

AG
244



FREETOWN TERMINAL
SIERRA LEONE

**ADDENDUM No.4 TO THE CONCESSION AGREEMENT
OF THE
CONTAINER TERMINAL AT QUEEN ELIZABETH II QUAY**

DATED 25TH NOVEMBER 2010

BY AND AMONG

**SIERRA LEONE PORTS AUTHORITY
(THE "AUTHORITY")**

- AND -

**THE GOVERNMENT OF SIERRA LEONE
(THE "GO SL")**

-AND-

**NATIONAL COMMISSION FOR PRIVATISATION
("NCP")**

-AND-

**BOLLORE
(THE "SPONSOR")**

-AND-

**FREETOWN TERMINAL LIMITED
(THE "CONCESSIONAIRE")**

PARLIAMENT LIBRARY
TOWER HILL FREETOWN

11/5/10

WJH

YBK

THIS ADDENDUM N°4 TO THE CONCESSION AGREEMENT is made on the 16th day of September in the Year Two Thousand and Fifteen,

BETWEEN

SIERRA LEONE PORT AUTHORITY, a public authority constituted under the Ports Act, 1964 of the Republic of Sierra Leone whose principal place of business is situated at Queen Elizabeth II Quay, P.M.B. 386, Cline Town, Freetown, Sierra Leone (the "**Authority**");

-and-

THE GOVERNMENT OF SIERRA LEONE, Represented by The Honourable Minister of Transport and Aviation, situated at Youyi Building, Brookfields, Freetown, Sierra Leone (the "**GoSL**");

-and-

NATIONAL COMMISSION FOR PRIVATISATION, an agency of the Government of Sierra Leone established under the National Commission for Privatisation Act, 2002, whose registered office is situated at Lotto House, OAU Drive, Tower Hill ("**NCP**");

-and-

BOLLORE a French *Société Anonyme* whose registered office is situated at Odet 29500 Ergué-Gaberic, France (the "**Sponsor**");

-and-

FREETOWN TERMINAL LIMITED, a private company incorporated under the laws of the Republic of Sierra Leone whose registered office is at Deep Water Quay, Cline Town, Freetown, Sierra Leone (the "**Concessionaire**").

The Authority and the Concessionaire and their respective successors and permitted assigns are hereinafter referred to individually as a "**Party**" and together, as the "**Parties**".

GoSL and NCP and their respective permitted assigns are hereinafter referred to individually as a "**Confirming Party**" and together as "**Confirming Parties**".

WHEREAS:

- A. The Parties, the Confirming Parties and the Sponsor are parties to a concession agreement entered into on November 25, 2010, in relation to the concession of the container terminal at Queen Elizabeth II Quay, Freetown, (Sierra Leone) (the "**Concession Agreement**"), as amended by virtue of an Addendum n°1 dated February 23rd, 2011, an Addendum n°2 dated March 1st, 2011 and an Amendment Number 4 dated 3rd July, 2014.
- B. As a result of the Government of Sierra Leone's desire to promote investment and private sector participation and to transform Sierra Leone into a regional centre for processing, manufacturing, assembly and distribution in West Africa, it is anticipated that volumes of exports and imports handled at the Port of Freetown will increase.
- C. In order to handle the anticipated growth in traffic resulting from such increase in volumes, the Concessionaire proposes to (i) design, engineer and construct a new deep water quay of 270 meters and a new berth with a depth of water of minus 13 meters which could accommodate larger container vessels and (ii) invest in the purchase of new equipment, including two ship-to-shore gantry cranes and four RTGs.

- D. The Parties, the Confirming Parties and the Sponsor have agreed to amend the Concession Agreement inter alia to (i) clarify the undertakings of the Concessionaire in relation with the construction of the new deep water quay and the provision of new equipment, (ii) amend the provisions relating to the Term and the Fixed Fee in the Concession Agreement; and (iii) insert provisions relating to obtaining tax incentives in favour of the Concessionaire.
- E. The Parties, the Confirming Parties and the Sponsor have also agreed to include a condition precedent to the effectiveness of this Fourth Addendum (defined below) relating to the GoSL becoming an equity owner of twenty per cent (20%) of the Concessionaire.
- F. The Parties, the Confirming Parties and the Sponsor have therefore decided to enter into this addendum to the Concession Agreement (the **"Fourth Addendum"**) to reflect the changes mentioned above.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Parties herein expressed, as well as other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties, the Confirming Parties and the Sponsor intending to be legally bound hereby, agree as follows:

