

THE SCOTTISH MINISTERS

and

ABELLIO SCOTRAIL LIMITED

CONDITIONS PRECEDENT AGREEMENT

relating to

SCOTRAIL FRANCHISE AGREEMENT

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AGREEMENT

AMONG

- (1) **THE SCOTTISH MINISTERS**, Victoria Quay, Edinburgh, EH6 6QQ, acting through Transport Scotland, Buchanan House, 58 Dundas Road, Glasgow, G4 0HF or such other agency department or other organisational unit of the Scottish Government as they may from time to time nominate (who and whose successors are referred to as the *Authority*); and
- (2) **ABELLIO SCOTRAIL LIMITED**, whose registered number is SC450732 and registered office is at 10th Floor, 133 Finnieston Street, Glasgow, G3 8HB (the *Franchisee*).

WHEREAS

- (A) The Authority and the Franchisee have entered into a franchise agreement executed on the date hereof relating to the ScotRail Franchise (the “Franchise Agreement”) which sets out the terms on which the Franchisee will provide the Franchise Services.
- (B) The Authority and the Franchisee wish to record in this Agreement certain conditions precedent to be satisfied prior to the issue of the Certificate of Commencement.
- (C) The Franchisee wishes to make certain representations and warranties to the Authority.

IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement:

Definitions Agreement means the Agreement between the Authority and the Franchisee of even date relating to the interpretation of this Agreement and the Franchise Agreement.

- 1.2 This Agreement, the Franchise Agreement, the SQUIRE Service Schedules Agreement and the Definitions Agreement together constitute a single agreement, which is a "franchise agreement" for the purposes of the Act, and shall be interpreted in accordance with the Definitions Agreement.
- 1.3 References in this Agreement to the Franchisee satisfying any condition precedent shall, where appropriate, be read as including a reference to the Franchisee procuring satisfaction of that condition precedent.
- 1.4 If there is any conflict between the terms of this Agreement and the Franchise Agreement, the terms of this Agreement shall prevail.

2. SATISFACTION OF CONDITIONS PRECEDENT

2.1 (a) On or prior to the Long Stop Date, the Franchisee shall satisfy or procure the satisfaction of the conditions precedent set out in Appendix 1 (*Conditions Precedent*) to this Agreement.

(b) Subject to clause 2.1(c) and (e) of this Agreement, as soon as the Authority is satisfied that each of the conditions precedent in this Agreement has been satisfied (except to the extent waived by the Authority, subject to such conditions as the Authority shall impose to any such waiver) it shall issue to the Franchisee a Certificate of Commencement, which shall specify the Franchise Commencement Date.

(c) The Authority may waive the requirement to satisfy any condition precedent prior to the Long Stop Date, attaching such conditions as it considers appropriate. If the Authority so waives the requirement to satisfy any condition precedent, the Franchisee shall satisfy such condition precedent, together with any conditions attaching to such waiver, as soon as reasonably practicable thereafter, or on or prior to such time as the Authority may stipulate.

(d) If the Authority waives the satisfaction of any conditions precedent pursuant to Clause 2.1(c) of this Agreement, the Franchisee shall procure that such conditions precedent, together with any conditions attaching to such waiver, are satisfied as soon as reasonably practicable thereafter, or at such other later time as the Authority may stipulate.

(e) The Authority may take such actions or steps as it considers appropriate to ensure that the Franchise Commencement Date occurs on a day which is, in its opinion, convenient or desirable, bearing in mind the interests of the Authority, the Franchisee and other persons likely to be affected by the day on which such Franchise Commencement Date occurs. To achieve this, the Authority may, in its discretion, permit the Franchisee to delay satisfaction of some or all of the conditions precedent until such day as the Authority may notify the Franchisee.

(f) Where agreements or deeds are required to be entered into or executed and delivered or any steps required to be taken under this clause 2.1 by the Franchisee or the Bond Providers, the Authority may require, as an additional condition precedent, further documentation (including legal opinions) or evidence of the power and authorisation of the relevant person to enter into, execute or deliver any such agreement or deed or take any such steps, and the Franchisee shall promptly supply such additional evidence.

(g) Where the Franchisee is required to enter into any agreement in satisfaction of the conditions precedent set out in Appendix 1 to this Agreement and such agreement contains a condition precedent requiring the Franchise Agreement to be unconditional, provided the Franchisee has satisfied all the other conditions precedent set out in such agreement, the requirement to enter into such agreement will be deemed to be satisfied.

Review Date

2.2(a) On or prior to the Review Date, the Franchisee shall demonstrate to the Authority (in a manner satisfactory to the Authority in form and substance) that the conditions precedent are likely to be fully satisfied by the Long Stop Date.

(b) If the Authority is not so satisfied at the Review Date, it may promptly afterwards by service of a notice on the Franchisee either:

- (i) waive any relevant condition precedent pursuant to clause 2.1(c) or set, by specifying in that notice either:
 - 1) a new Review Date; or
 - 2) a new Review Date and a new Long Stop Date, provided that any such new Review Date shall be no more than one calendar month prior to such new Long Stop Date; or
 - 3) a new Long Stop Date; or
- (ii) terminate the Franchise Agreement on the Long Stop Date or such earlier date as the Authority may specify in that notice.

(c) If the Franchisee has not satisfied the conditions precedent or they have not been waived by the Authority by the Long Stop Date, it may promptly afterwards by service of notice on the Franchisee either:

- (i) set, by specifying in that notice, either:
 - 1) a new Long Stop Date; or
 - 2) a new Review Date and a new Long Stop Date, provided that any such new Review Date shall be no more than one calendar month prior to such new Long Stop Date; or
- (ii) terminate the Franchise Agreement with effect from the Long Stop Date or such later date as the Authority may specify in that notice, which shall be no later than 14 days after the Long Stop Date.

