

SCHEDULE 10.3

THIS IS SCHEDULE 10.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE STRATEGIC RAIL AUTHORITY, STRATHCLYDE PASSENGER TRANSPORT EXECUTIVE AND FIRST SCOTRAIL LIMITED

Events of Default and Termination Event

1. PROVISIONS RELATING TO EVENTS OF DEFAULT

Contravention

1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by the Franchisee.

Notification of Event of Default

1.2 The Franchisee shall notify the Authority and the SPTE as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Authority may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Remedial Plans*) shall also apply.

2. EVENTS OF DEFAULT

Each of the following is an Event of Default:

Insolvency

- 2.1(a) **Administration:** Any step being taken by any person with a view to the administration of the Franchisee or the Parent or any Bond Provider under Part II of the Insolvency Act 1986;
- (b) **Insolvency:** Any of the Franchisee or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or a material part of (or a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
- (i) the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;

- (ii) Section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time notify in writing to the Franchisee; and
 - (iii) any of the Franchisee or the Parent or any Bond Provider shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in Section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand;
- (c) **Arrangements with Creditors:** The directors of the Franchisee or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, diligence, execution or other similar process being levied or served against any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee or the Parent or any Bond Provider ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Authority (having consulted with the SPTE) before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

unless, in the case of paragraphs 2.1(a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt and subject, in the case of any relevant event

occurring in relation to a Bond Provider where no other Event of Default has occurred and is unremedied or continuing at such time, to a period of 20 business days having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

2.2 The Franchisee failing to pay to the Authority or the SPTE any amount due under this Agreement within 28 days of the due date for such payment.

Change of Control

2.3 Without the prior consent of the Authority, a change occurring in the identity of any 1 person, or 2 or more persons acting by agreement, who may Control the Franchisee on and from the date of this Agreement and during the Franchise Term, which shall include a person, or 2 or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time and, for the purposes of this paragraph 2.3, 2 or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in Section 204(1) of the Companies Act 1985, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons. The Authority agrees with the SPTE to consult with the SPTE before giving such consent.

Revocation of Licence

2.4 Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under this Agreement.

Safety Case

2.5 The Safety Case of the Franchisee being withdrawn or terminated.

Passenger Service Performance

2.6 The Franchisee's performance in relation to any Benchmark contravenes the Default Performance Level for that Benchmark for:

- (a) any 3 consecutive Reporting Periods;
- (b) any 4 Reporting Periods within a period of 13 consecutive Reporting Periods;
or
- (c) any 5 Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

- 2.7(a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is material.
- (b) Non-compliance by the Franchisee with:

- (i) a provisional order;
- (ii) a final order;
- (iii) a penalty; or
- (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order, in each case made by the Authority under the Act.

Other Franchises

2.8 Termination, as a result of an event of default (excluding termination as a result of non-satisfaction of a condition precedent), of any other franchise agreement to which the Franchisee or an Affiliate of the Franchisee is a party.

Financial Ratios

2.9 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (*Financial Obligations and Undertakings*).

Breach of Law

- 2.10(a) It becoming unlawful for the Franchisee to provide all or a material part of the Passenger Services or to operate all or a material number of the Stations or Depots (except to the extent not required so to do under this Agreement).
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of culpable homicide, manslaughter, fraud or, in England and Wales, any other indictable criminal offence, or in Scotland, any offence tried on indictment including where either the indictment or the verdict shall include any inchoate element in each case relating directly to the provision and operation of the Franchise Services.
- (c) The Franchisee being in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) of the HSE. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

2.11 The occurrence of the following:

- (a) the Franchisee contravening to a material extent any one or more of its obligations under this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.11);
- (b) the service by the Authority on the Franchisee of a written notice specifying:

- (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee contravening such obligation or obligations again to a material extent or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Authority has specified in the notice served pursuant to paragraph 2.11(b).

The Authority agrees with the SPTE to consult with the SPTE prior to giving any such written notice.

Non-membership of Inter-Operator Schemes

2.12 The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Bonds

- 2.13(a) Any Performance Bond or Season Ticket Bond or Authority Maintenance Bond or SPTA Maintenance Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to provide to the Authority a Performance Bond which fulfils the requirements of Schedule 12 (*Financial Obligations and Undertakings*);
 - (c) A failure by the Franchisee to provide to the Authority a Season Ticket Bond which fulfils the requirements of Schedule 12;
 - (d) A failure by the Franchisee to provide to the Authority an Authority Maintenance Bond which fulfils the requirements of Schedule 12; or
 - (e) A failure by the Franchisee to provide to the SPTE, to be delivered to the SPTA, a SPTA Maintenance Bond which fulfils the requirements of Schedule 12.

Key Contracts

2.14 Termination, or the material variation, of any Key Contract except where requested (or consented to (for the purpose of paragraph 7 of Schedule 14.3 (*Key Contracts*))) by the Authority or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Authority that it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services. If the

Authority is requested to confirm that it is so reasonably satisfied, the Authority agrees with the SPTE to consult with the SPTE before confirming such satisfaction.

3. TERMINATION EVENT

The Authority may terminate this Agreement in accordance with Schedule 10.2 (*Termination and Expiry*) if any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than 6 consecutive months or for a total period of 6 months in any period of 12 consecutive months (a Termination Event).