Article 1 – Definitions

1.1. The following definitions set forth in Article 1.1 of the Concession Agreement are hereby amended as follows:

"Berths" means berths 3, 4, 5, and 6 and the New Berth at the Premises, including the Quay Wall;

"Premises" means the real property at the Port as more particularly described in Appendix A, which for the avoidance of doubt includes the Berths;

1.2. The following definitions are hereby included in Article 1.1 of the Concession Agreement:

"Date of Operation" means the date upon which a vessel is first operated at the New Quay;

"New Berth" means the new berth of the New Quay with a depth of water of minus 13m Chart datum and the adjoining yard of 35,000 square meters;

"New Quay" means the new quay of 270 meters of length quay comprising the New Berth;

"Project" means the design, construction, operation, maintenance and use of the New Quay together with yard, buildings ancillary thereto and any installations required for the berthing and unloading of vessels.

Article 2 – General Terms

2.1 Capitalized terms

For the purposes of this Fourth Addendum, the defined terms used herein shall have the same meaning as set forth in the Concession Agreement unless otherwise herein specifically provided. Any

reference to an Article or a Section in this Fourth Addendum shall be a reference to an article or a section in the Concession Agreement unless otherwise herein specifically provided.

2.2 Amendment

This Fourth Addendum constitutes an amendment to the Concession Agreement in accordance with Section 18.2 of the Concession Agreement.

2.3 Scope of the Fourth Addendum

This Fourth Addendum amends and replaces the relevant provisions of the Concession Agreement only to the extent provided herein. The remainder of the Concession Agreement shall remain valid and unchanged between the Parties, the Confirming Parties and the Sponsor.

2.4 Fourth Addendum

The Parties acknowledge that the amendment to the Concession Agreement signed on July 3rd, 2014 is referred to therein as "Amendment Number 4" but constituted only the third addendum to the Concession Agreement.

Article 3 – Conditions Precedent

3.1 Except for the provisions of this Clause 3, no Party shall be obligated or become legally bound by this Fourth Addendum until all conditions precedent in this Fourth Addendum shall have been satisfied or waived in writing by the Party entitled to waive such conditions precedent whereupon this Fourth Addendum shall become effective and inure for the benefit of the Parties for the Term (the "**Addendum Effective Date**").

3.2 Before or on December 1, 2015, the following conditions precedent shall have been fulfilled or waived in writing by the Party entitled to waive such conditions precedent:

3.2.1 Conditions Precedent in Favour of the Authority and GoSL.

- (i) The GoSL and Freetown Terminal Holding Limited, a private company limited by shares incorporated under the laws of England, whose registered office is at c/o Thrings LLP, 5th Floor, Kinnaird House, 1 Pall Mall East, London SW1Y 5AU England, registered at the Companies House under number 07423971, shall have entered into a share subscription agreement setting forth the terms and conditions upon which the GoSL will become an equity owner of twenty per cent (20%) of the issued share capital of the Concessionaire; and
- (ii) The Concessionaire shall deliver to the Authority and the GoSL certified copies of all resolutions adopted by the Board of Directors of the Concessionaire, authorising the execution, delivery and performance by the Concessionaire of this Fourth Addendum. The conditions precedent set forth in this Clause 3.2.1 of this Fourth Addendum may be waived fully or partially by written agreement between the Parties or by the Authority upon written notice to the Concessionaire.

3.2.2 Conditions Precedent in Favour of the Concessionaire

- (i) The Authority shall deliver to the Concessionaire:
 - (a) certificates of passage of the resolution evidencing that this Fourth Addendum has been ratified by the Parliament of Sierra Leone;

- (b) upon ratification of this Fourth Addendum by the Parliament of Sierra Leone, a copy of the publication of the ratification certificate by the Parliament of Sierra Leone of this Fourth Addendum;
- (c) a copy of the publication of the ratification certificate by the Parliament of Sierra Leone granting the Concessionaire a 50% (fifty per cent) exemption on its income tax liability for a period of 10 (ten) years following the Date of Operation; and
- (d) upon ratification of this Fourth Addendum by the Parliament of Sierra Leone, a copy of the publication of the ratification certificate granting the Concessionaire an exemption from Goods and Services Tax (GST) and withholding tax on all plant, machinery, equipment and construction work (excluding services) relating to the civil works and equipment described in Clause 10 of this Fourth Addendum;
- (e) certified copies of all resolutions adopted by the Board of Directors of the Authority, authorising the execution, delivery and performance by the Authority of this Fourth Addendum.

The conditions precedent set forth in Clause 3.2.2 of this Fourth Addendum may be waived fully or partially by written agreement between the Parties or by the Concessionaire upon written notice to the Authority.