Consequences of non-fulfilment

2.3(a) The Authority may give notice to the Franchisee terminating the Franchise Agreement if the Certificate of Commencement has not been issued on or before the Long Stop Date or if the Authority reasonably considers that any condition precedent of this Agreement will not be satisfied before the Long Stop Date.

(b) On service of a notice by the Authority pursuant to clause 2.2(b)(ii) or 2.2(c)(ii) or 2.3(a), the Franchise Agreement shall terminate on the date specified in that notice.

(c) On termination of the Franchise Agreement under clause 2.2(b)(ii) or clause 2.2(c)(ii) or clause 2.3(a) of this Agreement, neither party shall have any liability to the other party under this Agreement, save in respect of:-

- (i) their respective obligations as to confidentiality under Schedule 17 (*Confidentiality, FOISA and Data Protection*) of the Franchise Agreement;
- (ii) any other obligations which either expressly or by their nature survive the termination of the Franchise Agreement; and
- (iii) any breach of their respective obligations hereunder or under the Franchise Agreement arising in respect of the period prior to (and including) the date of termination of the Franchise Agreement.

3. REPRESENTATIONS AND WARRANTIES

Franchise replacement process

3.1 The Franchisee represents and warrants to the Authority, subject only to any matter fully and fairly disclosed to the Authority in writing (and accepted by it) or expressly referred to in the audited accounts of the Franchisee or expressly provided for under the terms of this Agreement:

- (a) that it has not acted in breach of any of the terms of the Franchise Re-letting Process Agreement; and
- (b) that all of the information, representations and other matters of fact communicated in writing to the Authority and/or its advisers by the Franchisee, its directors, officers, employees, servants or agents in connection with or arising out of the Franchisee's proposal to secure the provision and operation of the Franchise Services were (at the dates submitted to the Authority or such advisers) and remain as at the Franchise Commencement Date, in all material respects, true, accurate and not misleading.

Updating of warranties

3.2 The Franchisee further undertakes to the Authority, subject to clause 3.3 of this Agreement, that:

- (a) the representations and warranties contained in clause 3.1 will be true and accurate in all material respects and not misleading in any material respect at the Franchise Commencement Date as if they had been given on the Franchise Commencement Date with reference to the facts and circumstances then subsisting; and
- (b) if after the signing of the Franchise Agreement and before the Franchise Commencement Date any event shall occur or matter arise which results or may result in any of the representations and warranties in clause 3.1 being unfulfilled, untrue, misleading or incorrect in any material respect at the Franchise Commencement Date, the Franchisee shall immediately notify the Authority in writing thereof and the Franchisee shall provide such information concerning the event or matter as the Authority may require.

Exceptions

3.3 No right to damages or compensation shall arise in favour of the Authority under clause 3.2 in consequence only of an event occurring or matter arising after:-

- (a) the signing of the Franchise Agreement but before the Franchise Commencement Date; or
- (b) if the Authority gives notice terminating the Franchise Agreement in accordance with clause 2.2(b)(ii) or clause 2.2(c)(ii) or clause 2.3(a), the effective date of termination specified in such notice,

which constitutes a breach or non-fulfilment of any of the representations and warranties in clause 3.1 (whether or not this Agreement is terminated in consequence thereof) if:

- (i) the event or matter could not reasonably have been avoided or prevented by the Franchisee; and
- (ii) the event or matter was duly notified to the Authority in accordance with clause 3.2(b).

4. AGREEMENTS TO BE INCLUDED IN THE COMMENCEMENT TRANSFER SCHEME

4.1 Subject to clauses 4.2 and 4.3 and unless the Franchisee has made alternative arrangements reasonably satisfactory to the Authority in accordance with paragraph 14 to Appendix 1 (*Conditions Precedent*) to this Agreement, the Authority will make 1 or more transfer schemes (each a ***Commencement Transfer Scheme***) in accordance with Section 12 and Schedule 2 of the Railways Act 2005 so as to transfer to the Franchisee the following property, rights and liabilities of the Train Operator under the Previous Franchise Agreement:

- (a) the Primary Franchise Assets designated as such on or prior to the Franchise Commencement Date; and
- (b) the Brand Licences listed in paragraph 4 of Appendix 2 (*List of Conditions Precedent Documents*) to this Agreement,

(together the ***Required Commencement Agreements***).

4.2 The Commencement Transfer Scheme shall not transfer to the Franchisee any Excluded Liabilities. For this purpose, ***Excluded Liabilities*** means:

- (a) any accrued, but unperformed obligation;
- (b) the consequences of any breach of any of the Required Commencement Agreements by any of the parties thereto; and
- (c) any other liability in respect of any act or omission by any of the parties thereto under or in relation to the Required Commencement Agreements,

in each case prior to, or as at the effective date of the Commencement Transfer Scheme.

4.3 The Authority's obligation to make any Commencement Transfer Scheme will be subject to the Authority being satisfied that all the conditions precedent set out in Appendix 1 to this Agreement:

- (a) are satisfied both on or before the Long Stop Date and remain satisfied as at the Franchise Commencement Date; or
- (b) have been waived on or before the Long Stop Date.

4.4 The Authority agrees to act reasonably in response to any request that is made by the Franchisee in accordance with clause 4.5 to transfer to it under the Commencement Transfer Scheme any further assets and/or liabilities of a Train Operator under the Previous Franchise Agreement which are required by the Franchisee to perform its obligations under the Franchise Agreement and cannot conveniently be transferred to it by other means.

