

DATED

2007

Between

First Capital Connect Limited
as Station Facility Owner

- and -

East Midlands Trains Limited
as Beneficiary

Luton Airport Parkway
SSA/23/13/95/01

STATION ACCESS AGREEMENT
(Access by passenger operators)

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THIS AGREEMENT is made on

2007 BETWEEN:-

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

BACKGROUND

- (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.
- (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 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" has the meaning set out in Clause 6.1;

"Beneficiary Event of Default" has the meaning attributed to it in Clause 5.2.1;

"Beneficiary's Passenger Throughput Charge" means the charge payable by the Beneficiary in respect of its use of the Station, the amount of which shall be calculated in accordance with the provisions of Part A of Schedule 5;

"Commencement Date" means the date set out in paragraph 3 of Schedule 1;

"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;

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

"Insolvency Event" means, in relation to either of the parties, where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (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, except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there were substituted "£50,000" or such higher figure as the parties may agree from time to time in writing; and
 - (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) 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) any step is taken to enforce 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;
- (e) any step is taken by any person with a view to its winding-up or any person presents a winding-up petition 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
- (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:

- (i) in any 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) in relation to that party pursuant to sections 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
- (ii) in the case of paragraphs (a), (d) or (e), or (f) in relation to matters analogous or equivalent to the matters referred to in paragraphs (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;

“Network Rail” means Network Rail Infrastructure Limited, a company registered in England 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 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;

“Safety Authorisation” and “deemed Safety Authorisation” have the meanings given to “safety authorisation” and “deemed safety authorisation” by the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Safety Certificate” and “deemed Safety Certificate” have the meanings given to “safety authorisation” and “deemed safety authorisation” by the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

“Secretary of State” means the Secretary of State for Transport;

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

“SNRP” has the meaning given to it by the Railway (Licensing of Railway Undertakings) Regulations 2005;

“Station” means the station described in paragraph 5 of Schedule 1;

“Station Access Conditions” means, in respect of the Station:

- (a) the National Station Access Conditions 1996 (England and Wales); and
- (b) the annexes relating to the Station (ORR Ref: SSA/23/13/95/01)

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 5.2.3;

"Suspension Notice" means a notice served by one party on the other pursuant to Clause 5.3;

"Termination Notice" means a notice served by one party on the other pursuant to Clause 5.4.1 or 5.4.2, as the case may be; and

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

1.2 References

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.

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, references to that party in this Agreement shall, with the exception of Clause 6 and without prejudice to Clause 7.6, 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

2.1 Conditions Precedent

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 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 holds a Safety Authorisation or deemed Safety Authorisation in relation to its operation of the Station;

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 holds a Safety Certificate or deemed Safety Certificate in relation to its operation of trains;

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.

2.4.2 The obligations of confidence provided for in the Station Access Conditions shall continue in force for the period of years indicated at paragraph 8 of Schedule 1 after 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.

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.

4 **STATION ACCESS CONDITIONS**

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

4.2 Except where the Office of Rail Regulation shall have directed otherwise in the exercise of its powers under the Act, the Station Facility Owner shall ensure that all operators of trains having permission to use the Station agree to comply with the Station Access Conditions.

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.

5 **TERM AND TERMINATION**

5.1 **Term**

This Agreement shall continue in force until the earliest to occur of:

- (a) lapse pursuant to Clause 2.4;
- (b) termination pursuant to this Clause 5 or Condition F11 of the Station Access Conditions;
- (c) the Expiry Date; and
- (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 s56A of

the Transport Act 1962 or s48 of the Act or following compliance with any statutory requirements for such closure.

5.2 Events of default

5.2.1 Beneficiary Events of Default

The following shall be Beneficiary Events of Default:

- (a) Insolvency: An Insolvency Event occurs in relation to the Beneficiary;
- (b) Breach of the Agreement: The Beneficiary commits a material breach of its obligations under this Agreement;
- (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;
- (d) Loss of Licence: The Beneficiary ceases to be authorised to be the operator of trains by a licence granted under section 8 of the Act or by a licence or SNRP granted or recognised under the Railway (Licensing of Railway Undertakings) Regulations 2005 (whether by revocation or otherwise) unless it is exempt from the requirement so to be authorised;
- (e) Loss of Safety Certificate: The Beneficiary ceases to hold a Safety Certificate or deemed Safety Certificate whether because it has been revoked or otherwise;
- (f) 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);
- (g) Non-operation: No trains operated by the Beneficiary or on its behalf depart from the Station for a continuous period of more than 270 days; and
- (h) 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 Secretary of State shall have entered into a further franchise agreement 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.

