

Settlement Agreement relating to the 2019 Freight Capacity Claims

This Deed is dated 28 February 2019 (the "Settlement Agreement")

Between the undersigned Parties:

The Secretary of State for Transport, (the "Principal")

and

The Channel Tunnel Group Limited and France-Manche S.A. of the other part, (altogether "Eurotunnel")

Each a "Party" and together the "Parties"

Preamble

- A. On 25 January 2019, Eurotunnel filed a claim in the High Court of Justice (Business and Property Courts) of England and Wales (HT-2019-000028) (the "**Procurement Claim**") and simultaneously issued an application for judicial review (CO/399/2019) (the "**Judicial Review Claim**") (together, the "**Proceedings**").
- B. The Procurement Claim and the Judicial Review Claim each relate to the award (and related decisions leading up to the award) of contracts to DFDS, Brittany Ferries and Seaborne Freight (collectively, the "**Contractors**") for the provision of additional freight capacity between the UK and continental Europe (the "**Capacity Contracts**").
- C. Eurotunnel has sought, amongst other remedies, to have the Capacity Contracts declared ineffective and/or void, an award of damages and/or that the Principal carries out a fresh procurement for supply of additional freight capacity.
- D. The Principal does not consider that Eurotunnel has any basis for its claims and denies Eurotunnel is entitled to any or all the relief sought.
- E. Eurotunnel is intending to undertake various projects in respect of the Channel tunnel site's infrastructure as more fully described in Appendix 4 and is willing to give the assurances and commitments in respect of those projects as set out in this Settlement Agreement.
- F. **The Parties have settled their differences and consider this Settlement Agreement to represent a mutually acceptable compromise for the full and final settlement of the Disputes.**

Definitions:

Category 1 Goods means those goods designated by HM Government as the highest priority and critical to the preservation of human and animal welfare and/or national security from time to time.

Disputes means any disagreement arising out of or in connection with any action or omission of the Principal prior to the Effective Date in procuring the Capacity Contracts and/or potential rail freight capacity contracts and, without limitation all facts or matters alleged in, disclosed in or giving rise to the Proceedings.

Effective Date means the date of this Settlement Agreement

Principal means the Secretary of State for Transport

Related Parties means a Party's parent, subsidiaries, assigns, transferees, representatives, principals, agents, officers or directors, and for the avoidance of doubt, in relation to the Principal, related parties should include all UK Government Departments, Non Departmental Bodies, agencies thereof or affiliated arms' length bodies.

Settlement Sum means the sum of £33 million, payable by the Principal to Eurotunnel in accordance with Clause 2 and Clause 6 of the Settlement Agreement. For the avoidance of doubt, in no circumstances shall the total amount payable by the Principal to Eurotunnel under the Settlement Agreement exceed £33 million.

In this Settlement Agreement, save where the context otherwise requires:-

- (a) references to the singular shall include references to the plural and vice versa;
- (b) the words "including" and "include" shall not be construed as or take effect as limiting the generality of the foregoing words; and
- (c) the headings shall not be construed as part of this Settlement Agreement nor affect its interpretation.

Transaction

Clause 1 – EFFECT OF THIS SETTLEMENT AGREEMENT

The Parties hereby agree that upon the Effective Date this Settlement Agreement shall immediately be fully and effectively binding on all Parties.

Clause 2 – FULL AND FINAL SETTLEMENT

2.1. Following the Effective Date the Principal undertakes to pay Eurotunnel the Settlement Sum of £33 million in full and final settlement of the Disputes.

2.2. The Principal will pay the Settlement Sum to Eurotunnel in equal instalments of £11 million on each of the 6 April 2019, 6 April 2020 and 6 April 2021 (each such payment an "Instalment Payment"), such Instalment Payment to be made to an account nominated by Eurotunnel, and in all respects free and clear of any charges, expenses, value added tax, counterclaim set off or other deductions on any account whatsoever.

