

TEMPLATE

[Station Access Agreement (SAA) reference number  
Will be supplied with Directions issued by Office of Rail Regulation]

DATED \_\_\_\_\_ 200[ ]

Between

[ ] as Station Facility Owner

-and-

[ ] as Beneficiary

[name of Station]  
[Station Specific Annex reference]

**STATION ACCESS AGREEMENT**  
(Access by passenger operators)

[Station Access Agreement (SAA) reference  
number will be supplied with directions  
issued by Office of Rail Regulation]

DATED \_\_\_\_\_ 2006

WORK\3912128\v.2  
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Between

GLASGOW PRESTWICK INTERNATIONAL AIRPORT LIMITED  
as Station Facility Owner

and

FIRST SCOTRAIL RAILWAYS LIMITED  
as Beneficiary

**STATION ACCESS AGREEMENT FOR**  
**OPERATORS OF PASSENGER**  
**SERVICES FOR GLASGOW**  
**PRESTWICK INTERNATIONAL**  
**AIRPORT STATION**

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DRAFT

THIS AGREEMENT is made on the ~~2001~~ 1 day of 2006  
BETWEEN:-

- (1) The party specified in paragraph 1 of the Schedule Part 1 (the "**Station Facility Owner**"); and
- (2) The party ~~whose name and address and other particulars are~~ specified in paragraph 2 of the Schedule Part 1 (the "**Beneficiary**");-

WHEREAS:-

- (A) The Station Facility Owner is the facility owner of the Station.
- (B) The Beneficiary is a passenger service operator who wishes to obtain permission to use the Station for or in connection with the operation of trains by the Beneficiary in the course of providing the Passenger Services.
- (C) The Station Facility Owner has agreed to grant the Beneficiary and its Associates such permission on the terms and conditions of this Agreement.
- (D) This Agreement ~~is~~ has been entered into pursuant to directions given by the Office of Rail Regulation in the exercise of its powers under the Act.

IT IS AGREED as follows:

## 1 INTERPRETATION

### 1.1 Definitions

In this Agreement, where the context admits:

**"Access Charge"** means the amount specified in the Schedule Part 4;

**"Act"** means the Railways Act 1993, as amended;

**"Access Dispute Resolution Rules"** means the rules regulating the resolution of disputes between parties to access agreements entitled "The Access Dispute Resolution Rules" as amended from time to time, the current form of which is annexed to the Network Code;

**"Affiliate"** means in relation to either party;

(a) a company or corporation which is either a holding company or a subsidiary of that party; or

(b) a company or corporation which is a subsidiary of a holding company of which that party is also a subsidiary;

**"Associates"** has the meaning ~~set out in Clause 6.1;~~ attributed to it in section 17(7) of the Act;

**"Beneficiary Event of Default"** has the meaning attributed to it in Clause ~~5.2.18.2(a);~~

**"Business Day"** means any week day (other than a Saturday) on which banks are open for domestic business in the City of London and in the city of Glasgow;

**"Commencement Date"** means the date ~~set-out;~~ specified in paragraph 3 of the Schedule Part 1;

**"Common Station Amenities"** means the amenities specified in paragraph 1 of the Schedule Part 2 and so identified on the Plan, to the extent they are available as at the Commencement Date, unless otherwise specified in the Schedule Part 2, together with such other amenities as shall be agreed in accordance with Clause 7 from time to time;

**"Common Station Services"** means the services specified in paragraph 2 of the Schedule Part 2 to the extent they are available as at the Commencement Date unless otherwise specified in the Schedule Part 2, together with such other services as shall be agreed in accordance with Clause 7 from time to time;

**"Emergency"** means:

(c) In relation to the Station, any situation or circumstance which the Station Facility Owner reasonably considers constitutes an emergency affecting the Station; and

(d) in relation to the operation of the Passenger Services, any situation or circumstance which the Beneficiary reasonably considers constitutes an emergency affecting the Passenger Services;

**"Event of Default"** means a Beneficiary Event of Default or a Station Facility Owner Event of Default, as the context requires;

~~"Exclusive Charges" means the sum of the charges for the Exclusive Station Services as such charges are specified in Schedule 2 subject to such variations as satisfy both the following conditions:~~

- ~~(a) the variations are agreed between the parties in writing and signed on their behalf by their duly authorised representatives or are determined in accordance with Schedule 2; and~~
- ~~(b) the variations do not come into effect until the Office of Rail Regulation has consented to them;~~

~~"Exclusive Station Services" means the services specified in Schedule 2 subject to such variations as satisfy both the following conditions:~~

- ~~(a) the variations are agreed between the parties in writing and signed on their behalf by their duly authorised representatives or are determined in accordance with Schedule 2; and~~
- ~~(b) the variations do not come into effect until the Office of Rail Regulation has consented to them;~~

"Existing Works" means the Works listed in the Schedule Part 6;

"Expiry Date" means the date specified in paragraph 4 of the Schedule Part 1;

"Force Majeure" has the meaning attributed to it in Clause 15.1;

"Franchise Agreement" means the Franchise Agreement between the Secretary of State, Strathclyde Passenger Transport Executive and First ScotRail Limited dated 20 August 2004;

"Industry Committee" means the committee for the resolution of disputes between participants in the railway industry established in accordance with Part A of the Access Dispute Resolution Rules;

~~"Insolvency Event" means, in relation to either a party, any of the parties, where~~following events:

- ~~(a)~~ (a) any step which has a reasonable prospect of success ~~is~~ taken by any person with a view to ~~its~~the administration of that party under Part II of the Insolvency Act 1986;
- ~~(b)~~ (b) it stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act ~~1986,~~1986 except that in the interpretation of this paragraph:

- (i) ~~(i)~~ section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there ~~were~~was substituted "£50,000" or such higher figure as the parties may ~~agree~~ from time to time ~~in writing~~agree; and
- (ii) ~~(ii)~~ it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) ~~of the Insolvency Act 1986~~ is satisfied before the expiration of 21 days from such demand;
- (c) ~~(e)~~ its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) ~~(d)~~ any step is taken to enforce ~~Security~~security over or a distress, execution or other similar process is levied or sued out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that ~~Security~~security;
- (e) ~~(e)~~ any step is taken by any person with a view to ~~its~~the winding-up ~~of that party~~ or any person presents a winding-up petition in relation to that party which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); ~~or~~and
- (f) ~~(f)~~ any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above;

unless:

- (g) ~~(i)~~ in any~~each~~ case, a railway administration order ~~(or application for it) has been made or such order (or application) is made within 14 days after the occurrence of such step, event, proposal or action (as the case may be)~~has been made in relation to that party pursuant to ~~sections 60, 61 or 62~~section 60 of the

Act and for so long as any such order ~~(or application)~~ remains in force ~~or pending~~; or

(h) ~~(ii)~~ in the case of ~~paragraphs 1.1(a), 1.1(d) or 1.1(e), or 1.1(f) in relation to matters analogous or equivalent to the matters referred to in paragraphs 1.1(a), 1.1(d) and 1.1 sub-clauses (a), (d) and (e)~~, the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

"Interest Rate" means, for any relevant period, an interest rate of 3 per centum per annum above the base interest rate from time to time charged during that period by Barclays Bank PLC in London;

"Network" means the network of which Network Rail is the facility owner and which is situated in England, Wales and Scotland;

"Network Code" means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

~~"Network Rail"~~ "Network Rail" means Network Rail Infrastructure Limited, a company registered in England and Wales under number 2904587 having its registered office at 40 Melton Street, London, NW1 2EE (formerly named ~~"Railtrack PLC"~~, and referred to as ~~"Railtrack"~~ in the Station Access Conditions);

"Passenger Information Systems" means any equipment, notice boards, visual display units or other media used at the Station to communicate train service information or customer service information to persons at the Station;

"Passenger Operator" means a passenger service operator with permission to use the Station including the Beneficiary;

"Passenger Services" means those railway passenger services provided ~~by or on behalf of the Beneficiary~~ pursuant to the permission to use track granted in accordance with the Track Access Agreement;

~~"Security"~~ means any mortgage, pledge, lien (other than a lien arising by operation of law) hypothecation, security interest or other charge or encumbrance;

"Plan" means the plan of the Station annexed and executed as relative to this Agreement;

"Proposal for Change" means any proposal;

(i) to change the condition, standard or quantum of the Common Station Amenities or the Common Station Services; or

(j) to alter the opening periods of the Station set out in paragraph 4 of the Schedule Part 2;

"Safety Obligations" means all applicable obligations and laws concerning health, safety and equipment (including fire protection equipment) (including any duty of care arising at common law, arising under statute, statutory instrument and codes of practice compliance with the provisions of which is mandatory) in Great Britain;

"Secretary of Station" means the Secretary of State for Transport whose principal place of business is 76 Marsham Street, London, SW1P 4DR or its successors or assigns from time to time;

"Station" means that area outlined on the Plan or the station described in paragraph 5 of the Schedule Part 1 and includes the Common Station Amenities;

~~"Station Access Conditions" means, in respect of the Station:~~

~~(a) the National Station Access Conditions 1996 [(England and Wales)] [(Scotland)]; and~~

~~(b) the annexes relating to the Station (ORR Ref: [ ])~~

~~as each is modified in respect of the Station from time to time with the approval of the Office of Rail Regulation and as each is incorporated in this Agreement;~~

~~"Station Facility Owner Event of Default" has the meaning attributed to it in Clause 5.2.38.2(b);~~

"Station Services" means the Common Station Services;

"Suspension Notice" means a notice served by one party on the other pursuant to party in accordance with Clause 5.38.3;

"Termination Notice" means a notice in writing served by one party on the other pursuant to Clause 5.4.1 or 5.4.2, as the case may be; and party in accordance with Clause 8.4(a), 8.3 or 8.4(b), as the case may be;

"Track Access Agreement" means the agreement for use of permission to use track, referred to in paragraph 7 of Schedule 1 the Schedule Part 1;

"Vehicles" means railway vehicles (including non-passenger carrying vehicles comprised in trains used for the purpose of providing service for the carriage of passengers by railway and excluding vehicles comprised in trains used solely for the purpose of providing services for the carriage of goods by railway); and

"Works" means any works of construction, alteration, improvement or addition.

