

SCHEDULE 8

THIS IS SCHEDULE 8 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE STRATEGIC RAIL AUTHORITY, STRATHCLYDE PASSENGER TRANSPORT EXECUTIVE AND FIRST SCOTRAIL LIMITED

Payments

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SCHEDULE 8.1

THIS IS SCHEDULE 8.1 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE STRATEGIC RAIL AUTHORITY, STRATHCLYDE PASSENGER TRANSPORT EXECUTIVE AND FIRST SCOTRAIL LIMITED

Franchise Payments

1. FRANCHISE PAYMENTS

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

$$\text{£FP} = \text{PFP} - \text{RShA} - \text{RShRA} + \text{RSuA} + \text{RSuRA} + \text{TAA} + \text{SCA}$$

where:

£FP means the Franchise Payment for that Reporting Period;

PFP means $\left(\frac{\text{RPD}}{\text{FYD}} \times \text{AFP}\right)$;

where

RPD means the number of days in that Reporting Period;

FYD is equal to 365 or, if February 29 occurs during the Franchisee Year in which that Reporting Period falls, 366; and

AFP means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Schedule 8.2 (*Annual Franchise Payments*);

RShA means the amount of any Revenue Share Adjustment to be made on that Reporting Period's Payment Date;

RShRA means the amount of any Revenue Share Reconciliation Amount to be paid on that Reporting Period's Payment Date;

RSuA means the amount of any Revenue Support Adjustment to be made on that Reporting Period's Payment Date;

RSuRA means the amount of any Revenue Support Reconciliation Amount to be paid on that Reporting Period's Payment Date;

TAA means any Track Access Adjustment to be made on that Reporting Period's Payment Date;

SCA means any Station Charge Adjustment to be made on that Reporting Period's Payment Date; and

1.2 Where a Franchisee Year starts or ends during a Reporting Period, $\text{\textsterling}FP$ and PF shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of 2 such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such Reporting Period shall be the sum of $\text{\textsterling}FP$ as determined for each such section of such Reporting Period.

1.3 The parties agree:

(a) each of $\text{\textsterling}FP$, RS_{RA} , RS_{A} , RS_{RA} , TAA and SCA may be a positive or negative number;

(b) where $\text{\textsterling}FP$ is a positive number, the Authority shall pay the Authority Share of that amount and the SPTE shall pay the SPTE Share of that amount in each case to the Franchisee on the Payment Date for that Reporting Period; and

(c) where $\text{\textsterling}FP$ is a negative number, the Franchisee shall pay to the Authority the Authority Share of the corresponding positive amount and to the SPTE the SPTE Share of the corresponding positive amount in each case on the Payment Date for that Reporting Period.

1.4 The SPTE Element of AFP shall be ascertained by the Authority in accordance with paragraphs 1.6 and 1.7 and, subject to paragraph 1.12, notified to the SPTE and the Franchisee on the Franchise Commencement Date and each anniversary of the Franchise Commencement Date.

1.5 The SPTE may refer any question as to the accuracy of the ascertainment by the Authority of the SPTE Element of AFP for resolution in accordance with paragraph 2.6.

1.6 The SPTE Element of AFP notified on the Franchise Commencement Date shall apply for the remainder of the first Franchisee Year and for the duration of the next Franchisee Year. The SPTE Element of AFP notified on any other anniversary of the Franchise Commencement Date shall apply for the duration of the next Franchisee Year.

1.7 Prior to the Franchise Commencement Date the Authority shall by notice to the Franchisee specify the SPTE Element of AFP . The Authority agrees with the SPTE that such notification shall first require the approval of the SPTE, which approval shall not be unreasonably withheld.

1.8 The SPTE Share shall be an amount equal to:

$$\Sigma (CE \times EAFP/AF)$$

where:

Σ means the sum for each of the constituent elements of £FP;

CE means, in turn, each of PFP, RShA, RShRA, RSuA, RSuRA, TAA and SCA; and

EAFP means the SPTE Element of AFP.

1.9 The Authority Share shall equal the balance of £FP after deducting the SPTE Share.

1.10 The payment obligations of the Authority and the SPTE pursuant to paragraph 1.3 are separate. Neither the Authority nor the SPTE shall have any liability to the Franchisee in respect of the performance or non-performance of the other nor shall the Franchisee be entitled to withhold from any payment to the Authority or the SPTE, as the case may be, any amount that is owing or payable by the other.

