

8th July 2013

Dear Stakeholder,

Gatwick Airport Limited – proposed licence conditions under section 18 of the Civil Aviation Act 2012 in relation to price commitments

Purpose

1. The purpose of this letter is to consult on a potential licence condition that could operate by reference to the commitments proposed by Gatwick Airport Limited (GAL).
2. To inform the CAA's final proposals, the CAA would especially welcome feedback on whether:
 - a) the CAA's proposed draft licence (included in Annex 1 to this letter) would operate in end users'¹ interests, in particular addressing concerns over enforceability and speed of response around GAL's commitment proposals; and
 - b) GAL's revised commitment proposals (included in Annex 2 to this letter) address concerns that terms in the commitments would not be in the interests of end users.
3. Please note the deadline for responses to this letter is 7 August 2013. The CAA cannot commit to taking into account representations after this date. Please email responses to airportregulation@caa.co.uk.
4. If you have any queries on this consultation, please contact Abigail Grenfell: abigail.grenfell@caa.co.uk or 020 7453 6243.
5. The CAA will publish responses to this consultation on its website shortly after the close of the consultation period. If there are parts of your response that you consider commercially confidential, please mark them clearly as such and explain why you consider they are confidential. Please note that the CAA has powers and duties with respect to information disclosure that can be found in section 59 of, and Schedule 6 to, the Act and in the Freedom of Information Act 2000.

Background

6. In April 2013 the CAA issued its initial proposals for the next regulatory period, termed Q6, which would be from April 2014 to March 2019². The CAA's initial proposals consulted on a proposed draft licence for GAL that might be granted if the CAA found that GAL had

¹ End users are passengers and cargo owners

² This can be found at <http://www.caa.co.uk/cap1029>

passed the market power test³. The draft licence included in the initial proposals was based on a RAB based form of regulation. This consultation has now closed and the CAA is considering the responses.

7. In May 2013 the CAA consulted on its “minded to” market power determination for GAL⁴. This consultation closes on 25 July 2013.
8. Alongside the CAA’s work on developing the draft licence, GAL has discussed with the CAA proposals to make voluntary commitments to the airlines with regards to prices and services and other matters normally covered by a regulatory settlement. GAL proposed that these commitments would be incorporated into the Gatwick Airport Conditions of Use and would be binding on GAL. GAL considered that the commitments would be an alternative to more formal licence regulation and could remove the need for any form of regulation at all.

GAL’s commitment proposals

9. As part of developing the initial proposals the CAA considered GAL’s proposed commitments. In both the Q6 initial proposals and the minded to market power assessment, the CAA said that overall it welcomed GAL’s proposed commitments but it was not sufficiently convinced that the enforceability and the terms of the commitments would provide better protection to passengers and cargo owners than the security offered under a licence. Consequently the CAA considered that the benefits of licence regulation were likely to outweigh the adverse effects and so GAL should have a licence for the next control period and beyond.
10. While taking forward proposals for RAB based conditions within the licence, the CAA stated that it hoped that a commitments and limited licensing framework could be the preferred form of regulation for GAL. This was on the basis that enforcement concerns could be addressed through the scope for enforcement under a licence where commitments were not delivered as expected; and that the commitments themselves were amended to address the concerns on the individual terms, so that they were reasonable and effective⁵.
11. Under a commitment and licensing framework the CAA considered⁶ that a licence should include conditions that would:
 - a) enable the CAA to take enforcement action under the licence if the commitments were breached. This would provide a direct response to concerns about enforceability and would allow enforcement in the interests of end users, rather than simply airlines.
 - b) prevent GAL from altering the commitments without good reason and from withdrawing the commitments. This would address the concerns that terms in the Conditions of Use could allow the airport to vary or withdraw the commitments unilaterally.

³ The Civil Aviation Act 2012 (the Act) prohibits an operator of a dominant airport area at a dominant airport from charging for airport operation services unless it has a licence granted by the CAA. An airport area is dominant if the CAA determines (and publishes) that the market power test set out in section 6 of the Act is met in relation to the area by the relevant operator.

⁴This can be found at <http://www.caa.co.uk/default.aspx?catid=1350&pagetype=90&pageid=14784>.

⁵ See paragraph 12.39 of the initial proposals.

⁶ See paragraph 12.38 of the initial proposals.

- c) allow the CAA to direct changes to the commitments in response to a dispute where the commitments were operating against the user interest. This power would operate within quite narrowly defined circumstances.
 - d) allow the CAA to introduce a freeze on charges if the CAA is undertaking an investigation into whether the regulatory regime needs revisiting to address an alleged detriment to the interests of end users. This would prevent further detriment during the time it took to remedy any failure of the regime, for example while new licence conditions were introduced, or the airport's market power was being reassessed. The charge freeze would prevent the airport operator from changing the current structure of charges or the average charge. The CAA considers that the charge freeze should operate for 18 months. This would address stakeholder concerns about the potential detriment that could occur if the Commitments were considered to be failing in a way that was detrimental to the interests of end users with regards to the airport operation services being provided by GAL.
12. The CAA has received a number of responses to the initial proposals which comment on the proposed form of licence that would be associated with commitments. These comments were made in the absence of full drafting of the proposed licence conditions and GAL's latest proposed commitments. The CAA acknowledges these comments and has highlighted in this letter some of the key issues raised. Given these comments the CAA considers it would be beneficial to provide stakeholders with an opportunity to comment on the CAA's more detailed proposals for a licence in this area. This draft licence does not attempt to address the comments made by stakeholders on key elements that would appear in both a commitments based licence and a RAB based licence, for example in terms of financial resilience, fees or revocation. The CAA will consider these issues in more detail when developing its final proposals to be published in October 2013, whether RAB or commitments based.
13. In seeking views on the framing of the particular licence condition relating to commitments, the CAA does so without prejudice to the separate decision that CAA will be required to make under section 7 of the Civil Aviation Act 2012 on whether the market power test under section 6 is met in relation to Gatwick. Only where this decision is that the market power test is met, will there ultimately be a legal requirement on GAL to have a licence under the Act⁷.

A draft commitments-based licence

Compliance with the commitments

14. One main principle of the commitments is that they will underpin the relationship between GAL and the airlines using Gatwick on a contractual basis. However, one of the CAA's main concerns with GAL's proposed commitments is that they are only enforceable by the airlines and the CAA considers that the interests of the airlines are not always aligned with those of passengers and cargo owners. There could be instances where there is detriment to passengers that the airlines fail to remedy. The CAA therefore considers that its duties under section 1 of the Act to further the interests of passengers and cargo owners (jointly

⁷ A separate consideration of the offer of GAL's proposed commitments in that context and in particular in the context of Test C of the market power test under s.6 has already been set out in the *Minded to consultation* document on GAL. The CAA will, where appropriate, take account of any concerns raised in response to the Initial Proposals that are also relevant to the further consideration of the application of the market power test to GAL.

“end users”) require it to ensure that the end users have to ability to seek redress, either directly or through a third party whose interests are wholly aligned with those of the end users. The CAA considers that it is best placed to take on this latter role through step-in rights in a licence to enforce the commitments.

15. However, the CAA would normally expect the airlines to manage the contractual relationship themselves through the procedures set out in the commitments, with the CAA only becoming involved in rare cases if it considered there was detriment to end users that was not being addressed or if it became clear that the commitments themselves were not working as expected. For most disputes this will be more efficient than seeking redress through an investigation by the CAA of a possible licence breach.
16. The draft licence therefore allows for both the CAA and the airlines to enforce the commitments:
 - a) it states that the commitments are conditions of the licence and must be agreed by the CAA from the date the licence comes into force (and amended from time to time in accordance with the variation procedure set out in those commitments). This is necessary as section 31 of the Act only allows the CAA to enforce licence conditions and under section 22 it can only make modifications to licence conditions; and
 - b) in order to ensure that the contractual relationship is maintained and to allow the airlines to enforce them directly, the draft licence also requires GAL to include the commitments in the Conditions of Use. GAL would not be able to withdraw the commitments without seeking a modification to the licence under the procedures set out in the Civil Aviation Act 2012.
17. The draft licence also requires GAL to comply with the commitments in a manner which furthers the interests of passengers and cargo owners with regards to the range, availability, continuity, cost and quality of airport operation services. This obligation reflects and facilitates the CAA’s ability to enforce the commitments in the interest of end users in line with its duties under section 1 of the Act. Without it GAL might be fully compliant with the commitments but at the same time there could be detriment to end users that was not being addressed. For example, if GAL was to fail repeatedly one or more of its service quality standards but paid the relevant rebates to the airlines, it would be compliant with the terms of the commitments and the airlines may not be able to seek further remedies for their customers. This provision would allow the CAA to investigate where there was detriment to end users and to require additional remedies if necessary. It also obliges GAL to continue to put end users at the forefront of any changes to the commitments it might wish to negotiate in the future. CAA would welcome views on whether there is merit in seeking to address concerns about the effectiveness of the commitments in this way and on whether this is the most appropriate mechanism.