1.2 **References** Permission to use

~~References to this Agreement include its schedules and, unless otherwise indicated, references to recitals, Clauses, sub-Clauses, Schedules and paragraphs are to recitals, clauses and sub-clauses of, and schedules to, this Agreement and paragraphs of such schedules. References to this Agreement include, unless otherwise indicated, the Station Access Conditions. References to any Condition shall be construed as a reference to the relevant Station Access Condition.~~

References in this Agreement to permission to use the Station shall, except where the contrary is indicated, to be construed to mean:

- (a) permission for the Beneficiary and its Associates to use the common Station Amenities and to obtain the benefit of the Station Services for or in connection with the operation of trains whether or not the Station Facility Owner is to provide those services himself or to secure their provision by another but not, without the consent of the Station Facility Owner, for the Beneficiary or its Associates to provide the Common Station Amenities or the Station Services; and
- (b) to the extent reasonably necessary to give full effect to the permission in Clause 1.2(a) and subject to Clause 1.2(c), permission for the Beneficiary and its Associates to:
  - (i) enter upon the Station, with or without vehicles;
  - (ii) bring things onto the Station and keep them there;
  - (iii) use and maintain any things kept, or buildings or other works constructed, on the Station (whether by the Beneficiary or another) or any amenities situated on the Station; and
  - (iv) carry out the Existing Works or such Works on the Station as shall be accepted in accordance with Clause 7 in respect of the common Station Amenities;

provided that the Beneficiary and its Associates shall in relation to the provisions in this Clause 1.2(b) first obtain the consent of this Station Facility Owner (which consent shall not be unreasonably withheld or delayed):

- (c) in relation to the permissions specified in Clauses 1.2(a) and 1.2(b):
- (i) the Beneficiary shall agree in advance with the Station Facility Owner the method and timing of any service which the Beneficiary intends to provide for its own benefit on the Station which, for the avoidance of doubt, shall include the bringing of workmen onto the Station and the acceptance of deliveries; and
  - (ii) whilst exercising any rights referred to in Clause 1.2(a) and 1.2(b) the Beneficiary and its Associates shall comply with such restrictions or instructions as the Station Facility Owner shall reasonably specify.

### 1.3 **References to statutory provisions**

References to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as from time to time being amended or modified or any enactment for the time being replacing or amending it.

### 1.4 **Interpretation Act 1978**

Words and expressions defined in the Interpretation Act 1978 shall have the same meanings in this Agreement the words "include" and "including" shall be construed without limitations.

### 1.5 **References to the Schedule, etc**

References to this Agreement include the Schedule and, unless otherwise indicated, references to recitals, clauses, sub-clauses and schedule parts are to recitals, clauses and sub-clauses of, and schedule parts to this Agreement.

### 1.6 **Headings**

Headings shall be disregarded in construing this Agreement.

1.7     **Railways Act 1993**

Terms and expressions defined in sections 81 to 83 (inclusive) and 151 of the Act shall, unless the contrary intention appears, have the same meaning in this Agreement.

1.8     **Construction of agreements**

References to an agreement or any other document include that agreement or document as from time to time supplemented, varied or amended.

1.9     **References to person**

Any reference to a "person" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of these and includes that person's legal personal representatives, successors and permitted assigns.

1.10    **Companies Act definitions**

The words "subsidiary", "holding company" and "company" shall have the same meanings in this Agreement as in the companies Act 1985.

1.11    **Use of present tense**

Use of the present tense means the relevant time or, as the case may be, from time to time during the relevant period.

1.12    ~~1.3~~ **Sub-contractors**

Where a party has sub-contracted its rights or obligations under this Agreement to any third party in accordance with Clause ~~7.6~~12.5, references to that party in this Agreement shall, with the exception of Clause ~~6.9~~ and without prejudice to Clause ~~7.6~~12.5, include references to any sub-contractor so appointed.

~~1.4~~    ~~**Station Access Conditions**~~

~~Where the context admits, words and expressions defined in the Station Access Conditions or which fall to be construed in accordance with such Conditions shall bear the same meanings and constructions in this Agreement and the rules of interpretation set out in the Station Access Conditions shall apply throughout this Agreement.~~

~~1.5~~ **Exclusive Station Services**

~~The provisions of Schedule 2 (if any) shall apply as to the terms and conditions on which the Station Facility Owner shall provide Exclusive Station Services to the Beneficiary.~~

2 **~~CONDITIONS PRECEDENT~~ COMMENCEMENT**

2.1 **~~Conditions Precedent~~ This Agreement shall come into effect and be binding on the parties on the Commencement Date, provided that the Access Charges shall be paid with effect from the 17 October 2004.**

~~Subject to Clauses 2.2 to 2.4, the provisions of this Agreement shall not have effect until the following conditions precedent (so far as they are applicable to each party) shall have been satisfied in full:~~

~~2.1.1 the Beneficiary has executed a Collateral Agreement in relation to the Station and delivered it to the Station Facility Owner for exchange thereof with Network Rail;~~

~~2.1.2 the Station Facility Owner is authorised to be the operator of the Station by a station licence granted under section 8 of the Act or is exempt from the requirement to be so authorised under section 7 of the Act;~~

~~2.1.3 the Station Facility Owner has obtained a safety validation certificate in respect of the Station Facility Owner's safety case in relation to the operation of the Station, which safety case has been accepted in accordance with the Railways (Safety Case) Regulations 2000;~~

~~2.1.4 the Track Access Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);~~

~~2.1.5 the Beneficiary has prepared a safety case in relation to the operation of trains, which safety case has been accepted in accordance with the Railways (Safety Case) Regulations 2000; and~~

~~2.1.6 an Insolvency Event not having occurred in relation to either of the parties.~~

~~2.2~~ **Obligation to satisfy Conditions Precedent**

~~The parties shall use all reasonable endeavours to secure that the following conditions precedent are respectively satisfied in full by them (and that notice of such satisfaction is promptly given by each party to the other party) as soon as practicable and, in any event, not later than the Commencement Date:~~

~~2.2.1 in the case of the Station Facility Owner, the conditions precedent contained in Clauses 2.1.2 and 2.1.3; and~~

~~2.2.2 in the case of the Beneficiary, the conditions precedent contained in Clauses 2.1.1, 2.1.4 and 2.1.5.~~

~~2.3~~ ~~Entry into effect~~

~~2.3.1~~ ~~Clauses 1 (other than Clause 1.5), 2, 4, 5, 7, 8 and 9 and Conditions A1, Q1 and Q3 shall come into effect and be binding on the parties immediately upon signature of this Agreement.~~

~~2.3.2~~ ~~All other Clauses and Conditions shall come into effect and be binding on the parties on the Commencement Date.~~

~~2.4~~ ~~Non-satisfaction~~

~~2.4.1~~ ~~If any of the conditions precedent in Clause 2.1 shall not have been satisfied in full on or before the Commencement Date, this Agreement (except Clause 2.4.2) shall lapse and neither party shall have any liability to the other under or in respect of it, save in respect of a pre-existing breach of any of Clauses 2, 4, 5, 7, 8 and 9.~~

2.2 ~~2.4.2~~ The obligations of confidence provided for in ~~the Station Access Conditions~~Clause 14 shall continue in force for ~~the~~a period of 5 years ~~indicated at paragraph 8 of Schedule 1 after the termination of this Agreement has otherwise ceased to have effect.~~

**3 PERMISSION TO USE THE STATION**

~~3.1~~ The Station Facility Owner hereby grants the Beneficiary and its Associates permission to use the Station.

**4 STATION FACILITY OWNER'S OBLIGATIONS**

~~3.2~~ ~~In consideration of the permission granted to the Beneficiary and its Associates by the Station Facility Owner in Clause 3.1 and the performance by the Station Facility Owner of its other obligations under this Agreement, the Beneficiary shall pay the Access Charge in accordance with Clause 6 and Part F of the Station Access Conditions.~~The Station Facility Owner shall in connection with the permission to use the Station granted by it under Clause 3, during the term of this Agreement:

~~4~~ ~~STATION ACCESS CONDITIONS~~

~~4.1~~ ~~The Station Access Conditions are incorporated in and shall form part of this Agreement.~~

4.1 ensure that, subject to Clause 6, the Station is open for use by the Beneficiary and its Associates during the opening periods specified in paragraph 4 of the Schedule Part 2;

4.2 use all reasonable endeavours to ensure that the Common Station Amenities are kept in a condition (subject to fair wear and tear) and, where appropriate, a working order which is at least as good as their condition,(and, where appropriate, working order), as at the Commencement Date and, if any changes shall have been made to them their

condition (and, where appropriate, working order) immediately after such changes shall have been successfully made;

4.3 use all reasonable endeavours to ensure that the Station Services are maintained at a standard and quantum which is at least as good as their standard and quantum as at the Commencement Date and, if any changes shall have been made to them, their standard and quantum immediately after such changes shall have been successfully made;

4.4 not change the Common Station Amenities or the Station Services (whether in whole or in part) from the conditions (or working order), standard or quantum referred to in Clauses 4.2 and 4.3 respectively without such change in the case of the Common Station Amenities and the Common Stations Services, having been accepted in accordance with the change procedure set out in Clause 7;

4.5 wherever practicable, provide at least 30 working days' notice in writing to the Beneficiary stating the time and date proposed for any proposed alteration, restriction or suspension referred to in Clause 6;

4.6 indemnify and keep indemnified the Beneficiary on an after tax basis against all losses, liabilities and reasonable costs and expenses incurred by the Beneficiary as a result of:

- (a) any breach by the Station Facilities Owner of its Safety Obligations; or
- (b) the negligence of the Station Facility Owner;
- (c) the failure of the Station Facility Owner to obtain or maintain insurance of the kind and to the standard described in paragraph 2.6 of the Schedule Part 2;

4.7 comply with any reasonable request of the Beneficiary which is necessary to enable the Beneficiary to:

- (a) deal with an Emergency; or
- (b) comply with its Safety Obligations;

4.8 within 15 days of being requested by the Beneficiary to do so, provide the Beneficiary with:

- (a) a copy of each insurance policy under or in respect of which the Station Facility Owner or any of its Associates has an interest and which relates to the Station or any risk of or in any way associated with, the operation of the Station;

- (b) details of any amount payable by the Station Facility Owner or any such Associate in respect of any such insurance policy; and
  - (c) details of any claim which shall be made under any such insurance policy if the making of that claim affects or could reasonably be expected to affect the Beneficiary or any Associate of the Beneficiary;
- 4.9 in respect of each insurance policy to which Clause 4.8(a) applies, procure that:
  - (a) if and to the extent that the beneficiary has an insurable interest capable of being covered by such policy, and to the extent that the Beneficiary reasonably so requests, name the Beneficiary as a co-insured under such policy and on such terms as may be agreed between the parties;
  - (b) all claims are duly filed, and all proper steps to collect proceeds are duly taken, in respect of such policy; and
  - (c) if such insurance policy is not required under the Station Facility Owner's station licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to the Beneficiary by the insurer or insurance broker of any lapse, or cancellation of, or material change to, the policy and that no such lapse, cancellation or change shall have effect unless such notice shall have been given;
- 4.10 provide the Beneficiary with a copy of its station licence and its safety case in relation to the operation of the Station and any amendment thereto and any notices given under or in respect thereof (including any notice of revocation or termination howsoever expressed) which affects, or is likely to affect, the rights or obligations of the Beneficiary under or in respect of this Assignment; and
- 4.11 provide the services and the amenities listed in the Schedule Part 2.