1.11 Before notifying the SPTE Element of AFP the Authority agrees with the SPTE to consult with the SPTE and to endeavour to determine the SPTE Element of AFP in a way that is fair as between the Authority and the SPTE taking account of the existing SPTE Element of AFP and the Changes that have taken place since the last determination of the SPTE Element of AFP.

1.12 The Authority shall notify the SPTE and the Franchisee of changes to the SPTE Element of AFP more often than each anniversary of the Franchise Commencement Date if the Authority reasonably believes that it is appropriate to do so in order to take account of Changes that have occurred.

1.13 The Authority and the SPTE agree with each other that the principle for determining changes to the SPTE Share following a change to the SPTE Element of AFP is that it should alter in respect of the financial consequences of any SPTE Change and/or the Change in paragraph (j) of the definition of Change and that the financial consequences of the Changes listed in (f), (h), (k), (l), (o) (but only in respect of a Variation that is not primarily directed at the Authority Services), (t) (v), (w) and (ag) should be shared (in proportion to their then sharing of the Franchise Payments or, in respect of (t), in proportion to the division of the increased access charges between Authority Stations and SPTE Stations or, in respect of (ai), on the basis of the principles established by this paragraph) by the Authority and SPTE.

1.14 The Authority and the SPTE agree with each other that where there is a Change that is not a Qualifying Change the Authority may alter the SPTE Element of AFP so that the Authority and the SPTE each get a fair share of the benefit of the Threshold Amount.

2. PAYMENT OF FRANCHISE PAYMENTS

2.1 The Authority shall notify the Franchisee, no less than 7 days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.

2.2 Each such notification shall set out in reasonable detail how the Franchise Payment, or the SPTE Share, as the case may be, has been calculated.

2.3 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.

2.4 Each Authority Share and SPTE Share of a Franchise Payment shall be payable by the Franchisee or, as the case may be, the Authority and the SPTE in the amount notified by the Authority in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.

2.5 Each Franchise Payment shall be made:

- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
- (b) so that cleared funds are received in that account on or before the due date for payment.

2.6 If any party disputes the amount of a Franchise Payment (or of the SPTE Element of AFP, the SPTE Share or the Authority Share), the dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of any party to pay a Franchise Payment (or an SPTE Share or Authority Share) notified in accordance with this paragraph 2.

2.7 If the Franchisee fails to pay any amount to the Authority or the SPTE on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:

- (a) any party has made a payment to any other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within 3 business days of the agreement or determination; or
- (b) any party has made a payment to any other party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee no later than the next day a Franchise Payment becomes payable under this Schedule 8.1 which falls not less than 7 days after such agreement or determination, or if there is no such day, 14 days after the date of such agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

3. REVENUE SHARE

Entitlement to Revenue Share Adjustments

3.1 A Revenue Share Adjustment shall be made in accordance with paragraphs 3.2, 3.3 and 5.4 in respect of any Franchisee Year if the Annual Management Accounts for that Franchisee Year disclose Revenue for that Franchisee Year as exceeding Target Revenue by more than 2 per cent for that Franchisee Year.

Amount of Revenue Share Adjustments

3.2 Each Revenue Share Adjustment in respect of any Franchisee Year, shall be determined by reference to:

- (a) the Revenue disclosed in the Annual Management Accounts for that Franchisee Year;
- (b) Target Revenue for that Franchisee Year; and
- (c) the following formula:

$$RS_{hA} = (A \times 50\%) + (B \times 80\%)$$

where:

RS_{hA} is the Revenue Share Adjustment for that Franchisee Year;

A is the amount of Revenue for that Franchisee Year which is:

- (a) greater than 102 per cent. of Target Revenue; and
- (b) less than or equal to 106 per cent. of Target Revenue; and

B is the amount of Revenue for that Franchisee Year which is greater than 106 per cent. of Target Revenue.

Revenue Share Adjustment Date

3.3 Each Revenue Share Adjustment in respect of any Franchisee Year shall be payable by the Franchisee and, subject to paragraph 5, be made to the Franchise Payment payable on the next Revenue Share Adjustment Date.

Revenue Share Reconciliation Amount

3.4 After each Franchisee Year, the Authority shall, following receipt by the Authority of the Annual Financial Statements in respect of that Franchisee Year,

calculate the Revenue Share Reconciliation Amount in accordance with paragraph 3.5.

