

Gerry Leighton
Head of Stations & Depots and Network Code
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

1 May 2015

Dear Gerry

APPLICATION FOR DIRECTIONS UNDER SECTION 17 OF THE RAILWAYS ACT 1993

1. I refer to your letter of 15 April 2015 to my colleague John Sarson in which you invite Stobart Rail Limited ("SRL") to make written representations in respect of the application submitted by Abellio Greater Anglia Limited ("AGA").

2. Please address all further correspondence about this matter to me.

INTRODUCTION

3. The current agreement for Southend Airport Station ("the Station") between the parties is the Station Access Agreement dated 15 July 2011 (ORR reference SAA/283/190/01/11/01), as amended by an agreement dated 11 December 2014 (ORR reference S/22/283/288/01/14/01). In this letter SRL refers to the current agreement as "the 2011 Agreement" and to the Stobart Access Conditions 2011 (ORR reference SAC/283/01/11/01) as "the SACs".

4. In summary, AGA has requested that ORR gives directions to SRL to enter into a new Station Access Agreement with AGA to commence no later than 0159 hours on 17 May 2015, such agreement to:

- contain a provision for it to be backdated to have effect from the December 2014 Passenger Change Date;
- remain in effect until 0159 hours on 16 October 2016 and be capable of being extended by up to seven railway periods after 16 October 2016; and
- be based on ORR-issued template documentation.

SRL SUBMISSION

5. SRL submits that ORR should not give the directions requested by AGA.

- Access should continue to be provided on the basis of the approved SACs, which were established to provide a long term structure for arrangements for

access to the station for all operators wishing to call. There is no case made out for departing from this approved structure.

- Further the request, if implemented, would be irrational and unlawful by reference to the requirements of the Railways Act 1993 and EU charging principles, in particular those arising under Section 2 of Directive 2012/34 to which UK railway legislative obligations on access and charging give effect.

EXTENSION AND FURTHER AGREEMENT

6. AGA proposes that, in the event that ORR declines to make a determination in relation to their application by 0159 hours on 17 May 2015, the 2011 Agreement be further extended. In a letter dated 27 April 2015 AGA further proposes that the 2011 Agreement be further extended until 0159 hours on 27 September 2015.

7. In the event that AGA's application is not determined by 0159 hours on 17 May 2015, SRL proposes that the 2011 Agreement be further extended until 0159 hours on 18 July 2016. Draft documentation for this further extension is attached in Appendix 1. In parallel with this, LSACL is offering to extend also the operating agreement under which it funds AGA's additional costs from calling services at the airport Station.

8. 18 July 2016 is the fifth anniversary of the date on which passenger services first called at the Station. It is also a few days after 7 July 2016, the date until which the passenger services which stop at the Station are designated as experimental. SRL confirms its willingness to consider longer term arrangements on terms consistent with the current SACs (including the five yearly review provisions under paragraph 5 of Schedule 4 and the additional review provided for in relation to the end of the experimental period under the parallel operating agreement).

RESPONSE

9. In response to AGA's application, SRL in summary:

- confirms that it remains its intention, as explained to ORR in 2011, that there will be a review of the 2011 Agreement to take effect no earlier than 18 July 2016 as provided for by paragraph 5 of Schedule 4 of the SACs and submits that such review should not be accelerated to take effect before 18 July 2016;
- strenuously rejects any allegation that the Station has caused any actual or potential call on public funds, while noting that the operating agreement between LSACL and AGA also includes a separate review opportunity at clause 9 for AGA including where at the time of expiry of the experimental service AGA considers the services represent a call on the public purse. LSACL remains content for the arrangements to be subject to review as provided in the operating agreement;
- submits that there is no evidence whatsoever that SRL is earning an excessive profit;
- suggests that none of the templates currently published by ORR can be considered to be appropriate for the bespoke arrangements at the Station;

- observes that the retrospective effect proposed would be both irrational and unlawful by reference to general regulatory and legislative principles governing retrospective effect; and
- observes that the charging approach proposed by AGA would leave SRL with very significant unrecovered costs in relation to its original investment (made at its own risk but providing very significant network and passenger benefit) in contravention of Article 32 of Directive 2012/34/eu.