4.5 Any request made pursuant to clause 4.4 shall be made in writing, submitted to the Authority on or prior to the date falling ten Weekdays prior to the Franchise Commencement Date or such lesser time period as the parties may agree between them, and specify in reasonable detail:-

- (a) the assets and/or liabilities to be transferred; and
- (b) the terms agreed as to the proposed transfer with any party affected by the proposed transfer.

4.6 Without limiting any other obligation it may have, the Franchisee agrees to enter into the Supplemental Agreement (as defined under the Previous Franchise Agreement) with the Train Operator under the Previous Franchise Agreement.

5. FEASIBILITY STUDY TO RETAIN CLASS 170 UNITS

5.1 The Franchisee shall, by 30 November 2014, deliver to the Authority a feasibility study in relation to retaining a number of class 170 units rather than class 156 units after the current lease expires in 2018 when the full EGIP Passenger Services are introduced.

5.2 The study must consider the following issues:

- (a) the feasibility of a timetable recast for the services concerned, based on the operation of class 170 units rather than class 156 units;
- (b) the feasibility of a timetable recast for the services concerned, based on the operation of a combination of class 156 and 170 units;
- (c) an assessment of any difference in costs arising from changes in mileage and/or diagram requirements;
- (d) any driver training requirements and the associated costs;
- (e) any route clearance, stepping distance, platform length, and compatibility requirements and the associated costs;

- (f) any changes to fleet maintenance arrangements in each case and any costs associated with such changes; and
- (g) any signal sighting issues arising from the change in traction.

5.3 The Franchisee shall discuss the approach to Rolling Stock with the Authority following the Rolling Stock Feasibility Study.

6. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of Scotland and the parties irrevocably agree to prorogate the exclusive jurisdiction of the Court of Session to settle any disputes which may arise out of or in connection with this Agreement, except as expressly set out in this Agreement. The jurisdiction of the Sheriff Courts in Scotland is expressly excluded by the parties.

IN WITNESS whereof the parties hereto have executed this Agreement as follows:-

Signed for and on behalf of THE SCOTTISH MINISTERS

At GLASGOW

On the 18TH day of OCTOBER 2014

By W. Reeve

William Joseph Reeve.....Name (printed)

before this witness:-

S. J. S......Witness

SARAH MARGARET BROWN.....Full Name

58 PORT DUNOAS ROAD.....Address

GLASGOW.....

Signed for and on behalf of ABELLIO SCOTRAIL LIMITED

At *Slagrow*.

On the *21* day of *October* 2014

By

..... Director

J. Heaps-Tescu..... Name (Printed)

before this witness:-

W. Kean..... Witness

MICHAEL C. KEAN..... Full Name

110 BLENHEIM CO..... Address

CAVENSHAW LG4 7ER.

THIS IS APPENDIX 1 TO THE FOREGOING CONDITIONS PRECEDENT AGREEMENT BETWEEN THE AUTHORITY AND ABELLIO SCOTRAIL LIMITED

CONDITIONS PRECEDENT

1. LICENCES

- 1.1 The Authority has received, on or before the Franchise Commencement Date, written notice from the ORR, addressed to the Authority and in a form satisfactory to the Authority, which confirms that:
 - (a) the Franchisee has been granted or will be granted the Licences listed in paragraph 1 of Appendix 2 (*List of Conditions Precedent Documents*);
 - (b) the Licences will take effect no later than the Franchise Commencement Date; and
 - (c) the ORR is not aware of any reason why any of the Licences should be revoked.
- 1.2 The Authority shall, in addition, where the Licences are not in existence at the date of signature of the Franchise Agreement, have received evidence on or before the Franchise Commencement Date in form and substance satisfactory to it, that:
 - (a) any of the Licences are not subject to any conditions which, if they had been known to the Authority before the signature of the Franchise Agreement, would, in its reasonable opinion, have resulted in the Authority not entering into the Franchise Agreement, or entering into the Franchise Agreement on materially different terms; and
 - (b) any conditions imposed by the ORR on any of the Licences are reasonably likely to be satisfied.

2. SAFETY CERTIFICATE

The Authority has received, on or before the Franchise Commencement Date, written notice from the ORR, addressed to the Authority and in a form satisfactory to the Authority, which confirms that:

- 2.1 the Franchisee's Safety Certificate has been issued;
- 2.2 the ORR has not directed any review or application for an amendment to the Safety Certificate; and
- 2.3 that no such review or application for amendment will be required as a result of the Franchise Agreement having been entered into or the commencement of the Franchise Services.

3. NETWORK AGREEMENTS

- 3.1 The Authority has received, on or before the Franchise Commencement Date, a certificate signed by the Franchisee:

- (a) identifying separately the network agreements listed in paragraph 3.2 that, in each case, enable the Franchisee throughout the Franchise Term (or, were that is not appropriate, for such lesser period as is appropriate) to perform its role and responsibilities under the Franchise Agreement; and
- (b) certifying that the Franchisee is a party or will be a party to each of them with the relevant counterparties on terms that are approved by the Authority.

3.2 The network agreements are:

- (a) the Track Access Agreement listed in paragraph 2.1 of Appendix 2 (*List of Conditions Precedent Documents*) to this Agreement;
- (b) the Access Agreements (and where relevant, associated Collateral Agreements) in agreed terms in respect of the stations, depots and Major Stations listed in paragraphs 2.2 to 2.6 (inclusive) of Appendix 2 to this Agreement;
- (c) the Connection Agreements in respect of the Depots referred to in paragraph 3.2 (d)(ii);
- (d) leases with Network Rail in respect of:
 - (i) such of the Stations as specified by the Authority pursuant to paragraph 3.1 of Appendix 2 to this Agreement;
 - (ii) such of the Depots listed in paragraph 3.2 of Appendix 2 to this Agreement as the Authority reasonably consider necessary; and
 - (iii) Major Station Areas listed in paragraph 3.3 of Appendix 2 to this Agreement;

in each case on such terms as are acceptable to the Authority, with the intention that, for the purposes of Section 31 of the Act, the properties comprised in such leases will be used for or in connection with the provision of the Franchise Services;

- (e) Station Subleases with the Caledonian Sleeper Franchisee and an Interposing Agreement with Network Rail in respect of:
 - (i) not used
 - (ii) such of the Station Areas listed in paragraph 3.5 of Appendix 2 to this Agreement;

as the Authority reasonably considers necessary and in each case on such terms as are acceptable to the Authority, with the intention that, for the purposes of Section 31 of the Act, the properties comprised in such leases will be used for or in connection with the provision of the Franchise Services; and

- (f) the additional Property Leases listed in paragraph 3.6 of Appendix 2 to this Agreement.