Modifications to the Commitments.

18. Under the Conditions of Use, GAL is able to, at its sole discretion, to vary, amend or add to the Conditions of Use. In the commitments it has excluded from these variation procedures any changes to the substantive provisions of the commitments⁸; these could only be varied in accordance with the specific provisions contained within the commitments. For example, the commitments allow variations to the indicative price

⁸ GAL lists those commitments dealing with the initial term, contractual remedies and independent adjudication, price, service, investment and consultation, information and operational and financial resilience

profile and service standards following consultation with airline representative bodies and agreement with airlines representing more than 51% of passengers (excluding those airlines not paying charges under the published tariff⁹). Any dispute arising from proposals to change would be subject to the independent adjudication process set out in the commitments.

19. GAL has only provided the heads of terms for its revised commitment proposals and has not provided the detailed drafting that would be included in the Conditions of Use. Consequently the CAA is not able to fully assess the effectiveness of the proposed limits on modifications to the commitments. However, in principle, the CAA considers that this process could provide an appropriate level of protection for airlines and their customers against GAL unilaterally modifying the commitments, although it would want to see the modification provisions set out in full and added to the list of commitments that could only be modified by agreement.
20. Section 21(3) of the Act allows the CAA to include provisions within the licence for specified types of modification in specified circumstances and at specified times. Such modifications are separate to the modification process set out in section 22 of the Act, can take effect immediately and do not give any party the right of appeal. The benefit of this process is that minor amendments to the commitments, agreed by relevant parties, could be made quickly through normal contractual mechanisms.
21. The CAA has therefore proposed a provision that allows GAL to modify the commitments only in accordance with the variation procedure, where the parties agree or a dispute has been resolved through arbitration. The CAA does not consider that it needs to explicitly approve these types of changes or have a right of veto, as the requirement for GAL to always comply in a manner which furthers the interests of end users would allow the CAA to intervene if any changes were not in the end users' interests. The CAA would welcome views on the effectiveness of this approach.

CAA directed changes to the commitments following a dispute

22. In the initial proposals the CAA proposed that it included a provision allowing it to determine any modifications if the parties could not reach agreement. GAL has argued that this is not required, given the arbitration process already built into the commitments modification process.
23. However, there may be instances, such as where one party refuses to accept the outcome of the arbitration process, where the ability to seek a determination from the CAA could be helpful. The benefit of this is that the CAA would be obliged to determine the matter, whereas it would not be obliged to agree to a request to make the modification under section 22 of the Act. The main difference from using the section 22 modification process is that the CAA would effectively become the final appeal body for the arbiter's decision, and there would be no further right of appeal to the Competition Commission (although there could be recourse to a Judicial Review of the CAA's decision). The benefit of this would be to speed up the process for the more regular and routine changes to the commitments, such as changes to individual elements of the service quality regime that might be expected during the course of a price control period. For more complex or substantial changes, the CAA would still retain the ability to use the section 22 process where necessary and appropriate, such as for significant changes to prices.

⁹ For example those with a bilateral contract.

24. The CAA considers that, should it need to impose changes which have not been sought by parties to the commitments¹⁰ it should use the licence modification process set out in section 22 of the Act. This ensures that any affected party will have the right to challenge such a change under the appeals process set out in the Act.
25. As this is the first stage at which this option has been aired in any detail, the CAA would particularly welcome comments on it and the draft licence includes a determination provision for consideration.

Temporary price freeze

26. The proposal on commitments would be a novel and untested feature of the regulatory regime in the UK and the CAA needs to be certain that it has remedies that can be applied quickly if it proves that the commitments are not working to further the interests of end users. Modifying the licence to remove the commitments and include a more traditional price control mechanism could take a year or more if the modification is appealed to the Competition Commission (CC). The CAA considers that the main risk to end users from the potential abuse of substantial market power will be around prices. Consequently the CAA is proposing to use the powers under section 18(1)(b)¹¹ and section 21(3) to include a provision that prevents GAL raising its prices if the CAA is going through the formal modification process. This price freeze would end once the CAA had modified the licence or if the modifications were set aside by the CC.
27. In making a determination to introduce a temporary price control notice, the CAA intends to adopt the following criteria and process¹²:
- a) the CAA will carry out an initial investigation to assess whether there are grounds to start a formal investigation;
 - b) the CAA will carry out a formal investigation to assess whether there:
 - i) are reasonable grounds to suspect that GAL's commitments are insufficient to adequately protect the interests of end users; and
 - ii) is a strong possibility of material detriment and irrecoverable harm to end users;
 - c) where the CAA is satisfied that the criteria set out above has been met, the CAA shall issue a Temporary Price Control Notice:
 - i) prohibiting GAL from raising any of its prices; and
 - ii) prohibiting the introduction of new charges for any items while the Temporary Price Control Notice remains in force
28. The Temporary Price Control Notice shall remain in force for a maximum of 18 months, or until the earlier of the following occurs:
- a) the CAA issues a notice terminating the Temporary Price Control Notice; or
 - b) the CAA has made a Licence modification under section 22 of the Act and any appeals to the CC have been completed.

¹⁰ The CAA may need to make changes itself in order to further the interests of end users or where there were breaches under the Airport Groundhandling Regulations or Airport Charges Regulations.

¹¹ To include such other conditions as the CAA considers necessary or expedient having regard to the CAA's duties under section 1

¹² Any price control modification can be suspended as of right under the appeal rules in Schedule 2 to the Act.

GAL's proposed commitments

29. As part of its response to the initial proposals, GAL has put forward revised commitment proposals. The CAA understands that this has benefited from discussions with a number of airlines.
30. GAL has stated that it has sought to address the concerns highlighted by the CAA in paragraph 12.39 of the initial proposals. These are summarised in Table 1 and set out in more detail on pages 16 to 20 of GAL's response to the initial proposals response.
31. The CAA recognises that GAL's response is the first time that stakeholders have seen GAL's revised commitment proposals in full. To inform the final proposals the CAA welcomes views on the terms in GAL's revised commitment proposals and whether they provide sufficient protections to end users. The CAA would particularly welcome responses at this stage on the operation of the price commitment in the commitments. We have already received responses from GAL and other stakeholders on the appropriate level for the price that will underpin this element of the commitments. It will be considering both aspects in developing its final proposals.
32. In the time available, the CAA has only had time to complete an initial review of GAL's commitment proposals. Based on this initial review the CAA notes the following issues:
- a) GAL is yet to include the revised heads of terms into the drafting that would be included in the conditions of use and therefore all comments are made without prejudice that this is done appropriately.
 - b) The indicative core service yield profile in the commitments now include in addition to airport charges selected ancillary service charges (staff ID, airside licences, fixed electrical ground power, airside parking, hydrant refuelling). The CAA will be giving further consideration to the impact that this could have on the level of constraint provided by the yield profile on airport charges.
 - c) The commitments include, if following the Airports Commission there is Government support for a second runway at Gatwick, that the planning and development costs for the second runway would be passed through to charges, with this pass through assuming costs are spread equally over ten years rather than based on an annual pass through. The CAA is concerned that this could mean users would pay in advance for the planning, development and construction costs of a second runway.
 - d) If GAL fails an individual service quality metric for more than six months then GAL has committed to increase rebates by 25% and to develop a performance improvement plan in consultation with the ACC. The commitments do not set out what sanction is available if this plan is considered not to be in the passenger interest or is not followed. The commitments also do not set out the procedures for measuring the individual service quality elements as set out currently in Annex H of the Q5 price control decision.
 - e) The commitment on capital expenditure is based on volume of expenditure rather than outputs.
 - f) The commitments include a commitment to publish a statement of GAL's assessment of the value of its asset base. This does not seem to go as far as the regulatory accounts which provide a calculation of the regulatory asset base.

- g) The operational resilience conditions commit GAL to “have regard to” rather than follow any guidance issued by the CAA. The condition also requires GAL during periods of service disruption to use “reasonable endeavours to coordinate the communication of operational information and to ensure the provision of timely, accurate and clear information about its operations to users of air transport services as well as information as to their rights under denied boarding regulations”. This is less firm, detailed and subject to sanctions than CAA’s proposed licence condition on operational resilience.
- h) The CAA notes that GAL’s proposals for financial resilience conditions included in the heads of terms do not go as far as the financial resilience conditions the CAA included in the initial proposals. In particular in terms of the form, period of time and scope of the confirmation of adequate resources requirement, the obligation on GAL if the latest certificate no longer holds true, and the requirements on parent company undertakings or restrictions on business activities.

33. This list is not intended to be exhaustive. When developing its final proposals, if the CAA follows a commitments and licensing approach, the CAA reserves the right to include licence provisions for any issues that it does not consider have been addressed in GAL’s commitment proposals. Although the CAA notes that it would not expect the commitments to be ideal in every regard, just that, as a whole, a commitments and licensing regime would have net benefits over alternative forms of regulation, for example in terms of simplicity and greater flexibility from the greater potential for bilateral contracts.

