

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

DATED 14/06/2007

Between

GLASGOW PRESTWICK INTERNATIONAL AIRPORT LIMITED
as Station Facility Owner

and

FIRST SCOTRAIL RAILWAYS LIMITED
as Beneficiary

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

CONTENTS

Clause	Heading	Page
1	INTERPRETATION	3
2	CONDITIONS PRECEDENT.....	10
3	COMMENCEMENT.....	12
4	PERMISSION TO USE THE STATION.....	12
5	STATION FACILITY OWNER'S OBLIGATIONS.....	12
6	BENEFICIARY'S OBLIGATIONS.....	14
7	RESTRICTIONS ETC. DUE TO WORKS, REPAIRS AND MAINTENANCE AND SECURITY REQUIREMENTS.....	16
8	COMMON STATION AMENITIES AND COMMON STATION SERVICES CHANGE PROCEDURE.....	17
9	TERM AND TERMINATION.....	17
10	REMEDIES.....	24
11	PAYMENTS.....	25
12	DISPUTES AND CLAIMS.....	26
13	WHOLE AGREEMENT, VARIATION AND ASSIGNMENT.....	27
14	INVALIDITY AND WAIVER.....	29
15	CONFIDENTIALITY.....	30
16	FORCE MAJEURE.....	31
17	NOTICES AND COMMUNICATIONS.....	32
18	GOVERNING LAW AND SUBMISSION TO JURISDICTION.....	3

Schedule	33
Part 2 - Common Station Amenities and Services	33
Appendix 1 - Cleaning Specification	35
Appendix 2 - Maintenance Specification	35
Schedule	34
Part 3 - Addresses for Service	34
Schedule	37
Part 4 - Access Charge	37
Schedule	38
Part 5 - Works to be carried out on the station by the Beneficiary	38
Schedule	39
Part 6 - Existing Works	39

THIS AGREEMENT is made on the _____ day of _____ 2007 BETWEEN:

- (1) The party specified in paragraph 1 of the Schedule Part 1 (the "**Station Facility Owner**"); and
- (2) The party specified in paragraph 2 of the Schedule Part 1 (the "**Beneficiary**")

WHEREAS:

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

IT IS AGREED as follows:

1 **INTERPRETATION**

1.1 **Definitions**

In this Agreement, where the context admits:

~~"Access charge" means the amount specified in section 49 of the Act;~~

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

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

"Affiliate" means in relation to either party:

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

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

"**Associates**" has the meaning attributed to it in section 17(7) of the Act;

"**Beneficiary Event of Default**" has the meaning attributed to it in Clause 8.29.2(a);

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

"**Charge**" means the amount specified in the Schedule Part 1;

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

"**Common Station Amenities**" means the amenities specified in paragraph 1 of the Schedule Part 2 and so identified on the Plan, to the extent they are available as at the Commencement Date, unless otherwise specified in the Schedule Part 2, together with such other amenities as shall be agreed in accordance with Clause 7.8 from time to time;

"**Common Station Services**" means the services specified in paragraph 2 of the Schedule Part 2 to the extent they are available as at the Commencement Date unless otherwise specified in the Schedule Part 2, together with such other services as shall be agreed in accordance with Clause 7.8 from time to time;

"**Emergency**" means:

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

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

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

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

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

"Force Majeure" has the meaning attributed to it in Clause 5.16.1;

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

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

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

- (a) any step which has a reasonable prospect of success taken by any person with a view to the administration of that party 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 was substituted "£50,000" or such higher figure as the parties may from time to time agree; 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) 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 the winding-up of that party or any person presents a winding-up petition in relation to that party which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); and
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above

unless:

- (g) in each case, a railway administration order has been made in relation to that party pursuant to section 60 of the Act and for so long as any such order remains in force; or
- (h) in the case of sub-clauses (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

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

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

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

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

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

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

"Passenger Services" means those railway passenger services provided pursuant to the permission to use track granted in accordance with the Track Access Agreement;

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

"Proposal for Change" means any proposal:

- (i) to change the condition, standard or quantum of the Common Station Amenities or the Common Station Services; or
- (j) to alter the opening periods of the Station set out in paragraph 4 of the Schedule Part 2;

"Safety Authorisation" and "deemed Safety Authorisation" have the meanings ascribed to them by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

"Safety Certificate" and "deemed Safety Certificate" have the meanings ascribed to them by regulation 2 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

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

~~"Secretary of Station" means the Secretary of State for Transport whose principal place of business is 70, Whitehall Street, London, SW1P 1DR or its successors or assigns from time to time;~~

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

"Station Facility Owner Event Default" has the meaning attributed to it in Clause 2.2(b);

"**Station Services**" means the Common Station Services;

"**Suspension Notice**" means a notice served by one party on the other party in accordance with Clause ~~8-30.3~~;

"**Termination Notice**" means a notice in writing served by one party on the other party in accordance with Clause ~~8-9.4(a)-8-3~~ or ~~8-9.4(b)~~, as the case may be;

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

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

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

1.2 **Permission to use**

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

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

- (iv) carry out the Existing Works or such Works on the Station as shall be accepted in accordance with Clause 28 in respect of the ~~Common~~ Common Station Amenities;

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

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

1.3 **References to statutory provisions**

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

1.4 **Interpretation Act 1978**

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

1.5 **References to the Schedule, etc**

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

1.6 **Headings**

Headings shall be disregarded in construing this Agreement.

