



(1) THE SCOTTISH MINISTERS

and

(2) ABELLIO SCOTRAIL LIMITED

**SECOND AMENDMENT AGREEMENT
RELATING TO
SCOTRAIL FRANCHISE AGREEMENT**

AMENDMENT AGREEMENT

BETWEEN

- (1) **THE SCOTTISH MINISTERS** of Victoria Quay, Edinburgh, EH6 6QQ acting through Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF or such other agency, department or other organisational unit of the Scottish Executive as they may from time to time nominate (the "**Authority**"); and
- (2) **ABELLIO SCOTRAIL LIMITED** whose registered number is SC450732 and registered office is at 5th Floor, Culzean Building, 36 Renfield Street, Glasgow, G2 1LU (the "**Franchisee**").

WHEREAS

- A The Authority and the Franchisee have entered into a Franchise Agreement, Conditions Precedent Agreement, Definitions Agreement and SQUIRE Service Schedules Agreement each dated 7 and 18 October 2014 as amended by the 1st Amendment Agreement between the Authority and the Franchisee dated 30 October and 5 November 2015 (collectively the "**Franchise Agreement**").
- B The Franchise Agreement provides that the Franchisee shall procure that certain Units (as such term is defined in the Franchise Agreement) shall have controlled emission toilets fitted on or before 1 January 2020.
- C The parties now wish to amend the Franchise Agreement pursuant to paragraph 1.1(b) of Schedule 9.1 (Variations and Financial Consequences of Change) of the Franchise Agreement in the manner detailed in this Amendment Agreement.

Now therefore it is hereby agreed as follows:-

1. Interpretation

- 1.1 Except where the context otherwise requires, terms defined and references construed for the purpose of the Franchise Agreement shall have the same meanings and construction in this Amendment Agreement.
- 1.2 Unless expressly stated otherwise, where an amendment to the Franchise Agreement, the Definitions Agreement or the SQUIRE Service Schedules Agreement is set out in this Agreement that amendment shall have effect from 17 October 2015 notwithstanding the date or dates hereof (the "**Amendment Date**").

2. Amendments

The parties agree that with effect from and after the Amendment Date, the Franchise Agreement shall be amended to reflect the document attached as Appendix 1 being various extracts of the Franchise Agreement varied and amended by the deletions, additions and substitutions shown thereon.

The parties agree that with effect from and after the Amendment Date, the Definitions Agreement is amended to reflect the document attached as Appendix 2 being various extracts of the Definitions Agreement varied and amended by the deletions, additions and substitutions shown thereon.

3. Change

The parties agree that notwithstanding that this Agreement constitutes a Variation it does not constitute a Change and it shall not constitute a Change for the purposes of paragraph 4 of Schedule 9.1 of the Franchise Agreement should there be any Changes during the first Franchisee Year.

4. Payment

Notwithstanding the date of this Amendment Agreement, the parties acknowledge that the Authority has paid to the Franchisee the sum of £382,000 to fund the CET Enhancement Works to be procured by the Franchisee in accordance with this Amendment Agreement.

5. Construction

Save as provided herein, the Franchise Agreement, the Definitions Agreement and the SQUIRE Service Schedules Agreement shall continue to have full force and effect. This Agreement is supplemental to, and shall be read and construed together with, the Franchise Agreement, the Definitions Agreement and the SQUIRE Service Schedules Agreement.

6. Governing Law and Jurisdiction

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

IN WITNESS WHEREOF these presents consisting of this and the preceding one page together with Appendix one and two are executed as follows:-

Signed for and on behalf of **SCOTTISH MINISTERS**

At Buchanan House, Glasgow

On the 9th day of December 2015

By [Signature]
.....
ANDREW MACKIE Name (printed)

Before this witness:-

[Signature] Witness

.....
SARAH AITKEN Full Name

.....
BUCHANAN HOUSE Address

.....
5B, PORT PONDAS ROAD, GLASGOW

Signed for and on behalf of **ABELLIO SCOTRAIL LIMITED**

At GLASGOW

On the 20th day of NOVEMBER 2015

By [Signature] Director
.....
KENNY MCPHAIL Name (Printed)

.....
[Signature] Witness

.....
SAM PRICE Name

.....
ATRIUM COURT, Address

.....
WATERLOO STREET, GLASGOW

This is APPENDIX 1 referred to in the foregoing Amendment Agreement relating to the ScotRail Franchise Agreement between The Scottish Ministers and Abellio ScotRail Limited

- (d) advise the Authority from time to time of the results of the implementation of such Improvement Plan.

