

CONFORMED COPY

DATED 1st October 1996

(1) DOCKLANDS LIGHT RAILWAY LIMITED

- and -

(2) CITY GREENWICH LEWISHAM RAIL LINK plc

CONCESSION AGREEMENT

- relating to -

the Lewisham Extension
of the Docklands Light Railway

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THIS AGREEMENT is made as a Deed this 1st day of October 1996

BETWEEN

- (1) **DOCKLANDS LIGHT RAILWAY LIMITED** (Company number: 2052677) with its registered office at Operations and Maintenance Centre, PO Box 154, Castor Lane, Poplar, London E14 0DX ("DLR Limited"); and
- (2) **CITY GREENWICH LEWISHAM RAIL LINK plc** (Company number: 316 9276) with its registered office at 35 Basinghall Street London EC2V 5DB ("the Concessionaire").

WHEREAS

- (A) DLR Limited is the owner and operator of the Existing Railway.
- (B) DLR Limited wishes to extend the Existing Railway by the addition of the Lewisham Extension on the basis of the Concession.
- (C) On 26th October 1994 DLR Limited commenced a competition pursuant to the Utility Supply and Works Contract Regulations 1992 as amended by the Utilities Supply and Works Contracts (Amendment) Regulations 1993 (implementing Council Directive 90/531/EEC) and Council Directive 93/38/EEC for the award of the Concession.
- (D) As a result of the competition referred to in Recital (C) the Concessionaire has been awarded the Concession.
- (E) The Project is to proceed as a public/private sector joint venture under H.M. Government's Private Finance Initiative and DLR Limited and the Concessionaire are obliged to act within the principles of the Initiative.
- (F) The Concessionaire intends to use the Project Documents as credit support for loans to be undertaken for the financing of the Project.

NOW IT IS HEREBY AGREED as follows:-

PART I

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement (including the Recitals, Schedules and Appendices), except where the context otherwise requires, the following words and expressions shall have the meanings given to them below:-

"1993 Act"	London Docklands Railway (Lewisham) Act 1993;
"Acceptable Funding"	shall have the meaning specified in Clause 6.3.16;
"Actual Tax Rate"	shall have the meaning specified in Clause 17.10.1;
"Additional Completion Time"	shall have the meaning specified in sub-clause 6.3.4(b);
"Additional Cost"	shall have the meaning specified in sub-clause 6.3.6(b);
"Additional Land"	land and rights in respect of land, being part of the Available Land, which pursuant to Clause 14.3.1 the Concessionaire notifies DLR Limited after the date hereof are required for the Works or for the maintenance of the Lewisham Extension;
"Additional Land Schedule"	the Schedule in Part 1B of Schedule 2 containing details of the Additional Land together with the minimum notice periods required for delivery of Vacant Possession of such Additional Land;
"Additional Material Detriment Land"	land which is not the subject of a notice to treat but which is held together with a parcel of Additional Land and is land which DLR Limited is required to acquire or (subject to the Concessionaire's prior approval not to be unreasonably withheld or delayed) agrees to acquire pursuant to Section 12 of the London Transport Act 1964;
"Additional Works"	a variation (whether by addition, substitution or otherwise) in the permanent works constituting the Lewisham Extension made in accordance with the provisions of this Agreement;
"Additional Works Certificate"	the certificate to be prepared and signed by or on behalf of DLR Limited in accordance with Clause 41 containing details of Additional Works to be implemented by the Concessionaire;