Table 1: GAL’s response to the earlier CAA concerns with the terms in the commitments

Issue	CAA’s comments on GAL’s first draft Commitments	GAL’s revised commitment proposals
Price	The CAA would want the commitments to offer a price that is fair. The CAA's views of a fair price in the initial proposals were RPI+0% over the seven year commitment period. In Test C of the market power test the CAA stated that the cumulative revenue yield should be based on actual rather than forecast revenues and traffic where available.	GAL has reduced the headline price in the commitments to RPI+2.5% with a RPI+1.5% for a blended price including revenue from bilateral contracts. GAL has also included some boundary conditions on the cumulative revenue difference and the included additional charges in the cumulative revenue difference. GAL has stated that it will publish information on the actual cumulative revenue difference when available.
Efficiency	The commitments should be amended to remove the full pass through of the costs of changes to security requirements to something similar to the Q5 arrangements, the removal of the pass through of taxation changes, and the removal of the pass through of development costs of a second runway.	GAL has amended the pass through arrangements for security and second runway costs. The pass through of taxation changes has been removed. GAL has included a pass through of hold baggage screening costs.

Issue	CAA's comments on GAL's first draft Commitments	GAL's revised commitment proposals
Service quality	The level of rebates and bonuses in the service quality scheme in the commitments should prevent service quality from being reduced and provide bonuses only where there is significant outperformance of existing levels of service quality. The commitments should also include protection against repeated failures to meet service quality targets. Airline service quality targets should also not distort competition between airlines.	GAL has reduced the level of bonuses in the service quality regime (although not to the level proposed by the CAA in the initial proposals) and increased rebates for failures for more than six months and, in the event of persistent failure, introduce an improvement plan in consultation with the ACC, and after consideration of representations from the CAA on the passenger interest. GAL does not envisage that the proposed airline service quality measures should distort competition. GAL has not changed the thresholds for penalties or bonuses.
Capex	A commitment to deliver any outputs resulting from the capex plan that are over and above the outputs that would be reflected in the service quality regime.	GAL has committed to maintain airport-side service standards, spend £100m per year on average over the seven years and provide an explanation of the difference between forecast investment and that forecast previously by GAL and the CAA.
Consultation	The commitments should include consultation requirements beyond those required by the ACD and address the significant information asymmetry between GAL and the airlines; allow airlines to provide properly informed views on the capital programme, the changes made to the programme and their implications; and provide clarity over how the airport operator has made decisions in contentious areas.	GAL has put forward proposals for enhanced consultation including outputs and delivery of major projects and the operational impact on airlines of projects.
Transparency	The commitments should provide sufficient information to airlines to allow them to understand whether charges are reasonable. As a minimum, the commitments should include the same public provision of audited data as currently provided in the regulatory accounts, together with transparency over the costs of activities currently covered by the public interest condition (with the exception of activities covered by the Airports (Groundhandling) Regulations 1997 (AGR)).	GAL will continue to publish statutory accounts (on the same basis as currently) and include a calculation of the asset value. GAL has included fair, reasonable and non discriminatory provisions for specified activities, provided relevant information to airlines and an annual statement of actual costs and charges.

Issue	CAA's comments on GAL's first draft Commitments	GAL's revised commitment proposals
Operational resilience	The commitments should provide clarity on what GAL will do and how it will interact with other operators at Gatwick to ensure the availability and continuity of airport operation services to further the interests of passengers, particularly during disruption. As a minimum the commitments should include resilience planning, collaboration with key stakeholders and dissemination of information.	GAL has provided undertakings on operational resilience that it considers are comparable to those included in CAA's draft licence.
Financial resilience	The commitments should provide clarity on what GAL will do to ensure the financial resilience and continuity of service. For example, they should include commitments to address the adequacy of resources, parent company undertakings, restriction on activities and a continuity of service plan	GAL has committed to develop a continuity of service plan and publish accounts. GAL also highlights the safeguards included in GAL's long term financing structure.

Yours sincerely,



Iain Osborne
Group Director, Regulatory Policy

Annex A: Draft Licence incorporating the commitments.

Licence granted to
GATWICK AIRPORT LIMITED
by the Civil Aviation Authority
under section 15 of the Civil Aviation Act 2012
On [date]

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Part I Scope and interpretation of the Licence

Licensed Operator

1. Licensed Operator means Gatwick Airport Limited (“the Licensee”).

Airport Area

2. The Airport is Gatwick Airport (London).
3. The Airport Area is [to be determined following the market power assessment]
4. Specifically, the Airport Area [includes/excludes]:
Condition 1 xxx

Licence duration

5. This Licence shall come into force on 1 April 2014 and shall continue in force until revoked in accordance with Condition 2 of this Licence.

Interpretation of the Licence

6. Unless specifically defined within this Licence or in the Act or the context otherwise requires, words and expressions used in the Conditions shall be construed as if they were an Act of Parliament and the Interpretation Act 1978 applied to them. References to an enactment shall include any statutory modification or re-enactment thereof after the date of the coming into effect of this Licence.
7. Any word or expression defined for the purposes of any provision of Part I of the Act shall, unless the contrary intention appears, have the same meaning when used in the Conditions.
8. Any reference to a numbered Condition or Schedule is a reference to the Condition or Schedule bearing that number in this Licence, and any reference to a paragraph is a reference to the paragraph bearing that number in the Condition or Schedule in which the reference occurs.
9. In construing the provisions of this Licence, the heading or title of any Condition, Schedule or paragraph shall be disregarded.
10. Where the Licensee is required to perform any obligation by a specified date or within a specified period and has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after expiry of the specified period, but without prejudice to any

rights or remedies available against the Licensee under the Act or this Licence by reason of the Licensee's failure to perform by that date or within the period.

11. The provisions of sections 74 and 75 of the Act shall apply for the purposes of the publication or sending of any document pursuant to this Licence.

Definitions

12. In this Licence:

- a) the Act means the Civil Aviation Act 2012
- b) the CAA means the Civil Aviation Authority

Part II Conditions on fees and revocation

Condition 1 Payment of fees

1.1 The Licensee shall pay to the CAA such charges and at such times as are determined under a scheme made under section 11 of the Civil Aviation Act 1982 in respect of the carrying out of the CAA's functions under Chapter I of the Act.

Condition 2 Licence revocation

2.1 The CAA may revoke this Licence in any of the following circumstances and only in accordance with the process set out in section 48 of the Act.

- (a) If the Licensee requests or otherwise agrees in writing with the CAA that the Licence should be revoked.
- (b) If:
 - (i) the Licensee ceases to be the operator of any part of the Airport Area; or
 - (ii) the Airport Area ceases to be a dominant area located at a dominant airport (or part of such an area) and does not include all or part of such an area.
- (c) If the Licensee fails:
 - (i) to comply with an enforcement order (within the meaning of section 33 of the Act) or an urgent enforcement order (within the meaning of section 35 which has been confirmed under section 36), and (in either case) such a failure is not rectified to the satisfaction of the CAA within three months after the CAA has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the CAA before the expiration of the period within which an appeal under section 47 could be brought in relation to the validity or terms of an order or the CAA's finding or determination upon which it is based, or before the proceedings relating to any such appeal are finally determined; or
 - (ii) to pay any penalty (within the meaning of sections 39, 40, 51 or 52 of the Act) where:

- (1) the Licensee has failed to pay the penalty by the due date for any such payment; and
 - (2) such payment is not made to the CAA within three months after the CAA has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the CAA before the expiration of the period within which an appeal under sections 47 or 55 could be brought in relation to the imposition of a penalty, the timing of the payment of the penalty, the amount of the penalty or before proceedings relating to any such appeal are determined.
- (d) If the Licensee fails to comply with:
- (i) an order made by the court under section 34 of the Competition Act 1998;
 - (ii) an order made by the relevant authority under sections 158 or 160 of the Enterprise Act 2002;
 - (iii) an order made by the Competition Commission under sections 76, 81, 83, 84 or 161 of the Enterprise Act 2002; or
 - (iv) an order made by the Secretary of State under sections 66, 147, 160 or 161 of the Enterprise Act 2002.
- (e) If any amount payable under Condition 1 of this Licence is unpaid three months after it becomes due and such a failure is not rectified to the satisfaction of the CAA within three months after the CAA has given notice in writing of such failure to the Licensee; or
- (f) If the conduct of the Licensee has resulted in a penalty imposed by the CAA under section 52(1) or 52(3) of the Act, provided that no such notice shall be given by the CAA before the expiration of the period within which an appeal under section 55 could be brought in relation to the imposition of a penalty, the timing of the payment of the penalty, the amount of the penalty or before proceedings relating to any such appeal are determined.

Part III The price commitment conditions

Condition 3 Price commitments

- 3.1 The Commitments are conditions of this Licence and shall be set out in a Schedule to the Conditions of Use.
- 3.2 In complying with this Condition 3 the Licensee shall, so far as reasonably practicable, do so in a manner designed to further the interests of users of air transport services regarding the range, availability, continuity, cost and quality of airport operation services.