Clause 3 – PERMITTED ACTIONS

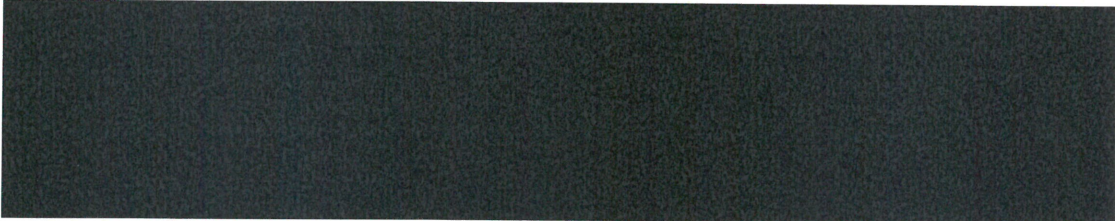
3.1. [REDACTED]

[REDACTED]



each of the above and any action taken under Clause 3.3 being a **"Permitted Action"**.

3.2 Eurotunnel hereby releases and forever discharges, all and/or any actions, claims, rights, demands and set-offs, in any jurisdiction, whether or not presently known to the Parties or to the law, and whether in law or equity, that each Party, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other Parties or any of their Related Parties arising in connection with or out of any Permitted Action (collectively, **Prohibited Claims**).



Clause 4 – RELEASES

4.1 This Settlement Agreement is in full and final settlement of, and from the Effective Date each Party hereby releases and forever discharges, all and/or any actions, claims, rights, demands and set-offs, in any jurisdiction, whether or not presently known to the Parties or to the law, and whether in law or equity, that each Party, its Related Parties or any of them ever had, may have or hereafter can, shall or may have against the other Parties or any of their Related Parties arising in connection with or out of:

- (a) the Disputes; and
- (b) the underlying facts, matters, actions or omissions relating to the Disputes.

(collectively, the **"Released Claims"**)

4.2 For the avoidance of doubt, and subject to Clause 3 (Permitted Actions), this release does not extend to any independent potential future disputes arising out of similar facts or circumstances to the Disputes arising after the date of signature of the present Settlement Agreement.

Clause 5 - AGREEMENT NOT TO SUE

Save as necessary to enforce the terms of this Settlement Agreement each Party agrees, on behalf of itself and on behalf of its Related Parties, not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other Parties or their Related Parties

any action, suit or other proceeding concerning the Released Claims and/or, in relation to Eurotunnel, the Prohibited Claims, in any jurisdiction.

Clause 6 - COSTS

6.1. The Parties shall bear their own legal and other costs in relation to the Disputes, including any costs incidental to the negotiation, preparation and execution of this Settlement Agreement.

6.2. [REDACTED]

Clause 7 - DISMISSAL OF PROCEEDINGS

7.1. Upon the Effective Date, the Parties shall procure that their respective legal representatives sign consent orders in the form of the draft consent orders, attached at Appendices 1 and 2 to this Settlement Agreement, dismissing the Proceedings. As soon as reasonably practicable Eurotunnel shall arrange for the orders to be filed. The Parties shall use reasonable endeavours to complete promptly any other step that may be required to dismiss the Proceedings.

7.2. All documents disclosed in the Proceedings are to be returned to the Party which disclosed them or, where applicable, written confirmation must be provided that the documents have been deleted or otherwise destroyed, including the deletion of any electronic copies of the documents in each case so far as reasonably practicable. Both Parties shall use their best endeavours to ensure that such documents are returned, deleted or destroyed as applicable as soon as practicable after the making of the consent orders referred to at Clause 7.1 above and in any event no later than two weeks from the date of this Settlement Agreement.

Clause 8 – 18 FEBRUARY 2019 UNDERTAKING

With effect from the Effective Date, Eurotunnel irrevocably releases the Principal from the undertaking provided on 18 February 2019 that it will not enter into any contracts to secure additional freight capacity in the form of a contract with a new provider or an extension of the volumes and/or routes currently procured from Brittany Ferries and DFDS without providing [REDACTED] of Freshfields Bruckhaus Deringer LLP three days' written notice of its intention to do so.

Clause 9 – EUROTUNNEL COMMITMENTS

9.1 In accordance with Appendix 4, Eurotunnel undertakes to implement projects to develop, enhance and upgrade the Channel tunnel site's infrastructure for improving the resilience of the UK terminal of the fixed link and the immediate surrounding environment (including Dollands Moor) (the "Eurotunnel Commitments").