"Adjusted Target Completion Date"	shall have the meaning specified in sub-clause 6.3.6(a);
"Affiliate"	<p>in relation to a company:-</p> <p>(a) any subsidiary or subsidiary undertaking of that company;</p> <p>(b) any holding company or parent undertaking of such first mentioned company;</p> <p>(c) any company which is a subsidiary or subsidiary undertaking of any such holding company or parent undertaking,</p> <p>the terms "subsidiary", "subsidiary undertaking", "holding company" and "parent undertaking" having the respective meanings ascribed to them under the Companies Acts 1985 to 1989;</p>
"Alcatel"	Alcatel (Canada) Inc. with its registered office at 1235 Ormont Drive, Weston, Ontario, Canada;
"Amended Construction Contract"	shall have the meaning specified in sub-clause 6.3.6(c);
"Ancillary Agreements"	the third party property, works, maintenance and operational agreements listed in Part 4 of Schedule 1;
"Anticipated Operating Date"	the date (being not earlier than the date shown in the Master Programme unless DLR Limited shall otherwise agree) when the Lewisham Extension would have first been Available for Service as permitted by, and in accordance with the requirements of this Agreement but for the relevant Compensation Events;
"Anticipated Usage Fees"	Usage Fees to which the Concessionaire would otherwise have been entitled (to be calculated by reference to DLR Limited's annual passenger and other relevant forecasts for the Railway current at the time that the Concessionaire's entitlement to Anticipated Usage Fees is to be ascertained (such forecasts to be discussed and agreed between the parties, or in the absence of agreement, to be subject to the Disputes Resolution Procedure) and having regard to the considerations referred to in paragraphs (A) to (D) of sub-clause 6.2.3(b)(ii)) but

	for the relevant event resulting in any reduction to such Usage Fees;
"Applicable Requirements"	the mandatory requirements of any existing or future Law, or of any licence, consent, permit, authorisation or agreement issued or entered into under any of the foregoing, or of any local authority, statutory undertaker or other competent body or authority which has jurisdiction with regard to the Works or the Project or which may be affected by the Works or the Project, in each case to the extent that the same comprise legally enforceable obligations and are applicable to the Works or the Project;
"Approved Administrative Receiver"	shall have the meaning specified in sub-clause 6.1.2(a)(i);
"Approved Administrator"	shall have the meaning specified in sub-clause 6.1.2(a);
"Approved Senior Lenders' Agent"	shall have the meaning specified in sub-clause 6.1.2(a)(ii);
"Approved Senior Lenders' Representative"	shall have the meaning specified in sub-clause 6.1.2(a)(ii);
"Approved Transferee"	shall have the meaning specified in Clause 6.1.8;
"Application for the Approval of Details"	an application for the approval of details of the Lewisham Extension as required by Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995;
"Assimilation"	shall have the meaning specified in Clause 24.1.3;
"ATC System"	the automatic train control and signalling system for the Railway following completion and Assimilation of the Lewisham ATC System Works comprising the Existing Railway ATC System and the Lewisham ATC System Installation;
"Availability"	the extent to which the Lewisham Extension is Available for Service and "Available" shall be construed accordingly;
"Availability Fee"	the fee for Availability to be calculated and paid in accordance with Clause 30 and the provisions of Part 1 of Schedule 7;

"Availability Fee Credit"	the monetary amount to be credited to the Concessionaire in respect of each Availability Period in accordance with the provisions of Part 1 of Schedule 7;
"Availability Fee Period"	the period during which the Concessionaire shall be entitled to receive Availability Fees, being at the date hereof the period commencing on the Operating Date and ending on the last day of Availability Period 129, as the same may be reduced in accordance with Clause 21.8.2 and extended in accordance with Clause 8.5.2;
"Availability Period"	during the Availability Fee Period, the periods specified as such in Appendix 1 of Part 1 of Schedule 7 and thereafter each period of four consecutive weeks throughout the Maintenance Period provided that where the Maintenance Period ends prior to the last day of a four week period the last Availability Period shall be the actual number of days between the end of the last four week period and the date of termination of the Concession. A reference in this Agreement to an Availability Period followed by a number shall be to the Availability Period having the same number in Column 1 of Appendix 1 to Part 1 of Schedule 7;
"Availability Points"	the points to be credited to and deducted from the Concessionaire during each Availability Period, in accordance with the provisions of Part 1 of Schedule 7, for the purpose of calculating the Availability Fee Credit of the Concessionaire at the end of each such Availability Period;
"Available for Service"	in a condition which means that Train Services can be run in accordance with the requirements of this Agreement;
"Available Funds"	shall have the meaning specified in Clause 6.3.16;
"Available Land"	the land and rights in respect of land to which DLR Limited is empowered to acquire title or possession pursuant to the 1993 Act subject to any relevant restrictions on such power arising by virtue of the Lewisham Acts, the Property Undertakings or the Ancillary Agreements (together with the Crown Land, the DLR Existing Land and such other land and rights in respect of land on or in which the Existing Railway is situated as DLR Limited and the Concessionaire agree shall be included within the Site or Working Areas);