3.3 The Franchisee shall procure that in each Reporting Period, the moving annual average of the number of:

- (a) Cancellations and Partial Cancellations does not equal or exceed the Breach Performance Levels and the Default Performance Levels specified in the cells relating to each such Reporting Period in the Cancellations Benchmark Table;
- (b) Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan, does not equal or exceed the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the Capacity Benchmark Table;
- (c) PPM does not fall below (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the relevant cell relating to such Reporting Period in the PPM Benchmark Table.

The Franchisee shall use reasonable endeavours to minimise the impact of the CET Enhancement Works on the Strengthened Services where Capacity exceeds 90%, by managing the fleet to ensure that there is sufficient Rolling Stock to meet passenger demand. Where the Franchisee complies with this obligation, between 11 September 2015 and 31 March 2016, the Capacity Benchmark which relates to the Class 156 Units shall not apply.

3.4 Certain consequences of the Franchisee's performance:

- (a) not being equal to or exceeding the Breach Performance Levels relating to :
 - (i) the Cancellations Benchmark; and/or
 - (ii) the Capacity Benchmark;
 are set out in Schedule 10 (*Remedies, Termination and Expiry*);
- (b) falling below (that is, being neither equal to nor worse than) the Breach Performance Levels to the PPM Benchmark are set out in Schedule 10;
- (c) not being equal to or exceeding the Default Performance Levels relating to the Cancellations Benchmark and Capacity Benchmark are set out in Schedule 10; and
- (d) falling below (that is, being neither equal to nor worse than) the Default Performance Levels relating to the PPM Benchmark are set out in Schedule 10.

4. **Benchmark Adjustments**

4.1 If:

- (a) there is a Change to the Service Level Commitments previously in force; and

and carbon dioxide equivalent emissions and waste that went to landfill from Franchise Services).

- 5.7 The Franchisee shall ensure all New Stations or new Depots deliver, where practicable, at least an "excellent" rating using BREEAM.

Controlled emission toilets

- 5.8 The Franchisee shall procure that:

(a) where Routes and Passenger Services in Scotland prior to the Franchise Commencement Date are operated with Vehicles that have controlled emission toilets, such Routes and Passenger Services shall continue on and from the Franchise Commencement Date to be operated with Vehicles that have controlled emission toilets; ~~and~~

(b) where Routes and Passenger Services in Scotland prior to the Franchise Commencement Date are operated with Vehicles that are not fitted with controlled emission toilets, all Vehicles with toilets serving such Routes and Passenger Services shall be fitted with controlled emission toilets on or before ~~1 January 2020~~ 15 December 2017;

~~(c) on or before 22 December 2015 each of the nine Fast-Tracked Class 156 Units leased by the Franchisee from Angel Trains Limited shall have controlled emission toilets fitted. The Franchisee shall procure:~~

~~(i) that the Fast-Tracked Class 156 Units are available to Angel Trains Limited at Knorr-Bremse RailServices' Springburn Facility, on the date specified in the Agreed Form Programme;~~

~~(ii) that the CET Enhancement Works are carried out;~~

~~(iii) that the CET Enhancement Works are carried out in accordance with the Agreed Form Programme; and~~

~~(d) where the Franchisee receives CET Enhancement Works Liquidated Damages, the Franchisee shall pay this sum to the Authority within 2 Business Days of such receipt.~~

- 5.9 Pending installation of the controlled emission toilets in Vehicles the Franchisee shall procure that all Vehicles have a reliable means by which toilets are prevented from emptying whilst the Vehicle on which they are equipped is stationary within stations.

Regenerative braking

- 5.10 The Franchisee shall use regenerative braking to reduce energy consumption and CO² emissions where this is part of the standard equipment on the train and the line the train is operating on is capable of accepting regenerative output.

