

**THE SCOTTISH MINISTERS**

**and**

**ABELLIO SCOTRAIL LIMITED**

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**SCOTRAIL FRANCHISE**

**REMEDIAL AGREEMENT**

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## AGREEMENT

between

- (1) **THE SCOTTISH MINISTERS**, 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 Government as they may from time to time nominate (who and whose successors are referred to as the "**Authority**"); and
- (2) **ABELLIO SCOTRAIL LIMITED**, incorporated and registered in Scotland under company number SC450732 and whose registered office is at 5th Floor, Culzean Building, 36 Renfield Street, Glasgow, G2 1LU (the "**Franchisee**").

## WHEREAS

- (A) The Authority appointed the Franchisee to provide railway passenger services within the ScotRail Franchise pursuant to a franchise agreement between the parties dated 7 and 18 October 2014 (the "**Franchise Agreement**").
- (B) On 24 December 2018, the Authority issued the Franchisee with a Remedial Plan Notice pursuant to Schedule 10.1 of the Franchise Agreement in relation to contraventions or likely contraventions of certain terms of the Franchise Agreement; being paragraph 1.5(a) of Schedule 1.2 of the Franchise Agreement, paragraph 3.3(a) of Schedule 7.1 of the Franchise Agreement, paragraph 1.5(b) of Schedule 1.2 of the Franchise Agreement and paragraph 3.3(c) of Schedule 7.1 of the Franchise Agreement (being defined in the Franchise Agreement as the "**Relevant Terms**"), a copy of which Remedial Plan Notice comprises Schedule 3 to this Agreement.
- (C) On 21 January 2019 the Franchisee notified the Authority that at the end of Rail Period 10 18/19 the Franchisee was in contravention of the following Benchmarks ("**the Benchmark Contraventions**"):
  - a. In respect of the Cancellations Benchmark, the Franchisee was within the Default Performance Level for the Suburban East Sector; and the Breach Performance Level for the Express Other Sector.
  - b. In respect of the PPM Benchmark, the Franchisee was within the Breach Performance Level for the Suburban East Sector (but, for the avoidance of doubt, remained above the Breach Performance Level for the Overall "All Sectors" PPM Benchmark).
- (D) On 18 February 2019 the Franchisee submitted to the Authority a Remedial Plan in respect of that Remedial Plan Notice and the Benchmark Contraventions, a copy of which Remedial Plan comprises Schedule 4 to this Agreement ("**the Remedial Plan**").
- (E) The parties wish to enter into a Remedial Agreement to document (i) the steps the Franchisee will take for the purposes of securing or facilitating compliance with the Relevant Terms and for the purposes of securing or facilitating the avoidance of occurrences of the Benchmark Contraventions in future

Reporting Periods, (ii) the steps the Franchisee will take with a view to facilitating that in future Reporting Periods during the Franchise Term the moving annual average of the number of Cancellations and Partial Cancellations for the Suburban East Sector and Express Other Sector will improve so as to be equal to or lower than the Target Performance Level specified in the Franchise Agreement, (iii) the steps the Franchisee will take with a view to facilitating that in future Reporting Periods during the Franchise Term the moving annual average of PPM for the Suburban East Sector, the Express Other Sector and the Overall "All Sectors" PPM Benchmark will improve so as to be equal to or higher than the Target Performance Levels specified in the Franchise Agreement (and/or in the case of the Overall "All Sectors" PPM Benchmark to remain so), and (iv) the time period within which such steps will be taken.

## **1 Interpretation and definitions**

- 1.1 This Agreement shall be interpreted in accordance with the Definitions Agreement as defined in the Franchise Agreement, save as the context otherwise requires.
- 1.2 The Schedules annexed and identified as relative to this Agreement form part of this Agreement.
- 1.3 This is a Remedial Agreement pursuant to paragraph 4 of Schedule 10.1 to the Franchise Agreement and is made with reference to and is supplemental to the Franchise Agreement.