"Bond Trust Deed"	the Bond Trust Deed which forms part of the Original Funding Agreements;
"Base Figure"	the number of Availability Points to be credited to the Concessionaire at the commencement of each day during an Availability Period in accordance with paragraph 2.1 of Part 1 of Schedule 7;
"CDM Regulations"	the Construction (Design and Management) Regulations 1994;
"Certificate of Entry"	an instrument to be issued by DLR Limited evidencing the provision of Vacant Possession to the Concessionaire in respect of any part of the Site or Working Areas;
"Change"	a variation (whether by addition, substitution, omission or otherwise) to the Technical Requirements including a variation in the design, quality, quantity or programme of the Works;
"Change of Law"	shall have the meaning specified in Clause 47.8;
"Charge on Shares"	the Share Mortgage which forms part of the Original Funding Agreements;
"Commencement Date"	the date on which the last of the conditions set out in Clause 4.1 is either satisfied or waived in accordance with Clause 4.3;
"Commissioning"	shall have the meaning specified in Clause 24.1.1;
"Commissioning Certificate"	the Full Commissioning Certificate, the Interim Commissioning Certificate or the Pre-Service Commissioning Certificate;
"Communication Systems"	the following systems which are to operate over the whole Railway:- <ul style="list-style-type: none"> (a) station public address system; (b) station closed circuit television system; (c) system for radio communication between the Control Centre and trains and for the control of operation and engineering activities; (d) internal telephone systems within and between stations and other operational and equipment facilities;

- (e) SCADA System;
- (f) fire detection and alarm system and passenger alarms (platforms and lifts); and
- (g) passenger information displays;

"Compensation Event"	shall have the meaning specified in Clause 47.2;
"Compensation Law"	the provisions within or incorporated into the 1993 Act or applying in respect of the exercise of the powers in or incorporated into the 1993 Act whereby compensation is payable as a result of the exercise of those powers or other applicable law whereby compensation is payable in connection with the carrying out of the Works or the acquisition of land or an interest in land or for the use of land for the Project or the Lewisham Extension;
"Complete Train Journey"	the passage of one train, which meets the requirements of paragraph 1.2 of Schedule 5, between Mudchute Station and Lewisham Station or vice versa;
"Completion Certificate"	the certificate to be issued by DLR Limited in accordance with Clause 26.2 stating that the Works have been completed in accordance with the requirements of this Agreement;
"Completion Date"	the date of issue of the Completion Certificate;
"Completion Notice"	the notice to be issued by the Concessionaire in accordance with Clause 26.1;
"Computer System"	the hardware and software comprised in the computer systems used by the Concessionaire for storing and accessing its data base of Design Data, assets and maintenance records including its CAD system of "as existing" drawings;
"Concession"	the rights granted to the Concessionaire under the Project Documents to undertake the Project;
"Concession Period"	the period from and including the Commencement Date until termination of the Concession as provided in Clause 5;
"Concessionaire"	City Greenwich Lewisham Rail Link plc, the company which is the second party hereto;

"Concessionaire's Change"	a Change required by the Concessionaire;
"Concessionaire's Change Certificate"	the certificate to be prepared by the Concessionaire and signed by or on behalf of DLR Limited pursuant to Clause 23.2 containing details of a Concessionaire's Change as it is to be implemented;
"Concessionaire Default"	any of the events specified in Clause 6.1.1;
"Concessionaire's Maintenance Proposals"	the maintenance standards, procedures and systems identified in Schedule 8 as the same may be amended from time to time as permitted by Clause 33.3;
"Concessionaire's Operational Compensation"	any Operational Compensation which results from any failure or defect in the performance of the Concessionaire's obligations under this Agreement or which arises out of the Concessionaire's performance of its maintenance obligations hereunder;
"Concessionaire's Representative"	the representative to be appointed by the Concessionaire in accordance with Clauses 12.2 and 12.3;
"Concessionaire's Works Proposals"	the drawings, specifications, data and programmes identified in Part 2 of Schedule 3 as the same may be amended from time to time either by a Concessionaire's Change or pursuant to a DLR Change;
"Concession Quality Plan"	the quality assurance procedures set out in Part 1 of Schedule 4;
"Confidential Information"	information of a technical, commercial or financial nature received from a party to this Agreement or its agents, representatives or advisers;
"Construction Contract"	the contract in the agreed form to be entered into between the Concessionaire and the Contractor in accordance with Clause 4.1;
"Construction Period"	the period from and including the Commencement Date until the Completion Date;
"Construction Practice Specification"	the code of practice governing the manner in which the Works are to be carried out in the form set out in Part 7 of Schedule 3;