1.7 Railways Act 1993

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

1.8 Construction of agreements

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

1.9 References to person

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

1.10 Companies Act definitions

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

1.11 Use of present tense

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

1.12 Sub-contractors

Where a party has sub-contracted its rights or obligations under this Agreement to any third party in accordance with Clause ~~12.5-13.5~~, references to that party in this Agreement shall, ~~with the exception of Clause 11 and~~ without prejudice to Clause ~~12.5-13.5~~, include references to any sub-contractor so appointed.

2 CONDITIONS PRECEDENT

Subject to Clauses 2.2 to 2.3, the provisions of this Agreement shall not have effect until the following conditions precedent (so far as they are applicable to each party) have been satisfied in full:

- (a) the Station Facility Owner has obtained a Safety Authorisation or deemed Safety Authorisation in relation to the operation of each Station;
- (b) the Track Access Agreement becoming effective in accordance with its terms (save for any condition relating to this Agreement becoming effective);
- (c) the Beneficiary holds a Safety Certificate, deemed Safety Certificate, Safety Authorisation or deemed Safety Authorisation in relation to its operation of trains; and
- (d) 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:

- (a) in the case of the Station Facility Owner, the conditions precedent contained in Clauses 2.1(a); and
- (b) in the case of the Beneficiary, the conditions precedent contained in Clauses 2.1(b) and 2.1(c).

2.3 Entry into Effect

2.3.1 Clauses 1, 2, 9, 12, 13, 14, 15, 17 & 18 shall come into effect and be binding on the parties immediately upon signature.

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

2.4 Non-satisfaction

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 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 its terms.

3 **2-COMMENCEMENT**

3.1 ~~1.1~~ This Agreement shall come into effect and be binding on the parties on The parties acknowledge and agree that, notwithstanding the Commencement Date, provided that the Access Charges shall be paid with effect payable from the 17 October 2004.

3.2 ~~1.2~~ The obligations of confidence provided for in Clause ~~1.15~~ shall continue in force for a period of 5 years after the termination of this Agreement.

4 **3-PERMISSION TO USE THE STATION**

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

5 **4-STATION FACILITY OWNER'S OBLIGATIONS**

The Station Facility Owner shall in connection with the permission to use the Station granted by it under Clause ~~3.4~~, during the term of this Agreement:

5.1 ~~4.1~~ ensure that, subject to Clause ~~6.7~~, the Station is open for use by the Beneficiary and its Associates during the opening periods specified in paragraph 4 of the Schedule Part 2;

5.2 ~~4.2~~ use all reasonable endeavours to ensure that the Common Station Amenities are kept in a condition (subject to fair wear and tear) and, where appropriate, a working order which is at least as good as their condition, (and, where appropriate, working order), as at the Commencement Date and, if any changes shall have been made to them their condition (and, where appropriate, working order) immediately after such changes shall have been successfully made;

5.3 ~~4.3~~ use all reasonable endeavours to ensure that the Station Services are maintained at a standard and quantum which is at least as good as their standard and quantum as at the Commencement Date and, if any changes shall have been made to them, their standard and quantum immediately after such changes shall have been successfully made;

5.4 ~~4.4~~ not change the Common Station Amenities or the Station Services (whether in whole or in part) from the conditions (or working order), standard or quantum referred to in Clauses ~~4.2~~ and ~~4.3~~ respectively without such change in the case of the Common Station Amenities and the Common Stations Services, having been accepted in accordance with the change procedure set out in Clause ~~4.8~~;

- ~~5.5~~ ~~wherever practicable, provide at least 30 working days' notice in writing to the Beneficiary stating the time and date proposed for any proposed alteration, restriction or suspension referred to in Clause 4.7;~~
- ~~5.6~~ ~~indemnify and keep indemnified the Beneficiary on an after tax basis against all losses, liabilities and reasonable costs and expenses incurred by the Beneficiary as a result of:~~
- ~~(a) any breach by the Station Facilities Owner of its Safety Obligations; or~~
 - ~~(b) the negligence of the Station Facility Owner;~~
 - ~~(c) the failure of the Station Facility Owner to obtain or maintain insurance of the kind and to the standard described in paragraph 2.6 of the Schedule Part 2;~~
- ~~5.7~~ ~~comply with any reasonable request of the Beneficiary which is necessary to enable the Beneficiary to:~~
- ~~(a) deal with an Emergency; or~~
 - ~~(b) comply with its Safety Obligations;~~
- ~~5.8~~ ~~within 15 days of being requested by the Beneficiary to do so, provide the Beneficiary with:~~
- ~~(a) a copy of each insurance policy under or in respect of which the Station Facility Owner or any of its Associates has an interest and which relates to the Station or any risk of or in any way associated with, the operation of the Station;~~
 - ~~(b) details of any amount payable by the Station Facility Owner or any such Associate in respect of any such insurance policy; and~~
 - ~~(c) details of any claim which shall be made under any such insurance policy if the making of that claim affects or could reasonably be expected to affect the Beneficiary or any Associate of the Beneficiary;~~
- ~~5.9~~ ~~in respect of each insurance policy to which Clause 5.8(a) applies, procure that:~~
- ~~(a) if and to the extent that the Beneficiary has an insurable interest capable of being covered by such policy, and to the extent that the Beneficiary reasonably so requests, name the Beneficiary as a co-insured under such policy and on such terms as may be agreed between the parties;~~

