

31 March 2020



Associated British Ports
25 Bedford Street
London
WC2E 9ES

Amendment of facility access contracts between Associated British Ports and GB Railfreight Limited.

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

- (i) dated 19 July 2010 (Port of Southampton)
- (ii) dated 11 January 2011 (Hull)
- (iii) dated 6 May 2010 (Immingham)
- (iv) dated 16 April 2015 (South Wales)
- (v) dated 10 May 2011 (Hams Hall).

The amendment is termed the 4th 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.H.', 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

31 March 2020



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

Andy Moyle
National Access Manager
GB Railfreight Ltd
3rd Floor
55 Old Broad Street
London
EC2M 1RX

Dear Chris and Andy,

Approval of changes to the facility access contract between Associated British Ports and GB Railfreight Limited

1. On 31 March 2020 the Office of Rail and Road (**ORR**) approved the 4th Supplemental Agreement (SA) to five facility access contracts (**FAC**) between Associated British Ports (**ABP**) and GB Railfreight Limited (**GBRF**) 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 4th SA is to amend the expiry date of the existing FAC that GBRF has with ABP at the ports of Immingham, Hull, Hams Hall, South Wales and Southampton. It is to take effect on the expiry of GBRF's current FAC on 31 March 2020 and will change the expiry date to 31 March 2025. The FAC allows GBRF 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 4th SA took place in March 2020 after the consultation period and the contracts were signed. The 4th 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

Fourth Supplemental Agreement

between

ASSOCIATED BRITISH PORTS

As Facility Owner

and

GB RAILFREIGHT LIMITED As Train Operator

relating to

The amendment of Facility Access Contracts

THIS FOURTH SUPPLEMENTAL AGREEMENT is made on the 31st 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) **GB RAILFREIGHT LIMITED**, a company registered in England and Wales under number 03707899, having its registered office at 3rd Floor, 55 Old Broad Street, London EC2M 1RX (the “**Train Operator**”).

WHEREAS: -

- (A) The parties entered into Facility Access Contracts at:
 - i. The Port of Immingham dated 6th May 2010
 - ii. The Port of Southampton dated 19th July 2010
 - iii. The Port of Hull dated 11th January 2011
 - iv. The Hams Hall Railfreight Terminal dated 10th May 2011
 - v. The South Wales Ports of Newport, Cardiff, Barry & Swansea dated 16th April 2015

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 Fourth Supplemental Agreement in order to vary the Contracts as described below.

IT IS HEREBY AGREED as follows: -

1. INTERPRETATION

In this Fourth 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 Fourth 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 Fourth 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 Fourth Supplemental Agreement to ORR.

2. EFFECTIVE DATE AND TERM

The amendments to the Contracts as set out in this Fourth 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

Clause 10.4.2 **Liability Cap** shall be amended by replacing with:

10.4.2 *Liability Cap*

The Liability Cap for the first Contract Year shall mean the sum of £5,000,000 and in relation to any subsequent Contract Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \left[\frac{RPI_n}{RPI_1} \right]$$

where:

- (i) C_1 is the sum of £5,000,000;
- (ii) C_n is the Liability Cap in the n th subsequent Contract Year;
- (iii) RPI_n is the Retail Prices Index (defined as RPI in Clause 9.2.7) published or determined with respect to the first month of the subsequent Contract Year n ; and
- (iv) RPI_1 is the Retail Prices Index (defined as RPI in Clause 9.2.7) published or determined with respect to the first month of the first Contract Year.

SCHEDULE 1 – CONTACT DETAILS

1.1 Train Operator: replace: 15-25 Artillery Lane
And copied to: London EH1 7HA

with: 3rd Floor, 55 Old Broad Street,
London EC2M 1RX

1.2 & 1.3 Train Operator: replace: Kestrel House,
Oysterbed Road,
Felixstowe IP11 4SH

Attention: Contracts Logistics Manager

with: Wickenden House,
Dock Road,
Felixstowe IP11 3TZ

Attention: General Manager Intermodal

4. GENERAL

The parties agree that the Contracts, as amended by this Fourth 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 Fourth 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 Fourth Supplemental Agreement.

5. LAW

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

6. COUNTERPARTS

This Fourth 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.