10. In a letter dated 6 October 2009 to SRL's affiliate London Southend Airport Company Limited ("LSACL"), the Department for Transport ("DfT") stated that its policy is "to support the provision of new stations, provided that they do not worsen the performance of the railway, disadvantage existing users, or cause any call on public funds". The DfT was satisfied that the Station passed the first two tests and required proposals to satisfy the third. A copy of this letter is attached in Appendix 2. SRL took forward the construction of the Station and associated infrastructure on the basis of the principles for its funding and operation set out in the letter.

11. LSACL and SRL fully accepted the DfT's requirement that the Station should not cause any call on public funds and fully understood the DfT's expressed desire to test the financial viability of services to the Station before making them permanent. The Station would inevitably be an integral part of the airport proposition, with its success or failure tied closely in with the airport and with little purpose if the airport were not to succeed. It appears this was too great a risk for any public body including the DfT and Network Rail Infrastructure Limited, as neither pursued the opportunity to develop the station themselves, which might have enabled a template station access arrangement to be offered to AGA.

12. Under the terms of the Railways Act 2005 the Secretary of State may designate a new passenger rail service as experimental. This is to allow the service's long-term viability to be demonstrated before it becomes permanent. The Secretary of State designated as experimental all services which stop at the Station for a period of five years beginning on 8 July 2011. The Secretary of State therefore put himself in a position whereby, towards the end of the five year experimental period, he could satisfy himself whether or not the Station is causing or is likely to cause any call on public funds before deciding whether or not to make the services permanent. This right of review with reference to call on the public purse was built into the suite of agreements established between the parties at clause 9 of the operating agreement.

13. After extensive discussions between SRL, London Eastern Railway Limited ("LERL") and the DfT between 2009 and 2011, the terms eventually agreed were set out in an operating agreement and the SACs. These were subject to extensive and detailed review by ORR, including ORR economists. In this response SRL does not repeat the calculations presented to and evaluated by ORR economists in 2011 as ORR will have details of these in its records. ORR eventually gave its approval on 12 July 2011 for SRL and LERL to enter into the 2011 Agreement. The structure of the arrangements took into account that there was no requirement on the train operator other than to call what services it was already running at the Station; the terms were designed to fund all the train operator's additional costs of calling at the Station; the anticipated journeys to and from the Station largely avoided existing peak times and made use of existing capacity on trains; the train operator would not be required to bear directly any costs of construction, operation or maintenance of the Station; revenue generated from train passengers travelling to or from the Station would be shared on a basis designed to ensure that all peak revenue was retained by the train operator and the majority of off peak revenue was shared with the airport. These issues were

addressed in more detail with the ORR at the time of the original establishment and approval of the SACs and related access agreement: further detail can be provided if required.

14. The 2011 Agreement incorporates the SACs. The SACs were established so that they set out a regulatory approved long term basis for access charging for the Station for all train operators who want to call at the Station. While station access agreements may end, the approved SACs are in place to apply to any access agreement which replaces them or new access agreements which are entered into.

15. The access charge provisions set out in Schedule 4 in the SACs and Schedule 4 of the 2011 Agreement both include provisions for a review to be undertaken and implemented each fifth anniversary of the date passenger services first called at the Station, with a view to maintaining the principle that the revenue sharing arrangements should continue on the basis of the operator receiving 100% of peak revenue (as well as season ticket revenue and revenue from travel off the core route between Southend Victoria and London Liverpool Street) and 9% of other revenue (in each case net of commission payable). This provision also permits a review to be called at any time where any of a series of stated assumptions which underpin the revenue sharing principles in the SACs cease to be correct. In addition clause 9 of the operating agreement provided for a review to be conducted coinciding with the end of the experimental period for the services including where the operator considered the services were a call on the public purse. SRL was intending to undertake both such reviews and to commence considering them in January 2016.

16. On 31 May 2015 certain services between London Liverpool Street and Shenfield will cease to be operated by AGA. They will operated thereafter by the Crossrail franchisee. SRL understands that the revenue received by AGA for certain journeys to and from the Station will diminish. As a consequence, the revenue SRL receives from those journeys will diminish. This effect will need to be taken into account in the review provided for in the SACs.