3.5 The Authority shall calculate the Revenue Share Reconciliation Amount in accordance with the following formula:

$$RS_{h}RA = RS_{h}A_{(FS)} - RS_{h}A$$

where:

$RS_{h}RA$ is the Revenue Share Reconciliation Amount for any Franchisee Year;

$RS_{h}A_{(FS)}$ is the Revenue Share Adjustment determined in the manner set out in paragraph 3.2 but by reference to the Annual Financial Statements (instead of the Management Accounts) for that Franchisee Year; and

$RS_{h}A$ is the Revenue Share Adjustment (if any, or if there was none, nil) for that Franchisee Year determined pursuant to paragraph 3.2.

Revenue Share Reconciliation Date

3.6 Any Revenue Share Reconciliation Amount shall be payable by the Authority, the SPTE or the Franchisee (as the case may be) and, subject to paragraph 5, be applied to the Franchise Payment payable on the next Revenue Share Reconciliation Date.

4. REVENUE SUPPORT

Entitlement to Revenue Support Adjustments

4.1 A Revenue Support Adjustment shall be made in accordance with paragraphs 4.2, 4.5 to 4.7 (inclusive), and 5.4 in respect of any Reporting Period which starts after the 4th anniversary of the Franchise Commencement Date if:

- (a) subject to paragraph 4.2, the Management Accounts for that Reporting Period disclose cumulative, year to date Revenue up to the end of that Reporting Period as being less than 98 per cent of Target Revenue for that corresponding year to date period; and
- (b) within 7 days of delivery to the Authority of the Management Accounts for such Reporting Period, the Franchisee requests that a Revenue Support Adjustment be made by the Authority and the SPTE.

4.2 If any Revenue Support Adjustment is made in respect of any Reporting Period that starts during the Franchisee Year in which the 4th anniversary of the Franchise Commencement Date occurs, any such Revenue Support Adjustment shall be made by reference to:

- (a) the cumulative Revenue for the period from the first Reporting Period that starts after the 4th anniversary of the Franchise Commencement

Date up to the end of the Reporting Period in respect of which such Revenue Support Adjustment is to be made; and

- (b) the cumulative Target Revenue for those Reporting Periods.

4.3 If:

- (a) the conditions specified in paragraph 4.1 are met prior to the 4th anniversary of the Franchise Commencement Date; and
- (b) the deficit is directly attributable to one or more Force Majeure Events,

then, subject to paragraph 4.4, the Franchisee may claim a Revenue Support Adjustment in accordance with paragraph 4.1 notwithstanding the fact that the claim arises prior to the 4th anniversary of the Franchise Commencement Date.

4.4 If and to the extent that the deficit referred to in paragraph 4.3 is directly attributable to a Force Majeure Event arising as a result of industrial action (howsoever caused and of whatever nature) then the Franchisee shall not be eligible for any Revenue Support Adjustment and the provisions of paragraph 1.3 of Schedule 8.3 (*Miscellaneous Payment Provisions*) shall apply.

4.5 If a Revenue Support Adjustment is requested and made pursuant to paragraphs 4.1 to 4.3 (inclusive) in any Reporting Period in any Franchisee Year, a further Revenue Support Adjustment shall be made (whether or not requested) in accordance with paragraphs 4.6 and 4.7 in each subsequent Reporting Period that falls wholly within that Franchisee Year.

Amount of Revenue Support Adjustments

4.6 Each Revenue Support Adjustment in respect of any Reporting Period, shall be determined by reference to:

- (a) subject to paragraph 4.2, the cumulative, year to date Revenue up to the end of that Reporting Period, reported in the latest Management Accounts referred to in paragraph 4.1;
- (b) the Target Revenue for the year to date (with Target Revenue for the year being spread evenly across the year); and
- (c) the following formula:

$$RS_{nA} = RS_{nE} - PRS_{nA}$$

where:

RS_{nA} is the Revenue Support Adjustment for that Reporting Period;

RS_{nE} is the cumulative Revenue Support Adjustment entitlement for the year to date, determined by reference to the following formula:

$$RS_uE = (A \times 50\%) + (B \times 80\%)$$

where:

A is the amount by which cumulative, year to date Revenue up to the end of that Reporting Period is:

- (a) less than 98 per cent. of Target Revenue; and
- (b) equal to or greater than 94 per cent. of Target Revenue,

for the year to date; and

B is the amount by which cumulative, year to date Revenue up to the end of that Reporting Period is less than 94 per cent. of Target Revenue for the year to date; and

PRS_uA is the cumulative net Revenue Support Adjustments (if any) made in any previous Reporting Periods in the same Franchisee Year as such Reporting Period.