- (b) all claims are duly filed, and all proper steps to collect proceeds are duly taken, in respect of such policy; and
- (c) if such insurance policy is not required under the Station Facility Owner's station licence, it shall bear an endorsement to the effect that 30 days' notice shall be given to the Beneficiary by the insurer or insurance broker of any lapse, or cancellation of, or material change to, the policy and that no such lapse, cancellation or change shall have effect unless such notice shall have been given;

~~5.10~~ ~~4.10~~ provide the Beneficiary with a copy of its station licence and its safety case in relation to the operation of the Station and any amendment thereto and any notices given under or in respect thereof (including any notice of revocation or termination howsoever expressed) which affects, or is likely to affect, the rights or obligations of the Beneficiary under or in respect of this Assignment; and

~~5.11~~ ~~4.11~~ provide the services and the amenities listed in the Schedule Part 2.

~~6~~ ~~5~~ **BENEFICIARY'S OBLIGATIONS**

The Beneficiary shall in connection with the permission to use the Station granted by the Station Facility Owner under Clause ~~3-4~~, during the term of this Agreement:

~~6.1~~ ~~5.1~~ comply with any reasonable request of the Station Facility Owner which is necessary to enable the Station Facility Owner to:

- (a) comply with its Safety Obligations;
- (b) deal with an Emergency; or
- (c) comply with any directions, instructions or enforcement notices give by the Secretary of State under sections 118 to 120 inclusive of the Act;

~~6.2~~ ~~5.2~~ not take or permit any action which would involve improper use of the Common Station Amenities or increase the risk of loss or damage to those amenities;

~~6.3~~ ~~5.3~~ procure that its Associates comply with the directions and requirements referred to in Clauses ~~3-4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~ 6.1, 6.2, 6.8, 6.9, 6.10, 6.11, and 6.12 which are applicable to them;

- ~~6.4~~ ~~§4~~ indemnify and keep indemnified the Station Facility Owner on an after tax basis against all losses, liabilities and reasonable costs and expenses incurred by the Station Facility Owner as a result of:
- (a) any breach by the Beneficiary of its Safety Obligations; or
 - (b) the negligence of the Beneficiary;
- ~~6.5~~ ~~§5~~ provide to the Station Facility Owner, for display at the Station, such information relating to changes in the Passenger Services (including changes of a temporary nature) as shall be necessary or expedient in order to inform passengers of such changes in a timely manner;
- ~~6.6~~ ~~§6~~ timeously provide to the Station Facility Owner any notices which:
- (a) are required to be displayed at the Station;
 - (b) contain or specify obligations binding on the Beneficiary; and
 - (c) are required to be provided by the Beneficiary
- by law or by or in accordance with the rules of a regulatory authority with whose rules or instructions the Beneficiary is obliged to comply other than as a result of a voluntary submission to its jurisdiction;
- ~~6.7~~ ~~§7~~ provide to the Station Facility Owner a copy of the Beneficiary's passenger licence (if any);
- ~~6.8~~ ~~§8~~ not carry out any Works (if any) on or in respect of the Station other than those specified in paragraph 1 of the Schedule Part 5 unless such Works shall, so far as they relate to the Common Station Amenities have been accepted in accordance with Clause 7.3;
- ~~6.9~~ ~~§9~~ subject to Clauses ~~§4~~ ~~§5~~ ~~§6~~ ~~§7~~ ~~§8~~ ~~§9~~ ~~§10~~ ~~§11~~ ~~§12~~ timeously notify the Station Facility Owner if the Beneficiary wishes to:
- (a) carry out any material maintenance of, or work to, anything kept on the Station;
 - (b) bring anything onto the Station which may affect the proper operation of the Station; or
 - (c) enter upon the Station with vehicles;

6.10 ~~5.10~~ not do anything on the Station which may be, illegal, immoral or offensive or which would, other than as may be ordinarily occasioned by or in connection with the normal operation of trains or any other act or event contemplated by the provisions of this Agreement, be dangerous or cause material damage, nuisance or annoyance to the Station Facility Owner (which will include anything to which the Station Facility Owner reasonably objects), any Passenger Operator or its Associates, the owners or occupiers of any neighbouring property at (as the case may be) any property other than the property of the Beneficiary or any Associate (other than a passenger) of the Beneficiary or the public;

6.11 ~~5.11~~ not, without the prior written consent of the Station Facility Owner (such consent not to be unreasonably withheld or delayed), and except as may be ordinarily occasioned by or in connection with the normal operation of trains and passenger services or any other act or event contemplated by the provisions of this Agreement bring, place or keep on the Station anything which is, or may become, noxious, dangerous, offensive, combustible, inflammable, radio-active or explosive, or any other substance which may produce concentrations or accumulations of gases or liquids which may cause material pollution to the environment or material harm to human health;

6.12 ~~5.12~~ not bring or do anything on the Station which may invalidate, or render any additional premium payable for, any insurance policy referred to in Clause ~~4.5.8~~; and

6.13 ~~5.13~~ pay the Access Charges set out in Schedule Part 4.

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

7.1 ~~5.1~~ The Station Facility Owner shall, provided it shall have complied with Clause ~~4.5.5~~, be entitled to restrict, suspend or alter permission to use the Station if and to the extent that it is reasonably necessary to:

- (a) permit Existing Works, repairs or maintenance to be made or carried out in relation to the Station (either by the Station Facility Owner pursuant to the provisions of this Agreement other than this Clause 7 or by other persons authorised by him to perform such work); or
- (b) safeguard the safety or security of persons or property at the Station.