17. Paragraph 3.1 of AGA's application describes the 2011 Agreement as "*an experiment for shared income based on a ticket revenue share*". For the avoidance of doubt, it is the passenger services stopping at the Station that are experimental, not the SACs. The SACs were established as the long term access conditions applicable to use of the Station with their own review process: the experimental designation of the services highlights the risks faced by SRL and the airport as to whether the Station would be served in the medium to long term. AGA fails to make out any justification for departing from the detailed review mechanisms included in the SACs and the operating agreement.

REQUEST FOR RETROSPECTIVE EFFECT

18. SRL objects to the ORR applying any back-dating of any amended application of the SACs and does not accept that this would be within ORR's powers which relate to the grant of access going forwards. Furthermore SRL observes that, should ORR validly decide to give directions that the 2011 Agreement be terminated with backdated effect from the December 2014 Passenger Change Date, ORR may affect the outcome of the process that will need to be completed by the Secretary of State no later than 7 July 2016 to assess the long-term viability of the services and decide whether or not to make the services permanent.

19. SRL observes that, should ORR give directions that the 2011 Agreement be terminated with backdated effect from the December 2014 Passenger Change Date,

ORR will have sought to both accelerate and extend the scope of the five year review provisions of the SAC's to which, following extensive discussions, they themselves gave approval on 12 July 2011 and on which SRL and its affiliate London Southend Airport Company Limited ("LSACL") have relied to ensure that there is some certainty for the first five years at least of the basis for the income they will earn from the new market for rail passengers created by LSACL's over £150 million investment in the airport and associated infrastructure.

20. SRL has taken all the risks associated with constructing and operating the Station. Given those risks, SRL submits that it would also be totally unreasonable for ORR to direct that the long term SACs arrangements contemplated and approved in 2011 for the five year experimental period and beyond be terminated at such an early stage. Directing such an early change to the SACs (whether as referred to in paragraph 19 or in this paragraph) would be irrational and contrary to its duties, including the duty under section 4(g) of the Railways Act 1993 (planning with a reasonable degree of assurance). It would also inhibit the permitted recovery of the long term costs and ongoing costs of the construction and operation of the station, plus an appropriate return on capital.

21. SRL observes that no other private company is likely to make a similarly substantial investment in new railway facilities if the negotiated and approved mechanism for it to have a prospect of generating a return on its investment cannot be guaranteed even for a five year experimental period, especially when as here SRL bore all the risk of the Station successfully generating revenue on the railway. Access charging schemes implemented in the GB rail legislation reflect that recovery of investment in enhancement projects completed after 1988 is to be permitted in line with Article 32 of Directive 2012/34/eu.

22. With regard to the issue of whether or not the Station is causing a call on public funds, AGA's application contains the following references to public funds:

- *"in their existing form, the Agreements represented a potential call on the public purse, i.e. the cost of building the Station was not intended to be funded by the tax payer"* (Paragraph 3.1);
- *"The issue of public funding is a consequence of the current SAA arrangements"* (Paragraph 4.4);and
- *"brings into question the issue of State Aid"* (Paragraph 4.4).

23. In reading AGA's application, it is not clear to SRL whether or not AGA is alleging that, contrary to the requirement set out in the DfT's letter of 6 October 2009, the Station is causing a call on public funds. Nevertheless, SRL submits that there is no evidence whatsoever that the Station is causing any actual or potential call on public funds.

24. The Station was built and is operated entirely at SRL's expense. AGA states that it does not receive any public funding (Paragraph 4.4). AGA acknowledges that the costs it incurs in stopping its trains at the Station are reimbursed by SRL (Paragraph 3.1). The franchise is no more expensive for AGA to operate than it would have been had the Station not been constructed. In the same period that SRL received £ [] (73%) of the revenue generated by passengers using the airport that is shared between SRL and the train operator (Paragraph 3.1), AGA received £ [] (27%). We calculate the gross revenue to which the £ [] share relates to be in the order of £ []. The

additional c£ [] revenue outside of the SACs sharing arrangement will have benefited AGA (for example where it is season ticket revenue or earned for travel off the core route) and other rail operators, including Transport for London, who receive commissions and revenue for portions of through journeys. None of this incremental revenue would have existed at all if SRL and LSACL had not made a more than £150m investment in the airport and associated infrastructure.