## 5 BENEFICIARY'S OBLIGATIONS

The Beneficiary shall in connection with the permission to use the Station granted by the Station Facility Owner under Clause 3, during the term of this Agreement:

- 5.1 comply with any reasonable request of the Station Facility Owner which is necessary to enable the Station Facility Owner to:
  - (a) comply with its Safety Obligations;

- (b) deal with an Emergency; or
  - (c) comply with any directions, instructions or enforcement notices give by the Secretary of State under sections 118 to 120 inclusive of the Act;
- 5.2 not take or permit any action which would involve improper use of the Common Station Amenities or increase the risk of loss or damage to those amenities;
- 5.3 procure that its Associates comply with the directions and requirements referred to in Clauses 5.1, 5.2, 5.8, 5.9, 5.10, 5.11, and 5.12 which are applicable to them;
- 5.4 indemnify and keep indemnified the Station Facility Owner on an after tax basis against all losses, liabilities and reasonable costs and expenses incurred by the Station Facility Owner as a result of:
  - (a) any breach by the Beneficiary of its Safety Obligations; or
  - (b) the negligence of the Beneficiary;
- 5.5 provide to the Station Facility Owner, for display at the Station, such information relating to changes in the Passenger Services (including changes of a temporary nature) as shall be necessary or expedient in order to inform passengers of such changes in a timely manner;
- 5.6 timeously provide to the Station Facility Owner any notices which:
  - (a) are required to be displayed at the Station;
  - (b) contain or specify obligations binding on the Beneficiary; and
  - (c) are required to be provided by the Beneficiary  
by law or by or in accordance with the rules of a regulatory authority with whose rules or instructions the Beneficiary is obliged to comply other than as a result of a voluntary submission to its jurisdiction;
- 5.7 provide to the Station Facility Owner a copy of the Beneficiary's passenger licence (if any);
- 5.8 not carry out any Works (if any) on or in respect of the Station other than those specified in paragraph 1 of the Schedule Part 5 unless such Works shall, so far as they

- relate to the Common Station Amenities have been accepted in accordance with Clause 7;
- 5.9 subject to Clauses 5.10, 5.11 and 5.12 timeously notify the Station Facility Owner if the Beneficiary wishes to:
- (a) carry out any material maintenance of, or work to, anything kept on the Station;
  - (b) bring anything onto the Station which may affect the proper operation of the Station; or
  - (c) enter upon the Station with vehicles;
- 5.10 not do anything on the Station which may be, illegal, immoral or offensive or which would, other than as may be ordinarily occasioned by or in connection with the normal operation of trains or any other act or event contemplated by the provisions of this Agreement, be dangerous or cause material damage, nuisance or annoyance to the Station Facility Owner (which will include anything to which the Station Facility Owner reasonably objects), any Passenger Operator or its Associates, the owners or occupiers of any neighbouring property at (as the case may be) any property other than the property of the Beneficiary or any Associate (other than a passenger) of the Beneficiary or the public;
- 5.11 not, without the prior written consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed), and except as may be ordinarily occasioned by or in connection with the normal operation of trains and passenger services or any other act or event contemplated by the provisions of this Agreement bring, place or keep on the Station anything which is, or may become, noxious, dangerous, offensive, combustible, inflammable, radio-active or explosive, or any other substance which may produce concentrations or accumulations of gases or liquids which may cause material pollution to the environment or material harm to human health;
- 5.12 not bring or do anything on the Station which may invalidate, or render any additional premium payable for, any insurance policy referred to in Clause 4.8; and
- 5.13 pay the Access Charges set out in Schedule Part 4.

6 RESTRICTIONS ETC. DUE TO WORKS, REPAIRS AND MAINTENANCE AND SECURITY REQUIREMENTS

6.1 The Station Facility Owner shall, provided it shall have complied with Clause 4.5, be entitled to restrict, suspend or alter permission to use the Station if and to the extent that it is reasonably necessary to:

(a) permit Existing Works, repairs or maintenance to be made or carried out in relation to the Station (either by the Station Facility Owner pursuant to the provisions of this Agreement other than this Clause 6 or by other persons authorised by him to perform such work); or

(b) safeguard the safety or security of persons or property at the Station,

and the Station Facility Owner shall, to the extent that such Existing Works, repairs or maintenance are or ought reasonably to be under its control or it is otherwise aware that such Works, repairs or maintenance are to be carried out, use all reasonable endeavours timeously to consult with the Beneficiary on such restriction, suspension or alteration and, as far as reasonably practicable, shall minimise the extent and period of any such restriction, suspension or alteration.

6.2 Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Clause 6.1, it shall, to the extent reasonably practicable, make timeous and adequate provision for alternative arrangements in respect of access to and from the highway, for the Beneficiary's passengers to join and leave trains and for the provision of up to date train running information and shall use all reasonable endeavours to make timeous and adequate provision for alternative arrangements in respect of all other Common Station Amenities and Station Services so as to enable the Beneficiary and its Associates to use the Station with minimum disruption, difficulty or inconvenience.

6.3 The Station Facility Owner shall procure that any Existing Works, repairs or maintenance referred to in Clause 6.1 are conducted in a proper and workmanlike manner and with the degree of prudence reasonably and ordinarily exercised by building contractors engaged in a similar activity under similar circumstances and conditions.

7 **COMMON STATION AMENITIES AND COMMON STATION SERVICES CHANGE PROCEDURE**

7.1 Should there be any need to change any Common Station Amenity or Common Station Service the Station Facility Owner and the Beneficiary will seek to agree such change and any compensation due therefore. Any changes to the Common Station Amenities or the Common Station Services shall not have effect unless such change has first been agreed by the parties to this Agreement and approved by the Office of Rail Regulation pursuant to section 22 of the Act.

7.2 ~~4.2~~ ~~— Except where the Office of Rail Regulation shall have directed otherwise in the exercise of its powers under the Act, Where~~ the Station Facility Owner shall ensure that ~~all operators of trains having grants~~ permission to use the Station ~~agree to comply with the Station Access Conditions to another passenger service operator, the parties shall review the Access Charge and use their best endeavours to agree an amendment thereto, if such an amendment would be fair and equitable to the parties and the other passenger service operator.~~

~~4.3~~ ~~— During the term of this Agreement, each of the parties shall duly and punctually perform, observe and comply with its obligations set out in the Station Access Conditions as incorporated in this Agreement pursuant to Clause 4.1.~~

8 ~~5~~-**TERM AND TERMINATION**

8.1 ~~5.1~~ **Term**

(a) This Agreement shall continue in force until the ~~earliest~~earlier to occur of:

~~(a)~~ ~~— lapse pursuant to Clause 2.4;~~

(i) ~~(b)~~ termination pursuant to ~~this Clause 5 or Condition F11 of the Station Access Conditions~~8.4;

(ii) ~~(c)~~ the Expiry Date; ~~and~~

(iii) ~~(d)~~ upon the closure of the Station ~~following the~~ expiry of any period of experimental operation of the Station (or its related passenger services) under ~~s~~Section 56A of the Transport Act 1962 or ~~s~~Section 48 of the Act or following compliance with any statutory requirements for such closure; ~~or~~

(iv) such date as the Station Facility Owner and Beneficiary may agree.

## 8.2 ~~5.2~~ Events of default

### (a) ~~5.2.1~~ Beneficiary Events of Default

The following shall each be a Beneficiary ~~Events~~Event of Default:

- (i) ~~(a)~~ Insolvency: An Insolvency Event occurs in relation to the Beneficiary;
- (ii) ~~(b)~~ Breach of the Agreement: The Beneficiary commits a material breach of its obligations under this Agreement;
- (iii) ~~(c)~~ Force Majeure: The Beneficiary fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure;
- (iv) ~~(d)~~ Loss of Licence: The Beneficiary ceases to be authorised to be the operator of trains for the provision of the Passenger Services by a licence granted under section 8 of the Act (whether by revocation of such licence or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act;
- (v) ~~(e)~~ Track Access Termination: Termination of the Track Access Agreement unless the Beneficiary shall become a party to an access agreement in relation to track which is contiguous to the Station on or before the date which is not later than 30 days after ~~the~~ termination of the Track Access Agreement (any such agreement being thereafter treated as the Track Access Agreement);
- (vi) ~~(f)~~ Non-operation: No trains operated by the Beneficiary or on its behalf depart from the Station for a continuous period of more than ~~270~~90 days; and
- (vii) ~~(g)~~ Franchise Agreement Termination: Termination of the ~~franchise agreement pursuant to which the Beneficiary provides railway passenger services to or from the Station unless the Beneficiary and the Strategic Rail Authority~~ Franchise Agreement unless the Secretary of State shall have entered into a further franchise agreement for the provision inter alia of railway passenger services to or from the Station by the Beneficiary on or before the date of such termination.

~~5.2.2 The Beneficiary shall notify the Station Facility Owner promptly on becoming aware of the occurrence of a Beneficiary Event of Default.~~

~~(b) 5.2.3 Station Facility Owner Events of Default~~

The following shall each be a Station Facility Owner ~~Events~~Event of Default:

(i) ~~(a)~~ Insolvency: An Insolvency Event occurs in relation to the Station Facility Owner;

(ii) ~~(b)~~ Breach of the Agreement: The Station Facility Owner commits a material breach of its obligations under this Agreement;

(iii) ~~(c)~~ Force Majeure: The Station Facility Owner fails, ~~for a continuous period of 90 days,~~ to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure; and

(iv) ~~(d)~~ Loss of Licence: The Station Facility Owner ceases to be authorised to be the operator of the Station by a licence granted under section 8 of the Act (whether by revocation of such licence or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act.

(c) ~~5.2.4 The Station Facility Owner~~Each part shall notify the ~~Beneficiary~~other promptly on becoming aware of the ~~occurrence of a Station Facility Owner~~occurrences of an Event of Default ~~referred to in Clause 8.2.~~

8.3 ~~5.3~~ **Suspension**

(a) ~~5.3.1~~ Right to suspend

(i) ~~(a)~~ The Station Facility Owner may serve a Suspension Notice where a Beneficiary Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

(ii) ~~(b)~~ The Beneficiary may serve a Suspension Notice where a Station Facility Owner Event of Default has occurred and is continuing, provided the relevant Event of Default is reasonably capable of remedy.