4. ROLLING STOCK LEASES

4.1 The Franchisee is at the Franchise Commencement Date a party to the Rolling Stock Leases and Rolling Stock Related Contracts in respect of the Train Fleet listed in Table 1 of Appendix 1 (*The Train Fleet*) to Schedule 1.1 (*Service Development*) of the Franchise Agreement (save in respect of the New Train Fleet in so far as paragraph 4.2 is satisfied), or such number of such Rolling Stock Leases and Rolling Stock Related Contracts as, in the reasonable opinion of the Authority should enable the Franchisee to meet the requirements of the Service Level Commitments, such Rolling Stock Leases and Rolling Stock Related Contracts to be on terms approved by the Authority.

4.2 The Franchisee is at the Franchise Commencement Date a party to the following agreements, on terms approved by the Authority, pursuant to Paragraph 2 of Appendix 3 (*New Train Fleets*) and such Relevant Project Agreements have been executed by all of the parties thereto:

- (a) a New Train Lease relating to each of the New Train Fleets;
- (b) a Train Services Agreement relating to each of the New Train Fleets;
- (c) a Manufacture and Supply Agreement relating to the EGIP and HLOS Rolling Stock;
- (d) the New Train Fleet Lease Direct Agreement relating to each of the New Train Fleets;
- (e) the Train Services Direct Agreement relating to each of the New Train Fleets;
- (f) the Manufacture and Supply Direct Agreement relating to the EGIP and HLOS Rolling Stock;

(together the “**Relevant Project Agreements**”)

4.3 The Franchisee has on or before the Franchise Commencement Date:-

- (a) delivered to the Authority a certified true copy of each of the executed Relevant Project Agreements for the EGIP and HLOS Rolling Stock and the Inter-city Rolling Stock to satisfy the Authority that the requirements given under section 54 of the Act are met; and
- (b) procured the execution of a Section 54 Agreement by the lessor under the New Train Lease relating to:-
 - (i) the EGIP and HLOS Rolling Stock and delivered such to the Authority, in substantially similar terms to the Section 54 Agreement in the Agreed Form; and

- (ii) the Inter-city Rolling Stock and delivered such to the Authority, in substantially similar terms to the HST Section 54 Agreement in the Agreed Form.

4.4 The Franchisee shall enter into on or before the Franchise Commencement Date:

- (a) a sub-lease with Govia Thameslink Railways Limited on terms which substantially reflect the Govia Sub-Lease Heads of Terms in the Agreed Form marked **Govia** for the five Class 170 3 car Diesel Multiple Units; and
- (b) The Guarantee side letter between European Rail Finance Limited, Govia Thameslink Railways Limited, The Go-Ahead Group plc and Keolis S.A. in the Agreed Form marked **GSL**.

5 **COMPETITION AND MERGERS**

5.1 The Authority being satisfied that the award of the ScotRail Franchise falls outside the scope of Regulation (EC) 139/2004 (“the **Regulation**”); or

5.2 The European Commission (“**Commission**”) issuing a decision under Article 6(1)(b) of the Regulation or being deemed to have done so under Article 10(6) of the Regulation, declaring that the award of the ScotRail Franchise is compatible with the common market without attaching to its decision any conditions or obligations; or

5.3 After the initiation by the Commission of proceedings pursuant to Article 6(1)(c) of the Regulation, the Commission issuing a decision declaring that the award of the ScotRail Franchise is compatible with the common market without attaching to its decision any conditions or obligations; or

5.4 Either the issuing by the Commission of a decision under Article 6(1)(b) of the Regulation or, after the initiation by the Commission of proceedings pursuant to Article 6(1)(c) of the Regulation, the issuing by the Commission of a decision in either case declaring that the award of the ScotRail Franchise is compatible with the common market subject to the fulfilment of one or more conditions or obligations which are satisfactory to the Authority; or

5.5 The relevant time periods for a decision under Article 6(1) or Article 8 of the Regulation (as the case may be) in respect of the award of the ScotRail Franchise expiring without the Commission issuing such a decision and, in the event that a request under Article 9(2) of the Regulation has been made by a Member State, the Commission indicating that it has decided not to refer the award of the ScotRail Franchise or any matter arising from it to a competent authority of such Member State under Article 9(1) of the Regulation; or

5.6 The Authority being satisfied (whether or not as a result of receiving confirmation from the Competition and Markets Authority) that the award of the ScotRail Franchise to the Franchisee does not constitute a relevant merger situation within the meaning of Part 3 of the Enterprise Act 2002; or

5.7 The Franchisee receiving confirmation that the award of the ScotRail Franchise to the Franchisee or any matter arising from it will not be referred to the Competition and

Markets Authority for investigation in accordance with Part 3 of the Enterprise Act 2002; or