Revenue Support Adjustment Date

4.7 Each Revenue Support Adjustment in respect of any Reporting Period shall be payable by the Authority, the SPTE or the Franchisee (as the case may be) and, subject to paragraph 5, made to the Franchise Payment payable on the Revenue Support Adjustment Date.

Revenue Support Reconciliation Amount

4.8 After each Franchisee Year in which any Revenue Support Adjustment has been made, the Authority shall, following receipt by the Authority of the Annual Financial Statements in respect of that Franchisee Year, calculate the Revenue Support Reconciliation Amount in accordance with paragraph 4.9.

4.9 The Authority shall calculate the Revenue Support Reconciliation Amount in respect of any Franchisee Year in accordance with the following formula:

$$RS_uRA = RS_uA_{(FS)} - PRS_uA$$

where:

RS_uRA is the Revenue Support Reconciliation Amount for that Franchisee Year;

$RS_uA_{(FS)}$ is the Revenue Support Adjustment for that Franchisee Year determined in accordance with the following formula:

$$RS_uA_{(FS)} = (A \times 50\%) + (B \times 80\%)$$

Where:

A is the amount by which Revenue for that Franchisee Year as reported in the Annual Financial Statements is:

- (a) less than 98 per cent. of Target Revenue; and
 - (b) equal to or greater than 94 per cent. of Target Revenue,
- for that Franchisee Year; and

B is the amount by which Revenue for that Franchisee Year as reported in the Annual Financial Statements is less than 94 per cent of Target Revenue for that Franchisee Year; and

PRS_nA is the sum of each Revenue Support Adjustment determined pursuant to paragraph 4.6 in respect of any Reporting Period in that Franchisee Year.

Revenue Support Reconciliation Date

4.10 The Revenue Support Reconciliation Amount shall be payable by the Authority, the SPTE or the Franchisee (as the case may be) and, subject to paragraph 5, applied to the Franchise Payment payable on the Revenue Support Reconciliation Date.

Revenue Support Adjustment where Franchisee is in Contravention of its Performance Obligations

4.11 If a Revenue Support Adjustment is to be made in accordance with this paragraph 4 in circumstances where the Franchisee is performing its obligations in contravention of any Breach Performance Level, then the provisions of Schedule 15.1 (*Reletting Provisions*) and, notwithstanding that the last 12 or 13 months of the Franchise Period have not commenced at such time, the provisions of Schedule 15.2 (*Last 12 or 13 Months of Franchise Period*) shall apply.

Final Franchisee Year

Revenue Share

5.1 Any Revenue Share Adjustment and/or Revenue Share Reconciliation Amount to be made in respect of the final Franchisee Year shall be determined in accordance with paragraphs 3.2 and 3.6 respectively but shall be paid within 30 days of the Authority giving written notice to the Franchisee and the SPTE of the amount of such Revenue Share Adjustment and/or Revenue Share Reconciliation Amount.

Revenue Support

5.2 Any Revenue Support Adjustment and/or Revenue Support Reconciliation Amount which:

- (a) is to be made in respect of the final Franchisee Year; and
- (b) has not been made during the Franchise Period,

shall be determined in accordance with paragraphs 4.6 and 4.9 respectively but shall be paid within 30 days of the Authority giving written notice to the Franchisee of the amount of such Revenue Support Adjustment and/or Revenue Support Reconciliation Amount.

Annual Financial Statements

5.3 If the Franchisee fails to provide the Annual Financial Statements for the final Franchisee Year within 3 Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.7 of Schedule 13.2 (*Information*), the Authority shall be entitled (but not obliged) to determine:

- (a) any Revenue Share Adjustment in accordance with paragraph 3.2;
- (b) any Revenue Share Reconciliation Amount in accordance with paragraph 3.5;
- (c) any Revenue Support Adjustment in accordance with paragraph 4.6; and/or
- (d) any Revenue Support Reconciliation Amount in accordance with paragraph 4.9,

but by reference to any relevant information available to the Authority at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.

Target Revenue

5.4 If this Agreement terminates early, Target Revenue shall be pro-rated for the year of termination.