9.2 Without prejudice to any other rights or remedies that the Principal may have, Eurotunnel acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the Eurotunnel Commitments by Eurotunnel. Accordingly, the Principal shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the Eurotunnel Commitments.

Clause 10 - WARRANTIES AND AUTHORITY

10.1. Each Party warrants and represents that it has not sold, transferred, assigned or otherwise disposed of its interest in the Released Claims.

10.2. Each Party warrants and represents to the others with respect to itself that it has the full right, power and authority to execute, deliver and perform this Settlement Agreement.

Clause 11 - INDEMNITIES

Each Party hereby indemnifies, and shall keep indemnified, the other Parties against all costs and damages (including the entire legal expenses of the other Parties) incurred in all future actions, claims and proceedings in respect of the Released Claims which it or its Related Parties or any of them may bring against the other Parties or their Related Parties or any of them.

Clause 12 - NO ADMISSION

12.1. This Settlement Agreement is entered into in connection with the compromise of disputed matters and in the light of other considerations. It is not, and shall not be represented or construed by the Parties as, an admission of liability or wrongdoing on the part of any Party to this Settlement Agreement or any other person or entity.

12.2. To the fullest extent permitted under law, the Parties further agree for themselves and their Related Parties not to take any step to challenge or undermine the lawfulness and validity of all or any provisions of this Settlement Agreement.

Clause 13 - SEVERABILITY

13.1 If any provision of this Settlement Agreement is found to be void or unenforceable, that provision shall be deemed to be deleted from this Settlement Agreement and the remaining provisions of this Settlement Agreement shall continue in full force and effect unless the provision concerns the essential purpose of the Settlement Agreement. The Parties shall use their respective reasonable endeavours to procure that any such provision is replaced by a provision which is valid and enforceable, and which gives effect to the spirit and intent of this Settlement Agreement.

13.2 To the extent that any sums paid or payable under this Settlement Agreement are found to be unlawful State aid by the European Commission, the Competition and Markets Authority in the United Kingdom, or a court of competent jurisdiction, the Principal has the right, by notice in writing, to require Eurotunnel to repay such sums under this Settlement Agreement that are found to constitute unlawful State aid with interest calculated in accordance with any requirement of law.

Clause 14 - ENTIRE AGREEMENT

14.1. This Settlement Agreement and the appendices hereto constitute the entire understanding and agreement between the Parties in relation to the subject matter of this Settlement Agreement.

14.2. Each Party acknowledges that it has not entered into this Settlement Agreement in reliance wholly or partly on any representation or warranty made by or on behalf of any other Party (whether orally or in writing) other than as expressly set out in this Settlement Agreement.

Clause 15 - CONFIDENTIALITY

15.1. Subject to Clauses 15.2 to 15.4, the substance of all negotiations in connection with the Settlement Agreement, any correspondence, materials or other documents relating thereto but excluding the Settlement Agreement itself and its terms (other than Clause 3.3 and the definition of Category 1 Goods) (the "Confidential Information") are confidential to the Parties and their

advisers, who shall not disclose them to, or otherwise communicate them to, any third party without the written consent of the other party other than:

- (a) to the Parties' respective auditors, insurers, funders, bankers, or lawyers on terms which preserve confidentiality;
- (b) pursuant to an order or procedural requirement of a court of competent jurisdiction or in respect of related proceedings;
- (c) pursuant to any proper order, demand or request made by any competent authority or body, including, without limitation, the Competition and Markets Authority, the European Commission, HM Revenue and Customs (or any successor to any of the foregoing); and
- (d) as far as necessary to implement and enforce any of the terms of this Settlement Agreement.

15.2. Without prejudice to Clause 15.1, in the case of the Principal, this Clause does not prevent the Principal from sharing the Confidential Information with HM Treasury, Cabinet Office, the National Audit Office and the Public Accounts Committee, Central Government Departments including their Executive Agencies and Non Departmental Public Bodies to the extent reasonably and necessarily required to comply with governmental, parliamentary or other public accountability obligations.

