

SCHEDULE 2.2

THIS IS SCHEDULE 2.2 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE STRATEGIC RAIL AUTHORITY, STRATHCLYDE PASSENGER TRANSPORT EXECUTIVE AND FIRST SCOTRAIL LIMITED

Security of Access Assets, Rolling Stock Leases, Station and Depot Leases

1. NOVATION OF ACCESS AGREEMENTS DURING THE FRANCHISE TERM

1.1 The Franchisee shall, to the extent so requested by the Authority (other than on termination of this Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (*Provisions Applying on and after Termination*)) apply:

- (a) following receipt of a notice purporting to terminate or irritate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate or irritate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of a Property Lease,

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Authority or as it may direct.

1.2 Such novation shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the Regulator.

1.3 Such novation shall be on such terms as the Authority may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Authority nor its nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Authority or as it may direct, subject, to the extent applicable, to the consent of the Regulator. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Authority and, where the Access Agreement relates to facilities in the Passenger Transport Extended Area, the SPTE on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS

2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by the Franchisee to the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract or lose any rights to enforce the whole terms of any Rolling Stock Related Contract in its favour,

without, in each case, the prior written consent of the Authority (not to be unreasonably withheld) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) to the Authority and also, where the Rolling Stock Contract relates to the SPTE Train Fleet, the SPTE.

2.2 The Franchisee shall not, without the prior written consent of the Authority,

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services and to which it is a party on the Franchise Commencement Date; or
- (b) enter into any new insurance arrangements after the Franchise Commencement Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services (*new insurance arrangements*).

2.3 The Franchisee shall, in addition, if it enters into any new insurance arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which

may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

- 2.4 Where the written consent of the Authority is sought pursuant to paragraphs 2.1 or 2.2 and that consent is sought in respect of a Rolling Stock Related Contract that relates to the SPTE Train Fleet, the Authority agrees with the SPTE that in giving or withholding its consent it will consult with the SPTE and follow any reasonable direction of the SPTE. The Authority shall have no liability to the Franchisee if it withholds its consent on a direction from the SPTE.

3. ASSIGNATION OF PROPERTY LEASES DURING FRANCHISE TERM

3.1 The Franchisee shall (other than on termination of this Agreement, for which the provisions of paragraph 4.6 of Schedule 15.4 (*Provisions Applying on and after Termination*) shall apply) following receipt of a notice purporting to terminate or irritate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Authority, assign its interest under all or any Property Leases to the Authority or as it may direct, subject where applicable to the agreement of any other party to such Property Lease or the Regulator.

3.2 Such assignment shall be on such terms as the Authority may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant, undertaking or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Authority or its nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (b) that neither the Authority nor its nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2(a), and the Franchisee shall indemnify the Authority or its nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignation of such Train Operator's interest under the relevant Property Lease to the Authority or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignation.

3.4 The Franchisee shall notify the Authority on becoming aware of any circumstances which might lead to the Authority being able to require the Franchisee to assign its interest or agree to the assignation of another Train Operator's interest under this paragraph 3.

4. STATION AND DEPOT LEASES

4.1 The Franchisee shall at all times enforce its rights under each Station Lease and Depot Lease.

4.2 The Franchisee shall not:

- (a) terminate or irritate or agree to terminate or irritate in whole or in part, or take or omit to take any other action which might result in the termination or irritancy of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease;
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease; or
- (d) by any act or omission lose any of its rights to enforce those provisions of any Station Lease or Depot Lease which are in the Franchisee's favour,

except to the extent that the Authority may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Authority, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

4.3 The Authority agrees with the SPTE that it shall consult with, and obtain the consent of, the SPTE before giving its agreement pursuant to paragraph 4.2 where such agreement relates to a Station Lease in respect of an SPTE Station. The SPTE agrees with the Authority not to unreasonably withhold its consent. If the SPTE does withhold its consent then the Authority shall have no liability to the Franchisee because that consent has been withheld.

5. STATION SUBLEASES

5.1 Unless the Authority agrees otherwise, the Franchisee shall not sublet, or grant any licence or any other right equating to a right of occupancy (whether or not exclusive), to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of this Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

5.2 If so requested by the Authority, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Authority may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 5.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Authority may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

5.3 The Franchisee shall notify the Authority and, where the Station Sublease relates to a Station within the Passenger Transport Extended Area, the SPTE immediately on it becoming aware of any event which might give the Franchisee a right to surrender, irritate or terminate any Station Sublease. The Franchisee shall notify the Authority and, where the Station Sublease relates to a Station within the Passenger Transport Extended Area, the SPTE if it wishes to surrender, irritate or terminate any such Station Sublease but shall not (without the Authority's prior written consent) effect such surrender, irritancy or termination until the date which occurs 3 months after the date of such notice.

5.4 The Franchisee shall, throughout the term of any Station Sublease ensure that if does not, through any act or omission by it, lose any right to enforce any or all of the terms of that Sublease which are in the Franchisee's favour.