25. SRL considers these arrangements (including the highly detailed revenue sharing and review provisions) reflect careful consideration over a prolonged period, subject to scrutiny by the DfT and by ORR. They were set up to follow principles to ensure no call on public funds, with SRL and LSACL funding AGA's incremental costs, and all the costs of the design, build, operation and maintenance of the Station, together with the other associated and supporting airport infrastructure. The revenue sharing principles were scrupulously worked through and allow AGA a material share of revenue, while recognising that any such revenue is very substantially incremental revenue, which is genuinely additive to overall railway industry revenue and as a result of SRL and LSACL's investment in the Station and airport.

26. The income received by AGA dwarfs the costs it claims to have incurred in strengthening weekend services (Paragraph 3.2). SRL suspects that these services have required strengthening more as a consequence of traffic to and from the new Westfield Shopping Centre at Stratford than to and from the airport. SRL has asked AGA for further information regarding the requirements for strengthening in order to understand the relationship between any crowding and traffic to and from the airport (see the letter dated 27 August 2014 from LSACL to AGA included with AGA's application). AGA has not yet responded to this request.

27. SRL therefore strenuously rejects any allegation of actual or potential call on public funds.

AGA – KNOWLEDGE OF ARRANGEMENTS WHEN BIDDING

28. AGA must be assumed to have bid for the franchise that commenced on 5 February 2012 with the intention that it would make a reasonable profit. The suite of agreements relating to the airport station arrangement that were transferred to AGA on 5 February 2012 was made available by the DfT for inspection by all bidders for the franchise. When the AGA franchise was further extended by a direct award by the Secretary of State, AGA had had the experience of the arrangements since 2012 in concluding the direct award franchise terms. AGA should, therefore, have been able to establish the terms for its franchise in the full knowledge of what the arrangements at the Station would be. It therefore becomes clear to SRL that AGA, in making their application, are simply seeking to enhance their profits from the franchise at the expense of SRL.

INCORRECT ASSERTIONS

29. In relation to SRL's business, AGA claim that:

- *"At the current rate, the Southend Airport Station, which was constructed at a cost of £16m, will have been fully funded within the next 3 years"* (Paragraph 3.1);
- *"The return on investment has been estimated at 1670% over 30 years"* (Paragraphs 3.1 and 4.4);

- *"The mechanism for sharing revenue within this non-standard model is unbalanced in the favour of Stobart"* (Paragraph 3.1);
- *"This is unbalanced"* (Paragraph 3.2);
- *"the current arrangements give them a level of income that subsidises their airport expansion"* (Paragraph 3.4); and
- *"Using a standard industry model, will stop AGA subsidising Stobart through the current ticket revenue share mechanism under the existing agreements"* (Paragraph 4.1).

30. Not one of these claims is substantiated in AGA's application or accepted by SRL. In making these claims, AGA has clearly taken no account whatsoever of the costs SRL incurs in owning and operating the Station in addition to the costs of construction and supporting AGA's additional operating costs or, in relation to its speculation about the first 30 years of operation of the Station, the fact that the SACs provide for reviews every five years or that there may need to be further negotiations in the context of future arrangements for serving the station (for example where additional services or capacity is required for the airport services – as referred to further below). There is no evidence whatsoever that SRL or LSACL is earning an excessive profit. In fact the activities of SRL and LSACL are currently making a substantial loss. In June 2011 SRL submitted a paper to ORR titled "Summary of background to the Southend Airport charging arrangements". This paper contained a financial plan on the page titled "Commercial - Summary". SRL is currently showing a deficit to that plan. The paper stated the construction costs incurred to date in June 2011 to be "over £16m". The total construction costs were over £20m. SRL would be willing to provide details of the deficit and the losses at the airport generally on a confidential basis to ORR.

31. In its response to the DfT's East Anglia Rail Franchise Consultation, SRL has suggested that additional services be incorporated in the specification for the next franchise. Subject to the directions issued by ORR as a consequence of AGA's application, SRL and LSACL anticipate discussing with bidders the possibility of a financial investment by SRL and LSACL in such extra services, recognising that these would otherwise involve additional expenditure for the operator.