- 3.3 If any condition precedent of this Fourth Addendum has not been fulfilled by the date specified or otherwise fully or partly waived in accordance with the provisions of this Fourth Addendum, the Party entitled to waive such condition precedent may extend the time set for the satisfaction of such condition precedent for an additional period which shall not exceed one hundred and eighty (180) days.
- 3.4 If the conditions precedent in this Fourth Addendum have not been fulfilled by the dates specified or otherwise fully or partly waived in accordance with this Fourth Addendum, the provisions of this Fourth Addendum shall have no effect and no Party, Confirming Party or the Sponsor will have any liability under this Fourth Addendum.
- 3.5 The GoSL and the Authority shall facilitate and assist the Concessionaire in obtaining all necessary permits and licenses required in connection with the Project or any part of the Project, its activities and the civil works and equipment described in Clause 10 of this Fourth Addendum. The Concessionaire shall bear the cost of obtaining all such permits and licenses.

Article 4 - Grant of Rights

Article 2.1 of the Concession Agreement is hereby amended to add the following provision:

"(c) the right, to carry out the Project."

Article 5 - Term

- 5.1. The first sentence of Article 3.2 of the Concession Agreement is hereby amended as follows:

"This Agreement shall have a term, which commences on the Effective Date (i.e., March 1, 2011) and terminates on the 30th (Thirtieth) anniversary of the Effective Date unless earlier terminated pursuant to Section 14.1."

Article 6 – Operations Rates

- 6.1 In Clause 6.7(b)(iii) of the Concession Agreement, the words "but not more than once every two years" are added after the words "free at all times". For the avoidance of doubt, the adjustment to the Operations Rates and penalty rates under Clause 6.7(b)(iii) of the Concession Agreement shall be determined on a cumulative basis such that there will be in total an adjustment corresponding to each calendar year.
- 6.2 The Container Throughput Fee and the Vehicle Throughput Fee shall be adjusted on a cumulative basis at the same time as any adjustment to the Operations Rates and penalty rates made by the Concessionaire in accordance with Clause 6.7(b)(iii) of the Concession Agreement (as amended by Clause 6.1 above) and otherwise in accordance with Clause 2.4 of Appendix F of the Concession Agreement.

Article 7 – Quinquennial Review & Monitoring Committee

Article 11 of the Concession Agreement is hereby amended to add the following provisions:

- 11.6 *The Parties shall meet every five (5) years at a mutually convenient venue, date and time to evaluate and discuss the terms of the Concession Agreement.*
- 11.7 *The Parties shall form a monitoring committee comprising four (4) members appointed by the GoSL and four (4) members appointed by the Concessionaire. The Monitoring Committee will hold its first meeting within one hundred and eighty (180) days following the Addendum Effective Date and thereafter no less than twice a year. Meetings of the Monitoring Committee shall be held at mutually convenient venue, date and time. The Monitoring Committee will be charged with reviewing the general performance of the Parties.*

Article 8 – Taxes

Article 8.8 of the Concession Agreement is hereby amended to add the following provisions:

- 8.8.1 *The Concessionaire shall benefit from the exemptions and privileges as described hereunder and any additional exemptions and privileges granted by any Governmental Authority.*
- 8.8.2 *The GoSL solely for the purpose of implementation of the Project and the Improvements hereby irrevocably and unconditionally agrees to the following:*
- (a) The Concessionaire shall be entitled to pay no import duties on the importation of plant, equipment and other inputs for the Project and the Improvements during the periods of construction, subject to the Concessionaire providing an approved bill of quantities.*
 - (b) The Concessionaire shall enjoy a 50% (Fifty Per Cent) exemption on its income tax liability for ten (10) years following the Date of Operation.*
 - (c) The Concessionaire shall be entitled to exemption from Goods and Services Tax (GST) and withholding tax on all equipment and construction work in relation to the Project and the Improvements made in accordance with the Development Plan.*
 - (d) The Concessionaire shall not be liable for the payment of import duty on the import of any plant, machinery or equipment relating to the Project and the Improvements made in accordance with the Development Plan (excluding resale).*

Article 9 - APPENDIX A (Premises)

- 9.1 Appendix A to the Concession Agreement is hereby deleted and replaced in its entirety by Appendix A to this Fourth Addendum.