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

7.2 ~~7.2~~ Where the Station Facility Owner restricts, suspends or alters permission to use the Station in accordance with Clause ~~6.1~~7.1, it shall, to the extent reasonably practicable, make timeous and adequate provision for alternative arrangements in respect of access to and from the highway, for the Beneficiary's passengers to join and leave trains and for the provision of up to date train running information and shall use all reasonable endeavours to make timeous and adequate provision for alternative arrangements in respect of all other Common Station Amenities and Station Services so as to enable the Beneficiary and its Associates to use the Station with minimum disruption, difficulty or inconvenience.

7.3 ~~7.3~~ The Station Facility Owner shall procure that any Existing Works, repairs or maintenance referred to in Clause ~~6.1~~7.1 are conducted in a proper and workmanlike manner and with the degree of prudence reasonably and ordinarily exercised by building contractors engaged in a similar activity under similar circumstances and conditions.

8 ~~8~~ **COMMON STATION AMENITIES AND COMMON STATION SERVICES**
CHANGE PROCEDURE

8.1 ~~8.1~~ Should there be any need to change any Common Station Amenity or Common Station Service the Station Facility Owner and the Beneficiary will seek to agree such change and any compensation due therefore. Any changes to the Common Station Amenities or the Common Station Services shall not have effect unless such change has first been agreed by the parties to this Agreement and approved by the Office of Rail Regulation pursuant to section 22 of the Act.

8.2 ~~8.2~~ Where the Station Facility Owner grants permission to use the Station to another passenger service operator, the parties shall review the ~~-----~~ Charge and use their best endeavours to agree an amendment thereto, if such an amendment would be fair and equitable to the parties and the other passenger service operator.

9 **TERM AND TERMINATION**

9.1 **Term**

- (a) This Agreement shall continue in force until the earlier to occur of:
 - (i) termination pursuant to Clause ~~8~~9.4;
 - (ii) the Expiry Date;
 - (iii) upon the closure of the Station ~~expiry of any period of experimental operation of the Station for its related passenger services, under Section 56A of the Transport Act 1962 or Section 48 of the Act or following compliance with any statutory requirements for such closure; or~~
 - (iv) such date as the Station Facility Owner and Beneficiary may agree.

9.2 **Events of default**

(a) **Beneficiary Events of Default**

The following shall each be a Beneficiary Event of Default:

- (i) **Insolvency**: An Insolvency Event occurs in relation to the Beneficiary;
- (ii) **Breach of the Agreement**: The Beneficiary commits a material breach of its obligations under this Agreement;
- (iii) **Force Majeure**: The Beneficiary fails to perform its obligations under this Agreement to any material extent for a continuous period of 90 days as a result of an event of Force Majeure;
- (iv) **Loss of Licence**: The Beneficiary ceases to be authorised to be the operator of trains for the provision of the Passenger Services by a licence granted under section 8 of the Act (whether by revocation of such licence or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act;
- (v) **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 termination of the

Track Access Agreement (any such agreement being thereafter treated as the Track Access Agreement):

- (vi) Non-operation: No trains operated by the Beneficiary or on its behalf depart from the Station for a continuous period of more than 90 days; and
- (vii) Franchise Agreement Termination: Termination of the Franchise Agreement unless the ~~Secretary of State~~ Scottish Ministers shall have entered into a further franchise agreement for the provision inter alia of railway passenger services to or from the Station by the Beneficiary on or before the date of such termination.

(b) Station Facility Owner Events of Default

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

- (i) Insolvency: An Insolvency Event occurs in relation to the Station Facility Owner;
- (ii) Breach of the Agreement: The Station Facility Owner commits a material breach of its obligations under this Agreement;
- (iii) Force Majeure: The Station Facility Owner 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; and
- (iv) Loss of Licence: The Station Facility Owner ceases to be authorised to be the operator of the Station by a licence granted under section 8 of the Act (whether by revocation of such licence or otherwise) unless it is exempt from the requirement so to be authorised under section 7 of the Act.

- (c) Each part shall notify the other promptly on becoming aware of the occurrences of an Event of Default referred to in Clause 4.2.

Suspension

- (a) Right to suspend

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

(b) Contents of a Suspension Notice

A Suspension Notice shall specify:

- (i) the nature of the relevant Event of Default;
- (ii) the date and time at which suspension is to take effect;
- (iii) 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;
- (iv) the steps reasonably required to remedy the Event of Default; and
- (v) a reasonable grace period for the defaulting party to remedy it.

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

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

- (i) the Beneficiary shall comply with any reasonable restriction thereby imposed on it; and
- (ii) the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Station Facility Owner to the Beneficiary pursuant to Clause 9.2(e)(iv).

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

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

- (i) it shall have the effect of suspending the Beneficiary's permission to use the Station to the extent specified in such Suspension Notice; and
- (ii) 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 ~~8-39.3~~(e)(iv).

