

SCHEDULE 14.3

THIS IS SCHEDULE 14.3 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE STRATEGIC RAIL AUTHORITY, STRATHCLYDE PASSENGER TRANSPORT EXECUTIVE AND FIRST SCOTRAIL LIMITED

Key Contracts

1. KEY CONTRACTS

1.1 The provisions of this Schedule 14.3 apply to all Key Contracts from time to time.

1.2 The Key Contracts as at the date of this Agreement are set out in the Appendix (*List of Key Contracts*).

2. DESIGNATION OF KEY CONTRACTS

2.1 Where the Authority considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with this Agreement, it may make a designation pursuant to paragraph 2.2.

2.2 The Authority may at any time, by serving notice on the Franchisee, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and
- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. DE-DESIGNATION OF KEY CONTRACTS

The Authority may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. RE-DESIGNATION OF KEY CONTRACTS

The Authority may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. DIRECT AGREEMENTS

5.1 Unless the Authority otherwise agrees, or unless lawfully directed to do so by the Regulator, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Authority in respect of that prospective Key Contract, providing on a basis acceptable to the Authority, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Authority designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Authority's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Authority in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Franchisee shall pay to the Authority an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Authority under the provisions of any Direct Agreement which may be notified to the Franchisee as a result of, or in connection with:

- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. EMERGENCIES

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the Authority enters into a Direct Agreement in respect of such contracts;
- (c) shall promptly inform the Authority of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Authority may request.

7. NO AMENDMENT

The Franchisee shall not without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless lawfully directed to do so by the Regulator.

8. REPLACEMENT OF KEY CONTRACTS

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Authority in relation to such replacement contract.

9. TERMINATION OF KEY CONTRACTS

Whether or not this Agreement is continued after the Initial Expiry Date in accordance with Schedule 18 (*Franchise Continuation*), the Franchisee shall, to the extent so requested by the Authority, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3

List of Key Contracts

The following items have as at the date of this Agreement been agreed between the Authority and the Franchisee to be Key Contracts:

1. Any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner.
2. Any Property Lease including the Property Leases listed in paragraph 4 of Appendix 2 (*List of Conditions Precedent Documents*) to the Conditions Precedent Agreement.
3. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
4. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Authority or the SPTE is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*)).
5. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
6. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
7. Any contract or arrangement for the supply of spare parts or Spares.
8. Any contract or arrangement for the maintenance of track and other related infrastructure.
9. Any licences of Marks to the Franchisee.