34. Modification of the Commitments

- 3.3 The Licensee shall not modify the Commitments otherwise than in the circumstances set out in the modification provisions of the Commitments.
- 3.4 Where the Licensee and providers of air transport services have engaged in the modification process set out in the Commitments, including Independent Adjudication, but cannot reach agreement, either the Licensee or any provider of air transport services may request that the CAA determines that the modifications should be made.
- 3.5 Following a request under Condition [3.4], the CAA may by notice determine that the requested modifications should be made, following a reasonable period of consultation.
- 3.6 The modifications that can be made under Condition [3.5] are modifications set out in the modification provisions of the Commitments.
- 3.7 Modifications can be made to the Commitments under Condition [3.3 and 3.5] at any time.

Short term price cap

- 3.8 Condition [3.9] has effect if the CAA has issued a Temporary Price Control Notice.
- 3.9 The Licensee shall not thereafter raise any of its prices (whether published or not, whether applying to one or multiple airlines), and will not introduce new charges for any items while the Temporary Price Control Notice remains in force.
- 3.10 A Temporary Price Control Notice shall remain in force until the earlier of the following:
- the issuing by the CAA of a notice terminating the Temporary Price Control Notice; or
 - the CAA modifies the Licence under section 22 of the Act to include a price control condition as defined by section 19 of the Act; and either:

Civil Aviation Authority

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- 1 no appeal has been made within the period set out under the Act for making an application for permission to appeal against a licence modification has expired ; or
 - 2 any appeal made under the Act has been determined by the Competition Commission;
- c. the date which is 18 months after the Temporary Price Control Notice was issued.

Definitions

3.11 In this Condition 3:

- a. the Commitments means the commitments made by the Licensee to providers of air transport services at Gatwick Airport as agreed by the CAA from the date this licence comes into force and amended from time to time under Conditions 3.3 to 3.7 of this Licence
- b. the Conditions of Use means the Gatwick Airport Conditions of Use, published by the Licensee; and
- c. a Temporary Price Control Notice means a notice issued by the CAA to the Licensee in writing and identified as such, setting out that the CAA intends to review the overall operation of the Commitments as regards the provision of airport operation services, the grounds for that review and the possible actions it might take following the review.

Annex 2: GAL’s proposed commitments

Section A	General Conditions
Parties	Gatwick Airport Limited (GAL) and all airlines operating at Gatwick Airport.
Regulatory background	<p>The CAA published (April 2013) its initial assessment of the three elements of the “Market Power Test” in accordance with the Civil Aviation Act 2012 (the Act). The CAA has concluded that the Market Power Test is met in relation to GAL as operator of Gatwick Airport, and that it is minded to issue Gatwick with a Licence.</p> <p>GAL disputes the CAA’s assessment and believes it does not meet the Market Power Test and, accordingly, should not be issued with a Licence. GAL remains subject to the provisions of Airport Charges Regulations 2011 (the ACR) and, where applicable, general competition law. The CAA will have concurrent powers under competition law through the framework of the Act. Nevertheless, GAL has decided that it would be commercially expedient for it to put in place the Airport Commitments for the benefit of all airlines operating at Gatwick Airport. The Commitments address the key interests of airport users including the range, availability, continuity, cost and quality of airport operation services.</p> <p>These Airport Commitments will create binding contractual arrangements between GAL and airlines operating at Gatwick. They have been drafted on the basis that GAL is not issued with a Licence. However, without prejudice to our contention that GAL does not require a licence under the Act, the Commitments would be effective if backed by a licence framework as discussed in paragraphs 12.37-12.41 of the Initial Proposals.</p>
Conditions of Use	<p>GAL undertakes to incorporate the Airport Commitments into GAL’s Conditions of Use, for the benefit of all airlines who may operate at Gatwick Airport during the period covered by the Airport Commitments.</p> <p>Set out below is indicative drafting to be incorporated into the Conditions of Use:</p> <ul style="list-style-type: none"> • <u>“Applicability and Enforceability</u> <p><i>The publication of these Conditions of Use constitutes an offer by Gatwick Airport Limited to permit the use of its facilities on the terms set out herein. The use of any facilities at the airport whether airside or landside other than as a passenger constitutes acceptance of these Conditions of Use. It is intended that these Conditions of Use constitute a contract as between Gatwick Airport Limited and each and every Operator using the facilities at the airport.</i></p> • <u>Variation</u> <p><i>Gatwick Airport Limited may at its sole discretion vary amend or add to these Conditions of Use and any such variation, amendment, or addition may be promulgated by means of a Gatwick Airport Directive (GAD) save that no variation may be made to clauses ● and ● [i.e. those dealing with the substantive provisions of the commitments including: initial term; contractual remedies and independent adjudication; price commitment; service commitment; investment & consultation commitment; information commitment; and operational & financial resilience commitments], other than in accordance with the variation provisions contained in clauses ● and ● respectively.”</i></p>
Initial term of Airport Commitments	7 years to 31 March 2021
Extension of Airport Commitments	<p>It is envisaged that, over time, the number of airlines operating under bilateral contracts rather than under the Conditions of Use will increase, such that the majority of passenger traffic is under contract.</p> <p>The scope of any future airport commitments will be a matter for commercial consideration by GAL and its airline customers prior to the end of the initial term of the Airport Commitments.</p> <p>GAL will notify the CAA and the airlines operating at Gatwick at least 2 years prior to the end of the initial term of the Airport Commitments of its intention with regards to the modification, extension, termination, or otherwise of the Airport Commitments.</p>

<p>Bilateral airline-airport contracts</p>	<p>Airlines operating at Gatwick Airport will operate under the terms of either:</p> <ul style="list-style-type: none"> the airport's Conditions of Use which will incorporate a published airport tariff and set out airport wide service standards consistent with the Airport Commitments; or bilateral contracts setting out the commercial arrangements between the airport and airline, including price and service standards. Such bilateral contracts may contain additional service penalty/bonus mechanisms and may include prices that are at a discount or premium to the published airport tariff. Alternatively, such contracts may place reliance on the Conditions of Use save for limited, specific alterations. <p>The charges for services rendered under the Conditions of Use and bilateral contracts will need to be consistent with the requirements of the ACR and any relevant provisions of competition law, but no prior regulatory approval of the detail of these contracts will be required.</p>
<p>Pricing principles</p>	<p>GAL will provide users, from time to time, with a summary of the pricing principles it has adopted in setting the airport tariff and entering into bilateral contracts. These pricing principles do not form part of the Commitments.</p>
<p>Contractual remedies and independent adjudication</p>	<p>Normal contractual remedies will be available to airlines operating under the Conditions of Use, within which the Airport Commitments have been incorporated.</p> <p>The right of redress would be to the courts but with an adjudication provision (of the type imposed by section 108 of the Housing Grants Construction and Regeneration Act 1996) built in to encourage speedy resolution of disputes by providing for non-binding adjudication by independent experts drawn from an agreed panel.</p> <p>Airlines will continue to have separate rights of redress under the Airport Charges Regulations 2011 where the airport operator has failed to set airport charges in accordance with the Regulations. In addition the CAA will continue to have rights to investigate and make compliance orders in relation to the airport operator's failure to comply with the Regulations.</p> <p>Set out below is indicative drafting to be incorporated into the Conditions of Use:</p> <p><u>"Dispute Resolution Procedure</u></p> <ul style="list-style-type: none"> <i>Either party shall refer any Dispute to an Expert for determination by serving notice in writing to that effect on the other party. The notice shall contain sufficient particulars of the Dispute to be referred to an Expert.</i> <i>The parties shall agree the identity of the Expert to be appointed. In default of agreement, within ten working days of the date of service of a notice referring a Dispute to an Expert for determination, the Expert shall be appointed on the application of any party to the President of the Law Society or the Chairman of the Bar Council.</i> <i>The Expert shall not act as an arbitrator and the provisions of the Arbitration Act 1996 shall not apply.</i> <i>The Expert shall determine the Dispute referred to him impartially and acting reasonably. The Expert will establish the procedural rules to be applied to the determination which must include the following steps:</i> <ul style="list-style-type: none"> <i>each party will be entitled to make submissions to the Expert;</i> <i>the Expert may request any party to provide him with any further information as he may require in order to determine the Dispute provided any such information is made available to the other party to comment;</i> <i>all communications between a party and an Expert shall be copied to the other party;</i> <i>any failure by a party to respond to any request or direction by the Expert shall not invalidate the Expert's determination.</i> <i>Unless a shorter period is agreed between the parties at the time of the Expert's appointment, a fully reasoned written determination must be delivered to the parties within 21 working days of the Expert's appointment.</i> <i>The fees and expenses of the Expert shall be borne by the parties in equal shares unless the Expert determines otherwise. Each party shall be solely responsible for bearing its legal and other</i>