## **2 Commencement and context**

- 2.1 This Agreement shall take effect and be binding upon each of the parties immediately upon signature of this Agreement (the "**Commencement Date**").
- 2.2 It is acknowledged that the Cancellations Benchmarks and the PPM Benchmarks are assessed on the basis of a moving annual average calculation and that this means that, at any given time, each Benchmark incorporates 12 months of historic performance data. These Benchmarks are therefore "lagging indicators" which will take time to reflect future period on period improvements in performance. Specifically, in the case of the Cancellations Benchmarks for Suburban East and Express Other Sectors, the very high period figures from Reporting Period 9 onwards in the financial year 2018-19 (although on a reducing trajectory) will continue to suppress the overall benchmark levels for a period of one year from the end of the relevant Period. The period trend in improvement and progress toward Target Performance Levels will therefore be closely monitored and reported during the period of implementation of this Remedial Agreement.

## **3 Term**

- 3.1 This Agreement shall expire on 30 May 2020 being the end of Reporting Period 2 in financial year 2020-21.

Having regard to the matters referred to above and the forecasts in section 6.1 of the Remedial Plan, that is the Reporting Period by the end of which it is anticipated by the Franchisee that both:

- 3.1.1 the moving annual average of the number of Cancellations and Partial Cancellations for the Suburban East Sector and Express Other Sector will improve so as to be lower than the Breach Performance Levels specified; and
- 3.1.2 the moving annual average of PPM for the Suburban East Sector and Express Other Sector will improve and as the case may be the Overall "All Sectors" PPM Benchmark will remain or have improved so as to be higher than the Breach Performance Level specified.
- 3.2 It is anticipated that when the circumstances in clauses 3.1.1 and 3.1.2 have occurred that the Franchisee will be obliged to provide an Improvement Plan pursuant to paragraph 3.2 of Schedule 7.1 of the Franchise Agreement in relation to the Cancellations Benchmarks for Suburban East Sector and Express Other Sector and the PPM Benchmark for Suburban East Sector, Express Other Sector and as the case may be the Overall "All Sectors" PPM Benchmark, setting out the plan that the Franchisee proposes to implement to ensure that its future performance meets the relevant Target Performance Levels as soon as reasonably practicable.
- 3.3 This Agreement shall terminate without need for notice on the expiry or termination of the Franchise Agreement.
- 3.4 The expiry or termination of this Agreement is without prejudice to the rights and obligations of the parties arising as a result of any antecedent breach or antecedent contravention of this Agreement and Clauses 7.1 and 7.2 shall continue to apply in respect of such antecedent breach or antecedent contravention of this Agreement; such that on the expiry of this Agreement under Clause 3.1 any antecedent failure by the Franchisee to comply with Clause 5.1 of this Agreement in respect of any of the Commitments will continue (unless and until remedied in accordance with Clause 7.2) to be a material non-compliance with this Agreement that will give rise to the Event of Default under paragraph 2.7(a) of Schedule 10.3 of the Franchise Agreement.

#### **4 Cost of compliance**

- 4.1 The Franchisee shall comply with this Agreement in accordance with its terms at its own cost.

#### **5 Commitments**

- 5.1 The Franchisee shall carry out, implement and complete each of the commitments specified in the second column of each of the tables set out in Schedule 1 to this Agreement (the "Commitments") so as to achieve completion of each Commitment as described in and within the time period specified in the corresponding entry for each Commitment within the fourth column of the relevant table set out in Schedule 1.
- 5.2 The Franchisee shall carry out its obligation in Clause 5.1 to secure or facilitate compliance with the Relevant Terms and to secure or facilitate the avoidance of occurrences of the Benchmark Contraventions in future Reporting Periods (in each case having regard to the time periods specified in Clauses 3.1 and 5.3).

5.3 The Franchisee's objectives in carrying out its obligations in Clause 5.1 include that by the end of Reporting Period 13 in financial year 2021-22:

5.3.1 the moving annual average of the number of Cancellations and Partial Cancellations for Suburban East Sector and Express Other Sector will be equal to or lower than the Target Performance Level specified in the cell relating to that Reporting Period in the Cancellations Benchmark Table; and

5.3.2 the moving annual average of PPM Benchmarks for Suburban East Sector, Express Other Sector and the Overall "All Sectors" PPM Benchmark will be equal to or higher than the Target Performance Level specified in the cells relating to that Reporting Period in the PPM Benchmark Tables.