(e) Suspension to be proportionate to breach

- (i) A Suspension Notice served pursuant to Clause ~~8-39.3~~(a) in respect of any Beneficiary Event of Default which relates only to particular Station Services or particular Common Station Amenities shall, so far as reasonably practicable, apply only to:

- 1) ~~A~~ the Station Services; or
- 2) ~~B~~ the Common Station Amenities

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

- (ii) A Suspension Notice served pursuant to Clause ~~8-39.3~~(a) in respect of any Station Facility Owner Event of Default which relates only to particular Station Services or particular Common Station Amenities shall, so far as reasonably practicable, apply only to:

- 1) ~~A~~ the Station Services; or
- 2) ~~B~~ the Common Station Amenities

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

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

- (iv) Where a party served with a Suspension Notice has complied with its obligations under Clause 3.3(e)(iii) (whether in whole or in part) and it is reasonable for the suspension effected by the Suspension Notice to be revoked (whether in whole or in part), the party which shall have served the Suspension Notice shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question, by notice to the other party specifying the extent of the revocation and the date on which it shall have effect.

9.4 Termination

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

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

- (i) the Beneficiary fails to comply with any material restriction in a Suspension Notice; or
- (ii) the Beneficiary fails to comply with its obligations under Clause 3.3(e)(iii); or
- (iii) except during the period of a suspension Notice relating to it, a Beneficiary Event of Default has occurred and is continuing.

(b) The Beneficiary's right to terminate

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

- (i) the Station Facility Owner fails to comply with its obligations under Clause 3.3(e)(iii); or
- (ii) except during the period of a Suspension Notice relating to it, a Station Facility Owner Event of Default has occurred and is continuing.

(c) Contents of Termination Notice

A Termination Notice shall specify:

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

(ii) the date and time at which termination is to take effect, which shall not be earlier than 30 days after the date of service of the notice and the expiry of any grace period under Clause 9.4(c)(iii)(B2);

(iii) where the relevant Event of Default is capable of remedy:

1) ~~the~~ the steps reasonably required to remedy the Event of Default; and

2) ~~a~~ a reasonable grace period within which such steps may be taken.

(d) Effects of a Termination Notice

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

(i) the service of such Termination Notice shall not affect the parties' continuing obligations under this Agreement up to the date of termination as specified in the Termination Notice;

(ii) the party which has served the Termination Notice shall withdraw it by notice to the other party upon being reasonably satisfied that the relevant Event of Default has been remedied;

(iii) this Agreement shall terminate on the later of:

1) ~~the~~ the date and time specified in the Termination Notice; and

2) ~~37~~ 28 days after the date upon which a copy of the Termination Notice shall have been given to the Office of Rail Regulation;

(iv) promptly after it has been served, a copy of the Termination Notice shall be sent by the party serving it to:

~~the Scottish Ministers at the~~ the Scottish Ministers at the address set out in paragraph 6 of Schedule Part I, or such other address as shall be notified by him to the parties from time to time; and

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

(e) 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.

9.5 ~~9.5~~ **Exclusion of common law termination rights**

The suspension and termination rights set out in this Clause ~~9.9~~ shall be the parties' only rights to suspend to terminate this Agreement, whether pursuant to its terms or at law, but shall be without prejudice to Clause ~~9.10~~ and to any right to claim damages for breach of contract or other equitable relief.

9.6 ~~9.6~~ **Non-operation of trains**

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

10 ~~10~~ **REMEDIES**

10.1 ~~10.1~~ **Non-performance**

(a) If the Station Facility Owner fails to secure the cleaning of the Station in accordance with the provisions of paragraph 2.2 of the Schedule Part 2 or fails to secure the maintenance and repair of the Station in accordance with paragraph 2.1 of the Schedule Part 2, the Beneficiary shall, subject to Clause ~~10.1~~(b), be entitled to procure that such cleaning, maintenance or repair is carried out in accordance with the relevant provisions of the Schedule Part 2 at the Station Facility Owner's expense.

(b) The Beneficiary shall be entitled to the remedies referred to in Clause ~~10.1~~(a) only if:

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

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

10.2 ~~10.2~~ **Consequential loss**

Without prejudice to Clauses ~~4.3, 5.6, 6.4 and 9.1~~ 10.1 to which this sub-clause will not apply, neither party shall recover from the other party any loss of revenue (including fare revenue, subsidy, access charges to third parties and incentive payments) or other consequential loss caused to it by the other party in connection with railway operations.

11 ~~10~~ **PAYMENTS**

11.1 The Beneficiary shall pay the Charge as follows:

- (a) for that portion of the Charge which relates to the period from the Commencement Date until termination of this Agreement, by way of equal four-weekly instalments in arrears within 30 days of receipt of an invoice from the Station Facility Owner; and

- b) for that portion of the Charge which relates to the period from 17 October 2004 up to the Commencement Date, within 30 days of receipt of an invoice from the Station Facility Owner.

11.2 All invoices 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 11.3.

11.3 All amounts payable under this clause 11 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.

11.4 **Default Interest**

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

such interest shall be calculated on the actual number of days elapsed and a 365 day year.

11.5 ~~10.2~~ Payments gross

All sums payable by either party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims, save only as may be required by law or in accordance with Clause ~~9.1~~ 10.1. If any sum payable under this Agreement shall be subject to a deduction or withholding required by law, the sum payable shall be increased to such a sum as shall, after taking into account of the relevant deduction or withholding, leave the party receiving the payment in the same position as if the payment in question had not suffered the deduction or withholding.

11.6 ~~10.3~~ Value Added Tax ("VAT")

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

2 ~~11~~ DISPUTES AND CLAIMS

Save as otherwise provided in this Agreement, any dispute or claim arising out of or in connection with this Agreement shall be resolved by the Industry Committee (save where the parties agree to submit the dispute to mediation instead), followed, if either

party shall be dissatisfied with the decision of the Industry Committee or the ruling of the Chairman hereof (as the case may be), by referral to such other mechanism (other than mediation) as the Industry committee shall specify, pursuant in each case to the Access Dispute Resolution Rules.