	<p><i>costs arising out of any reference of a Dispute to an Expert.</i></p> <ul style="list-style-type: none">• <i>Any decision of the Expert shall be binding until the Dispute is finally determined by legal proceedings or by agreement.</i>• <i>Neither party shall make any application to a competent court in relation to the conduct of the determination or the Expert's determination or the Dispute after ninety days from the date of the Expert's determination or, in the event the Expert has failed to reach a decision, the date on which the Expert should have reached a determination.</i>• <i>The dispute resolution procedure set out in clauses [●] above is without prejudice to, and does not impact upon, Gatwick Airport Limited's right to exercise its power to detain aircraft for the non-payment of Airport charges, pursuant to the Civil Aviation Act 1982. Gatwick Airport Limited may at all times exercise that power without recourse to this dispute resolution procedure.</i>• <i>The dispute resolution procedure set out in clauses ● above shall not prevent either party from seeking urgent relief by applying to a competent court for injunctive relief."</i>
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Section B	Price commitment
<p>Published airport tariff</p>	<p>The published airport tariff will include the following elements:</p> <p>(1) <u>Core Service Charges</u> for commercial passenger flights receiving the Core Service Standard. This will include:</p> <ul style="list-style-type: none"> • ATM fees (landing & take-off) • passenger fees • aircraft parking fees <p>The Core Airport Charges may include general discount and incentive structures available to all airlines operating under the Conditions of Use.</p> <p>(2) <u>Premium Service Charges</u> for commercial passenger flights receiving Premium Service Products.</p> <p>(3) <u>Selected Ancillary Service Charges</u> for other services provided by the airport including for:</p> <ul style="list-style-type: none"> • certain currently Specified Activities, namely: <ul style="list-style-type: none"> - Staff ID - airside licences - FEGP (net of cost of electricity) - Airside Parking - Hydrant Refuelling <p>(4) <u>Other Ancillary Services Charges</u> for other services provided by the airport including for:</p> <ul style="list-style-type: none"> • PRM services • Property related charges (rental, utilities, etc) • Certain currently Specified Activities, namely: <ul style="list-style-type: none"> - Check-in & Baggage Charges - Staff car parks - Facilities for bus & coach operators - Utilities (gas, water, electricity, heating) - Cable routing <p>(5) Other Airport Charges for cargo, general aviation and other non-passenger flights including related landing and parking fees and ancillary charges.</p> <p>Public interest conditions in relation to currently Specified Activities to be removed. Check-in & Baggage Charges and other charges for groundhandling activities remain subject to the provisions of the Groundhandling Regulations.</p>
<p>Scope of price commitment</p>	<p><u>Core Service Charges and Selected Ancillary Service Charges</u> in the published airport tariff will be set at a level such that the indicative price path condition is met (see below).</p>
<p>Indicative price path condition</p>	<p>GAL intends for the Aggregate Core Revenue per Passenger (the “Core Yield”) and the Aggregate Blended Revenue per Passenger (the “Blended Yield”) to be set in line with, respectively, the Indicative Gross Yield profile and the Indicative Net Yield profile (set out below). The actual Core Yield and Blended Yield may deviate from its associated indicative yield in any given year. GAL undertakes that, taking the period of the airport commitments as a whole, there will be no aggregate “over-recovery” in airport charges relative to the indicative yield profiles.</p> <p>The Indicative Net Yield profile in a relevant year t (NY_t) is defined as:</p> $NY_t = U_t + B_t + S_t$

	<p>The Indicative Gross Yield profile in a relevant year t (GY_t) is defined as:</p> $GY_t = W_t + B_t + S_t$ <p>These are indicative profiles since, in any given year, the actual Core Yield and Blended Yield may be less than, or greater than, its associated Indicative Yield. Such phasing differences may be due to unanticipated circumstances (e.g. changes in actual vs. expected mix of traffic) or deliberate business decisions (e.g. to alter charges below/above that implied in the Indicative Yield profiles taking into account factors such as: prior year under- or over-recoveries, economic conditions, competitive threats, growth opportunities, etc).</p> <p>The amount by which the actual Core Yield differs from the Indicative Gross Yield in a relevant year t will generate a revenue difference which, over time, will give rise at the end of a relevant year t to a Cumulative Gross Revenue Difference (CGRD_{t}) defined as:</p> $CGRD_t = (T_t - Q_t \cdot GY_t) + CGRD_{t-1}(1 + I_{t-1})$ <p>and where,</p> $CGRD_{2013/14} = 0$ <p>Similarly, the amount by which the actual Blended Yield differs from the Indicative Net Yield in a relevant year t will generate a revenue difference which, over time, will give rise at the end of a relevant year t to a Cumulative Net Revenue Difference (CNRD_{t}) defined as:</p> $CNRD_t = (T_t - Q_t \cdot NY_t) + CNRD_{t-1}(1 + I_{t-1})$ <p>and where,</p> $CNRD_{2013/14} = 0$ <p>GAL undertakes that:</p> <ul style="list-style-type: none"> • the Cumulative Gross Revenue Difference shall not exceed: <ul style="list-style-type: none"> - £nil at the end of the initial term of the Airport Commitment i.e. $CGRD_{2020/21} \leq 0$; and - £10m in any year during the initial term of the Airport Commitments i.e. $CGRD_t \leq £10m$. • in setting airport charges each year, GAL will do so with the objective that the change in estimated Core Yield between any year “$t-1$” and subsequent year “t” should not exceed RPI+10%, provided that this objective shall not limit GAL from attaining a $CGRD_{2020/21}$ of £nil; • the Cumulative Net Revenue Difference shall not exceed: <ul style="list-style-type: none"> - £nil at the end of the initial term of the Airport Commitment i.e. $CNRD_{2020/21} \leq 0$
<p>Publication of Cumulative Revenue Differences</p>	<p>The Cumulative Revenue Differences (CRD, meaning both CGRD and CNRD) will be published by GAL as part of the annual airport charges consultation, updated with actual data and revised estimates. As the consultation in relation to year “t” is undertaken part way through year “$t-1$”, GAL will publish at this time:</p> <ul style="list-style-type: none"> • the actual CRD_{t-2}; • a revised estimate of CRD_{t-1}; and • an estimate of CRD_t. <p>Assumptions underlying the estimated figures (including outturn charges, traffic and revenue data for historic years, as and when available) will be provided to enable airlines to verify the calculations.</p>
<p>Adjustments to indicative price path upon airline approval</p>	<p>Amendments to the indicative price path may be made by GAL, following consultation by GAL with the Gatwick Airline Consultative Committee (ACC):</p> <ul style="list-style-type: none"> • if approved in writing by airlines paying charges under the published tariff that together account for at least 51% of the passengers (in the 12 months immediately preceding the month in which GAL requested written approval from the airlines of the proposed amendment) travelling through the airport on airlines paying charges under the published tariff, and representing at least 51% of the airlines responding in writing.

Second runway costs and potential adjustments to the indicative price path	<p>Amendments to the indicative price path may be made by GAL, following consultation by GAL with the Gatwick ACC and the CAA:</p> <ul style="list-style-type: none"> • if following the completion of the Airports Commission the Government supports the development of a second runway at Gatwick Airport, to allow for the recovery of the reasonable costs of applying for planning permission for a second runway and the subsequent development of the second runway and associated airport infrastructure. The recovery of costs associated with an application for planning permission will not be on the basis of an annual pass through, but on the presumption of recovering such costs over a [10 year] period by way of equal instalments.
Annual consultation on charges	<p>Consultation on charges in the published airport tariff of the Conditions of Use, together with associated service standards and investment, will be undertaken annually in accordance with the Airport Charges Regulations 2011. GAL will provide additional financial information to support this consultation as set out in "Information Commitment" below.</p>
Definitions for the Price Commitment	<p>Set out below.</p>
Aggregate Core Revenue	<p>Aggregate Core Revenue is the sum of:</p> <ol style="list-style-type: none"> revenue arising from Core Service Charges and Selected Ancillary Service Charges for relevant commercial passenger services operated under the terms of the published airport tariff set out in the Conditions of Use; and revenue arising from charges equivalent to the Core Service Charge and Selected Ancillary Service Charges for relevant commercial passenger services operated under the terms of bilateral contracts, but substituting for the actual revenue received the revenue that would have been received if such services had been offered and charged under the published airport tariff. <p>For the avoidance of doubt:</p> <ul style="list-style-type: none"> • Aggregate Core Service Revenue does not include: revenue from Premium Service Charges, Other Ancillary Service Charges, Other Airport Charges and Ancillary Charges arising under the terms of the published airport tariff; nor revenue arising from equivalent charges under the terms of bilateral contracts; and • Revenue from FEGP charges, included in Selected Ancillary Service Charges, is net of the cost of electricity.
Aggregate Blended Revenue	<p>Aggregate Blended Revenue is the sum of:</p> <ol style="list-style-type: none"> revenue arising from Core Service Charges and Selected Ancillary Service Charges for relevant commercial passenger services operated under the terms of the published airport tariff set out in the Conditions of Use; and revenue arising from charges equivalent to the Core Service Charge and Selected Ancillary Service Charges for relevant commercial passenger services operated under the terms of bilateral contracts. <p>For the avoidance of doubt:</p> <ul style="list-style-type: none"> • Aggregate Core Service Revenue does not include: revenue from Premium Service Charges, Other Ancillary Service Charges, Other Airport Charges and Ancillary Charges arising under the terms of the published airport tariff; nor revenue arising from equivalent charges under the terms of bilateral contracts; and • Revenue from FEGP charges, included in Selected Ancillary Service Charges, is net of the cost of electricity.
Passengers	<p>For the purpose of the calculation of the Core Yield, "Passengers" includes all passengers, whether carried by an airline under the terms of the published airport tariff or a bilateral contract.</p>