This Clause 5.3 sets out the Franchisee's aspirations in relation to reaching the Target Performance Levels that the Franchisee is contractually committed to in terms of the Franchise Agreement and is without prejudice to the Franchisee's obligations under the Franchise Agreement.

5.4 It is acknowledged that the Franchise Agreement requires that Remedial Agreements are to be discussed at Franchise Performance Meetings but that the parties have agreed that the primary forum for discussion of the Remedial Agreement shall be the Remedial Plan Monitoring Meeting, the terms of reference and composition of which are included in Schedule 5.

5.5 The Authority may (but shall not be obliged to) monitor (whether by inspection, audit or otherwise) the Franchisee's performance of its obligations under this Agreement and the Franchisee shall co-operate fully with the Authority in relation to such monitoring.

5.6 It is agreed that the Authority and the Franchisee will review the implementation and effectiveness of the Commitments during the term of this Agreement and consider any additional or amended Commitments that should be implemented by the Franchisee in order to facilitate and achieve the objectives of this Agreement. It is acknowledged that the Authority and the Franchisee may, as a consequence of such ongoing review, supplement or vary this Agreement with additional or amended Commitments.

## **6 Effect of Remedial Agreement**

6.1 For the purposes of paragraph 1.3 of Schedule 10.2 of the Franchise Agreement the Events of Default for which the Franchisee is implementing this Agreement are those specified as such in Schedule 2 to this Agreement. Schedule 2 has been agreed having regard to sections 1 and 6.1 of the Remedial Plan, which describe respectively the anticipated scope of the Remedial Plan and the Franchisee's forecasts as to when default and breach will be exited.

## **7 Material non-compliance with Agreement**

7.1 For the purposes of paragraph 2.7(a) of Schedule 10.3 of the Franchise Agreement a failure by the Franchisee to comply with Clause 5.1 of this Agreement in respect of any of the Commitments is a material non-compliance with this Agreement.

7.2 The material non-compliances referred to in Clause 7.1 shall be capable of remedy by the Franchisee within such reasonable period for the rectification of any such material non-compliance as the Authority may specify in its discretion.

## **8 Compliance with Laws**

8.1 The Franchisee shall at all times perform its obligations under this Agreement in accordance with all applicable Laws.

## **9 Entire Agreement**

9.1 This Agreement and the Franchise Agreement contains the entire agreement between the parties in relation to the Remedial Plan Notice.

9.2 Without prejudice to the generality of Clause 9.1:

9.2.1 paragraphs 5 (Force Majeure) and 6 (Increased Monitoring) of Schedule 10.1 of the Franchise Agreement apply; and

9.2.2 paragraph 8.3 (g) of Schedule 11 of the Franchise Agreement (Franchise Performance and Review Meetings) applies.

9.3 This Agreement does not supersede the Franchise Agreement, the Definitions Agreement, the Conditions Precedent Agreement or the SQUIRE Service Schedules Agreement.

9.4 This Agreement supersedes all prior agreements and arrangements (other than the Franchise Agreement itself) among or between the parties in connection with the Remedial Plan Notice.

9.5 For the avoidance of doubt, this Agreement is without prejudice to the rights of the Authority under the Franchise Agreement to issue Remedial Plan Notices in respect of any contraventions of the Relevant Terms that occur subsequent to the contraventions in respect of which this Agreement applies.

## **10 Franchise Agreement**

10.1 Except as expressly provided for in this Agreement, the Franchise Agreement will remain unchanged and in full force and effect.

**11 Precedence**

11.1 In the event of any conflict between the terms of the Franchise Agreement and the terms of this Agreement, the terms of the Franchise Agreement shall prevail.

**12 Governing Law**

12.1 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 consisting of this and the preceding five pages and including the five Schedules on this and the following page as follows:-

SIGNED for and on behalf of THE SCOTTISH MINISTERS

At

On the                    day of                    2019

By .....

.....Name (printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....

