

DATED 22 September 2015

Between

Stobart Rail Limited as Station Facility Owner

- and -

Abellio Greater Anglia Limited as Beneficiary

Southend Airport Station
SSA/283/01/11/01

STATION ACCESS AGREEMENT
(Access by passenger operators)

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THIS AGREEMENT is made on

22 September.

2015

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;

"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 1 Eversholt Street, London, NW1 2DN (formerly named "Railtrack PLC");

"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 certificate" and "deemed safety certificate" by the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Scottish Ministers" has the meaning given in section 44 of the Scotland Act 1998;

"Secretary of State" means, the Secretary of State for Transport and/or where this agreement relates to matters within their responsibility, the Scottish Ministers;

"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 Stobart Station Access Conditions 2011; and
- (b) the annexes relating to the Station (ORR Ref: SSA/283/01/11/01);

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; and
- 2.1.7 a copy of this Agreement has been sent to the Office of Rail Regulation in hard copy or by email within 14 days of this Agreement being signed and dated by 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 this Agreement being signed and dated by the parties;
- 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 later of the Commencement Date and the

expiry of the 14 day period mentioned in Clause 2.1.7, 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;
- (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 be the sum determined in accordance with Schedule 4.

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 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.

7 **WHOLE AGREEMENT, AMENDMENT 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 Amendment

7.3.1 Amendments to be in writing and to be approved

No amendment of any provision of this Agreement shall be effective unless:

- (a) such amendment is in writing and signed and dated by, or on behalf of, the parties; and
- (b) if it is an amendment which requires the Office of Rail Regulation's approval under section 22 of the Act, the amendment has been approved by the Office of Rail Regulation.

7.3.2 Exception

Clause 7.3.1(b) does not apply to an amendment made by virtue of a general approval issued by the Office of Rail Regulation under section 22 of the Act.

7.3.3 Copy to be sent to the Office of Rail Regulation

A copy of any amendment to this Agreement shall be sent to the Office of Rail Regulation within 14 days of such amendment being made.

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.

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: Stobart Rail Limited (Company Registration Number 02821207)

Registered office: 22 Soho Square, London, W1D 4NS

2 Beneficiary:

Name: Abellio Greater Anglia Limited (Company Registration Number 06428369)

Registered office: 5 Fleet Place, London, EC4M 7RD

3 Commencement Date: 02:00 hours on 27 September 2015

4 Expiry Date: "The earlier of: (i) the date upon which the Station Facility Owner ceases to be the Station Facility Owner, (ii) the date of expiry or termination of the Franchise Agreement pursuant to which the Beneficiary provides railway passenger services to or from the Station, and (iii) the discontinuance of services calling at the Station in accordance with section 37 of the Railways Act 2005."

5 Station:

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

6 Address of Secretary of State:

The Secretary of State
Department for Transport
33 Horseferry Road
London
SW1P 4DR

WHERE APPROPRIATE

The Scottish Ministers
Transport Scotland
Buchanan House
58 Port Dundas Road
Glasgow
G4 0HF

7 Track Access Agreement:

Access contract dated 10 December 2004 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 6.1.1:

Not used.

SCHEDULE 2

EXCLUSIVE STATION SERVICES

None.

SCHEDULE 3

ADDRESSES FOR SERVICE

1 Address for service on the Station Facility Owner:

(Attention: Managing Director)

Stobart Rail Limited

22 Soho Square

London

W1D 4NS

Fax No.: 01288 882301

2 Address for service on the Beneficiary:

(Attention: Managing Director)

