

SCHEDULE 14.4

THIS IS SCHEDULE 14.4 REFERRED TO IN THE FOREGOING FRANCHISE AGREEMENT AMONG THE STRATEGIC RAIL AUTHORITY, STRATHCLYDE PASSENGER TRANSPORT EXECUTIVE AND FIRST SCOTRAIL LIMITED

Designation of Franchise Assets

1. FRANCHISE ASSETS

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.

1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:

- (a) any contracts of employment;
- (b) this Agreement and any Transfer Scheme or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution;
- (e) the rights and liabilities of the Franchisee under any of the Rolling Stock Leases entered into by the Franchisee on or around the date hereof (other than those with Porterbrook); and
- (f) such other property, rights and liabilities as the Franchisee and Authority may agree from time to time or as the Authority may de-designate as Franchise Assets under paragraph 10.2.

2. PRIMARY FRANCHISE ASSETS

The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed in the Appendix (*List of Primary Franchise Assets*) (which constitutes a list of Primary Franchise Assets agreed between the Authority and the Franchisee as at the date of this Agreement), on the Franchise Commencement Date;
- (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;

- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated in accordance with Schedule 14.3 (*Key Contracts*), on the date of such designation; and
- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation.

3. DESIGNATION OF ADDITIONAL PRIMARY FRANCHISE ASSETS

The Authority may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

4. DESIGNATION DURING LAST 12 MONTHS OF FRANCHISE PERIOD

If the Authority designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last 12 months of the Franchise Period then, within 28 days of such designation, the Authority may de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.

5. DESIGNATION OF KEY CONTRACTS AS PRIMARY FRANCHISE ASSETS

The Authority shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. DESIGNATION OF FARES AND DISCOUNT CARDS

The Authority may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. RIGHTS AND LIABILITIES

The Authority, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time

(including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. DISPUTES OVER DESIGNATION

8.1 The Franchisee may object in writing to the Authority to any designation pursuant to paragraph 3 or 4.

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Authority or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.

8.3 Any such objection may only be made within 28 days of a designation under paragraph 3 or 14 days of a designation under paragraph 4.

8.4 The Authority shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.

8.5 If any dispute as to any designation pursuant to paragraph 3 or 4 remains outstanding on the expiry of the Franchise Period then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. PROVISION OF INFORMATION TO AUTHORITY

9.1 The Franchisee shall provide such information as the Authority may reasonably require in order to satisfy the Authority that any Franchise Assets which are to be designated as Primary Franchise Assets after the Franchise Commencement Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Authority may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Authority within such timescale as the Authority may reasonably require.

10. DE DESIGNATION OF FRANCHISE ASSETS AND PRIMARY FRANCHISE ASSETS

10.1 The Authority and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary

Franchise Asset, and the relevant Franchise Asset shall cease to be designated upon such agreement coming into effect.

10.2 The Authority may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.

10.3 The Authority may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than 1 year prior to the expiry of the Franchise Term. In respect of those other Primary Franchise Assets the Authority shall also not exercise such right after the time that it has determined to terminate this Agreement in consequence of a Termination Event.

10.4 The Authority may from time to time agree with the Franchisee that it will not de-designate particular Primary Franchise Assets.

11. SPARES

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4

List of Primary Franchise Assets

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

- 1 Lease Agreement in respect of the leasing of 22 Class 170 3 Car Diesel Multiple Units between Porterbrook Leasing Company Limited and ScotRail Railways Limited dated 16th October 2003 in order to facilitate the transfer to a successor operator.
- 2 Maintenance Reserve Agreement in respect of 22 Class 170 3 Car Diesel Multiple Units between Porterbrook Leasing Company Limited and ScotRail Railways Limited dated 16th October 2003 in order to facilitate the transfer to a successor operator.
- 3 Collateral Agreement in respect of the leasing of 22 Class 170 3 Car Diesel Multiple Units between Porterbrook Leasing Company Limited and ScotRail Railways Limited and Bombardier Transportation (Projects) UK Limited dated 16th October 2003 in order to facilitate the transfer to a successor operator.
- 4 Lease Agreement in respect of the leasing of 7 Class 170 3 Car Diesel Multiple Units between Porterbrook Leasing Company Limited and ScotRail Railways Limited dated 16th October 2003 in order to facilitate the transfer to a successor operator.
- 5 Maintenance Reserve Agreement in respect of 7 Class 170 3 Car Diesel Multiple Units between Porterbrook Leasing Company Limited and ScotRail Railways Limited dated 16th October 2003 in order to facilitate the transfer to a successor operator.
- 6 Collateral Agreement in respect of the leasing of 7 Class 170 3 Car Diesel Multiple Units between Porterbrook Leasing Company Limited and ScotRail Railways Limited and Bombardier Transportation (Projects) UK Limited dated 16th October 2003 in order to facilitate the transfer to a successor operator.
- 7 Medium Ticket Lease between Lombard Lessors Limited and ScotRail Railways Limited , dated 20 February 2004
- 8 Leasing of Station Gating Systems Agreement between Lombard Lessors Limited, ScotRail Railways Limited and Cubic Transportation Systems Limited, dated February 2004 .
- 9 Contract for the Supply and Installation of Automatic Passenger Gating

Systems at Glasgow Queen Street, Edinburgh Haymarket and Waverley stations between ScotRail Railways Limited and Cubic Transportation Systems Limited, dated 20 February 2004

10 Contract for the maintenance and support of Station Gating Systems at Glasgow Queen Street, Edinburgh Haymarket and Edinburgh Waverley Stations, between the Franchise Operator, and Cubic Transportation Systems Limited dated 29 April 2004.

11 ticket vending machines, with the following serial numbers:

**0130024130; 0130024053; 0130024127; 0130024054; 0130024129;
0130024123; 0130024125; 0130024128; 0130024124; 0130024122;
0130024116.**

The ticket machines are located at, the date of this Agreement at the following stations: Glasgow Queen Street High Level, Edinburgh Waverley; Haymarket; Falkirk High; Polmont and Linlithgow.