Signed for and on behalf of ABELLIO SCOTRAIL LIMITED

At

On the            day of            2019

By

..... Director

..... Name (Printed)

Before this witness:-

..... Witness

..... Full Name

..... Address

.....



This is Schedule 1 referred to in the foregoing Agreement between Scottish Ministers and Abellio ScotRail Limited

## SCHEDULE 1 – COMMITMENTS

### Commitments principally relating to Cancellations in Suburban East Sector and Express Other Sector

	<b>Commitments</b>	<b>Remedial Plan reference(s)</b>	<b>Completion / Timescale</b>
1	Complete current driver and conductor recovery training programme in East of Scotland depots and provide updated copies of the training programme	3.1.1	All required training under recovery programme completed by 31 May 2019  Updated training programme to be provided every two weeks
2	Recruit 55 additional drivers during 2019	3.1.2	All Trainees recruited during 2019  All training completed and additional drivers available to operate services by 29 May 2020
3	Recruit 30 additional conductors during 2019	3.1.2	All Trainees recruited during 2019  All training completed and additional conductors available to operate services by July 2019
4	Develop and maintain an ongoing three-year traincrew resource plan based on future requirements in order to deliver the agreed Service Level Commitment	3.1.4	Plan for 2019-2021 to be submitted to Transport Scotland by end of May 2019 and thereafter reviewed and updated at least once per annum
5	Create a Head of Operations Strategy role within the ScotRail Operations department organisation, which role shall be responsible for maintaining the three-year traincrew resource plan referred to in commitment 4 above.	3.1.4	Role to be in place by 30 April 2019. The role shall be treated by the Franchisee as one of its Key Personnel for the purposes of Schedule 11, paragraph 2 of the Franchise Agreement
6	Develop and maintain a train-crew strategy for the remaining duration of the Franchise Term. The train-crew strategy shall be developed and maintained by the Operations Director and will be regularly reviewed and presented to the AS Board for approval.	3.1.5	Strategy to be developed and submitted to Transport Scotland by 30 April 2019. Updates thereafter to be provided not less than six-monthly.

7	Implement an improved internal programme management and governance framework for resources and timetable planning that meets (inter alia) the recommended outputs of the following recommendations from the Arup Independent Review: (4, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14)	3.1.5	Revised framework to be implemented by 30 April 2019.
8	Revise and thereafter maintain and implement Fleet Reliability Action Plans (FRAPs) for all ScotRail trains, including class 385s, maintained by Hitachi. The FRAPS shall at a minimum include the content described in section 5.7 of the Remedial Plan and the specific initiatives for individual fleets referred to in Sections 3.2.1 and 3.2.3 of the Remedial Plan	3.2.1, 3.2.3, 5.7	Updated FRAPs in new format to be submitted to Transport Scotland by 30th April 2019 and thereafter to be updated and reviewed on a four-weekly basis.
9	ASR will lease three additional classic HST trains to provide resilience and support training activity.	3.2.1	Lease of three additional classic HST trains completed, with one additional classic available for passenger service by 15 March 2019. Thereafter, fleet availability and number of units in passenger service shall be reported and monitored on a periodic basis.
10	Eight additional Hitachi train riding technicians to be recruited bringing the establishment up to 24.	3.2.2	Recruitment to be completed by 31 May 2019
11	Seven Hitachi maintenance controllers in the ScotRail integrated control centre, working alongside ScotRail and Network Rail.	3.2.2	Controllers to be in place by 31 March 2019
12	Extend the contract for hire of two locomotive hauled trains, each with a minimum of 300 seats, to provide capacity on Fife Circle peak services until May 2020, with a further option to extend to Dec 2020, in order to ensure they are available until sufficient HSTs are in service to deliver the planned cascade of class 170s to Fife routes	3.2.4	Extension to be contractualised by 31 May 2019