Abellio Greater Anglia Limited

5 Fleet Place

London

EC4M 7RD

SCHEDULE 4

ACCESS CHARGE

1 Definitions

1.1 In this Schedule:

- (a) **Airport** means London Southend Airport Co Limited and its successors or assigns;
- (b) **Flow** means a Flow as defined in the TSA which serves the Station in either direction, for the purpose of either setting down or picking up passengers;
- (c) **Model** means the model for establishing the Relevant Factor set out in paragraph 4.3 as it may be amended in accordance with this Schedule;
- (d) **Operating Agreement** means an operating agreement between the Airport and the Beneficiary under which the Beneficiary is under an obligation for its services to call at the Airport;
- (e) **Other Flow** means any Flow other than a Peak Flow;
- (f) **Peak Flow** means a Flow advertised in the passenger timetable:
 - (i) to depart from the Station between 6am and 8:59am on a weekday, travelling in the direction of London Liverpool Street Station; or
 - (ii) to arrive at the Station between 5pm and 7.59pm on a weekday travelling in the direction from London Liverpool Street Stationwhere 'weekday' means any day which is Monday to Friday (inclusive) but excluding any day on which banks are closed for business in the City of London;
- (g) **RSP** means Rail Settlement Plan Limited;
- (h) **Relevant Factor** means the factor as set out in paragraph 4 and as revised in accordance with the review provisions in paragraph 5;
- (i) **relevant reference period** has the meaning given to it in paragraph 4.3;
- (j) **Relevant Revenue** has the meaning given to it in paragraph 3.1, subject to any adjustments as may from time to time apply in accordance with paragraph 3.4 or paragraph 5;
- (k) **season ticket** means, in accordance with the TSA definition of a Season Ticket Fare, a ticket which entitles the holder to make an unlimited number of journeys on the railway network from time to time during a specified period, whether or not subject to restrictions; and
- (l) **TSA** means the Ticketing and Settlement Agreement dated 23 July 1995 between Rail Settlement Plan Limited and other passenger train operators.

2 Access Charge and Costs Contribution

Access Charge

- 2.1 In respect of any Accounting Period, the Access Charge shall be calculated with reference to a share of the revenue of the Beneficiary as follows:

$$AC = RR \times RF$$

where:

AC means the amount of the Access Charge;

RR means the Relevant Revenue (as defined in paragraph 1.1) in respect of that Accounting Period; and

RF means the Relevant Factor (as defined in paragraph 1.1) in respect of that Accounting Period.

- 2.2 The Station Facility Operator may invoice the Access Charge in respect of any Accounting Period at any time after the end of that Accounting Period and the Access Charge shall be due and payable by the Beneficiary in accordance with the terms of this Agreement by the later of 30 days after the end of that Accounting Period and 7 days after the date of invoice.

Costs Contribution

- 2.3 If and for so long as the Beneficiary is party to an Operating Agreement, the Station Facility Owner shall in respect of each Accounting Period commencing with the Accounting Period in which the Beneficiary commences to call services at the Station pay an amount in respect of the short run marginal costs of the Beneficiary making such calls as follows:

$$CP = DAP/365 \times ACC$$

where

CP is the amount of the payment in respect of costs for the relevant Accounting Period;

DAP is the number of days in the relevant Accounting Period on which services operated by the Beneficiary call at the Station to pick up or set down passengers;

ACC is the annual costs contribution of £152,566, subject to indexation in accordance with paragraph 2.4 and adjustment in accordance with paragraph 5.3. This figure represents the sum of £74,733 in respect of additional driver costs and £77,833 in respect of braking and traction electricity costs in each case associated with services operated by the Beneficiary calling at the Station in accordance with the Operating Agreement.

- 2.4 The value ACC stated in paragraph 2.3 in respect of the annual costs is stated in values for the Financial Year 2011/12. With effect from 1 April 2012 and each anniversary of that date (each an "indexation date"), that value shall be subject to indexation by being multiplied by the quotient of the Retail Prices Index for the November immediately preceding that indexation date divided by the Retail Prices Index for November 2010.
- 2.5 The Beneficiary may invoice the Station Facility Operator the amount due under paragraph 2.3 in respect of any Accounting Period at any time after the end of that Accounting Period and the Access Charge shall be due and payable by the Station Facility Operator in accordance with the terms of this Agreement by the later of 30 days after the end of that Accounting Period and 30 days after the date of invoice.