- 5.8 The Franchisee receiving confirmation that the award of the ScotRail Franchise to the Franchisee will not be referred to the Competition and Markets Authority for investigation on the condition that the Franchisee gives specified undertakings to the Competition and Markets Authority in accordance with Part 3 of the Enterprise Act 2002, and the terms of those undertakings are in all respects satisfactory to the Authority and where any undertakings are to be given by the Authority, that the terms of those undertakings are in all respects satisfactory to the Authority; or
- 5.9 Following any reference of the award of the ScotRail Franchise to the Franchisee by the Competition and Markets Authority for investigation, the Competition and Markets Authority finding that the award of the ScotRail Franchise or any matter arising from it is not expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services; or
- 5.10 Following any reference of the award of the ScotRail Franchise to the Franchisee by the Competition and Markets Authority for investigation, the Competition and Markets Authority finding that the award of the ScotRail Franchise or any matter arising from it may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services, but that the acceptance of specified undertakings by the Franchisee would have the effect of remedying, mitigating or preventing that lessening of competition and the terms of such undertakings are satisfactory to the Authority; or
- 5.11 All appropriate time periods (including the extensions of such time periods) for any person to apply for a review of any decision taken by the Competition and Markets Authority under paragraphs 5.7 to 5.10 having expired or lapsed (as appropriate) without any such application for review having been made.

6. OTHER KEY CONTRACTS

The Franchisee is at the Franchise Commencement Date a party to the Key Contracts listed in paragraphs 3 to 15 of the Appendix (*List of Key Contracts*) to Schedule 14.3 (*Key Contracts*) of the Franchise Agreement to the extent that such Key Contracts are required by the Franchisee for the provision of the Franchise Services, such Key Contracts to be on terms approved by the Authority. For the avoidance of doubt, the Relevant Project Agreements shall be Key Contracts.

7. DIRECT AGREEMENTS

The counterparty of any contract which will, as at the Franchise Commencement Date, be a Key Contract (including any such contract to which the Franchisee is required under this Agreement to be a party or have vested in it as at the Franchise Commencement Date), has entered into a Direct Agreement with the Authority in respect of such Key Contract on terms acceptable to the Authority.

8. FEASIBILITY STUDY TO RETAIN CLASS 170 UNITS

The Franchisee has, by the date set out in clause 5, delivered the Rolling Stock Feasibility Study.

9. TRANSPORT, TRAVEL AND OTHER SCHEMES

The Franchisee is at the Franchise Commencement Date a party to the schemes listed in the Appendix (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*) of the Franchise Agreement.

10. FINANCIAL UNDERTAKINGS

10.1 Receipt by the Authority of evidence in a form and substance satisfactory to it that the Franchisee will comply, on and from the Franchise Commencement Date, with its obligations in respect of the financial undertakings set out in Schedule 12 (*Financial Obligations and Undertakings*) to the Franchise Agreement.

10.2 Receipt by the Authority, on or before the Franchise Commencement Date, of a certificate signed by the Franchisee certifying that:-

- (a) the Franchisee and Abellio Transport Holding BV are parties to the Term Loan entered in to between the Franchisee and Abellio Transport Holding BV;
- (b) that the provisions of the Term Loan (i) will not prevent the Franchisee from meeting its financial undertakings as set out in Schedule 12 and (ii) are supportive of its Business Plan;
- (c) any conditions attached to its draw down are satisfied or will be by the Franchise Commencement Date;
- (d) the Term Loan is constituted in such a manner that in terms of paragraph 3.1(a) of Schedule 12 no repayment will be made to Abellio Transport Holding BV during any Lock-up Period.

11 PERFORMANCE BOND AND SEASON TICKET AND SMARTCARD BOND

The Authority has received on or before the Franchise Commencement Date the Performance Bond and the Season Ticket and Smartcard Bond duly executed and delivered by the relevant Bond Provider.

12 POWER OF ATTORNEY

The Authority has received on or before the Franchise Commencement Date the Power of Attorney (in Agreed Form marked **POA**) duly executed and delivered by the Franchisee.

13. PENSIONS

The Franchisee has at the Franchise Commencement Date:

- 13.1 entered into the deeds of establishment, participation or adherence with the trustees of the Pension Trust and if any employee of the Franchisee whose employment transfers to the Franchisee from the Train Operator under the Previous Franchise Agreement is a member of any of the Closed Schemes of the Franchise Agreement) with the trustees of those Closed Schemes; and
- 13.2 taken such other steps (if any) as are required to secure compliance with the terms of paragraphs 1 to 3 (inclusive) of Schedule 16 (*Pensions*) of the Franchise Agreement (such compliance to also be from the Franchise Commencement Date).

14 CONTINUING REPRESENTATIONS AND WARRANTIES

The Authority is satisfied that no event has occurred which has or ought to have been notified to the Authority by the Franchisee under clause 3.2(b) of this Agreement (including, a change in identity of any 1 person, or 2 or more persons acting by agreement, who may Control the Franchisee as at the Franchise Commencement Date, other than as agreed with the Authority prior to the date of the Franchise Agreement) and which, if it had been known to the Authority before the signature of the Franchise Agreement, would, in its reasonable opinion, have resulted in:

- 14.1 it not entering into the Franchise Agreement with the Franchisee; or
- 14.2 it entering into the Franchise Agreement with the Franchisee on materially different terms.

15. COMMENCEMENT TRANSFER SCHEME

The Authority being reasonably satisfied:

- 15.1 that at the date on which all of the other conditions precedent listed in this Appendix 1 are first satisfied (or waived):
 - (a) any Commencement Transfer Scheme made by it pursuant to clause 4.1 of this Agreement will have the effect of transferring to the Franchisee the Required Commencement Agreements; and
 - (b) upon receipt by the Authority of evidence in a form and substance satisfactory to it, the Franchisee will enter into the Supplemental Agreement (as defined under the Previous Franchise Agreement); or
- 15.2 that the Franchisee has made appropriate alternative arrangements in order to ensure that on the Franchise Commencement Date, the Franchisee will be party to the Required Commencement Agreements.