32. In requesting ORR to direct that an ORR issued template be used in any new agreement, AGA employs the following rationale: *"In simple terms, if an operator carries the passenger then they should receive the associated revenue for providing that service"* (Paragraph 3.1). This is a rationale we suggest that ORR would be ill advised to adopt in this case in particular and in general. It would change the basis on which SRL has been relying for the funding of the construction and continued operation and maintenance of the airport Station. It would act to deter further innovative funding schemes for new stations.

33. The bespoke nature of the Station, the basis established for its funding, its construction and operation together with the nature of various undertakings made by SRL in connection with car parking and season tickets (to protect train operators from risks of abstraction) mean that none of the templates currently published by ORR can be considered to be appropriate for this Station. Limiting SRL to the standard industry revenue commission for ticket sales at the station and station access charging regime would in no way compensate SRL for the risks and costs undertaken in developing, operating and maintaining the Station and for the genuine increase in revenues generated by its investment.

34. A direction by ORR that an ORR issued template be adopted will have the effect of removing the incentive for SRL and LSACL to encourage rail users to travel by train, as SRL and LSACL would no longer participate meaningfully in the revenue generated by their investment in the station and would be denied a route to recover the costs incurred. This would also prejudice SRL engaging in further investment to support improvements in the rail service to the airport.

FURTHER POINTS OF RESPONSE

35. SRL has the following comments on various miscellaneous statements made by AGA in their application:

- *"The current percentage of passengers using rail to arrive or depart the airport terminal is 41%" (Paragraphs 3.1 and 3.2).*

The source of this information is not provided and this figure is at variance with SRL's current estimate (22%).

- *"AGA issued notice to terminate the agreements on 17 September 2014 with the full support of the DfT....." (Paragraph 3.1).*

On 22 October 2013 SRL attended a meeting to which it had been invited by the DfT and at which the DfT made a presentation entitled "DfT Review of the Access Agreements", the conclusions of which were unacceptable to SRL. Some of the DfT's conclusions were based on alleged facts which were unsubstantiated. These were followed up by SRL with DfT and were withdrawn. This was reflected in LSACL's letter to AGA of 6 March 2014 (included with AGA's section 17 application). SRL cannot comment over the nature of DfT support for AGA's service of notice to terminate the existing agreements, but the notice was subsequently withdrawn and the existing agreements extended to ensure continuity of service.

- *"Stobarts have been unwilling to meet and review the operation of the agreements" (Paragraph 3.1).*

Meetings have taken place. SRL is willing to review the operation of the agreements in accordance with the timescale provided for in the SACs but not with backdated effect from the December 2014 Passenger Change Date. SRL is also expecting to have discussions over potential enhancements to the rail services to the airport, including arrangements to help in financing those improvements.

- *"In this case Stobart will also receive commission for tickets sold at the Southend Airport station since they are the lead retailer there and are responsible for the retail facilities and staffing." (Paragraph 3.1).*

SRL has made a substantial investment in ticket selling equipment at the Station. It anticipates making further investments in additional ticket machines and in the equipment it will need to acquire in order to issue smart cards as part of the South East Flexible Ticketing programme announced by AGA and the DfT on 26 March 2015. SRL has participated in ORR's Retail Market Review. SRL accepts as a further risk that it will never be in a position to control the commission percentage rate it receives and that the commission rate may vary from time to time, given that the rates are set by the train companies. In any event the commission rate is an industry rate designed to reflect ticket retailing

costs rather than the costs and risks of providing a station which serves to generate revenue.

SRL also notes that while it has made possible travel to the airport by rail through its funding the construction of the airport Station, many rail passengers will purchase tickets other than at the airport, in which case (but for the station SACs) SRL and LSACL would not receive any percentage of the rail revenue which they are responsible for generating.

- *First Class promotion* (Paragraph 3.2).

This promotion, which ended on 30 April 2015, was organised by an agent on behalf of LSACL and an airline. The tickets were paid for in full. Neither LSACL or its agent has any evidence of complaints having been made by first class passengers. LSACL and the agent will bear AGA's concerns in mind in the design of any future promotions.

36. The offer made by AGA in their application to consider entering into an arrangement with SRL similar to arrangements they describe at Stansted Airport is meaningless in the context of their application as the circumstances at Stansted Airport are completely different to those at Southend Airport. London Southend Airport is privately funded, with the station construction, operation and maintenance also privately funded and designed to be served using available capacity on existing rail services.