t	The annotation “t” denotes the relevant year t, being a period of twelve months starting on 1 April and ending on 31 March in the following year, the annotation “t-1” denotes relevant year “t-1” immediately preceding relevant year “t”, and so forth. By way of example, the annotation “2014/15” denotes the year commencing 1 April 2014 and ending on 31 March 2015.
U_t	U_t is the underlying net yield in relevant year t, defined as: $U_t = U_{t-1}(1 + RPI_{t-1} + X)$ and, $U_{2013/14} = [\bullet]$
W_t	W_t is the underlying gross yield in relevant year t, defined as: $W_t = W_{t-1}(1 + RPI_{t-1} + X + 1\%)$ and, $W_{2013/14} = U_{2013/14}$
RPI_{t-1}	RPI_{t-1} means the percentage change in the Retail Price Index between that published with respect to August in relevant year t-1 and that published with respect to August in relevant year t-2.
X	X is 1.5%
B_t	B_t is the bonus per passenger earned in relevant of year t, if any, being: <ul style="list-style-type: none"> the amount of the Core Service Bonus calculated as set out under “Service Commitment” below; divided by the number of passengers using the airport in year t (Q_t) Any estimate of B_t prepared prior to the start of year t will be assumed to be £nil.
S_t	S_t is the permitted security cost per passenger in relevant year t, if any, being: <ul style="list-style-type: none"> the aggregate of: <ul style="list-style-type: none"> 90% of the amount by which the increase in security costs at the airport in year t, which arise as a result of a change in required security standards at the airport, exceeds £1m; and the cost of installing new hold baggage screening equipment in accordance with the requirements of Gatwick’s security regulator and as agreed through the capital investment programme consultation process. The recovery of the capital costs and associated funding costs will be presumed to be made over the assessed life of the equipment, in equal annual amounts. divided by: <ul style="list-style-type: none"> the number of passengers using the airport in year t (Q_t).
T_t	T_t is the Aggregate Core Revenue in relevant year t.
Q_t	Q_t is the total number of passengers using Gatwick airport in relevant year t. This includes all passengers, whether carried by an airline under the terms of the published airport tariff or a bilateral contract.
I_{t-1}	I_{t-1} is the annual percentage interest rate equal to the sum of (i) the average of the UK Treasury Bill Discount Rate (expressed as an annual percentage interest rate) published weekly by the Bank of England, during the 12 months from the beginning of September in relevant year t-1 to the end of August in relevant year t; and (ii) if the relevant CRD _t has a positive value, 3%, otherwise, 0%.

<p>Specified Activities Charges</p>	<p>Gatwick Airport Limited shall ensure that those charges relating to Specified Activities are set at a level which is fair, reasonable and non-discriminatory.</p> <p>Specified Activities for these purposes will comprise:</p> <ul style="list-style-type: none"> • Staff ID • airside licences • FEGP • Airside parking • Hydrant refuelling • Staff car parks • Facilities for bus & coach operators • Utilities (gas, water, electricity, heating) • Cable routing <p>At least 3 months prior to making any amendments to those charges relating to Specified Activities, GAL will provide to users of the Specified Activities and the CAA:</p> <ul style="list-style-type: none"> • relevant information (including cost information, where relevant, or other information if charges for the specified facilities are not established in relation to cost) and assumptions adequate to verify the basis upon which the charges have been calculated. <p>GAL will provide additional financial information to support this consultation as set out in "Information Commitment" below.</p>
<p>PRM and Check-in & Baggage Charges</p>	<p>GAL will comply with the relevant legislation in relation to the setting of check-in & baggage charges and PRM charges.</p> <p>GAL will provide additional financial information to support this consultation as set out in "Information Commitment" below.</p>

Section C	Service commitment
<p>Airport-wide standards to be monitored <u>and</u> subject to penalties/bonuses</p>	<p>The Core Service Standards are as set out in Table A (appended), together with Service Bonus Standards.</p> <p>These are broadly based on the existing Q5 SQR scheme with some modifications as to:</p> <ul style="list-style-type: none"> • the inclusion of an outbound baggage target; • the inclusion of an airfield availability metric or retention of the existing aerodrome congestion term (but to include a measure of snow event readiness); • the maximum annual rebate amount remains 7% of Core Service Charge Revenue; • the maximum annual bonus amount is 3.5% of Core Service Charge Revenue, relating only to certain selected passenger facing measures and maintaining symmetry with the rebate; • a single maximum potential rebate percentage for each service standard, equally applicable to a month or year. In Q5 a monthly maximum and a separate annual maximum is specified; • an incremental penalty factor of 25% applied to the rebate percentage for certain selected passenger facing measures if the relevant service standard has not been met for six consecutive months; • bonuses change the indicative yield profiles and, therefore, may give rise to adjustments in airport charges in subsequent years (as in Q5); and • failure of an airline to meet certain Airline Service Standards will reduce the amount payable by GAL in any month to such airline under the Core Service Rebates.
<p>Adjustments to service standards upon airline approval</p>	<p>Amendments to the Core Service Standards may be made by GAL:</p> <ul style="list-style-type: none"> • following consultation by GAL with the Gatwick Airline Operators Committee (AOC) & Gatwick ACC; and • if approved in writing by airlines paying charges under the published tariff or under bilateral contract (save for those airlines that have expressly waived the application of these service standards under the terms of their contract) that together account for at least 51% of the passengers (in the 12 months immediately preceding the month in which GAL requested written approval from the airlines of the proposed amendment) travelling through the airport on airlines paying charges under the published tariff or under bilateral contract (save for those airlines that have expressly waived the application of these service standards under the terms of their contract), and representing at least 51% of that airlines responding in writing.
<p>Airline Service Standards to be monitored and published, and subject to penalties / bonuses</p>	<p>GAL will monitor and publish the performance of individual airlines in relation to certain airport-wide activities. These include:</p> <ul style="list-style-type: none"> • Check-in queue performance; • Arrival bag performance; and • PRM service and pre-notification. <p>GAL may amend the airline service standards that it is monitoring and publishing from time-to-time, following consultation with the Gatwick AOC & ACC.</p> <p>The first two of these standards are designated as Airline Service Standards for the purposes of determining the Core Service Rebate for individual airlines. These standards are set out in Table B (attached). The third standard (in relation to PRM) is already a factor that determines the PRM charges payable by individual airlines.</p>
<p>Airport-wide standards to be monitored <u>but not</u> subject to penalties/bonuses</p>	<ul style="list-style-type: none"> • Airlines & airport: On-time performance (departures and arrivals); • UKBF: Immigration performance • Airport: ASQ

Publication of standards	GAL to publish monthly report on achievement of Airport-wide standards and the Airline Standards.
Payment of Core Service Rebate	<p>The Core Service Rebate is the amount payable by GAL for a failure by it to meet the Core Service Standards.</p> <p>The Core Service Rebate will be paid quarterly, within 1 month of the end of each quarter (end June, September, December, March) to those airlines operating exclusively under the terms of the published airport tariff during the relevant period. An airline operating under the terms of a bilateral contract will not be entitled to the Core Service Rebate, unless otherwise provided for in such an agreement.</p> <p>The rebates will be calculated by terminal by month, and then allocated to the relevant airlines that used the terminal pro-rata with the Core Service Charges payable by each airline in relation to that month.</p> <p>An airline that has not met the applicable Airline Standards (as set out in Table B) will have its entitlement to Core Service Rebates reduced. Further, GAL shall be under no obligation to pay the rebate to an airline if there are unpaid amounts outstanding from such an airline to GAL. If the entitlement of an individual airline to Service Rebates is so reduced, there will be no change in the entitlement of other airlines to the Core Service Rebate.</p>
Core Service Rebate	<p>The amount (“Core Service Rebate”) payable by GAL to an airline “a” in month “j” for a failure to meet the Core Service Standard Levels will be calculated as:</p> $\text{Core Service Rebate}_{a,j} = \sum_t \text{Net Rebate Percentage}_{a,t,j} \cdot \text{Core Service Charge}_{a,t,j}$ <p>Where:</p> $\text{Net Rebate Percentage}_{a,t,j} = \text{Service Rebate Percentage}_{t,j} - \text{Airline Standard Rebate Percentage}_{a,t,j}$ $\text{Core Service Charge}_{a,t,j} = \text{Core Service Charges incurred by each airline “a”, in respect of terminal “t”, in relevant month “j”}.$
Service Rebate Percentage	<p>Rebates shall be calculated separately for each terminal based on the performance against the standards for that terminal; with the exception of airfield availability, which will be calculated at an airfield level and the same percentage applied to both terminals. As noted in Table A, the inter-terminal transit availability standards and potential rebate percentages relate only to the North Terminal.</p> <p>For each terminal t, the Service Rebate Percentage for the month j shall be calculated as:</p> $\text{Service Rebate Percentage}_{t,j} = \sum_{\text{standard } i} p_{i,t} \cdot x_{i,t,j}$ <p>Where:</p> <p>$p_{i,t}$ = the potential service rebate percentage per month for standard “i”, for terminal “t”, as set out in Table A.</p> <p>$x_{i,t,j}$ = 0 if the standard “i”, for terminal “t”, in month “j” is greater than or equal to the service rebate level, as set out in Table A; or</p> <p>1 if the standard “i”, for terminal “t”, in month “j” is less than the service rebate level, as set out in Table A; or</p> <p>1.25 in relation only to Selected Passenger Facing Measures, 1.25 if the relevant standard “i”, for terminal “t”, in months “j” and in each of the five immediately preceding months (i.e. “j-1”, “j-2”, “j-3”, “j-4”, “j-5”) is or was less than the service rebate level, as set out in Table A. Provided that the maximum aggregate Service Rebate Percentage payable in relation to all Selected Passenger Facing Measures shall not exceed 3.50% in any financial year ending 31 March.</p> <p>For the purposes of this calculation, the Selected Passenger Facing Measures comprise those that are eligible for a Core Service Bonus, namely: Departure Lounge Seat Availability; Cleanliness; Way-Finding; Flight Information; Central Passenger Search (times<5minutes, times < 15 minutes); Passenger Sensitive Equipment (General); Passenger Sensitive Equipment (Priority); and Arrivals Reclaim (Baggage Carousels).</p>