16 TRAIN PLAN

The Authority has received on or before the Franchise Commencement Date the Train Plan for the Timetable as at that date duly delivered by the Franchisee.

17 POLICE SERVICES AGREEMENTS

The Authority has received on or before the Franchise Commencement Date, a certificate signed by the Franchisee certifying that the Franchisee is a party to a Police Services Agreement.

THIS IS APPENDIX 2 TO THE FOREGOING CONDITIONS PRECEDENT AGREEMENT BETWEEN THE AUTHORITY AND ABELLIO SCOTRAIL LIMITED

LIST OF CONDITIONS PRECEDENT DOCUMENTS

1 LICENCES

The following Licences granted to the Franchisee:

- 1.1 A passenger train operator's Licence;
- 1.2 A station operator's Licence;
- 1.3 A depot operator's Licence; and
- 1.4 A non-passenger train operator's Licence.

2 ACCESS AGREEMENTS

2.1 Track Access Agreement

Track Access Agreement(s) substantially in accordance with the interim document in the Agreed Form marked *TAA* subject to the Franchisee's further review, as supplemented by the ORR's directions (when available) and as otherwise approved by the ORR.

2.2 Station Access Agreements and Collateral Agreements in favour of the Franchisee:-

Station Access Agreements with the relevant Facility Owners and Collateral Agreements with Network Rail for such of the following Stations as the Authority reasonably consider(s) necessary and on such terms as are acceptable to the Authority and approved by the ORR:-

1. Bardon Mill
2. Brampton
3. Corbridge
4. Haltwhistle
5. Haydon Bridge
6. Hexham
7. Metro Centre
8. Newcastle
9. Prudhoe
10. Riding Mill
11. Stocksfield
12. Wetherall
13. Wylam

2.3 Depot Access Agreements in favour of the Franchisee:

Depot Access Agreements with the relevant Facility Owners for such of the following Depots as the Authority reasonably consider(s) necessary and on such terms as are acceptable to the Authority and approved by the ORR:-

1. Aberdeen Clayhills
2. Edinburgh Craighton
3. Newcastle Heaton
4. Polmadie (Glasgow)

2.4 Major Stations and Prestwick International station Access Agreements in favour of the Franchisee

1. Access Agreements with Network Rail on such terms as are acceptable to the Authority and approved by the ORR for the Major Stations; and
2. Access Agreement relating to Prestwick International station with the relevant landlord on such terms as are acceptable to the Authority and approved by the ORR.

2.5 Station Access Agreements in favour of third parties

Station Access Agreements with the relevant beneficiaries for such of the following Stations as the Authority reasonably considers(s) necessary and on such terms as are acceptable to the Authority and approved by the ORR:-

Northern Rail Limited

1. Motherwell

West Coast Trains Limited

1. Carstairs
2. Motherwell

XC Trains Limited

1. Aberdeen
2. Arbroath
3. Carstairs
4. Cupar
5. Dundee
6. Haymarket
7. Inverkeithing
8. Kirkcaldy
9. Ladybank
10. Leuchars
11. Lockerbie
12. Markinch
13. Montrose
14. Motherwell
15. Stonehaven

East Coast Main Line

Limited

1. Aberdeen
2. Arbroath
3. Aviemore
4. Blair Atholl
5. Carrbridge
6. Dunblane
7. Dundee
8. Dunkeld
9. Falkirk Grahamston
10. Gleneagles
11. Haymarket
12. Inverkeithing
13. Inverness
14. Kingussie
15. Kirkcaldy
16. Leuchars
17. Montrose
18. Motherwell
19. Newtonmore
20. Perth
21. Pitlochry
22. Stirling
23. Stonehaven

Direct Rail Services Limited

Charter station access for ad hoc use of all the Stations.

DB Schenker Rail (UK) Limited

Access to all the Stations (occasional use).

West Coast Railway Company Limited

- i. Charter station access for ad hoc use of all the Stations.
- ii. Access to Fort William, Glenfinnan and Mallaig (daily use).

Caledonian Sleeper Franchisee

1. Aberdeen
2. Arbroath
3. Ardlui
4. Arrochar & Tarbet
5. Aviemore
6. Blair Atholl
7. Bridge of Orchy
8. Carrbridge
9. Carnoustie

10. Carstairs
11. Corrour
12. Crianlarich
13. Dalmuir
14. Dalwhinnie
15. Dumbarton Central
16. Dunblane
17. Dundee
18. Dunkeld and Birnam
19. Falkirk Grahamston
20. Fort William
21. Garelochhead
22. Glasgow Queen Street Low Level
23. Gleneagles
24. Helensburgh Upper
25. Inverkeithing
26. Inverness
27. Kingussie
28. Kirkcaldy
29. Leuchars
30. Montrose
31. Motherwell
32. Newtonmore
33. Perth
34. Pitlochry
35. Rannoch
36. Roy Bridge
37. Spean Bridge
38. Stirling
39. Stonehaven
40. Tulloch
41. Upper Tyndrum

2.6 Depot Access Agreements and Collateral Agreements in favour of third parties

Depot Access Agreements and Collateral Agreements with the relevant beneficiaries on such terms as are acceptable to the Authority and approved by the ORR, and which will be transferred to the Franchisee under the Commencement Transfer Scheme, for the following Depots:-

East Coast Main Line Company Limited

1. Inverness

D B Schenker Rail (UK) Limited

1. Ayr Townhead
2. Corkerhill
3. Haymarket
4. Inverness
5. Perth
6. Shields
7. Yoker

Babcock Rail Limited	1. Ayr Townhead 2. Corkerhill 3. Haymarket 4. Perth 5. Shields 6. Yoker
First/Keolis TransPennine Holdings Limited	1. Corkerhill 2. Shields
West Coast TrainCare Limited	1. Shields
XC Trains Limited	1. Haymarket

2. Depot Access Agreement(s) in favour of the Caledonian Sleeper Franchisee

Depot Access Agreement(s) with the Caledonian Sleeper Franchisee for such of the following Depots as the Authority reasonably considers necessary and on such terms as are acceptable to the Authority and approved by the ORR:-

Inverness

3 PROPERTY LEASES

3.1 Stations

Station Leases with Network Rail for such of the Stations as the Authority reasonably considers necessary and on such terms as are acceptable to the Authority.