Energy consumption and emissions reporting

- 5.11 The Franchisee shall

(a) with such frequency as the Authority may require, but in any event monthly, report to the Authority on the energy consumption and carbon dioxide equivalent emissions of the delivery of Franchise Services and energy efficiency and environmental performance, by the provision of such information in such format as is compatible with the Authority's Carbon Management System may reasonably require. Such reports shall include:

**This is APPENDIX 2 referred to in the foregoing Amendment Agreement relating to the ScotRail
Definitions Agreement between The Scottish Ministers and Abellio ScotRail Limited**

Capacity in paragraphs 2.3 to 2.5 of Schedule 7.1 (*Train Operating Performance*) means, in respect of any train and any Formation Monitoring Point, the number of seats on such train which the Franchisee provides or (as the case may be) plans to provide under any relevant Train Plan, on such train at such Formation Monitoring Point;

Capacity Benchmark means any of the performance levels in respect of the capacity operated in delivering the Passenger Services set out in the Capacity Benchmark Table;

Capacity Benchmark Table means the table set out in Appendix 2 (*Capacity Benchmark Table*) to Schedule 7.1 (*Train Operating Performance*);

Capital Expenditure has the meaning given to it in paragraph 7.5 of Schedule 9.1 (*Variations and Financial Consequences of Change*);

Carbon Management System means a suite of tools to enable consistent, transparent and objective measurement and reporting of carbon emissions which also supports design and construction optioneering for operations and investments;

Cascade Plan means the plan for the deployment of Cascaded Units to other routes as a consequence of the introduction into service, whether on a phased basis or otherwise, of the Rolling Stock;

Cascaded Units means those diesel units displaced as a function of the electrification of the affected route or routes and the deployment into passenger service of the Rolling Stock;

Ceiling Level means the performance level designated as such and set out in paragraph 2 of each SQUIRE Service Schedule;

Central Belt means for the purposes of Schedule 5.1 (*Purpose, Structure and Construction*), those Routes within the Service Level Commitment known as Routes A1-A3, Routes C1-C6 and Routes D1-D14 in so far as on such Routes both the arrival and departure stations are not within Strathclyde;

Certificate of Commencement means the certificate to be issued by the Authority pursuant to the Conditions Precedent Agreement;

CET Enhancement Works mean the works carried out in accordance with the specifications (with references AT/MP2279 and AT/MP2285), in the Agreed Form;

CET Enhancement Works Liquidated Damages means any liquidated damages due by the contractor to Angel Trains Limited, which are thereafter passed through to the Franchisee, as a result of a delay to the agreed programme for the fitment of controlled emission toilets to the Class 156 Units with numbers: 156449, 156453, 156465, 156492, 156496, 156447, 156485, 156445, and 156495;

Strengthened Services mean the services set out the in May 2015 Train Plan with the following Train ID codes: 1J40LX, 2N63LC, 2Y57LA, 2N65LB, 1L52LG, 2N51LB, 2N56LB, 2J03LA, 2N63LB, 2J12LB, 2J16LB, 2J10LB, 2N24LX, 2J05LA, 2J13LA, 2J36LB, 1J07LX, 1A05LA, 2Y52LB, 1A22LB, 2N49LY, 1L54LG, and 2J21LB;

Suburban (East) Sector means all Passenger Services operating under the HA02 Service Group;

Suburban West Sector means together the Suburban West (Off Peak) Sector and the Suburban West (Peak) Sector;

Suburban West (Off Peak) Sector means all Off Peak Passenger Services operating under the HA06 and HA07 Service Group;

Suburban West (Peak) Sector means all Passenger Services operating under the HA06 and HA07 Service Group excepting those operating under the Suburban (West) (Off Peak) Sector;

Successor Operator means a Train Operator or Train Operators succeeding the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;

Super OFF-Peak tickets shall be interpreted in accordance with the national fares structure and public nomenclature adopted by Train Operators in 2008;

Supplemental Agreement means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (*Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions Applying on and after Termination*), but subject to such amendments as the Authority may reasonably make thereto as a result of any change of law affecting such supplemental agreement or other change of circumstances between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4;

Survey Methodology means the survey methodology in Agreed Form marked SM used pursuant to the Passenger Views Survey;

SUSTRANS means Sustrans Limited, incorporated under the Companies Acts with registered number 1797726 and having its registered office at 2 Cathedral Square, College Green, Bristol BS1 5DD;

Systems in Schedule 7.1 (*Train Operating Performance*) means the systems described in paragraph 1 of Part 2 of Appendix 4 to Schedule 7.1;