13 ~~12~~ **WHOLE AGREEMENT, VARIATION AND ASSIGNMENT**

13.1 ~~12.1~~ **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 ~~12.1~~13.1 shall not have the effect of excluding any terms implied by law.

13.2 ~~12.2~~ **Amendment**

No amendment of this Agreement (other than as expressly otherwise contemplated by this Agreement) shall be effective unless:

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

13.3 ~~12.3~~ **Assignment**

Subject to Clause ~~12.4~~13.4, this Agreement shall be binding on and enure to the benefit of the parties and their successors and permitted assignees but neither party may assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other party and the approval of the Office of Rail Regulation in terms of Clause ~~12.6~~13.6.

13.4 ~~12.4~~ **Novation**

Each party agrees to take all such steps as may be necessary to give effect to the novation of the other party's rights and obligations under this Agreement by and in favour of the ~~Scottish Ministers or their nominee~~ Scottish Ministers or their nominee, if and to the extent necessary to enable the ~~Scottish Ministers~~ Scottish Ministers to perform their 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 assignment or novation shall

have been approved by the Office of Rail Regulation pursuant to the Act and shall be on terms that:

- (a) ~~the Secretary of State~~ Scottish Ministers or ~~their~~ nominee shall have satisfied all relevant conditions precedent applicable to the Beneficiary which are described in Clause ~~2.13.1~~;
- (b) the other party 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 acts or omissions~~ under this Agreement prior to, or as at the date of, any such novation (except to the extent that the ~~Secretary of State or~~ Scottish Ministers or their nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (c) neither the ~~Secretary of State~~ Scottish Ministers nor ~~their~~ nominee shall ~~not~~ be obliged, in connection with the novation to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in Clause ~~2.13.1(b)~~.

13.5 ~~2.5~~ **Sub-contractors**

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 its rights or obligations under this Agreement. Neither the giving of any such consent (in the case of the Beneficiary) nor any other action (in the case of either party) shall relieve a sub-contracting party of its obligations under this Agreement and such party shall remain responsible for the acts and omissions of any sub-contractor as if they were the acts and omissions of that party.

13.6 ~~2.6~~ **Office of Rail Regulations consent**

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

13.7 ~~2.7~~ **Litigation**

- (a) The Station Facility Owner shall promptly notify the Beneficiary and any other Passenger or non-Passenger Operations of:
- (i) any incidents, accidents or circumstances causing damage to Common Station Amenities, the cost of which may exceed £10,000; and
 - (ii) any claim, litigation, lien, demand or judgement relating to the Common Station Services or the Common Station Amenities where the total amount in dispute and/or the total amount of damages together with any costs are estimated to exceed £10,000.
- (b) The Station Facility Owner shall have the authority to commence, prosecute, defend, pursue or settle any claim, litigation, lien, demand or judgment relating to the Common Station Amenities or the Common Station Services (other than between the Station Facility Owner and the Beneficiary) on behalf of both itself and, if appropriate, the Beneficiary, provided that the Station Facility Owner shall have no such authority without the prior consent of the Beneficiary and all other Passenger Operators (such consent not to be unreasonably withheld or delayed) where:
- (i) the dispute may affect the Station Facility Owner's ability to operate the Station;
 - (ii) the dispute may affect, or could reasonably be expected to affect, the Beneficiary, any Passenger Operator or any person employed or engaged by the Beneficiary or such Passenger Operator.
- (c) The Beneficiary shall promptly notify the Station Facility Owner of any claim, litigation, lien, demand or judgment brought by it or against it which may affect the Common Station Services or the Common Station Amenities.
- (d) Notwithstanding clauses ~~13.7~~13.7(a) and ~~13.8~~13.8(b), the Beneficiary shall have the right to participate in any prosecution, defence or settlement conducted in accordance with clauses ~~13.7~~13.7(a) and ~~13.8~~13.8(b) at its sole cost and expense provided that such participation shall neither prejudice the conduct thereof by the Station Facility Owner nor avoid the Beneficiary's share of the cost of such action.

~~13~~ **INVALIDITY AND WAIVER**

~~14.1~~ **Invalidity**

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

~~14.2~~ **Waiver**

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

~~14.3~~ **Time Limits**

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

~~14~~ **CONFIDENTIALITY**

~~15.1~~ **Except as permitted by Clause ~~14.2~~ 15.2, all data and information acquired or received by either party under or pursuant to this Agreement and shall be held confidential during the continuance of this Agreement and for a period of 5 years thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other party.**

~~15.2~~ **Either party shall be entitled in good faith to divulge any data or information to which Clause ~~14.2~~ 15.1 applies without the approval of the other party in the following circumstances:**

- (a) to the Office of Rail Regulation;
- (b) to the ~~Scottish Ministers~~ Scottish Ministers;

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

16. **FORCE MAJEURE**

16.1 ~~16.1~~ In this Agreement, "Force Majeure" shall be deemed to occur if and to the extent that there occurs any event or circumstances or any combination of events or circumstances beyond the reasonable control of either party to this Agreement which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means, and which prevents, hinders or delays that party from performing any of its obligations under this Agreement. Without prejudice to that generality, "Force Majeure" under this Clause ~~16.1~~ shall include the following events and circumstances:

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

and shall exclude the following events and circumstances:

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

16.2 ~~15.2~~—Neither party to this Agreement shall be responsible for any failure to fulfil its obligations under this Agreement if, and to the extent that, such failure shall be caused by, or directly or indirectly by reason, Force Majeure, which makes it impossible or impracticable for that party to comply with its obligations.