37. SRL notes that, as well as benefiting from the 13.6% increase in passengers at Southend Airport in 2014 to a total of 1.1 million, AGA is also benefiting from the 11.7% increase in passengers from Stansted Airport in 2014 to a total of 19.9 million (source: Civil Aviation Authority). SRL considers it entirely logical and sensible that AGA has concentrated its marketing activities on Stansted Airport services from which it receives a greater yield. SRL has no complaint about this and has been happy to market the rail services to and from Southend Airport at its own expense.

38. SRL considers the circumstances at the Station to be unique. If, however, ORR in considering AGA's application decides that it is relevant to examine the situation at other airports, SRL observes that (to the extent that it has knowledge of the detailed circumstances at the five other London airports) the only other London airport to have invested in recent years in the construction of rail stations is Heathrow where facilities have been provided both for its own Heathrow Express operation and for London Underground services and from which the owners of Heathrow justifiably earn a financial return. In contrast to the construction and operation of the new stations at London City Airport and Luton Airport Parkway, SRL took all the risk in constructing and operating the Station.

39. In relation to Gatwick Airport, SRL notes from press releases issued by Gatwick Airport dated 3 February 2014 and 29 January 2015 that, although Gatwick Airport has made a financial contribution to past improvements at Gatwick Airport Station and proposes to do so in the future, the vast majority of the funding for these projects has been provided by public funds.

40. We therefore respectfully request that the application be rejected as it is inappropriate economically, legally and factually.

41. Please do not hesitate to let me know if SRL can provide any further information to assist ORR in making its determination.

REDACTIONS

42. We are content for all of this letter to be provided to AGA. We would ask that the revenue numbers in paragraph 24 be redacted for reasons of commercial sensitivity before any general publication of this letter by you. We are content for the references to the operating agreement in this letter to be included in any published version, subject to AGA also being content for their inclusion. We will be happy to provide a version of this letter with redactions for use in wider publication if required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'WAT', written over the typed name.

Andrew Tinkler
Chief Executive

AMENDING AGREEMENT
THE RAILWAYS ACT 1993 SECTION 22

THIS AGREEMENT is made the day of May 2015

BETWEEN:-

1. **STOBART RAIL LIMITED** (company registered number 02821207) whose registered office is at 22 Soho Square, London W1D 4NS (the "Station Facility Owner");

AND

2. **ABELLIO GREATER ANGLIA LIMITED** (company registered number 06428369) whose registered office is at 5 Fleet Place, London EC4M 7RD (the "Beneficiary")

(together "the Parties")

SUPPLEMENTAL TO the Station Access Agreement.

WHEREAS:

- (A) The Station Facility Owner is the facility owner of the Station and is the present grantor of the permission to use the Station for or in connection with the operation of trains contained in the Station Access Agreement.
- (B) The Beneficiary is the present grantee of a permission to use the Station for or in connection with the operation of trains contained in the Station Access Agreement, the Station Access Agreement having been originally entered into by London Eastern Railway Limited as beneficiary, having been the subject of a transfer scheme made by the Secretary of State between London Eastern Railway Limited as transferor and the Beneficiary as transferee and having been extended by agreement of the parties approved under section 22 of the Act and dated 11 December 2014.
- (C) The Parties wish to make the Amendments to the Station Access Agreement to which they are both parties.
- (D) The Office of Rail Regulation has given approval under section 22 of the Act to the making of the Amendments to the Station Access Agreement.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement, except where the context otherwise requires, the following words and expressions have the following meanings:

"the Act" means the Railways Act 1993;

"the Amendments" means the amendments set out in the Schedule;

"the Schedule" means the schedule to this Agreement;

"the Station" means Southend Airport Station; and

"Station Access Agreement" means the station agreement relating to the Station between the Parties dated 15th July 2011 (ORR reference SAA/283/190/01/11/01), as amended by an agreement between the Parties dated 11 December 2014 (ORR reference S/22/283/288/01/14/01).

1.2 In this Agreement, unless otherwise specified:-

- (A) a reference to any statute or statutory provision shall be construed as a reference to it as it may have been or may in the future be amended, modified or re-enacted and to any statutory instrument, order or other provision that may have been made or may in the future be made under it;
- (B) headings to clauses and titles of sub-clauses are for convenience only and do not affect the interpretation of this Agreement; and
- (C) words and expressions to which meanings are ascribed in the Act have the same meanings in this Agreement.