5.2.3 Station Facility Owner Events of Default

The following shall be Station Facility Owner Events of Default:

- (a) Insolvency: An Insolvency Event occurs in relation to the Station Facility Owner;
- (b) Breach of the Agreement: The Station Facility Owner commits a material breach of its obligations under this Agreement;
- (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 as a result of an event of Force Majeure;
- (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 or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act; and
- (e) Loss of Safety Authorisation: The Station Facility Owner ceases to hold a Safety Authorisation or deemed Safety Authorisation whether because it has been revoked or otherwise.

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

5.3 Suspension

5.3.1 Right to suspend

- (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.
- (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.

5.3.2 Contents of a Suspension Notice

A Suspension Notice shall specify:

- (a) the nature of the relevant Event of Default;

- (b) the date and time at which suspension is to take effect;
- (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;
- (e) the steps reasonably required to remedy the relevant Event of Default; and
- (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).

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:

- (a) the Beneficiary shall comply with any reasonable restriction thereby imposed on it;
- (b) 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 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.

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:

- (a) it shall have the effect of suspending the 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
- (c) 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).

5.3.5 Suspension to be proportionate to breach

(a) A Suspension Notice served pursuant to Clause 5.3.1 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:

- (i) those Station Services; and
- (ii) those Common Station Amenities,

(or (as the case may be) parts or part of them) and the remainder of the rights and obligations of the parties shall remain in full force and effect.

(b) A Suspension Notice served pursuant to Clause 5.3.1 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:

- (i) those Station Services; and
- (ii) those Common Station Amenities,

(or (as the case may be) parts or part of them) and the remainder of the rights and obligations of the parties shall remain in full force and effect.

(c) The party served with a Suspension Notice 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.

(d) Where a party served with a Suspension Notice has complied with its obligations under Clause 5.3.5(c) (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.

5.4 Termination

5.4.1 The Station Facility Owner's right to terminate

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

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

5.4.2 The Beneficiary's right to terminate

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

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

5.4.3 Contents of Termination Notice

A Termination Notice shall specify:

- (a) the nature of the relevant Event of Default;
- (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 notice is given and the expiry of any grace period under Clause 5.4.3(c)(ii);
- (c) where the relevant Event of Default is capable of remedy:
 - (i) the steps reasonably required to remedy the Event of Default; and
 - (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).

5.4.4 Effects of a Termination Notice

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

- (a) the service of the 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;

- (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;
- (c) this Agreement shall terminate on the later of:
 - (i) the date and time specified in the Termination Notice; and
 - (ii) 28 days after the date upon which a copy of the Termination Notice shall have been given to the Office of Rail Regulation.
- (d) promptly after it has been served, a copy of the Termination Notice shall be sent by the party serving it to:
 - (i) the Secretary of State at the address set out in paragraph 6 of Schedule 1 , or such other address as shall be notified by it to the parties from time to time; and
 - (ii) the passenger transport executive (if any) or its successors within whose region the Station is situated.

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.

5.5 Exclusion of common law termination rights

The suspension and termination rights set out in this Clause 5 shall be the parties' only rights to suspend or terminate this Agreement, whether pursuant to its terms, at law or otherwise.

5.6 Non-operation of trains

5.6.1 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;
- 6.1.2 the Beneficiary's Passenger Throughput Charge; and
- 6.1.3 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 The Beneficiary's Passenger Throughput Charge will be paid in the manner set out in Part B of Schedule 5.

6.3 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 6.4 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.

6.4 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.

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

7 **WHOLE AGREEMENT, VARIATION AND ASSIGNMENT**

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 shall not have the effect of excluding any term 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

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) 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

Subject to Clause 7.5, 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 Office of Rail Regulation.

7.5 Novation

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

7.5.1 the Secretary of State or his nominee shall have satisfied all relevant conditions precedent which are specified in Clause 2.1 (unless and to the extent that such conditions precedent shall have been waived);

7.5.2 the 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 under or in relation to this Agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his 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

7.5.3 neither the Secretary of State nor his nominee shall 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.

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 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 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 of its obligations under this Agreement and each 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 Stations Code Retrofit

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

8 NOTICES AND COMMUNICATIONS

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 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 Schedule 3, or to such other address in the United Kingdom as that party may specify by notice to the other party to this Agreement.

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:

8.2.1 if sent by hand or recorded delivery when so delivered or in the case of prepaid first class post, 2 days after posting; and

8.2.2 if sent by facsimile, upon sending (where such transmission occurs before 17.00 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.

9 **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

9.1 Governing law

This Agreement shall be governed by and construed in accordance with English law.

9.2 Jurisdiction

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

10 **RIGHTS OF THIRD PARTIES**

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 (whether by virtue of any enactment that is part of the applicable law of this Agreement or otherwise) to enforce any term of this Agreement.

10.2 Application to the Office of Rail Regulation and the Secretary of State

The Office of Rail Regulation and the Secretary of State shall have the right (whether by virtue of any enactment that is part of the applicable law of this Agreement or otherwise) to directly enforce such rights as have been granted to them under this Agreement.