3.2 Depots

Depot Leases with Network Rail for such of the following Depots as the Authority reasonably consider(s) necessary and on such terms as are acceptable to the Authority:-

1. Ayr Townhead
2. Corkerhill
3. Eastfield
4. Haymarket
5. Inverness
6. Motherwell
7. Perth
8. Shields
9. Yoker

3.3 Major Station Areas

Leases with Network Rail on such terms as are acceptable to the Authority for the following areas within the Major Stations:-

1. Reception room on the concourse (part of Caledonia Centre) at Glasgow Central.
2. Crew accommodation and offices at platform 7 at Edinburgh Waverley.
3. Various small stores/bothy units on platforms at Glasgow Central.
4. Travel centre at Glasgow Central.
5. Mail room at Glasgow Central.
6. 2 x Basement stores at Glasgow Central.
7. Office premises at the entrance to platform 14 and extending beneath the exit ramp to platform 11 at Edinburgh Waverley.
8. Office premises at the entrance to platform 14 at Edinburgh Waverley.
9. Ground floor office off platform 11 at Edinburgh Waverley.
10. Cash office in the basement at Glasgow Central.
11. Caledonian Chambers 87 Union Street, Glasgow.
13. Basement, First and Second Floor of Main Office Building at Edinburgh Waverley.
14. Locker Room and Cleaner Store at Platform 11 at Edinburgh Waverley.

3.4 NOT USED

3.5 Station Areas

(a) Interposed Sub-Leases with the Caledonian Sleeper Franchisee and Interposing Agreements with Network Rail on such terms as are acceptable to the Authority for the following Stations Areas:

- (i) Business/first class passenger lounge, Aberdeen;
- (ii) Business/first class passenger lounge, Fort William;
- (iii) Business/first class passenger lounge, Inverness;

(b) Interposed Sub-Leases and/or arrangements in terms of the Station Access Agreement on such terms as are acceptable to the Authority for an Information Totem site at each of the stations listed in paragraph 2.5 hereof for the Caledonian Sleeper Franchisee.

3.6 Additional Property Leases

The following on such terms as are acceptable to the Authority:

- (a) commercial agreement with the Caledonian Sleeper Franchisee in respect of access to the First Class lounges at Aberdeen Station;

- (b) commercial agreement with the Caledonian Sleeper Franchisee in respect of access to the customer use of First Class lounges at Inverness Station;
- (c) commercial agreement with the Caledonian Sleeper Franchisee in respect of access to the customer use of First Class lounges at Edinburgh Waverley Station;
- (d) commercial agreement with the Caledonian Sleeper Franchisee to provide access to the existing customer showers at Aberdeen, Fort William and Inverness Stations;
- (e) commercial arrangement with the Caledonian Sleeper Franchisee to provide access at Perth, Dundee and Stirling Stations for the installation of showers at these stations by the Caledonian Sleeper Franchisee and thereafter to provide access to such showers;
- (f) lease or assignation of lease for Atrium Court, 50 Waterloo Street, Glasgow;
- (g) lease or assignation of lease for Fort William Call Centre; and
- (h) lease or assignation of lease for accommodation housing train simulators.

4. BRAND LICENCES

- 4.1 Exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Franchising Director and ScotRail Railways Limited in respect of certain trademarks relating exclusively to the ScotRail franchise.
- 4.2 Non-exclusive Trade Mark Licence Agreement dated 10 December 1995 between the Franchising Director and the ScotRail Railways Limited in respect of certain other trademarks not relating exclusively to the ScotRail franchise.

**THIS IS APPENDIX 3 TO THE FOREGOING CONDITIONS PRECEDENT AGREEMENT
BETWEEN THE AUTHORITY AND ABELLIO SCOTRAIL LIMITED**

NEW TRAIN FLEETS

1. APPROVAL OF SPECIFICATION

1.1 The Franchisee shall:

- (a) by no later than 15 November 2014, submit to the Authority the technical descriptions for the New Train Fleets compliant with the Franchise Agreement and the Output Requirements (each a “*Specification*”);
- (b) provide to the Authority such additional information or materials relating to each Specification as the Authority may reasonably request so as the Authority can review each Specification in respect of the compliance of the Franchise Agreement and the Output Requirements;
- (c) procure for the Authority, its authorised representatives and advisors reasonable access to the Franchisee’s consultants and advisors engaged in relation to the design and manufacture/refurbishment (as applicable) of each of the New Train Fleets, the owner of each of the New Train Fleets and the manufacturer/refurbisher (as applicable) of each of the New Train Fleets, as reasonably required by the Authority to enable it to understand and review the Specification; and
- (d) if the Authority in its reasonable opinion considers that any Specification is not compliant with the Franchise Agreement and the Output Requirements, revise the relevant Specification at no cost to the Authority and re-submit any such revised Specification to the Authority. This process shall be repeated until the Authority confirms that in its reasonable opinion the relevant Specification is compliant with the Franchise Agreement and the Output Requirements.