2. AMENDMENTS

The Parties agree that with effect from the dating and signing of this Agreement, the Amendments are made to the Station Access Agreement.

3. DECLARATION

- 3.1 Save as specifically provided in this Agreement, the Station Access Agreement shall remain in full force and effect and the Parties agree to observe and perform their respective obligations subject to the Amendments.
- 3.2 Nothing in this Agreement constitutes a waiver of any outstanding breach of the Station Access Agreement.

4. REGISTRATION

The Parties agree to send a copy of this Agreement to the Office of Rail Regulation within 14 days of it being dated and signed.

AS WITNESS this Agreement has been signed by the duly authorised representatives of the Parties the day and year first before written.

Signed by

duly authorised for and on behalf of Stobart Rail Limited

Signed by

duly authorised for and on behalf of Abellio Greater Anglia Limited

THE SCHEDULE

Paragraph 4 of Schedule 1, Contract Particulars to the Station Access Agreement shall be amended to read as follows:

Expiry Date: the earlier of (i) 01:59 hours on 18 July 2016, (ii) where the Station Facility Owner is directed by the ORR under section 17 of the Railways Act 1993 to allow the Beneficiary access to the Station under a replacement Station Access Agreement, any earlier date with effect from which the beneficiary is entitled to access the Station under that replacement Station Access Agreement, and (iii) the discontinuance of services calling at the Station in accordance with section 37 of the Railways Act 2005.

Department for **Transport**

Mr Alastair Welch
Managing Director
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6 October 2009

Dear Mr Welch,

Southend Airport Station

I refer to discussions which have been taking place between yourself and the Department.

Southend Airport is proposing that a railway station be constructed, entirely at its cost, on the Shenfield to Southend Victoria line, to serve Southend Airport. In the first instance, Network Rail is seeking assurance that the Department supports the station in principle, to enable it to enter into the requisite agreements with Southend Airport, to allow construction of the station to take place. Southend Airport is in discussion with the current franchisee, National Express East Anglia (NXEA), regarding terms under which NXEA would operate the station and stop trains there until the end of its franchise. Then, Southend Airport is seeking the Department's assurance that operation of the station and provision of a train service will be provided for in successor franchises.

The Department's policy is to support the provision of new stations, provided that they do not worsen the performance of the railway, disadvantage existing users, or cause any call on public funds. We are satisfied that this proposed station passes the first two tests. Furthermore, we recognise the station's potential, by supporting growth of the airport, to contribute to regeneration of East London and the Thames Estuary.

That leaves the impact on public finances. As already noted, you are in discussion with NXEA on terms acceptable to the franchisee – and to us – which will apply during the present franchise. In your letter of 4th August 2009, you proposed the following principles in respect of successor franchises:

1. *"The franchisee to:*
 - i. *Ensure that all trains on the route call at the station;*
 - ii. *Operate and staff the station;*
 - iii. *Receive 9% commission on ticket sales to and from station, underwritten by Airport at an annual minimum of £84k, as compensation for staff costs.*
2. *Southend Airport to :*
 - i. *Retain 91% of ticket sales to and from the station (or a smaller amount if the franchisee's share is less than £84k per year);*
 - ii. *Maintain the station infrastructure;*

- iii. *Compensate the franchisee for revenue loss resulting from longer journey times, abstraction, and train stopping costs. The details of this compensation regime have yet to be agreed;*
- iv. *Pay Network Rail lease charges;*
- v. *Compensate the franchisee for direct station operating costs (such as heat and light but excluding staff costs)."*

We are now willing to continue negotiations based on the above framework, with a view to reaching commercial agreement, and executing legal documents. Please continue to deal with Andrew Nock in my directorate, Virginia Pamment in Rail Service Delivery, and Christian Destombes in Corporate Finance.

I note that some developments at Southend Airport needed to realise your plans for it in full are still subject to planning consent.

In short, provided that we can satisfy ourselves contractually on the financial aspects, the Department is content to see this development proceed.

Yours sincerely
Bob Linnard.

BOB LINNARD