16.3 ~~15.3~~—Any party affected by Force Majeure shall use all reasonable endeavours to minimise the effects of that Force Majeure upon the performance of its obligations under this Agreement.

16.4 ~~15.4~~—As soon as reasonably practicable after commencement of the Force Majeure, the party affected by the Force Majeure shall notify the other party in writing of the occurrence of the Force Majeure, the date of commencement of the Force Majeure and the effects of the Force Majeure on its ability to perform its obligations under this Agreement.

16.5 ~~15.5~~—As soon as reasonably practicable after the cessation of the Force Majeure, the party affected by the Force Majeure shall notify the other party of the cessation of the Force Majeure and resume performance of all its obligations under this Agreement.

NOTICES AND COMMUNICATIONS

17 ~~16~~—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 prepaid first class post, or by facsimile, to the party on whom the notice is to be served at the relevant address for service set out in the Schedule Part 3, or to such other address

in the United Kingdom as that party may specify by notice in writing to the party by or on whose behalf the notice or other communication is sent.

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

- (a) if sent by hand, recorded delivery, pre-paid first class post, when so delivered; and
- (b) if sent by facsimile, upon receipt by the sender of confirmation of uninterrupted transmission by a transmission report upon sending (where such transmission occurs before 16.00 hours on the day of transmission) and in any other case on the day following the day of transmission.

18 **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

18.1 **Governing Law**

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

18.2 ~~17.2~~ **Jurisdiction**

Subject to the provisions of clause ~~17.2~~, the parties irrevocably agree that the courts of Scotland are to have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with, this Agreement.

IN WITNESS WHEREOF this Agreement (including the Schedule and Plan annexed hereto) is executed as follows:

Subscribed for and on behalf of

Glasgow Prestwick International Airport Limited

at

on

by

Director in

the presence of:

..... Witness

..... Full Name

..... Address

.....

Subscribed for and on behalf of

First ScotRail Limited

at

on

by

Director in

the presence of:

..... Witness

..... Full Name

..... Address

.....

Schedule

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

Part 1

1 Station Facility Owner

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

Registered Office: Glasgow Prestwick International Airport
Prestwick
Ayrshire
KA9 2PL

2 Beneficiary:

Name: First ScotRail Limited (Company No: SC185018)

Registered Office: 395 King Street
Aberdeen
AB24 5RP

3 Commencement Date:

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

4 Expiry Date:

The date of termination of the Franchise Agreement.

5 Station:

The Station known as Prestwick International and identified in the Plan.

6 Address of Scottish Ministers

Transport Scotland
Meridian Court
Cadogan Street

Glasgow

GT 6AT

Tel: 0141 272 7100

7 Details of Track Access Agreement:

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

Schedule

Part 2

Common Station Amenities and Services

- 1 Common Station Amenities
- 1.1 Platforms 1 & 2
Access to and egress from the railway Station and the airport.
- 1.2 Waiting Amenity on Platforms 1 and 2.
- 1.3 First Aid Amenity in Baggage Area of Platform 2.
- 1.4 Fixed Timetable Departure Boards and any fixed boards for the display of statutory and compulsory notices supplied by the Beneficiary in accordance with Clause ~~5.6.6.6~~.
- 1.5 A board (provided by the Beneficiary) to provide information of altered services.
- 1.6 Directional Signing to facilitate rail passenger movement and emergency egress.
- 1.7 Public Address System
- 1.8 Fire Alarm, fire detection, fire prevention and fire fighting equipment and other safety equipment considered necessary by the Station Facility Owner or a relevant authority with statutory powers of enforcement of fire safety precautions for the safe operation of the ~~station~~Station.
- 1.9 Passenger Self Help Trolleys (all of which shall be to railway specification i.e. self-braking).
- 1.10 Customer Information Point in the Airport Terminal, and a customer's telephone link from the Station to the Information Point.
- 1.11 Customer Information systems (CIS Monitors).
- 2 Common Station Services
- 2.1 Repair and maintenance of the Station (in accordance with Appendix 2).
- 2.2 Cleaning of the Station (in accordance with Appendix 1).

- 2.3 Lighting of the Station according to Railway Industry Standards or any other relevant standards required to secure statutory approval of the works.
- 2.4 Repair, maintenance and replacement of the fire detection, fire alarm, fire prevention and fire fighting equipment reasonably considered by the Station Facility Owner to be necessary for the safe operation of the Station.
- 2.5 Security measures as deemed necessary by the Station Facility Owner.
- 2.6 Insurance against property owners liability and third party liability.
- 2.7 Display timetable departure sheets as provided by the Beneficiary.
- 2.8 Display any emergency or temporary timetables provided by the Beneficiary.
- 2.9 Announcement by the public address system of up to date information relating to the Beneficiary's passenger service as the Station Facility Owner is reasonably able to announce, and which is available to the Station Facility Owner from the Beneficiary.
- 2.10 Display of notices provided by the Beneficiary under Clause 3.6.6 of this Agreement.
- 2.11 Information about the purchase of the Beneficiary's tickets.