Article 10 - Appendix D (Development Plan)

- 10.1. Phase 3 of Appendix D (Development Plan) of the Concession Agreement is hereby replaced by the following provisions:

"The Concessionaire undertakes to:

- (i) launch the studies for the construction of the New Quay;*
- (ii) commence the construction of the New Quay within a period of eight (8) months following the Addendum Effective Date;*
- (iii) complete the construction of the New Quay within a period of twenty-two (22) months following the commencement of the construction,*
- (iv) order, install and operate the stevedoring equipment (the "Stevedoring Equipment") necessary for the operation of the New Quay,*

as per the following tables:

Type of civil works	Investment description
New Quay	270m quay wall to support STS gantries
New Berth	13 m water depth
New Yard	35,000 square meters with reclamation on the sea

The Stevedoring Equipment comprises the following:

Equipment Type	Capacity	Quantity
Ship to shore gantry crane	100 tons	2
RTG	45 tons	4
Front loader	16 tons	1

The estimated cost of the construction of the New Quay and the Stevedoring Equipment is 120,000,000 USD.

- 10.2 The Concessionaire undertakes to commence the following civil works and order the following equipment (which developments have an estimated cost of US\$ 87,000,000. 00 (Eighty-Seven Million United States Dollars)), when the Container Terminal throughput exceeds 260,000 TEUs per annum, as per the following tables:

Type of civil works	Investment description
Existing Quay	300 m quay wall reinforcement to support STS gantries
Existing Yard	Construction of RTG supporting beams
Extension of the Existing Yard	47,000 sqm yard extension

	Reefer park extension and related substation / generator extension
--	--

Equipment Type	Capacity	Quantity
Ship to shore gantry crane	100 tons	2
RTG	45 tons	4

The estimated cost of the developments described in this Clause 10.2 is 87,000,000 USD.


Article 11 - Appendix F (Concession Fees)

11.1. Article 1(b) of Appendix F of the Concession Agreement is hereby amended as follows to add the following provision:


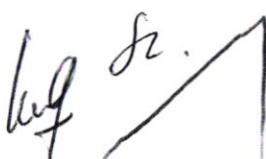
b) notwithstanding anything to the contrary above, in consideration for the Project, following the Date of Operation and for the remainder of the Term, the Fixed Fee shall be equal to the amount of the Fixed Fee paid on the last anniversary date of the Fixed Fee prior to the Date of Operation.

IN WITNESS WHEREOF, the Parties hereto have executed this Fourth Addendum as a Deed on the date written below each signature:

EXECUTED AS A DEED BY
THE DULY AUTHORISED REPRESENTATIVE
OF **SIERRA LEONE PORTS AUTHORITY**


Ag (General Manager)

Date: 16th / 9 / 2015



-IRIC

in the presence of:

NAME OF WITNESS: EUSTACE D.O. ROGERS

[Signature] 16/9/15

DESIGNATION: AG COMPANY SECRETARY

ADDRESS: c/o SLPA

EXECUTED AS A DEED BY THE
HONOURABLE MINISTER OF TRANSPORT AND AVIATION
FOR AND ON BEHALF OF
THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE

[Signature]
Date: 16th sept 2015

in the presence of:

NAME: Geoffrey M. Kamanda

DESIGNATION: Deputy Director

ADDRESS: M-T-A

EXECUTED AS A DEED
THE DULY AUTHORISED REPRESENTATIVE
OF NATIONAL COMMISSION FOR PRIVATISATION

[Signature]
(Chairman)

Date: 16/9/2015

in the presence of:

NAME OF WITNESS: MOHAMMED ALIE SEFA

DESIGNATION: Ag Executive Secretary

ADDRESS: *National Commission for privatization*

EXECUTED AS A DEED BY *STANISLAS DE SAINT LOUVENS*
THE DULY AUTHORIZED REPRESENTATIVE
OF BOLLORE

[Signature]
by virtue of a PROXY under the hand and seal of Mr *Gyille* Vincent BOLLORE
dated the *09/09/11* ~~duly registered at the Registrar General of Sierra Leone~~

Date: *16/09/2015*

in the presence of:

NAME OF WITNESS: *LABARRE LIONEL.*

DESIGNATION: *R.M. BOLLORE*

ADDRESS: *01 BP 4082 ABJ 01 RCI*

EXECUTED AS A DEED BY
THE DULY AUTHORISED REPRESENTATIVE
OF FREETOWN TERMINAL LIMITED

[Signature]
MARC GERARD
(Director) GENERAL MANAGER

Date: *16/09* 2015

in the presence of:
NAME: *CAPT. FABIAN KOKEAN*

DESIGNATION: *COUNTRY MANAGER*

ADDRESS: *FREETOWN STEAM COOKS*

[Signature]
16.9.2015

h.
MRK
YRIC

**APPENDIX A
PREMISES**

11/5/14 / 12.

YBIL