

31 March 2020



Associated British Ports
25 Bedford Street
London
WC2E 9ES

Freightliner Heavy Haul
Limited
30 Whitfield Street
Fitzrovia
London
W1E 4TZ

Amendment of facility access contracts between Associated British Ports and Freightliner Heavy Haul Limited.

Under section 22 of the Railways Act 1993, and further to the application made by Associated British Ports and Freightliner Heavy Haul Limited, I approve the amendment to these facility access contracts between the parties, as submitted to ORR on 31 March 2020:

- (i) dated 12 November 2010 (Hull)
- (ii) dated 22 April 2010 (Immingham)
- (iii) dated 17 March 2011 (South Wales)
- (iv) dated 15 October 2012 (Goole)

The amendment is termed the 5th Supplemental Agreement and changes the expiry date of each contract to 31 December 2020, and a copy is enclosed with this notice.

A handwritten signature in black ink, appearing to read 'G.H.', is written over a light blue rectangular background.

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

Lindsay Durham
Rail access and strategy manager
Freightliner Heavy Haul Ltd
3rd Floor
90 Whitfield Street
London
W1T 4EZ

Dear Chris and Lindsay,

Approval of changes to the facility access contract between Associated British Ports and Freightliner Heavy Haul Limited

1. On 31 March 2020 the Office of Rail and Road (**ORR**) approved the 5th Supplemental Agreement (SA) to four facility access contracts (**FAC**) between Associated British Ports (**ABP**) and Freightliner Heavy Haul Limited (**FHHL**) under section 22 of the Railways Act 1993 (**the Act**), submitted to us on 31 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 FHHL has with ABP at the ports of Immingham, Hull, Goole and South Wales. It is to take effect on the expiry of FHHL's current FAC on 31 March 2020 and will change the expiry date to 31 December 2020. The FAC allows FHHL 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 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

FREIGHTLINER HEAVY HAUL LIMITED

As Train Operator

relating to

The amendment of Facility Access Contracts

THIS FIFTH 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) **FREIGHTLINER HEAVY HAUL LIMITED**, a company registered in England under number 03831229, having its registered office at 3rd Floor, 90 Whitfield Street, Fitzrovia, London, United Kingdom, W1T 4EZ (the “**Train Operator**”).

WHEREAS: -

- (A) The parties entered into Facility Access Contracts at:
 - i. The Port of The Port of Immingham dated 22nd April 2010
 - ii. The Port of Hull dated 12th November 2010
 - iii. The Port of Goole dated 15th October 2012
 - iv. The South Wales Ports of Newport, Cardiff, Barry & Swansea dated 17th March 2011

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 December 2020

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

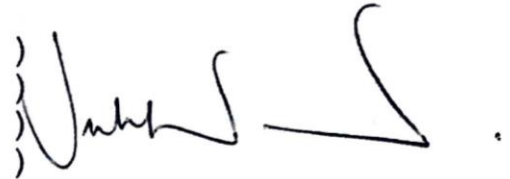
This Fifth Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

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', enclosed within a large, stylized bracket on the left side.

SIGNED by *GARY Leadley*
CEO
for and on behalf of
FREIGHTLINER HEAVY HAUL LIMITED

A handwritten signature in blue ink, appearing to read 'Gary Leadley', enclosed within a large, stylized bracket on the left side.

31 March 2020



Associated British Ports
25 Bedford Street
London
WC2E 9ES

Freightliner Heavy Haul
Limited
30 Whitfield Street
Fitzrovia
London
W1E 4TZ

Amendment of facility access contracts between Associated British Ports and Freightliner Heavy Haul Limited.

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

(i) dated 17 March 2011 (Ayr)

The amendment is termed the 6th Supplemental Agreement and changes the expiry date of each contract to 31 December 2020, and a copy is enclosed with this notice.

A handwritten signature in black ink, appearing to read 'G. Herbert', is written over the printed name.

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

Lindsay Durham
Rail access and strategy manager
Freightliner Heavy Haul Ltd
3rd Floor
90 Whitfield Street
London
W1T 4EZ

Dear Chris and Lindsay,

Approval of changes to the facility access contract between Associated British Ports and Freightliner Heavy Haul 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 Freightliner Heavy Haul Limited (**FHHL**) under section 22 of the Railways Act 1993 (**the Act**), submitted to us on 31 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 FHHL has with ABP at the port of Ayr. It is to take effect on the expiry of FHHL's current FAC on 31 March 2020 and will change the expiry date to 31 December 2020. The FAC allows FHHL 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 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

FREIGHTLINER HEAVY HAUL LIMITED As Train Operator

relating to

The amendment of Facility Access Contracts

THIS SIXTH 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) **FREIGHTLINER HEAVY HAUL LIMITED**, a company registered in England under number 03831229, having its registered office at 3rd Floor, 90 Whitfield Street, Fitzrovia, London, United Kingdom, W1T 4EZ (the “**Train Operator**”).

WHEREAS: -

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

- i. The Port of Ayr dated 17th March 2011

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 December 2020

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.

