

31 March 2020



Associated British Ports  
25 Bedford Street  
London  
WC2E 9ES

## **Amendment of facility access contracts between Associated British Ports and DB Cargo Limited.**

Under section 22 of the Railways Act 1993, and further to the application made by Associated British Ports and DB Cargo Limited, I approve the amendment to this facility access contract between the parties, as submitted to ORR on 31 March 2020:

- (i) dated 15 October 2010 (Port of Ayr)

The amendment is termed the 6th Supplemental Agreement and changes the expiry date of each contract to 31 March 2025, and a copy is enclosed with this notice.

A handwritten signature in black ink, appearing to read 'G. Herbert', is enclosed in a light grey rectangular box.



**GORDON HERBERT**

**Duly authorised by the Office of Rail and Road**



**Steve Jones**

Executive, Access and Licensing  
Railway Markets and Economics

Email: [steve.jones@orr.gsi.gov.uk](mailto:steve.jones@orr.gsi.gov.uk)

31 March 2020



Chris Geldard  
Acting for Associated British Ports  
Associated British Ports  
25 Bedford Street  
London  
WC2E 9ES

Dear Chris and Nigel,

**Approval of changes to the facility access contract between Associated British Ports and DB Cargo Limited**

1. On 31 March 2020 the Office of Rail and Road (**ORR**) approved the 6th Supplemental Agreement (SA) to a facility access contract (**FAC**) between Associated British Ports (**ABP**) and DB Cargo Limited (DBC) under section 22 of the Railways Act 1993 (**the Act**), submitted to us on 30 March 2020. This letter sets out the reasons for our decision.

**Purpose of the agreement**

2. The purpose of the 6th SA is to amend the expiry date of the existing FAC that DBC has with ABP at the port of Ayr. It is to take effect on the expiry of DBC's current FAC on 31 March 2020 and will change the expiry date to 31 March 2025. The FAC allows DBC to operate freight services on ABP's network.

**Consultation**

3. ABP undertook the usual industry consultation between 10 March and 24 March 2020. No comments were received and there are no outstanding concerns following closure of the consultation period.

**ORR Review**

4. Our initial review of the 6th SA took place in March 2020 after the consultation period and the contracts were signed. The 6th SA did not raise any regulatory, performance or economic issues.
5. This application to extend contracts by five years falls within our Duration of Access Contracts Policy.

**ORR Decision**

6. This is an application under section 22 of the Act and is agreed between the parties.
7. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:

- (i) to protect the interests of users of railway assets;
- (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
- (iii) to promote efficiency and economy on the part of the persons providing railway services; and
- (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

### **Public Register**

- 8. In entering any provision on the register, ORR is required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:
  - a. any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
  - b. any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that body.

Please let me know if there any matters that need redacting.

Yours sincerely

*S Jones*

Steve Jones

# Sixth Supplemental Agreement

between

**ASSOCIATED BRITISH PORTS**

As Facility Owner

and

**DB CARGO (UK) LIMITED** As Train Operator

relating to

**The amendment of Facility Access Contracts**

**THIS SIXTH SUPPLEMENTAL AGREEMENT** is made on the 31<sup>st</sup> day of March 2020

**BETWEEN: -**

- (1) **ASSOCIATED BRITISH PORTS**, a statutory corporation created under the Transport Act 1981 and registered in England under number ZC000195, having its principal office at 25 Bedford Street, London EC2E ("**ABP**"); and
- (2) **DB CARGO (UK) LIMITED**, a company registered in England under number 2938988, having its registered office at Lakeside Business Park, Carolina Way, Doncaster DN4 (the "**Train Operator**").

**WHEREAS: -**

(A) The parties entered into Facility Access Contract at:

- i. The Port of Ayr dated 15<sup>th</sup> October 2010

in a form approved by the Office of Rail Regulation ("ORR") pursuant to the section 18 of the Act (which Facility Access Contracts as subsequently amended are hereafter referred to as the "Contracts").

(B) The parties propose to enter into this Sixth Supplemental Agreement in order to vary the Contracts as described below.