Airline Standard Reduction Percentage	<p>For each airline “a”, Airline Standard Reduction Percentage for the month j shall be calculated as:</p> $\text{Airline Standard Reduction Percentage}_{a,t,j} = \sum_{\text{standard } k} r_{k,t} \cdot z_{k,t,j}$ <p>Where:</p> <p>$r_{k,t}$ = the potential airline standard reduction percentage per month for standard “k”, for terminal “t”, as set out in Table B.</p> <p>$z_{k,t,j}$ = 0 if the standard “k”, for terminal “t”, in month “j” is greater than or equal to the standard reduction level, as set out in Table B; or</p> <p>1 if the standard “k”, for terminal “t”, in month “j” is less than the standard reduction level, as set out in Table B.</p>
Core Service Bonus	<p>The amount (“Core Service Bonus”) earned by GAL each year for meeting the Service Bonus Standard Levels will be calculated as:</p> $\text{Core Service Rebate} = \sum_{t,j} \text{Service Bonus Percentage}_{t,j} \cdot \text{Core Service Charge}_{t,j}$ <p>Where:</p> <p>$\text{Core Service Charge}_{t,j}$ = Core Service Charges in respect of terminal “t”, in relevant month “j”.</p>
Service Bonus Percentage	<p>Bonuses shall be calculated separately for each terminal based on the performance against the standards for that terminal. For each terminal t, the Service Bonus Percentage for the month j shall be calculated as:</p> $\text{Service Bonus Percentage}_{t,j} = \sum_{\text{standard } i} q_{i,t} \cdot y_{i,t,j}$ <p>Where:</p> <p>$q_{i,t}$ = the potential service bonus percentage per month for standard “i”, for terminal “t”, as set out in Table A.</p> <p>$y_{i,t,j}$ = 1 if the standard “i”, for terminal “t”, in month “j” is greater than or equal to the service bonus level, as set out in Table A; or</p> <p>0 if the standard “i”, for terminal “t”, in month “j” is less than the service bonus level, as set out in Table A.</p>
Repeated failures by GAL to meet service quality targets	<p>In the event that any service quality target is not met for a period of 6 months, in addition to the increase in service rebate percentage that this would attract and the requirement for monthly publication of its performance standards, GAL will draw up an improvement plan in consultation with the ACC. In preparing such a plan, GAL and the ACC will consider any representations from the CAA made in the passengers’ interest.</p>
Premium Service Products	<p>GAL may provide airlines and their customers with products and services over-and-above the Core Service Standard. These may be offered under the terms of the Conditions of Use or a bilateral agreement.</p>

Section D	Investment & consultation commitment
Service enhancement through investment	<p>GAL shall retain sole responsibility for managing the capital investment programme to enable it to meet its obligations regarding airport-wide service standards.</p> <p>GAL commits to maintaining the airport to comply with all applicable safety and environmental requirements and to maintain and develop the infrastructure of the airport to enable the airport-wide service standards to be achieved. In doing so, GAL commits to investing a minimum of £100m p.a. on average over each year of the initial term, although there is no binding programme of specific capital expenditure nor are there projects that are subject to capital expenditure triggers.</p> <p>GAL will undertake appropriate consultation in relation to capital investment, as described in the following sections. This approach to consultation goes beyond the capital expenditure consultation requirements of the Airport Charges Regulations 2011.</p>
Categorisation of capital expenditure	<ul style="list-style-type: none"> • For the purposes of consultation, GAL proposes categorising capital expenditure into one of three areas: <ul style="list-style-type: none"> - Major Development Projects, comprising those individual projects or individual programmes of projects in excess of £10m (excluding the Asset Stewardship Programme) and the Second Runway Project; - Minor Development Projects, being those individual projects or individual programmes of projects less than £10m (excluding both the Asset Stewardship Programme and Second Runway Project); and - Asset Stewardship Programme, comprising all asset stewardship projects split into five broad elements - Airfield, Commercial, IT, Facilities and Compliance/Risk.
Airline consultative groups	<ul style="list-style-type: none"> • Consultation with the airlines will need to be undertaken at a number of different levels, with groups formed appropriately: <ul style="list-style-type: none"> - ACC: to consider strategic matters involving the medium- to long-term development of the airport; - Capital sub-committee of ACC: to consider tactical matters involving the delivery by GAL of the capital development programme; and - Working groups (informal and formal): to consider operational impacts of projects on the day-to-day activities of the airlines operating at the airport. These working groups (where required) will be project specific, involve affected airlines, and may require a formally constituted working group (e.g. the AOC) for significant projects requiring a high degree of airline input into the design and execution planning (e.g. check-in transformation).
Master Plan	<ul style="list-style-type: none"> • GAL published a Master Plan in July 2012. GAL will publish a revised Master Plan every five years, in consultation with airlines (including the ACC), other business partners and the local community. The exact timing of Master Plan updates will be dependent on Government airport policy consultations/decisions (e.g. in relation to the Airports Commission) and on the need to keep the overall long-term vision for the airport up-to-date.
Capital Investment Programme	<ul style="list-style-type: none"> • GAL will publish annually a rolling five year Capital Investment Programme • The CIP will be the key document around which strategic-level consultation on future airport development will take place. This consultation with the ACC will address: <ul style="list-style-type: none"> - the principal business drivers behind the airport's development strategy, including service levels; - forecast traffic demand and associated demand for airport capacities and services; - the capacities that the airport intends to provide, taken in the context of forecasted demand; and - the cost of the capital investment programme, and the resulting effect on the Asset Base of the airport. • The forecast cost of the capital investment programme will:

	<ul style="list-style-type: none"> - summarise expenditure on each of the Major Development Projects; - summarise aggregate expenditure on the Asset Stewardship Programme (across all five elements); - summarise aggregate expenditure on Minor Development Projects; - be at a level of detail that naturally reflects the planning horizon and Tollgate status for projects, with those in the short-term being more granular and certain than those in the final years of the forecast. - provide an explanation as to any material differences between the latest forecast and: <ul style="list-style-type: none"> o the prior year forecast; and o the forecast per the CAA's price control review
<p>Individual Major Development Project consultation</p>	<ul style="list-style-type: none"> • As part of the annual Capital Investment Programme consultation with the ACC, GAL will consult with airlines in relation to Major Development Projects (with the exception of “commercial return projects” and “dedicated airline projects”) covering: <ul style="list-style-type: none"> - high-level options for the development of Major Development Projects and the trade-offs involved between alternatives; - the outputs that are expected to be delivered in terms of service, capacity, operating cost, and revenue; - scope, programme and cost of the project required to deliver the business objectives; and - the business case for the project. (This would be in a form consistent with those prepared by GAL for the ACC in Q5 and in preparation for BQ5). • GAL will consult with the Capital sub-committee of the ACC in relation to the Major Development Projects at Tollgate 2, Tollgate 3, and Tollgate 4. This will require meetings on a more frequent basis than annually. • Following Tollgate 4, progress with the delivery of Major Development Projects will be reviewed by the Capital sub-committee of the ACC as part of its annual Capital Investment Performance Review (see below). • A “commercial return project” is any project with associated commercial revenues that has a positive NPV not taking into account incremental airport charges. • A “dedicated airline project” would be a project undertaken for the benefit of one or more specified airlines and which is remunerated by a separate commercial arrangement or specific airport charge payable by users of the project.
<p>Annual Capital Investment Performance Review</p>	<ul style="list-style-type: none"> • GAL will meet annually with the Capital sub-committee of the ACC to review GAL's delivery of the Capital Investment Programme, specifically: <ul style="list-style-type: none"> - in relation to the following 12 months: <ul style="list-style-type: none"> o the schedule and expenditure for each Major Development Project; o the priorities and aggregate expenditure of the Asset Stewardship Programme across each of the five broad elements (separately identifying individual projects in excess of £1m). o the expenditure on Minor Development Projects (separately identifying individual projects in excess of £1m). - in relation to the preceding 12 months, works undertaken and progress with: <ul style="list-style-type: none"> o each Major Development Project; o Minor Development Projects (separately identifying individual projects in excess of £1m); and o Asset Stewardship Programme across each of the five broad elements (separately identifying individual projects in excess of £1m).