(b) ~~5.3.2~~ Contents of a Suspension Notice

A Suspension Notice shall specify:

- (i) ~~(a)~~ the nature of the relevant Event of Default;
- (ii) ~~(b)~~ the date and time at which suspension is to take effect;
- (iii) ~~(c)~~ in the case of a Suspension Notice served on the Beneficiary, reasonable restrictions imposed on the grant to the Beneficiary and its Associates of permission to use the Station while the Suspension Notice is in force;
- ~~(d) in the case of a Suspension Notice served on the Station Facility Owner, details of any suspension on the grant to the Beneficiary of the permission to use the Station while the Suspension Notice is in force;~~
- (iv) ~~(e)~~ the steps reasonably required to remedy the ~~relevant~~ Event of Default; and
- (v) ~~(f)~~ a reasonable grace period for the defaulting party to remedy it ~~(and where the relevant Event of Default is a failure to pay any part of the Access Charge, seven days shall be a reasonable grace period).~~

(c) ~~5.3.3~~ Effects of a Suspension Notice served by the Station Facility Owner

Where the Station Facility Owner has served a Suspension Notice on the Beneficiary:

- (i) ~~(a)~~ the Beneficiary shall comply with any reasonable restriction thereby imposed on it; and
- (ii) ~~(b)~~ the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Station Facility Owner to the Beneficiary pursuant to Clause ~~5.3.5(d); and~~
- ~~(c) service of a Suspension Notice shall not affect the Beneficiary's continuing obligation to pay the Access Charge 8.3(e)(iv).~~

(d) ~~5.3.4~~ Effect of a Suspension Notice served by the Beneficiary

Where the Beneficiary has served a Suspension Notice on the Station Facility Owner:

- (i) ~~(a)~~ it shall have the effect of suspending the Beneficiary's permission to use the Station to the extent specified in such Suspension Notice;

~~(b) — the amount of the Access Charge payable shall be abated to the extent that it corresponds to the suspended part of the Beneficiary's permission to use the Station; and~~

(ii) ~~(e)~~ the Suspension Notice shall remain in full force and effect until it has been revoked either in whole or in part by notice from the Beneficiary to the Station Facility Owner pursuant to Clause ~~5.3.5(d)~~8.3(e)(iv).

(e) ~~5.3.5~~ Suspension to be proportionate to breach

(i) ~~(a)~~ A Suspension Notice served pursuant to Clause ~~5.3.1~~8.3(a) in respect of any Beneficiary Event of Default which relates only to particular Station Services or particular Common Station Amenities shall, so far as reasonably practicable, apply only to:

(A) ~~(i) those~~the Station Services; ~~and/or~~

(B) ~~(ii) those~~the Common Station Amenities;

~~(or (as the case may be) parts or part of them)~~thereof to which the relevant Event of Default relates and the remainder of the rights and obligations of the parties shall remain in full force and effect.

(ii) ~~(b)~~ A Suspension Notice served pursuant to Clause ~~5.3.1~~8.3(a) in respect of any Station Facility Owner Event of Default which relates only to particular Station Services or particular Common Station Amenities shall, so far as reasonably practicable, apply only to:

(A) ~~(i) those~~the Station Services; ~~and/or~~

(B) ~~(ii) those~~the Common Station Amenities;

~~(or (as the case may be) part of parts or part thereof)~~to which the relevant Event of Default relates and the remainder of the rights and obligations of the parties shall remain in full force and effect.

(iii) ~~(e)~~ The party served with a Suspension Notice which specifies an Event of Default which is capable of remedy shall, with all reasonable diligence, take such steps as shall be reasonable and necessary to remedy the Event of Default and shall keep the party serving the Suspension Notice fully informed of the progress which is being made in remedying the Event of Default.

- (iv) ~~(d)~~ Where a party served with a Suspension Notice has complied with its obligations under Clause ~~5.3.5~~(e.8.3(e)(iii)) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which shall have served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question, by notice to the other party specifying the extent of the revocation and the date on which it shall have effect.

#### 8.4 ~~5.4~~ Termination

##### (a) ~~5.4.1~~ The Station Facility Owner's right to terminate

The Station Facility Owner may serve a Termination Notice on the Beneficiary where:

- (i) ~~(a)~~ the Beneficiary fails to comply with any material restriction in a Suspension Notice; or
- (ii) ~~(b)~~ the Beneficiary fails to comply with its obligations under Clause ~~5.3.5~~(e.8.3(e)(iii)); or
- (iii) ~~(c)~~ except during the period of a ~~Suspension~~suspension Notice relating to it, a Beneficiary Event of Default has occurred and is continuing.

##### (b) ~~5.4.2~~ The Beneficiary's right to terminate

The Beneficiary may serve a Termination Notice on the Station Facility Owner where:

- (i) ~~(a)~~ the Station Facility Owner fails to comply with its obligations under Clause ~~5.3.5~~(e.8.3(e)(iii)); or
- (ii) ~~(b)~~ except during the period of a Suspension Notice relating to it, a Station Facility Owner Event of Default has occurred and is continuing.

##### (c) ~~5.4.3~~ Contents of Termination Notice

A Termination Notice shall specify:

- (i) (a) the nature of the relevant Event of Default;
- (ii) (b) the date and time at which termination is to take effect, which shall not be earlier than ~~the later of~~ 30 days after ~~such~~ the date of service of the notice ~~is given~~ and the expiry of any grace period under Clause ~~5.4.38.4~~ 5.4.4(c)(~~iii~~)(B);
- (iii) (c) where the relevant Event of Default is capable of remedy:
  - (A) (i) the steps reasonably required to remedy the Event of Default; and
  - (B) (ii) a reasonable grace period within which such steps may be taken ~~(and where the Event of Default is a failure of the Beneficiary to pay the Access Charge, seven days shall be a reasonable grace period).~~

(d) 5.4.4 Effects of a Termination Notice

Where either party has served a Termination Notice on the other:

- (i) (a) the service of ~~the~~ such Termination Notice shall not affect the parties' continuing ~~rights and~~ obligations under this Agreement up to the date of termination as specified in the Termination Notice;
- (ii) (b) the party which has served the Termination Notice shall withdraw it by notice to the other party upon being reasonably satisfied that the relevant Event of Default has been remedied;
- (iii) (c) this Agreement shall terminate on the later of:
  - (A) (i) the date and time specified in the Termination Notice; and
  - (B) (ii) 28 days after the date upon which a copy of the Termination Notice shall have been given to the Office of Rail Regulation;
- (iv) (d) promptly after it has been served, a copy of the Termination Notice shall be sent by the party serving it to:

(A) ~~(i) the Strategic Rail Authority~~ the Secretary of State at the address set out in paragraph 6 of Schedule Part 1, or such other address as shall be notified by ~~it~~ him to the parties from time to time; and

(B) ~~(ii)~~ the passenger transport executive (if any) or its successors within whose region the Station is situated;

(e) ~~5.4.5~~ The lapse or expiry of this Agreement or the termination of this Agreement by either party shall be without prejudice to any right of action that may have arisen prior to, or may arise in consequence of, such lapse, expiry or termination.

#### 8.5 ~~5.5~~ **Exclusion of common law termination rights**

The suspension and termination rights set out in this Clause ~~5.5~~ shall be the parties' only rights to suspend ~~or to~~ terminate this Agreement, whether pursuant to its terms, ~~at law or otherwise or at law, but shall be without prejudice to Clause 9 and to any right to claim damages for breach of contract or other equitable relief.~~

#### 8.6 ~~5.6~~ **Non-operation of trains**

~~5.6.1~~ ~~The~~ Without prejudice to Clause 15, the Beneficiary shall notify the Station Facility Owner whenever it reasonably expects a material interruption to, or material change in, the Passenger Services (by reference to the then current published timetable for provision of such services). Any such notice shall, to the extent reasonably practicable, state the details of any such interruption or change.

~~5.6.2~~ ~~Subject to the Station Access Conditions, no interruption to the Passenger Services shall affect the Beneficiary's obligation to pay the Access Charge.~~

### ~~6~~ **CHARGES FOR PERMISSION TO USE THE STATION**

~~6.1~~ ~~The Access Charge shall, in respect of each Accounting Year, be the sum of the following in respect of that Accounting Year:~~

~~6.1.1~~ ~~the Common Charges; and~~

~~6.1.2~~ ~~the Exclusive Charges;~~

~~provided that the percentage referred to in paragraph (c) of the definition of Common Charges in the Station Access Conditions shall be the percentage indicated at paragraph 9 of Schedule 1 as at the Commencement Date.~~

~~6.2 All invoices, other than VAT invoices which shall be supplied in accordance with Condition Q2.3, shall be sent by electronic or facsimile transmission (with confirmation copy by prepaid first class post) to the address for service of the recipient set out in Schedule 3 with a copy to the bank or other financial institution providing the payment facility referred to in Clause 6.3 and (save as provided in Condition F2.3 in respect of the Access Charge) all invoices shall be paid within 28 days of their receipt.~~

~~6.3 All amounts payable under this Clause 6 shall, except as may otherwise be agreed by the parties from time to time, be paid by direct debit mandate or standing order mandate to such bank account in the United Kingdom as may be nominated by the Station Facility Owner from time to time.~~

~~6.4 Further detailed provisions relating to the Common Charges are set out in Part F of the Station Access Conditions.~~

## 9 REMEDIES

### 9.1 Non-performance

(a) If the Station Facility Owner fails to secure the cleaning of the Station in accordance with the provisions of paragraph 2.2 of the Schedule Part 2 or fails to secure the maintenance and repair of the Station in accordance with paragraph 2.1 of the Schedule Part 2, the Beneficiary shall, subject to Clause 9.1(b), be entitled to procure that such cleaning, maintenance or repair is carried out in accordance with the relevant provisions of the Schedule Part 2 at the Station Facility Owner's expense.

(b) The Beneficiary shall be entitled to the remedies referred to in Clause 9.1(a) only if:

(i) the Station Facility Owner has been notified of the breach in writing; and

(ii) the breach is capable of being remedied, the Station Facility Owner has been given a reasonable period in which to remedy or procure the remedy of that breach and the breach remains unremedied by the Station Facility Owner at the end of that period.

### 9.2 Consequential loss

Without prejudice to Clauses 4.6, 5.4 and 9.1 to which this sub-clause will not apply, neither party shall recover from the other party any loss of revenue (including fare revenue, subsidy, access charges to third parties and incentive payments) or other consequential loss caused to it by the other party in connection with railway operations.

## 10     **PAYMENTS**

### 10.1   **Default Interest**

If either party to this Agreement defaults in the payment, when due, of any sum payable under this Agreement (howsoever determined), the liability of such party shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (both before and after judgment) at the Interest Rate. All such interest shall be calculated on the actual number of days elapsed and a 365 day year.