IN WITNESS whereof this Agreement has been duly executed.

SCHEDULE 1

CONTRACT PARTICULARS

1 Station Facility Owner:

Name: First Capital Connect Limited

Registered office: 50 Eastbourne Terrace, Paddington, London, W2 6LX

2 Beneficiary:

Name: East Midlands Trains Limited

Registered office: Friars Bridge Court, 41-45 Blackfriars Road, London, SE1 8NZ

3 Commencement Date: 11 November 2007

4 Expiry Date: The first to occur of the date of termination of the Station Facility Owner's franchise agreement and the date of termination of the Beneficiary's franchise agreement.

5 Station: Luton Airport Parkway

The station known as Luton Airport Parkway, as more particularly defined in the Station Access Conditions

6 Address of Secretary of State:

The Secretary of State
Rail Group
76 Marsham Street
London
SW1P 4DR

7 Track Access Agreement:

Access contract [dated 11th November 2007] between Network Rail and the Beneficiary [or such agreement as may from time to time replace it] 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 6 years.

9 Percentage of Common Charges payable pursuant to Clause 6.1.2:

6.44%.

SCHEDULE 2

EXCLUSIVE STATION SERVICES

None

[Clause 8.1 and
various other
provisions throughout
Agreement]

SCHEDULE 3

ADDRESSES FOR SERVICE

- 1 Address for service on the Station Facility Owner:
(Attention: Access Contracts Manager)

Address: 50 Eastbourne Terrace, Paddington, London, W2 6LX
Fax No.: 0207 713 2235

- 2 Address for service on the Beneficiary:
(Attention: Station Access Contracts Manager)

Address: Friars Bridge Court, 41-45 Blackfriars Road, London, SE1 8NZ

Fax No. 0207 983 6148

SCHEDULE 4

STATIONS CODE RETROFIT

1 AUTOMATIC EFFECT

1.1 General

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.

1.2 Retrospective effect

No relevant notice may have retrospective effect.

2 MODIFICATION NOTICE

2.1 Meaning

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

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.

3 **ADAPTATION PROCEDURE**

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 its 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.

4 **PROCEDURAL MATTERS**

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 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 Secretary of State 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 Secretary of State such drafts of the proposed relevant notice as it 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 Secretary of State 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 Secretary of State 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 Secretary of State 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.

SCHEDULE 5

PART A

BENEFICIARY'S PASSENGER THROUGHPUT CHARGE

- (e) The Beneficiary's Passenger Throughput Charge ("**BPTC**") is an amount determined in accordance with the following formula:

$$\text{BPTC} = (£700,000 \times X) + (\text{PTC} \times X)$$

Where:

X is the proportion (expressed as a percentage), during the relevant Accounting Year, which the number of Beneficiary's Passengers bears to the number of Total Operators' Passengers; and

PTC is the passenger throughput charge at the Station determined as an aggregate sum in each relevant Accounting Year made up of:

- (a) £0.55 per passenger for the first 1,000,000 passengers either alighting from or embarking on scheduled train services at the Station during the relevant Accounting Year; and
- (b) £0.25 per passenger for all passengers in excess of 1,000,000 (up to 2,000,000) either alighting from or embarking on scheduled train services at the Station during the relevant Accounting Year.

(For the avoidance of doubt, there is no PTC charged in respect of passengers alighting or embarking at the Station in excess of 2,000,000 during any relevant Accounting Year.)

- 2 For the purpose of the formula set out in paragraph 1 above:

"Beneficiary's Passengers" means, in each Accounting Year, the aggregate of the total number of passengers travelling by train to the Station on the Beneficiary's trains and the total number of passengers travelling by train from the Station on the Beneficiary's trains; and

"Total Operators' Passengers" means in each Accounting Year the aggregate of the total number of passengers travelling by train to the Station on all Passenger Operators' trains (including those of the Station Facility Owner) and the total number of passengers travelling by train from the Station on all Passenger Operators' trains (including those of the Station Facility Owner).

- 3 The number of Total Operators' Passengers will be determined by the Station Facility Owner which shall count the number of journeys to and from the Station as recorded by the rail industry's income and settlement system known as Lennon ("Lennon").
- 4 The number of Beneficiary's Passengers will be determined by counting the number of journeys to and from the Station recorded by Lennon which are allocated to the Beneficiary.
- 5 The Station Facility Owner shall within 30 days after the end of each Accounting Year provide to the Beneficiary a written statement ("Written Statement") of the number of Total Operators' Passengers and the number of Beneficiary's Passengers for the relevant Accounting Year, which Written Statement will specify the proportion, X, which the number of Beneficiary's Passengers bears to the number of Total Operators' Passengers in that Accounting Year. The Station Facility

Owner will use all reasonable endeavours to ensure that the information contained in the Written Statement will be as accurate as possible.