3 Relevant Revenue

- 3.1 In respect of any Accounting Period the Relevant Revenue is the sum of:
- (a) the gross revenue of the Beneficiary (excluding season ticket revenue and without any deduction for operating costs or charges except for (i) commission on that gross revenue payable to third parties in accordance with the TSA and charged to revenue in the normal course of business, and (ii) commission on

that gross revenue payable by the Beneficiary to the Airport or the Station Facility Operator under any agency agreement between them under Schedule 26 of the TSA) relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Beneficiary through the TSA) on any Flow to or from the Station; and

- (b) if the Beneficiary is prevented or restricted by Network Rail or a third party from operating trains between the Station and London Liverpool Street Station for more than 24 consecutive hours, the revenue element of such compensation as the Beneficiary may be entitled to from Network Rail (including whether under Schedule 4 or Schedule 8 of the Track Access Agreement or Part G of the Network Code or otherwise) or any third party as fairly relates to revenue (other than season ticket revenue) on Flows to and from the Station which are affected by that disruption or restriction

PROVIDED THAT if and to the extent a Flow to or from the Station involves the carriage of passengers by railway on services operated by the Beneficiary over a route other than the route between London Liverpool Street Station and Southend Victoria Station, the proportion of revenue in relation to travel on the Beneficiary's services on that other route and any commission payable on that revenue shall be disregarded from the calculation of Relevant Revenue. (By way of example in relation to a Flow from the Station to Chelmsford, only the revenue attributable to the proportion of the flow between the Station and Shenfield shall be counted.)

- 3.2 Within 14 days of the end of each Accounting Period, the Beneficiary shall report to the Station Facility Owner the amount of its Relevant Revenue for that Accounting Period, together with such reasonable validating information as the Station Facility Owner may require. In respect of Relevant Revenue processed in accordance with the TSA that validating information shall include reports from the LENNON system (or any successor to that system from time to time under the TSA).
- 3.3 Where Relevant Revenue in respect of any Accounting Period includes any amount in respect of compensation but that compensation is not known by the Beneficiary within seven days of the end of the Accounting Period:
 - (a) this shall not delay calculation of the balance of the Relevant Revenue in respect of the Accounting Period;
 - (b) the Beneficiary shall report the amount of that compensation to the Station Facility Owner as soon as it becomes known; and
 - (c) the compensation shall be taken into account as if it were part of the Relevant Revenue in the Accounting Period in which it is received or otherwise credited to the Beneficiary.
- 3.4 If either party at any time considers that the Relevant Revenue may be affected by any act or omission which serves in any material way to distort or not accurately capture either passengers travelling to or from the Station by railway using the Beneficiary's services or (subject to retail commissions paid in the ordinary course of business to third parties) the amounts paid by those passengers for travel to or from the Station by railway using the Beneficiary's services then:
 - (a) it shall promptly notify the other party;
 - (b) the parties shall promptly liaise together to agree whether the concern is justified and, if so:
 - (i) steps to address the concerns such that the Relevant Revenue accurately captures in all material respects passengers travelling and amounts paid as referred to above;

from the Station, rather than travelling on the Beneficiary's services from another station;

- (f) there are no changes to any of the TSA, Railways Acts, operator licences or other laws, rules and regulations applicable at the date of execution of this Station Access Agreement or the structure (including the ticketing or fares structure) of the railway industry which are material to the operation of this Schedule; and
- (g) there is no change to the form of this Schedule as specified to apply under Part F of the Stobart Station Access Conditions in respect of the Station.