### 10.2   **Payments gross**

All sums payable by either party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims, save only as may be required by law or in accordance with Clause 9.1. If any sum payable under this Agreement shall be subject to a deduction or withholding required by law, the sum payable shall be increased to such a sum as shall, after taking into account of the relevant deduction or withholding, leave the party receiving the payment in the same position as if the payment in question had not suffered the deduction or withholding.

### 10.3   **Value Added Tax ("VAT")**

- (a)     Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one party to the other party, the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.
  
- (b)     Where, under this Agreement, one party has agreed to reimburse or indemnify the other party in respect of any payment made or cost incurred by the other party, and the supply of the subject matter giving rise to the payment does not constitute a taxable supply for VAT purposes by the other party, then the first party shall also reimburse any VAT paid by the other party which forms part of its payment made or cost incurred to the extent such VAT is not available for credit to the other party under sections 24 to 26 (inclusive) of the Value Added Tax Act 1994.
  
- (c)     Where, under this Agreement, one party has agreed to reimburse or indemnify the other party in respect of any payment made or cost incurred by the other party, and the supply of the subject matter giving rise to the payment constitutes

a taxable supply for VAT purposes, then the first party shall not be required to reimburse any VAT paid by the other party in relation to its payment or cost.

## 11 **DISPUTES AND CLAIMS**

Save as otherwise provided in this Agreement, any dispute or claim arising out of or in connection with this Agreement shall be resolved by the Industry Committee (save where the parties agree to submit the dispute to mediation instead), followed, if either party shall be dissatisfied with the decision of the Industry Committee or the ruling of the Chairman hereof (as the case may be), by referral to such other mechanism (other than mediation) as the Industry committee shall specify, pursuant in each case to the Access Dispute Resolution Rules.

## 12 **7-WHOLE AGREEMENT, VARIATION AND ASSIGNMENT**

### 12.1 **7.1 Whole agreement**

This Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes all prior agreements and arrangements. This Clause ~~7.1~~12.1 shall not have the effect of excluding any ~~term~~terms implied by law.

### ~~7.2~~ **Counterparts**

~~This Agreement may be executed in counterparts, each of which will constitute one and the same document.~~

### ~~7.3~~ **Variation**

### 12.2 **Amendment**

~~No variation of this Agreement (including, without limitation, any variation made pursuant to any provision of this Agreement (whether as a result of the exercise of a party's discretion or otherwise howsoever) which would, apart from that provision, require the Office of Rail Regulation's approval under section 22 of the Act)~~amendment of this Agreement (other than as expressly otherwise contemplated by this Agreement) shall be effective unless ~~it is in writing, signed by the parties and the Office of Rail Regulation has consented to it unless:~~

~~7.3.1~~ ~~the variation is made pursuant to the Station Access Conditions; or~~

~~7.3.2 this Agreement expressly contemplates otherwise in which event the parties shall promptly notify the Office of Rail Regulation of the variation.~~

~~7.4 Assignment~~

- (a) in writing and signed by duly authorised representatives of the parties; and
- (b) approved by the Office of Rail Regulation pursuant to the Act, except where the Office of Rail Regulation has given a general approval in accordance with Section 22(2) or 22(3) of the Act and such amendment shall be wholly within the terms of such general approval.

12.3 Assignment

Subject to Clause ~~7.5, 12.4~~, this Agreement shall be binding on and enure to the benefit of the parties and their successors and permitted ~~assigns or~~ assignees but neither party may assign or transfer all or any ~~part~~ of its rights or obligations under this Agreement without the prior written consent of the other party and the approval of the Office of Rail Regulation ~~in terms of Clause 12.6.~~

12.4 ~~7.5~~ **Novation**

Each party agrees to take all such steps as may be necessary to give effect to the novation of ~~either the other~~ party's rights and obligations under this Agreement by and in favour of the ~~Strategic Rail Authority~~ Secretary of State or its nominee, if and to the extent necessary to enable the ~~Strategic Rail Authority~~ Secretary of State to perform its duty to secure the provision of services for the carriage of passengers by railway pursuant to ~~section~~ Section 30 of the Act, provided that any such assignment or novation shall have been approved by the Office of Rail Regulation pursuant to the Act and shall be on terms that:

(a) ~~7.5.1 the Strategic Rail Authority~~ the Secretary of State or its nominee shall have satisfied all relevant conditions precedent applicable to the Beneficiary which are ~~specified~~ described in Clause 2.1 ~~(unless and to the extent that such conditions precedent shall have been waived);~~

(b) ~~7.5.2~~ the other party ~~whose rights and obligations are being novated~~ shall not be released from any accrued but unperformed obligation, the consequences of any breach of this Agreement which is the subject of arbitration or litigation between the parties or any liability in respect of ~~any act or omission~~ duties performed under ~~or in relation to~~ this Agreement prior to, or

as at the date of, any such novation (except to the extent that the ~~Strategic Rail Authority~~Secretary of State or its nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

- (c) ~~7.5.3~~ neither the ~~Strategic Rail Authority~~Secretary of State nor its nominee shall not be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in Clause ~~7.5.2. 12.4(b).~~

## 12.5 ~~7.6~~ Sub-contractors

~~7.6.1~~ Subject to Clause ~~7.6.3~~, the Station Facility Owner may subcontract the performance of any of its obligations under this Agreement.

~~7.6.2~~ Subject to Clause ~~7.6.3~~ the The Beneficiary shall not, without the prior written consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed), sub-contract ~~the performance of any of its~~ rights or obligations under this Agreement.

~~7.6.3~~ Nothing in this Clause ~~7.6~~ shall operate so as to relieve the Station Facility Owner or the Beneficiary. Neither the giving of any such consent (in the case of the Beneficiary) nor any other action (in the case of either party) shall relieve a sub-contracting party of its obligations under this Agreement and ~~each~~such party shall remain responsible for the acts and omissions of any sub-contractor as if they were the acts and omissions of that party.

## ~~7.7~~ Ceasing to be a facility owner

~~7.7.1~~ In this Clause ~~7.7~~:

- (a) ~~"a relevant disposal" means the disposal or the creation of any estate, interest, right or title in or to the Station which, whether or not with the passage of time or the giving of notice, may result in another person becoming the facility owner in respect of the Station but does not include the creation of Security over the Station; and~~
- (b) ~~"Security" means any mortgage, pledge, lien (other than a lien arising by operation of law), hypothecation, security interest or other charge or encumbrance.~~

~~7.7.2~~ The Station Facility Owner shall not make a relevant disposal otherwise than to a person holding a station licence in respect of the Station who prior to the making of the relevant disposal has novated the access agreements of all Users on terms approved by the Office of Rail Regulation.

~~7.7.3~~ The Station Facility Owner shall not create or permit to subsist Security over the Station otherwise than on terms to which the Office of Rail Regulation has consented.

~~7.7.4 A relevant disposal made in breach of Clause 7.7.2 and Security created or permitted to subsist in breach of Clause 7.7.3 shall be void and of no effect and shall not be binding upon or confer rights exercisable against any User.~~

~~7.7.5 Neither the disposal nor the creation of any estate, interest, right or title in or to the Station shall release the Station Facility Owner from any accrued but unperformed obligation, the consequences of any breach of a Station Access Agreement or the Station Access Conditions or any liability in respect of any act or omission under or in relation to a Station Access Agreement or the Station Access Conditions arising prior to another person becoming the facility owner in respect of the Station.~~

~~7.8 **Station Code Retrofit**~~

~~The provisions set out in SCHEDULE 4 shall apply to this Agreement.~~

12.6 **Office of Rail Regulations consent**

No assignment, transfer or novation of any right or obligation under or pursuant to this Agreement shall have effect unless approved by the Office of Rail Regulation and effected in accordance with the conditions (if any) of such approval.

12.7 **Litigation**

(a) The Station Facility Owner shall promptly notify the Beneficiary and any other Passenger or non-Passenger Operations of:

(i) any incidents, accidents or circumstances causing damage to Common Station Amenities, the cost of which may exceed £10,000; and

(ii) any claim, litigation, lien, demand or judgement relating to the Common Station Services or the Common Station Amenities where the total amount in dispute and/or the total amount of damages together with any costs are estimated to exceed £10,000.

(b) The Station Facility Owner shall have the authority to commence, prosecute, defend, pursue or settle any claim, litigation, lien, demand or judgment relating to the Common Station Amenities or the Common Station Services (other than between the Station Facility Owner and the Beneficiary) on behalf of both itself and, if appropriate, the Beneficiary, provided that the Station Facility Owner shall have no such authority without the prior consent of the Beneficiary and all other Passenger Operators (such consent not to be unreasonably withheld or delayed) where:

(i) the dispute may affect the Station Facility Owner's ability to operate the Station;

- (ii) the dispute may affect, or could reasonably be expected to affect, the Beneficiary, any Passenger Operator or any person employed or engaged by the Beneficiary or such Passenger Operator.
- (c) The Beneficiary shall promptly notify the Station Facility Owner of any claim, litigation, lien, demand or judgment brought by it or against it which may affect the Common Station Services or the Common Station Amenities.
- (d) Notwithstanding clauses 12.7(a) and 12.7(b), the Beneficiary shall have the right to participate in any prosecution, defence or settlement conducted in accordance with clauses 12.7(a) and 12.7(b) at its sole cost and expense provided that such participation shall neither prejudice the conduct thereof by the Station Facility Owner nor avoid the Beneficiary's share of the cost of such action.

### 13 INVALIDITY AND WAIVER

#### 13.1 Invalidity

If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

#### 13.2 Waiver

No waiver by either party of any default by the other in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. No single or partial exercise of any other right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any right or remedy.

#### 13.3 Time Limits

Where in this Agreement any obligation of a party is required to be performed within a specified time limit, that obligation shall be deemed to continue after that time and until such time as is specified by the other party, if the party fails to comply with the obligation within the time limit.

14      **CONFIDENTIALITY**

14.1    Except as permitted by Clause 14.2, all data and information acquired or received by either party under or pursuant to this Agreement and shall be held confidential during the continuance of this Agreement and for a period of 5 years thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.

14.2    Either party shall be entitled in good faith to divulge any data or information to which Clause 14.1 applies without the approval of the other party in the following circumstances:

- (a)    to the Office of Rail Regulation;
- (b)    to the Secretary of State;
- (c)    to any Affiliate of such party upon obtaining an undertaking of strict confidentiality from such Affiliate;
- (d)    to any officer or servant of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary to enable the party in question to perform its obligations under this Agreement or to enforce its rights under this Agreement, upon obtaining an undertaking of strict confidentiality from such servant or person;
- (e)    to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (f)    to any lender, security trustee, bank or other financial institution from whom such party is seeking or obtaining finance, or any advisers to any such entity, upon obtaining an undertaking of strict confidentiality from the entity or advisers in question;
- (g)    to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or any formal request of any taxation authority;
- (h)    to the extent that it has become available to the public other than as a result of any breach of an obligation of confidence; or

(i) pursuant to the order of any court or tribunal of competent jurisdiction (including the Industry Committee or any sub-committee thereof).