- 6 If at any time Lennon is out of service because of repair, maintenance, damage, mechanical or electrical fault or otherwise, the Station Facility Owner will give written notice to the Beneficiary of that fact and such notice will state the date on which Lennon ceased to operate and the date on which it re-commences correct operation. The period between such dates (including the dates on which operation of Lennon ceased and re-commenced) is referred to herein as the "Breakdown Period". The number of Total Operators' Passengers during a Breakdown Period will be deemed to be the same as the number of Total Operators' Passengers in the immediately preceding equivalent period when train services operating to and from the Station were the same as or substantially the same as the train services operating to and from the Station during the relevant Breakdown Period.
- 7 The parties may agree from time to time to calculate X by other appropriate means.
- 8 Any disputes between the Station Facility Owner and the Beneficiary concerning the determination and calculation of the relevant number of Beneficiary's Passengers, Total Operators' Passengers, X or the Written Statement will be resolved in accordance with the provisions set out in Condition H5[11].

PART B

PAYMENT OF BENEFICIARY'S PASSENGER THROUGHPUT CHARGE

- 1 The Station Facility Owner shall, promptly after the date on which this Agreement receives the approval of the Office of Rail Regulation (the "Approval Date") in respect of the first Accounting Year, and not later than 60 days prior to the commencement of each subsequent Accounting Year, notify the Beneficiary of its best estimate of the Beneficiary's Passenger Throughput Charge for that Accounting Year.
- 2 The notice referred to in paragraph 1 of this Part B of Schedule 5 shall include a breakdown of the estimated Beneficiary's Passenger Throughput Charge in as much detail as is reasonably practicable, together with comparative figures for the preceding Accounting Year (except in the case of a notice in relation to the first Accounting Year) so as to enable the Beneficiary to make a proper assessment of the charges proposed.
- 3 The Station Facility Owner shall use reasonable endeavours to provide to the Beneficiary such further information and/or clarification relating to the charges proposed as the Beneficiary may from time to time reasonably request, promptly upon receipt of any such request.
- 4 Condition F2.3 as incorporated in this Agreement shall be modified by the addition of the words "and the Beneficiary's Passenger Throughput Charge" (as that term is defined in this Agreement) after the words "the Residual Variable Charge" in the third line of Condition F2.3.
- 5 At the same time that the Station Facility Owner notifies the Beneficiary of its best estimate of the Beneficiary's Passenger Throughput Charge, in accordance with paragraph 1 of this Part B of Schedule 5, it shall be entitled to issue an invoice to the Beneficiary in respect of that part of the Beneficiary's Passenger Throughput Charge, as so estimated, which relates to the period from and including the Approval Date to and including the date immediately before the date on which the first four week period in respect of which a payment in arrears is to be made in accordance with Condition F2.3 (as modified by paragraph 4 of this Part B of Schedule 5) commences following

the Approval Date and payment in respect of such invoice shall be made not later than 7 days after its date of issue.

- 6 If, in relation to any Accounting Year, the amount of the Beneficiary's Passenger Throughput Charge paid by the Beneficiary in accordance with this Part B of Schedule 5 shall have been greater than the amount of the Beneficiary's Passenger Throughput Charge for that Accounting Year stated to be due in the relevant Written Statement, the Station Facility Owner shall either (at the Station Facility Owner's option) retain and credit against the next instalment of the Beneficiary's Passenger Throughput Charge or repay to the Beneficiary as soon as reasonably practicable an amount equal to:
 - 6.1 the difference between the amount so paid and the Beneficiary's Passenger Throughput Charge as stated in the Written Statement; and
 - 6.2 interest on the amount referred to in paragraph 6.1 above calculated pursuant to paragraph 8 below.
- 7 If, in relation to any Accounting Year, the amount of the Beneficiary's Passenger Throughput Charge paid by the Beneficiary shall have been less than the amount of the Beneficiary's Passenger Throughput Charge for that Accounting year stated to be due in the relevant Written Statement, the Beneficiary shall pay to the Station Facility Owner forthwith on receipt of the Written Statement an amount equal to:
 - 7.1 the difference between the amount so paid and the Beneficiary's Passenger Throughput Charge as so certified; and
 - 7.2 interest on the amount referred to in paragraph 7.1 above calculated pursuant to paragraph 8 below.
- 8 Interest payable pursuant to paragraphs 6 and 7 above shall be at the base lending rate from time to time of the Royal Bank of Scotland plc and shall be calculated as if the amount on which the interest is payable were a debt incurred in equal four weekly instalments during the Accounting Year in question. The interest shall be payable on each instalment from the date upon which it shall be treated as having been incurred until the actual date of payment or the date when credit is given to the Beneficiary (as the case may be).

SIGNED by)
on behalf of)
Dated)

SIGNED by)
on behalf of)
Dated)