated to the card on 1 April each year. Orkney Ferries Ltd will be responsible for administering the Local Concessionary Travel Scheme to eligible residents via a handheld ticket machine. Orkney Ferries Ltd will ensure that all

staff are trained to use the system effectively (via the Council's Transportation Team) and that monthly passenger reports are submitted in conjunction with monthly invoicing.

Orkney Ferries Ltd will be required to work with the Council on any future integrated ticketing projects.

2: Vessels

The vessels to be used to provide the "approved lifeline services" are those owned or leased by the Council or the Company at the time of the timetables being approved by the Council's Development and Infrastructure Committee and are as specified in Schedule Part C of this SLA These will be suitable and certificated to provide a Roll on – Roll off (Ro-Ro) vehicle and passenger service and a Lift on - Lift off (Lo-Lo) service to the ONI.

3: Staff

The Company shall employ staff it deems necessary in order to provide the approved lifeline services using the vessels provide or leased.

Sea Staff shall hold qualifications and standards as set by the Maritime and Coastguard Agency (MCA) in all respects – this being used as the minimum acceptable standard for all sea staff.

Shore staff must be of a suitable standard to provide all management, clerical and pier services as deemed necessary by the Company in order to provide the approved lifeline services.

Regardless of whether staff are employed at sea or on shore the Company should provide all necessary training, support services and systems in order that the Company meets all requirements made by regulation or law for the employment of those staff.

4: The Company

The Company will ensure that it meets all the requirements in order that it can provide the approved services, this will include, but not necessarily be limited to, the requirements of the Health and Safety Executive and relevant regulations and guidance, the Maritime and Coastguard Agency and relevant regulations and guidance and other International or European rules, regulations or guidance that is, or becomes, applicable to the provision of the approved lifeline services.

5: Tariffs

The Company will ensure that all due tariffs are collected and accounted for. The Council has determined that fare increases should follow the increase applied to Transport Scotland funded ferry services. Any review of Transport Scotland funded ferry services fares may then result in a review of Orkney Ferries fares to ensure that they align. Tariff rates will be published by the Company.

The normal period for review and introduction of revised tariff rates will be 1 April to 31 March each year.

Tariffs rates will form part of the revenue budget setting exercise and lead to the setting of the funding package agreed between the Company and the Council on an annual basis. This is the basis for the detail within Articles 1, 2, 3 and 4 of this SLA and is a fundamental part of the financing of the Company.

In the event of a difference in recommendations from the Board of the Company and approvals from the Council's Development and Infrastructure Committee the overriding decision remains with the Council at their next available General Meeting after the Development and Infrastructure Committee Meeting.

This is the Schedule referred to in the foregoing Service Level Agreement between Orkney Islands Council and Orkney Ferries Ltd.

Schedule Part B

Standards of Expected Services for Orkney Ferries Ltd

- 1: Consultation
 - (a) The Company will take part in the Inter-Isles Ferry Forum and its meetings organised by the Council, held twice per annum. This will include any consultation and discussions to changes to timetables and provision of service in sufficient time for other members of this Committee to respond. Any other matters raised or requiring a response from the Company will be attended to in good time and via the Council's Service Manager - Transportation.

- 2: Complaints
 - (a) The Company will publish details of and operate a transparent complaints procedure to deal with all written complaints received by the Company. This system will consist of a logging in, investigation, conclusion and action arrangement - with a written response always being sent to the person making the complaint. On an annual basis and after the Company's ISM Management Review meeting, a summary of complaints will be presented to the next meeting of the Ferry Forum.

- 3: Passenger Information Systems
 - (a) The Company will operate and keep up to date, as far as reasonably possible Social Media Platforms for use in the event of disruptions or cancellations to approved services. For those persons who have a booking on the company's main booking system they should be contacted via text message or telephone to inform them of any disruption to service.
 - (b) The Company will keep up to date their web site, this is to include operational notices with all details being posted on their web site in the event of disruptions or cancellations to approved services.
 - (c) The Company is to keep the Council's Service Manager - Transportation informed of all disruptions or cancellations to approved services. Likewise, the Council's Service Manager - Transportation is to keep the Company informed of any occurrences or alterations to other transport operators or Council procedures in general which may have an effect on the Company's ability to provide approved services.

- (d) The Company will provide the Council on a monthly basis passenger and vehicle patronage data on usage of the ferry services on a route-by-route basis. The Company will also provide the Council with monthly usage data of the Council's Concessionary Travel Scheme.

This is the Schedule referred to in the foregoing Service Level Agreement between Orkney Islands Council and Orkney Ferries Ltd.

Schedule Part C

Vessels to be Used for the Provision of Outer North Isles Services

Vessel Name	IMO / Official Number
mv Varagen	710153
mv Earl Sigurd	719643
mv Earl Thorfinn	719644
mv Nordic Sea	177773