Section E	Information commitment
Financial performance	<ul style="list-style-type: none"> • GAL publishes detailed statutory accounts consistent with its status as a UK registered company, with debt securities listed on the London Stock Exchange, and falling within the Walker Guidelines relevant to a private equity owned company. • These statutory accounts (refer, for example, to GAL's Report & Financial Statements for the year ended 31 March 2012): <ul style="list-style-type: none"> - provide greater disclosure than the current regulatory accounts; and - contain sufficient, meaningful data in relation to the operating cost and revenue components of EBITDA, and in relation to the capital expenditure and depreciation components of GAL's asset base, to enable airlines, the CAA, and other users of GAL's accounts to undertake an analytical review of GAL's on-going business performance, capital investment, and financial returns, (including relative to the CAA's financial projections prepared as part of the Q6 review) and to assess whether charges are reasonable. • GAL will not publish separate regulatory accounts. • To ensure there continues to be the provision of sufficient information for airlines to understand whether charges are reasonable, GAL will ensure that the scope of disclosure in its statutory accounts is maintained to be consistent with that of its most recent accounts (i.e. GAL's Report & Financial Statements for the year ended 31 March 2012) in so far as it relates to the operating costs, revenues, fixed asset base, depreciation and capital expenditure. If GAL's statutory accounts do not meet these requirements, GAL will ensure a separate audited statement meeting this standard will be provided confidentially to airlines and the CAA. • GAL proposes to publish annually a statement of GAL's assessment of the value of its asset base. This will set out the underlying assumptions and calculations, including: the initial asset based (carried forward from the end of the prior year); depreciation; additions; disposals; indexation factors; other adjustments that may be relevant; and the closing asset base (carried forward to the start of the next year). The material provided, together with the audited financial statements, will enable stakeholders to verify the calculation. • GAL will provide such further financial information required (if any) to ensure compliance with the Airport Charges Regulations 2011.
Financial information in relation to Specified Activities, PRM Service, and Check-in & Baggage facilities	<ul style="list-style-type: none"> • GAL will provide to users of the Specified Activities, PRM Services, Check-in & Baggage Facilities, and the CAA, by 31 December in each year a statement of actual costs and revenues in respect of each of the specified activities for the year ending the previous 31 March.

Section F	Operational and financial resilience commitments
Operational resilience	<p>GAL will develop and maintain an operational resilience plan which will set how GAL intends to operate an efficient and reliable airport to the levels required by the Commitments or otherwise agreed with users and, in particular, how it will secure the availability and continuity of airport operation services, particularly in times of disruption. GAL will consult annually on the resilience plan with all interested parties including the CAA.</p> <p>In pursuance of the above obligation GAL will by [1 October 2014] publish one or more plan(s) or other documents setting out the principles, policies and processes by which it will comply with Condition [●]. Such plans and any amendments will have regard to any relevant guidance issued by the CAA.</p> <p>Prior to publishing any plans or other documents under Condition [●]. GAL shall consult all relevant parties on those plans or documents.</p> <p>GAL shall so far as is reasonably practicable coordinate and cooperate with all relevant parties at the airport to meet the requirements of this operational resilience commitment and shall at least once a year hold a meeting to which all relevant parties or organisations representing them shall be entitled to attend to discuss any issues pertinent to this operational resilience commitment.</p> <p>The Conditions of Use shall require all providers of air transport services and groundhandlers to comply with rules of conduct relating to minimum service provision and in particular to actions to be taken during periods of disruption.</p> <p>During periods of service disruption GAL shall use reasonable endeavours to coordinate the communication of operational information and to ensure the provision of timely, accurate and clear information about its operations to users of air transport services as well as information as to their rights under denied boarding regulations.</p>
Financial resilience	<p>The Conditions of Use will include the following financial resilience obligations to users:</p> <ul style="list-style-type: none"> • The Directors of GAL will provide an annual confirmation of adequate financial resources to operate the airport and provide the Core Services; and • GAL shall not amend, vary, supplement or modify or concur in the amendment, variation, supplementation or modification of any of the finance documents in respect of credit rating requirements (whether in each case in the form of a written instrument, agreement or document or otherwise) (a "Variation") unless it has given prior written notice thereof to the CAA. GAL shall, as soon as reasonably practicable: <ul style="list-style-type: none"> - notify the CAA of the possibility of any such Variation; and - provide a summary of the executed change. <p>The provisions of this Condition shall not apply to any administrative or procedural variation.</p>
Continuity of Service Plan	<p>GAL shall prepare and at all times maintain a continuity of service plan. The plan shall describe such legal, regulatory, operational and financial information that an administrator, receiver, or new management might reasonably be expected to require, in addition to the aerodrome manual and other statutory or regulatory documents which GAL is required to maintain, in order for it to efficiently carry out its functions and to remain compliant with its aerodrome licence. GAL shall supply such continuity of service plan to the CAA by 1 October 2014 and shall make such reasonable amendment to the form, scope and content of the plan as the CAA may reasonably require. GAL shall provide the CAA with details of any material variations to the continuity of service plan.</p>

Table A – Airport Service Quality Targets (Rebates & Bonuses)

	Standard “i”	Metric	Rebate Level	Maximum potential rebate (both terminals, unless noted)	Bonus Level	Maximum potential bonus (both terminals, unless noted)
(i)	Passenger satisfaction measures			1.40%		1.40%
1	Departure Lounge Seat Availability	Moving Average QSM Score	3.8	0.35%	4.0	0.35%
2	Cleanliness		4.0	0.35%	4.2	0.35%
3	Way-Finding		4.1	0.35%	4.2	0.35%
4	Flight Information		4.2	0.35%	4.3	0.35%
5	Security		n/a	n/a	n/a	n/a
(ii)	Security			2.00%		0.80%
6	Central Passenger Search	Times <5 Minutes Times <15 Minutes	95% 98%	0.80%	97% 99%	0.80%
		Day when single time slice > 30 Minutes	t.b.d	0.20%	n/a	n/a
7	Transfer Passenger Search	Times <10 Minutes	95%	0.40%	n/a	n/a
8	Staff Search	Times <5 Minutes (terminal) Times <10 Minutes (crew)	95%	0.30%	n/a	n/a
9	External Control Posts Search	Times <15 Minutes	95%	0.30%	n/a	n/a
(iii)	Passenger operational measures			1.30% (ST) 1.60% (NT)		1.30%
10	Passenger Sensitive Equipment (General)	% Time Available	99%	0.40%	99.5%	0.40%
11	Passenger Sensitive Equipment (Priority)	% Time Available	99%	0.45%	99.5%	0.45%
12	Inter Terminal Transit System	% Time 1 Car Available % Time 2 Cars Available	99% 97%	0.30% (NT)	n/a	n/a
13	Arrivals Reclaim (Baggage Carousels)	% Time Available	99%	0.45%	99.5%	0.45%
(iv)	Airline operational measures			1.65%		n/a
14	Outbound Baggage	t.b.d	t.b.d	0.30%	n/a	n/a
15	Stands	% Time Available	99%	0.30%	n/a	n/a
16	Jetties	% Time Available	99%	0.30%	n/a	n/a
17	Pier Service	Moving average % passengers pier served	95%	0.50%	n/a	n/a
18	Fixed Electrical Ground Power	% Time Available	99%	0.25%	n/a	n/a
(v)	Aerodrome congestion term			0.50%		n/a
19	Airfield congestion / availability	t.b.d	t.b.d	0.50%	n/a	n/a
	Total			7.15% (NT) 6.85% (ST)		3.50% (NT) 3.50% (ST)

Table B – Airline Service Quality Targets

Standard “k”	Metric	Target Level	Airline Rebate Percentage
Check-in performance – queue time	Times <30 Minutes	95%	0.80%
Arrivals bag performance – last bag on carousel	Times <45 Minutes (long-haul)	95%	0.80%

The check-in performance metric is not routinely measured, although the use of automated queue measurement in South Terminal security indicates that this is feasible. GAL will consult with the Gatwick AOC to determine the appropriate approach for implementing such a measurement.