1.2 Subject to the Franchisee complying in a timely manner with its obligations in paragraph 1.1, the Authority shall respond to any request by the Franchisee for a response to any Specification (as originally submitted or as revised in accordance with paragraph 1.1(d)) as soon as reasonably practicable and, in any event, within 21 days of receipt of such request in respect of the relevant Specification as originally submitted or 10 days of such request in circumstances where the Specification has been revised in accordance with paragraph 1.1(d).

2. APPROVAL OF PROJECT AGREEMENTS

2.1 The Franchisee shall:

- (a) by no later than 15 November 2014, submit to the Authority for approval (such approval not to be unreasonably withheld) final drafts of each of the following agreements:
 - (i) a New Train Lease in respect of each of the New Train Fleets;

- (ii) a Train Services Agreement in respect of each of the New Train Fleets;
- (iii) a Manufacture and Supply Agreement in respect of the EGIP and HLOS Rolling Stock;
- (v) the New Train Fleet Lease Direct Agreement in respect of each of the New Train Fleets;
- (vi) the Train Services Direct Agreement in respect of each of the New Train Fleets;
- (vii) the Manufacture and Supply Direct Agreement in respect of the EGIP and HLOS Rolling Stock;

Withholding of such approval of the Relevant Project Agreements shall be limited to the following reasons:

- (A) the Authority, acting reasonably, considers that the entering into of the Relevant Project Agreements shall result in the Franchisee not being compliant with the Franchise Agreement;
- (B) the Authority, acting reasonably, considers that the Relevant Project Agreement is not in line with the Authority's stated policy objectives within the Franchise Agreement or will otherwise risk bring the Authority or the Passenger Services into disrepute;
- (C), the Authority, acting reasonably, considers that the terms would not be acceptable to an experienced owner of rolling stock or experienced rail franchisee negotiating agreements with substantially similar terms to the Relevant Project Agreements;
- (b) provide to the Authority such additional information relating to the draft Relevant Project Agreements as the Authority may reasonably request;
- (c) if any Relevant Project Agreement is not approved by the Authority pursuant to paragraph 2.1(a) above, and the Authority has notified the Franchisee of any contractual provision which the Authority has reasonable grounds to believe would fall within the reasons stated above (A) to (C) which would result in the requirements of the Franchise Agreement not being met,

use its reasonable endeavours to procure that the relevant provision is amended (or a new provision added or existing provision deleted) in accordance with the reasonable instructions of the Authority. If any of the draft Relevant Project Agreements are subject to amendment in accordance with this paragraph 2.1(c), the Franchisee shall re-submit any such draft Relevant Project Agreement to the Authority for approval as soon as practicable.

2.2 Subject to the Franchisee complying in a timely manner with its obligations in paragraph 2.1, the Authority shall respond to any request by the Franchisee for approval of the draft Relevant Project Agreements (as originally submitted or as revised in accordance with paragraph 2.1(c)) as soon as reasonably practicable and, in

any event, within 21 days of receipt of such request in respect of the Relevant Project Agreements as originally submitted or 7 days (or such longer period as the Authority and the Franchisee shall agree (both parties acting reasonably) having regard to the extent and nature of the amendments to the Relevant Project Agreements) of such request in circumstances where any of the Relevant Project Agreement have been revised in accordance with paragraph 1.1(d).

2.3 The Franchisee shall not enter into, and shall use reasonable endeavours to procure that no other party enters into, any Relevant Project Agreements, unless and until such Relevant Project Agreement has been reviewed and approved by the Authority (such approval not to be unreasonably withheld or delayed).

3. TERMINATION OF THE RELEVANT PROJECT AGREEMENTS

3.1 If any of the Relevant Project Agreements are terminated on or prior to the Long Stop Date the Franchisee shall immediately notify the Authority in writing thereof and the Franchisee shall provide to the Authority:

- (a) the Franchisee's proposal to address the termination of the Relevant Project Agreement to ensure the timely completion of the Project in accordance with the Project Plan; and
- (b) such information concerning the termination of the Relevant Project Agreement and the Franchisee's proposals to address the same, as the Authority may require.

3.2 If within one month of receipt of such information the Authority is not satisfied with the Franchisee's proposal the Authority shall notify the Franchisee and the Authority shall be entitled to terminate the Franchise Agreement in terms of clause 2.2(b)(ii) or clause 2.2(c)(ii) or clause 2.3(a) of this Agreement.

4. MONITORING AND REPORTING

4.1 The Franchisee shall between the date of this Agreement and the date on which all of the Conditions Precedent have been satisfied:

- (a) provide a written report to the Authority within 7 days of the end of each calendar month containing details of:
 - (i) the progress made by the Franchisee towards the satisfaction of the Conditions Precedent during the previous month;
 - (ii) the activities to be undertaken by the Franchisee towards the satisfaction of the Conditions Precedent during the forthcoming month; and
 - (iii) any areas of concern in relation to the Project or matters which the Franchisee considers may be likely to cause delay to the satisfaction of the Conditions Precedent, or to the Franchisee's ability to comply with its obligations under this Appendix 3 (*New Train Fleet*).
- (b) if requested by the Authority, provide to the Authority current drafts of the Specification and the Relevant Project Agreements for review; and

- (c) if required by the Authority, attend meetings with the Authority and its advisors to discuss any issues arising from the written reports provided pursuant to paragraph 4.1(a) or any draft Specification or draft Relevant Project Agreement provided pursuant to paragraph 4.1(b) and the progress of the Project generally and, if requested by the Authority, use reasonable endeavours to procure that appropriate representatives of the owner of each of the New Train Fleets and manufacturer/refurbisher (as applicable) of each of the New Train Fleets attend such meetings.