- 5.4 It is acknowledged that the Station Access Charge has been calculated on the basis that the manner of use of car parking at the Airport means that it is unlikely that the Station will give rise to any material abstraction of revenue from the Beneficiary in respect of Other Flows (it being noted that the Beneficiary is already allocated all the revenue in respect of Peak Flows under the Model). Where a review is required on the grounds set out in paragraph 5.3(e), the nature of the review shall be to ascertain whether and if so to what extent the Beneficiary is suffering any material abstraction of revenue towards Other Flows as a result of the use of car parking adjoining the Station at the Airport and if so what mechanism should be applied to compensate the Beneficiary for the abstraction of revenue to Other Flows which it suffers as a consequence of that car parking at the Airport. For these purposes a level of abstraction shall not be material unless it is greater than £30,000 in a year and there shall be deemed to be no abstraction at any time when (excluding parking for employees and contractors) the costs of parking a car for the day at an Airport car park adjoining the Station without being under an obligation to use the Airport are less than the corresponding charge to park a car for a day at the station car park (if any) at either Southend Victoria Station, Rayleigh Station, Rochford Station or Prittlewell Station.
- 5.5 Where a review is required on the grounds set out in paragraph 5.3(f), the nature of the review shall be to ascertain whether and in what fashion and to what extent the relevant change has effected or is reasonably expected to effect the operation of the Schedule and, where there is any actual or reasonably expected effect, what changes should be made to the Schedule to give ongoing effect to its underlying principles (including the principles of the structure of an access charge with reference to a share of Beneficiary revenue, a contribution to Beneficiary costs where the Beneficiary is party to an Operating Agreement and with the Station Facility Operator bearing the costs of the operation, maintenance and repair of the Station) in an efficient manner as is reasonably practicable.
- 5.6 Where a review is required on the grounds set out in paragraph 5.3(g), the nature of the review shall be to ascertain what changes should be made to the Schedule so that it is maintained on a basis consistent with Part F of the Station Access Conditions as it applies from time to time, taking into account such customisations, changes or reviews as may have been properly applied to the Schedule to reflect the circumstances relating to the Beneficiary and which it may be appropriate to continue (where applicable subject to adaptation to take account of the latest version of Part F).
- 5.7 It is acknowledged that a proper consideration in connection with any review of this Schedule includes avoiding any undue discrimination between users of the Station.
- 5.8 Any failure of the parties to agree any review (including the representative reference period to be used for the review) shall be resolved at the request of either party by expert determination in accordance with the Access Dispute Resolution Rules.
- 5.9 Where it is agreed or determined consequent on any review or dispute under this Schedule that this Schedule should be amended, no such amendment shall take effect until it is first approved by the Office of Rail Regulation in accordance with the Railways Acts and both the Station Facility Owner and the Beneficiary shall together use all reasonable endeavours to secure that approval in a timely fashion, including by making

application to the Office of Rail Regulation for approval and supplying information, attending meetings and cooperating with the reasonable requests of the Office of Rail Regulation in connection with the approval.

- 5.10 The Beneficiary shall permit the Station Facility Owner and its duly authorised representatives on reasonable notice to inspect and take copies of its accounts and records (including from RSP or under the TSA) as reasonably required to confirm the truth, accuracy and completeness of its records in relation to amounts to be taken into account for the purposes of this Schedule, including in relation to calculations or review of Relevant Revenue, the Relevant Factor or the Access Charge in respect of any Accounting Period. The Station Facility Owner shall be entitled to disclose such information to the Airport subject to the Airport agreeing to keep such information confidential.

6 Miscellaneous

- 6.1 It is acknowledged that throughout the term of this Agreement the Beneficiary shall be responsible at its own cost for providing the following for use at the Station and keeping the same regularly updated, with the intent that the information made available to passengers at the Station is reasonably consistent with that provided by the Operator at neighbouring stations operated by the Operator from time to time:

- (a) the routeing guide;
- (b) timetables, in reasonable quantities in booklet form and in poster form for *Station information displays*;
- (c) copies in reasonable quantities of the Beneficiary's Passenger's Charter;
- (d) copies in reasonable quantities of the National Conditions of Carriage; and
- (e) posters advising of any significant service alterations to the Beneficiary's services.

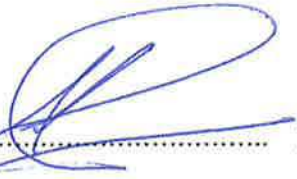
- 6.2 The Beneficiary shall throughout the term of this Agreement at its cost (as between itself and the Airport and Station Facility Owner) be responsible for:

- (a) providing information to the Station to enable the Station Facility Owner to advise passengers with information on the running of the Beneficiary's services scheduled to call at the Station, including automated announcements and data for display on information screens and ticket machines in formats and media consistent with those used at neighbouring stations operated by the Operator from time to time;
- (b) providing services for persons of reduced mobility to make arrangements to travel on its services to or from the Station (subject to the Station Facility Owner being responsible for the provision of staff and facilities at the Station); and
- (c) organising and providing any bus rail replacement services which may from time to time be required in respect of services calling at the Station in a manner consistent with what is applied at neighbouring stations operated by the Operator from time to time.



SIGNED by)

on behalf of Stobart Rail Limited)



SIGNED by)

on behalf of Abellio Greater Anglia Limited)