

31 March 2020



Associated British Ports  
25 Bedford Street  
London  
WC2E 9ES

## **Amendment of facility access contracts between Associated British Ports and Direct Rail Services Limited.**

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

- (i) dated 14 April 2011 (Port of Southampton)
- (ii) dated 14 November 2011 (Hull and Barrow)
- (iii) dated 16 April 2015 (Immingham).

The amendment is termed the 3<sup>rd</sup> 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 written over a light blue grid 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](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

Ian Dudley  
Managing Director  
DRS Ltd  
Regents Court  
Baron Way  
Carlisle  
CA46 4SJ

Dear Chris and Ian,

**Approval of changes to the facility access contract between Associated British Ports and Direct Rail Services Limited**

1. On 31 March 2020 the Office of Rail and Road (**ORR**) approved the 3<sup>rd</sup> Supplemental Agreement (SA) to four facility access contracts (**FAC**) between Associated British Ports (**ABP**) and Direct Rail Services Limited (**DRS**) 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 3<sup>rd</sup> SA is to amend the expiry date of the existing FAC that DRS has with ABP at the ports of Immingham, Hull, Barrow and Southampton. It is to take effect on the expiry of DRS's current FAC on 31 March 2020 and will change the expiry date to 31 March 2025. The FAC allows DRS 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 3<sup>rd</sup> SA took place in March 2020 after the consultation period and the contracts were signed. The 3<sup>rd</sup> 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

# Third Supplemental Agreement

between

ASSOCIATED BRITISH PORTS

As Facility Owner

and

DIRECT RAIL SERVICES LIMITED

As Train Operator

relating to

The amendment of Facility Access Contracts

**THIS THIRD 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) **DIRECT RAIL SERVICES LIMITED**, a company registered in England and Wales under number 3020822, having its registered office at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Train Operator**").

**WHEREAS: -**

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

- i. The Port of Southampton dated 14<sup>th</sup> April 2011
- ii. The Port of Hull dated 14<sup>th</sup> November 2011
- iii. The Port of Barrow dated 14<sup>th</sup> November 2011
- iv. The Port of Immingham dated 16<sup>th</sup> 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 Third Supplemental Agreement in order to vary the Contracts as described below.

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

**1. INTERPRETATION**

In this Third 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 Third 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 Third Supplemental Agreement has been signed by, or on behalf of, the parties; and

- i. ABP has, within 14 days of such signature, sent a signed copy of this Third Supplemental Agreement to ORR.

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

The amendments to the Contracts as set out in this Third 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 Third 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 Third 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 Third Supplemental Agreement.

## **5. LAW**

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

## **6. COUNTERPARTS**

This Third 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', written over a horizontal line.

**SIGNED** by  
for and on behalf of  
**DIRECT RAIL SERVICES LIMITED**

A handwritten signature in black ink, written over a horizontal line, appearing to be a stylized name.