15.3. Where Confidential Information comes into the public domain pursuant to this Clause or as a result of the UK Freedom of Information Act 2000 ("FOIA"), then the Parties are released from their obligations of confidentiality in respect of that information.

15.4 Notwithstanding the foregoing, the Principal is entitled to respond at its absolute discretion to questions received from any branch of Government or to questions asked by, or in, Parliament in respect of the Confidential Information, or to any other questions to which the Principal is legally obliged to respond.

Clause 16 - FREEDOM OF INFORMATION

16.1. Eurotunnel acknowledges that the Principal is subject to the requirements of FOIA and shall assist and cooperate with it to enable it to comply with its information disclosure obligations.

16.2. The Principal shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in this Settlement Agreement or any other agreement between the Parties, whether the Confidential Information and/or any other information is exempt from disclosure in accordance with FOIA.

16.3. The Parties acknowledge that (notwithstanding the provisions of Clause 15) the Principal may, acting in accordance with the Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA issued by the Secretary of State under section 45 of FOIA, be obliged under FOIA to disclose information concerning this Settlement Agreement or the Disputes following a request for information (or an apparent request for information) under FOIA (a "Request").

16.4. Where the Principal receives a Request that could potentially lead to disclosure of any Confidential Information it shall promptly notify Eurotunnel of such Request, consult with Eurotunnel and take its views into account as to the application of any FOIA exemptions.

16.5. The Parties acknowledge that, in accordance with Clause 16.3 and notwithstanding any such consultation, the interpretation of FOIA and the applicability of any exemptions shall be made at the Principal's absolute discretion acting reasonably and in accordance with FOIA. However, the Principal agrees that, where it considers, acting reasonably, that any FOIA exemption(s) may be applicable, the Principal shall take full advantage of the relevant exemption(s).

16.6. In circumstances where the Principal decides that none of the exemptions apply to Confidential Information which has been the subject of a Request, the Principal shall notify Eurotunnel of its intention to disclose any of the Confidential Information no less than 48 hours before making such disclosure.

Clause 17 - CO-OPERATION

The Parties shall deliver or cause to be delivered such instruments and other documents at such times and places as are reasonably necessary or desirable and shall take any other action reasonably requested by the other Party for the purpose of putting this Settlement Agreement into effect.

Clause 18 - VARIATION

18.1. No variation of this Settlement Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

18.2. For the avoidance of doubt, Clause 18.1 shall not apply to the appendices to the Settlement Agreement, which have their own variation provisions (where relevant).

Clause 19 - GOVERNING LAW AND JURISDICTION

19.1. This Settlement Agreement shall be governed by and construed in accordance with the laws of England and Wales.

19.2. The Parties agree that the courts of England and Wales are to have exclusive jurisdiction to settle any dispute which may arise in connection with the validity, effect, interpretation or performance of, or the legal relationships established by, this Settlement Agreement or otherwise arising in connection with this Settlement Agreement. Any proceeding, suit or action arising out of or in connection with this Settlement Agreement shall be brought in the courts of England and Wales. Eurotunnel for this purpose submits irrevocably to the jurisdiction of the Courts of England and Wales.

19.3. France-Manche S.A. irrevocably appoints The Channel Tunnel Group Limited to be its agent for the receipt of any claim form, application notice, order, judgment or other document relating to any dispute within the scope of Clause 19.2.

Clause 20 - NO THIRD PARTY RIGHTS

The Parties to this Settlement Agreement do not intend that any term of this Settlement Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Settlement Agreement.

Clause 21 - LANGUAGE

This Settlement Agreement shall be executed in English

Clause 22 - COUNTERPARTS

22.1 This Settlement Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but it shall not be effective until each Party has executed at least one counterpart.

22.2 Each counterpart shall constitute an original of this Settlement Agreement, but all the counterparts shall together constitute but one and the same instrument.

22.3 Delivery of a counterpart of this Settlement Agreement by e-mail attachment shall be an effective mode of delivery. Facsimile, electronic and scanned signatures to this Settlement Agreement shall be deemed the same as original signatures and shall be considered legal and binding for the purposes of this Settlement Agreement.