## 15 FORCE MAJEURE

15.1 In this Agreement, "Force Majeure" shall be deemed to occur if and to the extent that there occurs any event or circumstances or any combination of events or circumstances beyond the reasonable control of either party to this Agreement which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means, and which prevents, hinders or delays that party from performing any of its obligations under this Agreement. Without prejudice to that generality, "Force Majeure" under this Clause 15.1 shall include the following events and circumstances:

war damage, enemy action, terrorism, the act of any government or government instrumentality (provided that such an act shall not be "Force Majeure" if and to the extent that such act is performed by such government as shareholder or controller of the party claiming Force Majeure and such party is acting on instructions from such government, its instrumentality or servants), riot, civil commotion, rebellion, storm, tempest, fire, flood, act of God or strike or any industrial action by employees of any third party;

and shall exclude the following events and circumstances:

any act of the Office of Rail Regulation, any lack of funds, any strike or other industrial action involving the employees of either party, or any accumulation (other than one of exceptional security or of an exceptional manner) of ice, rain, water, snow or leaves on railway assets.

15.2 Neither party to this Agreement shall be responsible for any failure to fulfil its obligations under this Agreement if, and to the extent that, such failure shall be caused by, or directly or indirectly by reason, Force Majeure, which makes it impossible or impracticable for that party to comply with its obligations.

15.3 Any party affected by Force Majeure shall use all reasonable endeavours to minimise the effects of that Force Majeure upon the performance of its obligations under this Agreement.

15.4 As soon as reasonably practicable after commencement of the Force Majeure, the party affected by the Force Majeure shall notify the other party in writing of the occurrence of

the Force Majeure, the date of commencement of the Force Majeure and the effects of the Force Majeure on its ability to perform its obligations under this Agreement.

15.5 As soon as reasonably practicable after the cessation of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the cessation of the Force Majeure and resume performance of all its obligations under this Agreement.

## 16 ~~8~~-NOTICES AND COMMUNICATIONS

16.1 ~~8.1~~ Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by ~~pre-paid~~prepaid first class post, or by facsimile, to the party on whom the notice is to be served at the relevant address for service set out in the Schedule Part 3, or to such other address in the United Kingdom as that party may specify by notice ~~to the other party to this Agreement~~in writing to the party by or on whose behalf the notice or other communication is sent.

16.2 ~~8.2~~ Any such notice or other communication ~~shall be, or~~ shall be deemed to have been, received by the party to whom it is addressed as follows:

(a) ~~8.2.1~~ if sent by hand ~~or,~~ recorded delivery, pre-paid first class post, when so delivered ~~or in the case of prepaid first class post, 2 days after posting;~~ and

(b) ~~8.2.2~~ if sent by facsimile, upon receipt by the sender of confirmation of uninterrupted transmission by a transmission report upon sending (where such transmission occurs before ~~17.00~~16.00 hours on the day of transmission) and (in any other case) on the day following the day of transmission, ~~provided that the sender obtains, and if required to do so by the person to whom the notice is alleged to have been sent produces, confirmation of uninterrupted transmission by a transmission report generated by the facsimile machine in question, or other sufficient evidence of transmission.~~

## 17 ~~9~~-GOVERNING LAW AND SUBMISSION TO JURISDICTION

### 17.1 ~~9.1~~ Governing ~~law~~Law

This Agreement shall be governed by and construed in accordance with ~~[English/Scots]~~ law.

### 17.2 ~~9.2~~ Jurisdiction

Subject to the ~~Station Access Conditions~~, provisions of clause 11, the parties irrevocably agree that the courts of ~~[England/Scotland]~~ are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement.

~~10~~ — **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

~~10.1~~ — **Application to Third Parties**

~~Except as provided in this Clause 10 or as expressly provided elsewhere in this Agreement, no person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.~~

~~10.2~~ — **Application to the Office of Rail Regulation and the Strategic Rail Authority**

~~The Office of Rail Regulation and the Strategic Rail Authority shall have the right under the Contracts (Rights of Third Parties) Act 1999 to directly enforce such rights as have been granted to them under this Agreement.~~

**IN WITNESS** ~~whereof this Agreement has been duly executed.~~ WHEREOF this Agreement (including the Schedule and Plan annexed hereto) is executed as follows:

Subscribed for and on behalf of

Glasgow Prestwick International Airport Limited

at \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_ Director in \_\_\_\_\_

the presence of:

\_\_\_\_\_ Witness

\_\_\_\_\_ Full Name

\_\_\_\_\_ Address

\_\_\_\_\_

Subscribed for and on behalf of

First ScotRail Limited

at \_\_\_\_\_

on \_\_\_\_\_

by \_\_\_\_\_ Director in \_\_\_\_\_

**SCHEDULE 1  
CONTRACT PARTICULARS**

the presence of:

..... Witness

..... Full Name

..... Address

.....

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## Schedule

This is the Schedule referred to in the foregoing Station Access Agreement between Glasgow Prestwick International Airport Limited and First ScotRail Limited.

### Part 1

1    ~~4~~    Station Facility Owner:

Name: [ ] Glasgow Prestwick International Airport Limited (Company No: SC135362)

Registered office: [ ] Office: Glasgow Prestwick International Airport  
Prestwick  
Ayrshire  
KA9 2PL

2    ~~2~~    Beneficiary:

Name: [ ] First ScotRail Limited (Company No: SC185018)

Registered office: [ ] Office: 395 King Street  
Aberdeen  
AB24 5RP

3    ~~3~~    Commencement Date: [ ]

The date on which the Office of Rail Regulation confirms its approval of the terms of this Agreement and issues directions pursuant to Section 18 of the Act.

4    ~~4~~    Expiry Date: [ ]

The date of termination of the Franchise Agreement.

5    ~~5~~    Station: [ ]

~~The station known as [ ], as more particularly defined in the Station Access Conditions~~ Station known as Prestwick International and identified in the Plan.

6    ~~6~~    Address of ~~Strategic Rail Authority:~~ Scottish Ministers

~~The Strategic Rail Authority~~

[Transport Scotland](#)

[Meridian Court](#)

~~55 Victoria~~[Cadogan](#) Street

London

SW1H 0EU

Tel: 020 7654 6000

Fax: 020 7654 6010

[Glasgow](#)

[GT 6AT](#)

Tel: 0141 272 7100

7 ~~7~~ [Details of Track Access Agreement:](#)

[The Track](#) Access ~~contract dated [ ]~~[Agreement](#) between Network Rail and the Beneficiary ~~or such agreement as may from time to time replace the same providing permission for the Beneficiary to use track in order to operate trains to and from the Station for the purpose of operating railway passenger services.~~

~~8~~ ~~[Obligations of Confidence:](#)~~

~~The period for which obligations of confidence shall apply referred to in Clause 2.4.2 shall be [ ] years.~~

~~9~~ ~~[Percentage of Common Charges payable pursuant to Clause 6.1.2:](#)~~

~~[ ]%.~~

**SCHEDULE 2**  
**EXCLUSIVE STATION SERVICES**

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**SCHEDULE 3**

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**SCHEDULE 31**  
**ADDRESSES FOR SERVICES**

~~1~~ Address for service on the Station Facility Owner:

(Attention: [—])

[Address]

[Fax No.]

~~2~~ Address for service on the Beneficiary:

(Attention: [—])

[Address]

[Fax No.]

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**SCHEDULE 4**

**STATIONS CODE RETROFIT** dated 12 December 2004, as supplemented and/or amended from time to time with the approval of the Office of Rail Regulation, or such other Track Access Agreement as may be entered into between Network Rail and any party who is from time to time the Beneficiary under this Agreement.

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## Schedule

### Part 2

#### Common Station Amenities and Services

1 ~~AUTOMATIC EFFECT~~ Common Station Amenities

1.1 ~~General~~ Platforms 1 & 2

~~This Agreement shall have effect~~

~~1.1.1 with the modifications; and~~

~~1.1.2 from the date~~

~~specified by the Office of Rail Regulation in a modification notice as supplemented (where appropriate) by a notice of consent to requisite adaptations or a notice of determined requisite adaptations.~~

Access to and egress from the railway Station and the airport.

1.2 ~~Retrospective effect~~ Waiting Amenity on Platforms 1 and 2.

~~No relevant notice may have retrospective effect.~~

1.3 First Aid Amenity in Baggage Area of Platform 2.

1.4 Fixed Timetable Departure Boards and any fixed boards for the display of statutory and compulsory notices supplied by the Beneficiary in accordance with Clause 5.6.

1.5 A board (provided by the Beneficiary) to provide information of altered services.

1.6 Directional Signing to facilitate rail passenger movement and emergency egress.

1.7 Public Address System

1.8 Fire Alarm, fire detection, fire prevention and fire fighting equipment and other safety equipment considered necessary by the Station Facility Owner or a relevant authority with statutory powers of enforcement of fire safety precautions for the safe operation of the station.

1.9 Passenger Self Help Trolleys (all of which shall be to railway specification i.e. self-braking).

1.10 Customer Information Point in the Airport Terminal, and a customer's telephone link from the Station to the Information Point.

1.11 Customer Information systems (CIS Monitors).

2 ~~MODIFICATION NOTICE~~ Common Station Services

2.1 ~~Meaning~~ Repair and maintenance of the Station (in accordance with Appendix 2).

~~A modification notice is a notice given by the Office of Rail Regulation to the parties for the purposes of this Agreement which modifies this Agreement (other than this Schedule 4) by:~~

~~2.1.1 the replacement of specified provisions of this Agreement with provisions in the Stations Code; and/or~~

~~2.1.2 the inclusion of additional provisions into this Agreement based on the Stations Code; and/or~~

~~2.1.3 the restatement of this Agreement, with any modifications under paragraphs 2.1.1 or 2.1.2, in the Stations Code.~~

2.2 ~~Contents of modification notice~~ Cleaning of the Station (in accordance with Appendix 1).

~~A modification notice shall state:~~

~~2.2.1 the modifications which are to be made to this Agreement;~~

~~2.2.2 the date from which specified modifications are to have effect, and, if any such modifications are to have effect from different dates, the dates applicable to each modification;~~

~~2.2.3 which of the specified modifications are to be subject to adaptation and the backstop date for the requisite adaptations in question; and~~

~~2.2.4 the date from which any restatement of this Agreement in the Stations Code is to have effect.~~

2.3 Lighting of the Station according to Railway Industry Standards or any other relevant standards required to secure statutory approval of the works.