**IT IS HEREBY AGREED** as follows: -

## **1. INTERPRETATION**

In this Sixth Supplemental Agreement:

- (A) Words and expressions defined in and rules of interpretation set out in the Contracts shall have the same meaning and effect when used in this Sixth Supplemental Agreement except where the context requires otherwise; and
- (B) "Effective Date" means the date when the following conditions precedent, which cannot be waived by the parties, have been satisfied in full:
  - i. This Sixth Supplemental Agreement has been signed by, or on behalf of, the parties; and
  - ii. ABP has, within 14 days of such signature, sent a signed copy of this Sixth Supplemental Agreement to ORR.

## **2. EFFECTIVE DATE AND TERM**

The amendments to the Contracts as set out in this Sixth Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect when the Contracts shall cease to have effect.

## **3. AMENDMENTS TO EACH OF THE CONTRACTS**

Clause 1.1 **Definitions** of the Contracts shall be amended by replacing:

**“Expiry Date”** means 31 March 2020

with

**“Expiry Date”** means 31 March 2025

## **4. GENERAL**

The parties agree that the Contracts, as amended by this Sixth Supplemental Agreement, shall remain in full force and effect in accordance with their terms, and with effect from and including the Effective Date and during the period in which the amendments made by this Sixth Supplemental Agreement are to have effect, all references in the Contracts to “the Contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contracts as amended by this Sixth Supplemental Agreement.

## **5. LAW**

This Sixth Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with the laws of Scotland.

## **6. COUNTERPARTS**

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

## **7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.



31 March 2020



Associated British Ports  
25 Bedford Street  
London  
WC2E 9ES

## **Amendment of facility access contracts between Associated British Ports and DB Cargo Limited.**

Under section 22 of the Railways Act 1993, and further to the application made by Associated British Ports and DB Cargo Limited, I approve the amendment to these facility access contracts between the parties, as submitted to ORR on 30 March 2020:

- (i) dated 15 September 2010 (Port of Southampton)
- (ii) dated 31 December 2010 (Hull)
- (iii) dated 16 April 2015 (Immingham)
- (iv) dated 22 March 2012 (Goole)
- (v) dated 14 March 2011 (South Wales)
- (vi) dated 21 July 2011 (Ipswich)
- (vii) dated 15 September 2010 (Hams Hall).

The amendment is termed the 5th Supplemental Agreement and changes the expiry date of each contract to 31 March 2025, and a copy is enclosed with this notice.

  
**GORDON HERBERT**

**Duly authorised by the Office of Rail and Road**





**Steve Jones**

Executive, Access and Licensing  
Railway Markets and Economics

Email: [steve.jones@orr.gsi.gov.uk](mailto:steve.jones@orr.gsi.gov.uk)

31 March 2020



Chris Geldard  
Acting for Associated British Ports  
Associated British Ports  
25 Bedford Street  
London  
WC2E 9ES

Dear Chris and Nigel,

**Approval of changes to the facility access contract between Associated British Ports and DB Cargo Limited**

1. On 31 March 2020 the Office of Rail and Road (**ORR**) approved the 5th Supplemental Agreement (SA) to seven facility access contracts (**FAC**) between Associated British Ports (**ABP**) and DB Cargo Limited (DBC) under section 22 of the Railways Act 1993 (**the Act**), submitted to us on 30 March 2020. This letter sets out the reasons for our decision.

**Purpose of the agreement**

2. The purpose of the 5th SA is to amend the expiry date of the existing FAC that DBC has with ABP at the ports of Immingham, Hull, Goole, Hams Hall, Ipswich, South Wales and Southampton. It is to take effect on the expiry of DBC's current FAC on 31 March 2020 and will change the expiry date to 31 March 2025. The FAC allows DBC to operate freight services on ABP's network.

**Consultation**

3. ABP undertook the usual industry consultation between 10 March and 24 March 2020. No comments were received and there are no outstanding concerns following closure of the consultation period.

**ORR Review**

4. Our initial review of the 5th SA took place in March 2020 after the consultation period and the contracts were signed. The 5th SA did not raise any regulatory, performance or economic issues.
5. This application to extend contracts by five years falls within our Duration of Access Contracts Policy.

**ORR Decision**

6. This is an application under section 22 of the Act and is agreed between the parties.

7. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
- (i) to protect the interests of users of railway assets;
  - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
  - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
  - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

### **Public Register**

8. In entering any provision on the register, ORR is required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:
- a. any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
  - b. any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that body.

Please let me know if there any matters that need redacting.