3 Exclusive Station Services

None

4 Opening Periods

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

Monday to Saturday	0545 to 0020
Sunday	0845 to 2355

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

Appendix 1

Cleaning Specification

———The skywalk and the waiting rooms (including the footbridge) will be cleaned as part of the Terminal Building, and will be included in the Terminal Building schedule of cleaning.

———The platforms will be cleaned once per day, with additional cleaning if necessary to maintain a high standard of presentation.

———Litter Bins will be cleared of rubbish twice per day regularly, and more frequently should that be necessary.

Appendix 2

Maintenance Specification

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

Schedule

Part 3

Addresses for Service

1 **Address for service on the Station Facility Owner**

Glasgow Prestwick ~~International~~ Airport Limited

Glasgow Prestwick International Airport

Prestwick

Ayrshire

KA9 2PL

Fax No. 01292 511010

2 **Addresses for Service on the Beneficiary**

~~Commercial~~ FAO Managing Director

First ScotRail Limited

~~Station Contracts Manager~~

~~Quedeman Chambers~~

~~7 Station~~ Atrium Court

50 Waterloo Street

Glasgow

G1 5TA 2 6HQ

Fax No. 0141 335 4206

Schedule

Part 4

Charge

1 The Charge to be levied by the Station Facility Owner to the Beneficiary shall be the sum of the two following elements:

1.1 The Long Term Charge in respect of the cost of maintaining, repairing and renewing the Station Facility, the sum of EXCLUDED INFORMATION, calculated as follows:

Period	Long Term Charge
For the financial year from 1 April 2005 to 31 March 2006	LTC_{05} = [REDACTED]
During each relevant financial year t (and so in proportion for any period comprising less than a full relevant financial year) following the financial year 2005/06	$LTC_t = LTC_{05} \left[\frac{RPI_{t-1}}{RPI_{t-2}} \right]$ <p>where:</p> <p>LTC_t is the annual Long Term Charge in relevant year t;</p> <p>LTC_{05} is the annual Long Term Charge for the financial year from 1 April 2005 to 31 March 2006, as defined above;</p> <p>RPI_{t-1} is the Retail Price Index published or determined with respect to November in relevant year $t-1$; and</p> <p>RPI_{t-2} is the Retail Price Index published or determined with respect to November in relevant year $t-2$.</p>

For the financial year from 1 April 2005 to 31 March 2005	$LTC_{05} = LTC_{04}$	$\left[\frac{165}{365} \right]$	$\left[\frac{RPI_{04}}{RPI_{03}} \right]$
---	-----------------------	----------------------------------	--

Period	Long Term Charge
	<p>[REDACTED]</p> <p>where;</p> <p>LTC₁ is the annual Long Term Charge for the period between 17 October 2004 to 31 March 2005;</p> <p>LTC₂ is the annual Long Term Charge for the financial year from 1 April 2005 to 31 March 2006, as defined above;</p> <p>RPI Nov04 is the Retail Price Index published or determined with respect to November 2004; and</p> <p>RPI Nov05 is the Retail Price Index published or determined with respect to November 2005.</p>

and

1.2 ~~The Operating Costs Charge in respect of the cost of internal management of operating the Station facility, the sum of EXCLUDED INFORMATION, as defined, and calculated as follows:~~

~~In respect of the cost of operating the Station facility, the sum of EXCLUDED INFORMATION, as defined.~~

Period	Operating Costs Charge
for the financial year from 1 April 2005 to 31 March 2006	OPEX [REDACTED]
during each relevant financial year, in proportion for any period ending less than the end of the relevant financial year following the financial year 2005/06	$OPEX = OPEX \times \frac{RPI_{2005/06}}{RPI_{2006/07}}$

Period	Operating Costs Charge
	<p>relevant year t;</p> <p>OPEX_t is the annual Operating Cost Charge for the financial year from 1 April 2005 to 31 March 2006, as defined above;</p> <p>RPI_{t-1} is the Retail Price Index published or determined with respect to November in relevant year t-1; and</p> <p>RPI_{t-2} is the Retail Price Index published or determined with respect to November in relevant year t-1.</p>
<p>For the 165-day period between 17 October 2004 to 31 March 2005</p>	$OPEX_{-1} = OPEX_{t-1} \times \left[\frac{165}{365} \right] \times \left[\frac{RPI_{Nov04}}{RPI_{Nov05}} \right]$ <p>= [REDACTED]</p> <p>where:</p> <p>OPEX₋₁ is the annual Operating Cost Charge for the period between 17 October 2004 to 31 March 2005;</p> <p>RPI_{Nov04} is the Retail Price Index published or determined with respect to November 2004; and</p> <p>RPI_{Nov05} is the Retail Price Index published or determined with respect to November 2005.</p>

Schedule

Part 5

Works to be carried out on the Station by the Beneficiary

- 1 **Permitted Works**
Nil

- 2 **Prescribed Works**
Nil

Schedule

Part 6

Existing Works

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

SIGNED by _____

in behalf of Glasgow Prestwick International _____

Airport Limited _____

Dated _____

SIGNED by _____

in behalf of First ScotRail Limited _____

Dated _____

Document comparison done by DeltaView on 21 May 2007 12:30:37

Input:	
Document 1	PowerDocs://ORR/252278/1
Document 2	PowerDocs://ORR/252278/10
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Style change	
Format change	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	219
Deletions	272
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	493