2.4 Repair, maintenance and replacement of the fire detection, fire alarm, fire prevention and fire fighting equipment reasonably considered by the Station Facility Owner to be necessary for the safe operation of the Station.

2.5 Security measures as deemed necessary by the Station Facility Owner.

2.6 Insurance against property owners liability and third party liability.

2.7 Display timetable departure sheets as provided by the Beneficiary.

2.8 Display any emergency or temporary timetables provided by the Beneficiary.

2.9 Announcement by the public address system of up to date information relating to the Beneficiary's passenger service as the Station Facility Owner is reasonably able to announce, and which is available to the Station Facility Owner from the Beneficiary.

2.10 Display of notices provided by the Beneficiary under Clause 5.6 of this Agreement.

2.11 Information about the purchase of the Beneficiary's tickets.

### **3** **ADAPTATION PROCEDURE** Exclusive Station Services

#### ~~3.1~~ **Application**

~~This paragraph 3 applies in the case of specified modifications which are specified as being subject to adaptation.~~

#### ~~3.2~~ **Negotiation of adaptations**

~~In respect of the modifications in each modification notice:~~

~~3.2.1~~ ~~within 14 days of the date of service of the modification notice, the parties shall meet and in good faith negotiate and attempt to agree the requisite adaptations;~~

~~3.2.2~~ ~~each party shall ensure that:~~

~~(a)~~ ~~such negotiations are conducted in good faith in a timely, efficient and economical manner, with appropriate recourse to professional advice;~~

~~(b)~~ ~~the Office of Rail Regulation's criteria are applied in the negotiations; and~~

~~(c)~~ ~~the negotiations shall not continue after the backstop date.~~

#### ~~3.3~~ **Agreed adaptations — notice to the Office of Rail Regulation**

~~If the parties have agreed the requisite adaptations on or before the backstop date, not later than 7 days after the backstop date the agreed requisite adaptations shall be sent by the parties to the Office of Rail Regulation for its consent, together with a statement, signed by or on behalf of both parties:~~

~~3.3.1~~ ~~stating the reasons for the agreed requisite adaptations:~~

~~3.3.2~~ ~~stating the extent to which and ways in which the Office of Rail Regulation's criteria have been applied in arriving at the agreed requisite adaptations and, in any case where they have not been applied, the reasons; and~~

~~3.3.3~~ ~~giving such other information as the Office of Rail Regulation may have requested.~~

~~3.4 — Agreed adaptations — Office of Rail Regulation's consent~~

~~If the Office of Rail Regulation is satisfied with the agreed requisite adaptations, and it gives a notice of consent to requisite adaptations, they shall have effect as provided for in paragraph 3.8.~~

~~3.5 — Agreed requisite adaptations — Office of Rail Regulation's refusal of consent~~

~~If the Office of Rail Regulation gives notice to the parties that it is not satisfied with any or all of the agreed requisite adaptations, it may:~~

~~3.5.1 — require the parties again to follow the procedure for negotiating requisite adaptations (with such modifications as to time limits as it specifies), in which case they shall do so; or~~

~~3.5.2 — determine the requisite adaptations itself.~~

~~3.6 — Requisite adaptations — failure to agree or submit~~

~~If the parties have failed to submit agreed requisite adaptations to the Office of Rail Regulation for its consent on or before the backstop date, it may determine the requisite adaptations itself.~~

~~3.7 — Notice of determined requisite adaptations~~

~~A notice of determined requisite adaptations is a notice:~~

~~3.7.1 — given by the Office of Rail Regulation to the parties for the purposes of this paragraph 3 following the failure of the parties to send to the Office of Rail Regulation on or before the backstop date requisite adaptations to which it gives his consent; and~~

~~3.7.2 — which states the requisite adaptations which the Office of Rail Regulation has determined should be made using its powers to do so under paragraph 3.5. or 3.6.~~

~~3.8 — Effect of requisite adaptations~~

~~Requisite adaptations established either:~~

~~3.8.1 — by agreement of the parties and in respect of which the Office of Rail Regulation has given a notice of consent to requisite adaptations under paragraph 3.4; or~~

~~3.8.2 — by the determination of the Office of Rail Regulation under paragraph 3.5 and 3.6 and stated in a notice of determined requisite adaptations;~~

~~shall have effect from such date as the Office of Rail Regulation states in the relevant notice of consent to requisite adaptations or (as the case may be) the relevant notice of determined requisite adaptations.~~

~~[None](#)~~

4 ~~PROCEDURAL MATTERS~~[Opening Periods](#)

~~4.1 — More than one notice~~

~~More than one modification notice may be given.~~

~~4.2 — Differences etc as to requisite adaptations~~

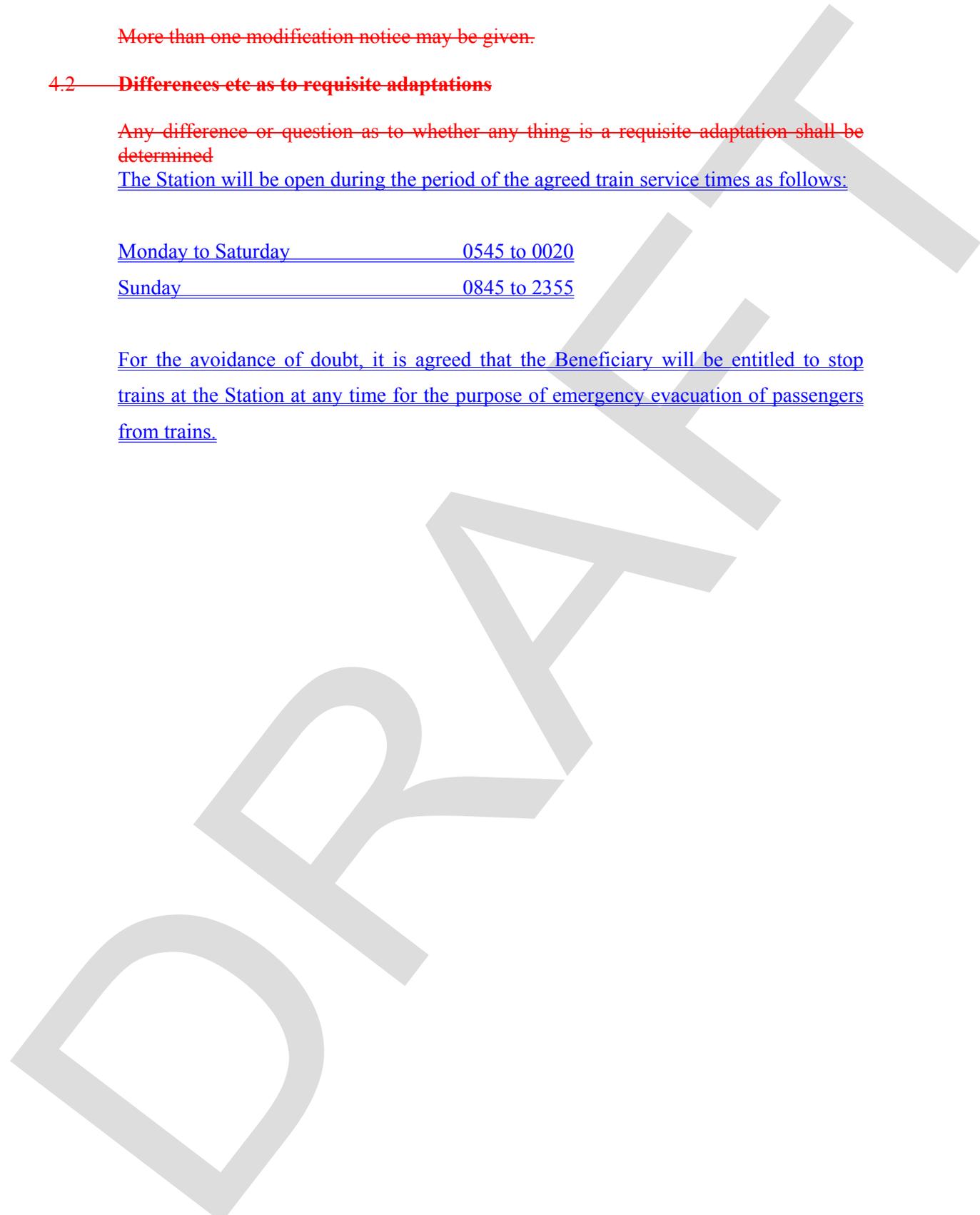
~~Any difference or question as to whether any thing is a requisite adaptation shall be determined~~

The Station will be open during the period of the agreed train service times as follows:

Monday to Saturday 0545 to 0020

Sunday 0845 to 2355

For the avoidance of doubt, it is agreed that the Beneficiary will be entitled to stop trains at the Station at any time for the purpose of emergency evacuation of passengers from trains.



## Appendix 1

### Cleaning Specification

- 1 The skywalk and the waiting rooms (including the footbridge) will be cleaned as part of the Terminal Building, and will be included in the Terminal Building schedule of cleaning.
- 2 The platforms will be cleaned once per day, with additional cleaning if necessary to maintain a high standard of presentation.
- 3 Litter Bins will be cleared of rubbish twice per day regularly, and more frequently should that be necessary.

## Appendix 2

### Maintenance Specification

- 1 The Station shall be maintained in accordance with the principles laid down in the Rail Industry standards appertaining at the opening and in accordance with legislative and building requirements, as approved in the Station's Safety Case.