### Commitments principally relating to PPM

	Commitments	Remedial Plan reference(s)	Completion / Timescale
13	Recruit four additional ScotRail employees based in the Integrated Control Centre to manage incidents	5.1	In post by 31 October 2019
14	Recruit an extra three Train Running Controllers dedicated to Suburban East and Express Other sectors	5.1	In post by 31 October 2019
15	Implement new policy to be used by the Integrated Control Centre to recover from fleet failures more quickly	5.2	Policy will be in place with employee training underway by 31 March 2019
16	An additional £500k funding each Franchisee Year for Performance Improvement Fund (PIF)	5.2	Enhanced fund to be established by end of April 2019. Periodic reporting to be provided thereafter on approval and implementation of initiatives and funds committed
17	Reorganise ScotRail performance team, including modernising business processes and greater use of digital technology to improve root cause data collection and analysis	5.2	Reorganisation to be completed and report submitted to Transport Scotland summarising outcomes and improvements achieved by end of August 2019.
18	Upgraded Customer Information Screens at the following 16 stations, which includes 61 screens. This will ensure that all ScotRail stations with CIS screens have the required functionality to display future system enhancements.  ALEXANDRIA BALLOCH BURNSIDE BISHOPTON CLYDEBANK CROSSHILL CUPAR GARROWHILL LADYBANK MUIREND NEWTON PATTERTON QUEENS PARK SHETTLESTON WHITECRAIGS WILLIAMWOOD	5.2	Upgraded screens installed by 31 March 2020.
19	Complete a pilot of roving microphones at Argyle St and Glasgow Central Low-Level stations to improve information and speed of customer boarding during peaks.	5.2	Results of pilot submitted to TS by 28 June 2019. If successful, proposals will be submitted to operate system permanently and extend to Partick and Queen Street Low-Level stations

**This is Schedule 2 referred to in the foregoing Agreement between Scottish Ministers and Abellio ScotRail Limited**

#### **SCHEDULE 2 – EVENTS OF DEFAULT**

For the purposes of paragraph 1.3 of Schedule 10.2 of the Franchise Agreement, the only Events of Default for which the Franchisee is implementing this Agreement are an Event of Default under Schedule 10.3, paragraph 2.6 of the Franchise Agreement where the circumstances giving rise to that Event of Default include a contravention of the Default Performance Level for Suburban East Cancellations and/or Express Other Cancellations, which contravention or contraventions occurred in any of the Reporting Periods between (inclusive) Reporting Period 10 in financial year 2018/19 and Reporting Period 2 in financial year 2020/21.

For the purposes of paragraph 1.3 of Schedule 10.2 of the Franchise Agreement, the Franchisee is not implementing this Agreement in respect of or for any other Events of Default whatsoever.

**This is Schedule 3 referred to in the foregoing Agreement between Scottish Ministers and Abellio ScotRail Limited**

**SCHEDULE 3 – REMEDIAL PLAN NOTICE**

The attached Remedial Plan Notice is hereby incorporated into this Agreement.

<https://www.transport.gov.scot/media/43847/remedial-plan-notice-public-register.pdf>

**This is Schedule 4 referred to in the foregoing Agreement between Scottish Ministers and Abellio ScotRail Limited**

**SCHEDULE 4 – REMEDIAL PLAN**

The attached Remedial Plan is hereby incorporated into this Agreement.

[https://www.scotrail.co.uk/sites/default/files/assets/download\\_ct/train\\_service\\_performance\\_remedial\\_plan\\_redacted.pdf](https://www.scotrail.co.uk/sites/default/files/assets/download_ct/train_service_performance_remedial_plan_redacted.pdf)

**This is Schedule 5 referred to in the foregoing Agreement between Scottish Ministers and Abellio ScotRail Limited**

## **SCHEDULE 5 – REMEDIAL PLAN MONITORING MEETING**

### Purpose

To monitor and provide assurance regarding the implementation of ScotRail's Remedial Agreement in respect of Train Operating Performance.

### Composition

The regular attendees of the meeting shall include:

#### **ASR**

- Operations Director
- Head of Franchise
- Head of Performance

#### **Transport Scotland**

- Head of Franchise Management Unit
- The Authority's Franchise Manager
- Rail Performance Team Leader

### Frequency

4-weekly

### Reporting

Reporting pack format to be agreed and thereafter provided for each meeting by the Franchisee.

Minutes of the meeting (which will be taken by the Authority) and other appropriate updates will be shared with the Performance Management Group and Franchise Performance Meetings.