Yours sincerely

*S Jones*

Steve Jones

# Fifth Supplemental Agreement

between

**ASSOCIATED BRITISH PORTS**

As Facility Owner

and

**DB CARGO (UK) LIMITED** As Train Operator

relating to

**The amendment of Facility Access Contracts**

**THIS FIFTH SUPPLEMENTAL AGREEMENT** is made on the 31<sup>st</sup> day of March 2020

**BETWEEN: -**

- (1) **ASSOCIATED BRITISH PORTS**, a statutory corporation created under the Transport Act 1981 and registered in England under number ZC000195, having its principal office at 25 Bedford Street, London EC2E (“**ABP**”); and
- (2) **DB CARGO (UK) LIMITED**, a company registered in England under number 2938988, having its registered office at Lakeside Business Park, Carolina Way, Doncaster DN4 (the “**Train Operator**”).

**WHEREAS: -**

- (A) The parties entered into Facility Access Contracts at:
  - i. The Port of Southampton dated 15<sup>th</sup> September 2010
  - ii. The Hams Hall Railfreight Terminal dated 15<sup>th</sup> September 2010
  - iii. The Port of Immingham dated 16<sup>th</sup> April 2015
  - iv. The Port of Hull dated 31<sup>st</sup> December 2010
  - v. The South Wales Ports of Newport, Cardiff, Barry & Swansea dated 14<sup>th</sup> March 2011
  - vi. The Port of Ipswich dated 21<sup>st</sup> July 2011
  - vii. The Port of Goole dated 22<sup>nd</sup> March 2012

in a form approved by the Office of Rail Regulation (“**ORR**”) pursuant to the section 18 of the Act (which Facility Access Contracts as subsequently amended are hereafter referred to as the “**Contracts**”).

- (B) The parties propose to enter into this Fifth Supplemental Agreement in order to vary the Contracts as described below.

**IT IS HEREBY AGREED** as follows: -

## **1. INTERPRETATION**

In this Fifth Supplemental Agreement:

- (A) Words and expressions defined in and rules of interpretation set out in the Contracts shall have the same meaning and effect when used in this Fifth Supplemental Agreement except where the context requires otherwise; and
- (B) “**Effective Date**” means the date when the following conditions precedent, which cannot be waived by the parties, have been satisfied in full:

- i. This Fifth Supplemental Agreement has been signed by, or on behalf of, the parties; and
- ii. ABP has, within 14 days of such signature, sent a signed copy of this Fifth Supplemental Agreement to ORR.

## **2. EFFECTIVE DATE AND TERM**

The amendments to the Contracts as set out in this Fifth Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect when the Contracts shall cease to have effect.

## **3. AMENDMENTS TO EACH OF THE CONTRACTS**

Clause 1.1 **Definitions** of the Contracts shall be amended by replacing:

**“Expiry Date”** means 31 March 2020

with

**“Expiry Date”** means 31 March 2025

## **4. GENERAL**

The parties agree that the Contracts, as amended by this Fifth Supplemental Agreement, shall remain in full force and effect in accordance with their terms, and with effect from and including the Effective Date and during the period in which the amendments made by this Fifth Supplemental Agreement are to have effect, all references in the Contracts to “the Contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contracts as amended by this Fifth Supplemental Agreement.

## **5. LAW**

This Fifth Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with English Law.

## **6. COUNTERPARTS**

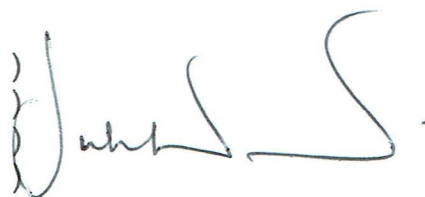
This Fifth Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

## **7. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person who is not a party to this Supplemental Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Supplemental Agreement.

IN WITNESS WHEREOF ABP and the Train Operator have, by their duly authorised representatives, respectively entered into this Supplemental Agreement on the date first above written.

**SIGNED** by Julian Walker  
Director  
for and on behalf of  
**ASSOCIATED BRITISH PORTS**

A handwritten signature in black ink, appearing to read 'Julian Walker', with a large flourish at the end.

**SIGNED** by **ROGER NEARY**  
HEAD OF SALES  
for and on behalf of  
**DB CARGO (UK) LIMITED**

A handwritten signature in blue ink, appearing to read 'Roger Neary', with a large flourish at the end.