Schedule

Part 3

Addresses for Service

1 Address for service on the Station Facility Owner

Glasgow Prestwick International Airport Limited

Glasgow Prestwick International Airport

Prestwick

Ayrshire

KA9 2PL

Fax No. 01292 511010

2 Addresses for Service on the Beneficiary

Commercial Director

First ScotRail Limited

Station Contracts Manager

Caledonian Chambers

87 Union Street

Glasgow

G1 3TA

Fax No. 0141 335 4206

Schedule

Part 4

Access Charge

1 The Access Charge to be levied by the Station Facility Owner to the beneficiary shall be as follows:

1.1 In respect of the cost of maintaining and repairing the Station facility, the sum of £ EXCLUDED INFORMATION per annum;

1.2 In respect of the cost of internal management of the Station facility, the sum of £ EXCLUDED INFORMATION per annum; and

1.3 In respect of the cost of replacing the Station facility, the sum of £ EXCLUDED INFORMATION per annum.

Schedule

Part 5

Works to be carried out on the station by the Beneficiary

1 Permitted Works

Nil

2 Prescribed Works

Nil

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## Schedule

### Part 6

#### Existing Works

Nil, except as otherwise agreed and approved by the Office of Rail Regulation:

~~4.2.1 on the application of either party; and~~

~~4.2.2 in accordance with such procedure (including as to consultation) as the Office of Rail Regulation may by notice to the parties determine.~~

#### ~~4.3 Co-operation and information~~

~~If the Office of Rail Regulation gives notice to either or both of the parties that it requires from either or both of them information in relation to any requisite adaptation or proposed requisite adaptation:~~

~~4.3.1 the party of whom the request is made shall provide the requested information promptly and to the standard required by the Office of Rail Regulation; and~~

~~4.3.2 if that party fails timeously to do so, the Office of Rail Regulation shall be entitled to proceed with its consideration of the matter in question and to reach a decision in relation to it without the information in question and the party in default shall have no grounds for complaint in that respect.~~

#### ~~4.4 Office of Rail Regulation's criteria~~

~~In relation to the negotiation of any requisite adaptation, the Office of Rail Regulation shall be entitled to:~~

~~4.4.1 give to the parties any criteria of its which it requires be applied in the negotiations; and~~

~~4.4.2 modify the criteria after consultation.~~

#### ~~4.5 Procedural modifications~~

~~In relation to the procedure in paragraph 3 for the agreement or establishment of requisite adaptations (including the time within which any step or thing requires to be done or achieved):~~

~~4.5.1 such procedure may be modified by the Office of Rail Regulation by a notice of procedural modification given by it to the parties; but~~

~~4.5.2 the Office of Rail Regulation may only give a notice of procedural modification if it is satisfied that it is necessary or expedient to do so in order to promote or achieve the objectives specified in section 4 of the Act or if it is requested by both parties.~~

#### ~~4.6 — Dates~~

~~In this Schedule 4:~~

~~4.6.1 where provision is made for a date to be specified or stated by the Office of Rail Regulation, it may, instead of specifying or stating a date, specify or state a method by which a date is to be determined, and references to dates shall be construed accordingly; and~~

~~4.6.2 any notice given by the Office of Rail Regulation which states a date may state different dates for different purposes.~~

#### ~~4.7 — Requirement for prior consultation~~

~~No relevant notice shall have effect unless:~~

~~4.7.1 the Office of Rail Regulation has first consulted the parties and the Strategic Rail Authority in relation to the proposed relevant notice in question;~~

~~4.7.2 in the consultations referred to in paragraph 4.7.1, the Office of Rail Regulation has made available to the parties and the Strategic Rail Authority such drafts of the proposed relevant notice as he considers are necessary so as properly to inform them of its contents;~~

~~4.7.3 the Office of Rail Regulation has given each party and the Strategic Rail Authority the opportunity to make representations in relation to the proposed relevant notice and has taken into account all such representations (other than those which are frivolous or trivial) in making its decision on the relevant notice to be given;~~

~~4.7.4 the Office of Rail Regulation has notified the parties and the Strategic Rail Authority as to its conclusions in relation to the relevant notice in question (including by providing to each such person a copy of the text of the proposed relevant notice) and its reasons for those conclusions; and~~

~~4.7.5 in effecting the notifications required by paragraph 4.7.4, the Office of Rail Regulation has treated as confidential any representation (including any submission of written material) which (and to the extent that) the person making the representation, by notice in writing to the Office of Rail Regulation or by endorsement on the representation of words indicating the confidential nature of such representation, has specified as confidential information.~~

#### ~~4.8 — Consolidated contract~~

~~Subject to paragraph 4.9 not later than 21 days after the giving of the last of:~~

~~4.8.1 a modification notice; and~~

~~4.8.2 a notice of determined requisite adaptations or a notice of consent to requisite adaptations (as the case may be);~~

~~the Station Facility Owner shall prepare and send to the Beneficiary, the Office of Rail Regulation and the Strategic Rail Authority a copy of this Agreement as so modified.~~

#### ~~4.9 — Restatement in the Stations Code~~

~~If a modification notice states that this Agreement is to be restated in the Stations Code:~~

~~4.9.1 the parties shall enter into such accession or other agreement as may be necessary to give effect to such restatement;~~

~~4.9.2 the parties shall give effect to the restatement no later than the date stated in the modification notice; and~~

~~4.9.3 the restatement shall not affect the other provisions of this Schedule 4 concerning requisite adaptations.~~

#### ~~4.10 — Saving~~

~~Nothing in this Schedule 4 affects:~~

~~4.10.1 the right of either party to approach and obtain from the Office of Rail Regulation guidance in relation to the requisite adaptations; or~~

~~4.10.2 the right of the Office of Rail Regulation at any time to effect modifications to the Stations Code under that code.~~

### ~~5 — DEFINITIONS~~

~~In this Schedule 4:~~

~~“backstop date” means the date (being not earlier than 28 days from the date of the modification notice) specified as such in a modification notice (or such later date as may be established under paragraph 3.7.1 or 4.6);~~

~~“Stations Code” means model clauses for access to stations to be entered into by station facility owners, beneficiaries and other interested persons published by the Office of Rail Regulation under section 21 of the Act, and any special provisions relating to particular stations which may form an annexure to such model clauses;~~

~~“modification notice” has the meaning ascribed to it in paragraph 2.1;~~

~~“notice of consent to requisite adaptations” means a notice given by the Office of Rail Regulation under paragraph 3.4;~~

~~“notice of determined requisite adaptations” has the meaning ascribed to it in paragraph 3.7;~~

~~“notice of procedural modifications” means a notice given by the Office of Rail Regulation to the parties under paragraph 4.5 modifying any aspect of the procedure in this Schedule 4 for the agreement or establishment of requisite adaptations;~~

~~“Office of Rail Regulation’s criteria” means the criteria established by the Office of Rail Regulation for the purposes of the negotiation of requisite adaptations and given to the parties, or modified, under paragraph 4.4;~~

~~“relevant notice” means a modification notice, notice of determined requisite adaptations, notice of procedural modifications or modification of the Office of Rail Regulation’s criteria;~~

~~“**requisite adaptations**” in relation to specified modifications, means the amendments (including the addition of information) to the model clauses in question which are necessary or expedient so as to give full effect to them in the particular circumstances of the case, and “adaptation” shall be construed accordingly; and~~

~~“**specified**” means specified in a modification notice.~~

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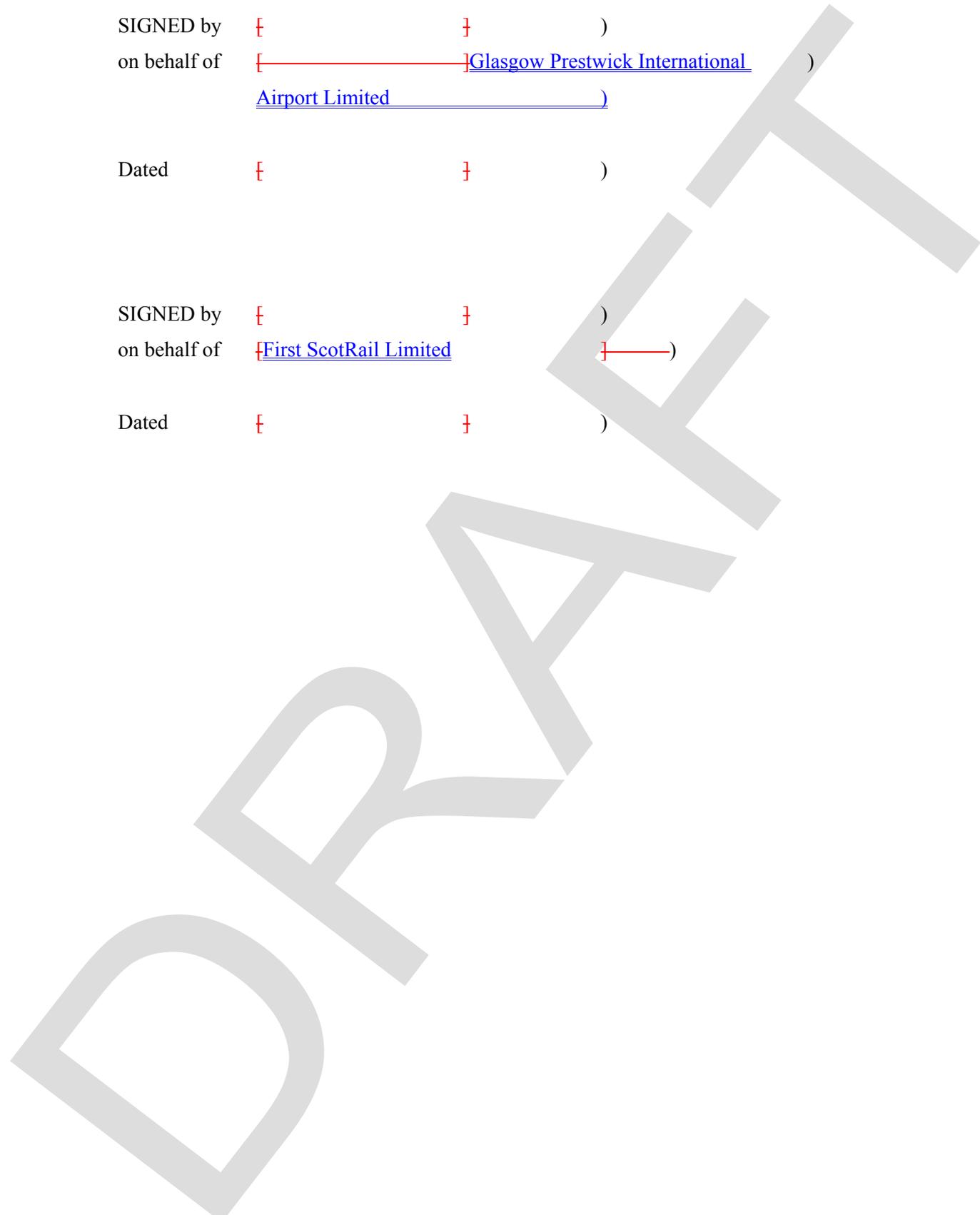
DRAFT

SIGNED by { } )  
on behalf of { } Glasgow Prestwick International )  
Airport Limited )

Dated { } )

SIGNED by { } )  
on behalf of { } First ScotRail Limited )

Dated { } )



Document comparison done by DeltaView on 21 February 2006 11:32:22

Input:	
Document 1	iManageDeskSite://DMSSERVERS/WORK/3976693/1
Document 2	iManageDeskSite://DMSSERVERS/WORK/3912128/2
Rendering set	Strikethrough and Double Underline

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	685
Deletions	734
Moved from	13
Moved to	13
Style change	0
Format changed	0
Total changes	1445