"Contracted Capacity"	the capacity to be achieved by the Lewisham Extension referred to in paragraph 2.2 of the Specification;
"Contractor"	Light Rail Group Contractors, a consortium comprising: John Mowlem Construction plc in joint venture with MBK Rail Link Construction Limited and Nishimatsu Construction Limited or such other person or persons as may be appointed from time to time by the Concessionaire to carry out the Works;
"Contractors' Direct Agreement"	the agreement in the form set out in Part 2 of Schedule 1 to be entered into between DLR Limited, the Concessionaire and the Contractor;
"Contract Price"	shall have the meaning specified in Clause 6.1.8;
"Control Centre"	the central control and signalling facility for the Railway located at the Poplar depot;
"Crown Land"	the land belonging to The Crown Estate Commissioners which is the subject of the Crown Land Agreement;
"Crown Land Agreement"	the agreement dated 26th June 1996 and entered into between The Crown Estate Commissioners and DLR Limited for the grant of an easement in respect of land beneath the River Thames in the form set out in Part 7 of Schedule 1;
"Cutty Sark Completion Date"	substantial completion of the structure of Cutty Sark station as certified by the Concessionaire pursuant to the Construction Contract;
"Cutty Sark Plots"	the plots identified in the Notified Land Schedule and numbered G5, G7 (part), G8 (part), G10 (part), G11, G15 (part), G19 to 26 (inclusive) and G28 together with the plots identified in the Additional Land Schedule numbered G6, G10 (part), G12, G13, G14, G15 (part), G16, G17 and G18 in respect of which the Concessionaire has given notice to DLR Limited by 18th November 1996 of its requirements for Vacant Possession;
"Cutty Sark Slab Agreement"	the agreement in the agreed form entered into on or about the date hereof and made between the Concessionaire (1), the Contractor (2) and The Urban Regeneration Agency (3);
"Cutty Sark Slab Completion Date"	the date of substantial completion of the concrete slab forming part of the station box at Cutty

	Sark as certified by the Concessionaire pursuant to the Construction Contract;
"Data Room Information"	the information contained in or referred to in the documents made available as at 28th June 1996 in the data room established for the purposes of the award of the Concession, copies of which have been supplied to the Concessionaire and the originals of which have been lodged in the archives of DLR Limited together with the further information made available to the Concessionaire since 28th June 1996 which is identified in the schedule of further Data Room Information initialled by the parties at the date hereof for the purposes of identification;
"Debenture"	the Debenture which forms part of the Original Funding Agreements;
"Deed of Accession"	the deed in the form annexed to the Lewisham Grant Agreement;
"Deed of Novation"	shall have the meaning specified in Clause 6.1.8;
"Default Rate"	the rate of one per cent plus the Prescribed Rate;
"Delay Event"	any of the events specified in Clause 21.3;
"Design Data"	all or any plans, specifications, drawings, graphs, sketches, surveys, models and other documents prepared or to be prepared by or on behalf of the Concessionaire relating to the Works and the operation and maintenance of the Lewisham Extension;
"Designer"	W.S. Atkins Consultants Limited of Woodcote Grove, Ashley Road, Epsom, Surrey KT18 5BW or such other person or persons as may be appointed from time to time by the Concessionaire or the Contractor to design the Works;
"Detailed Design"	the detailed design for the Lewisham Extension to be developed from the Preliminary Design so as to allow construction of the Lewisham Extension in accordance with the Technical Requirements;
"Disclosed Data"	shall have the meaning specified in Clause 53.2;
"Dispute"	a dispute or difference of whatsoever nature between DLR Limited and the Concessionaire in relation to the operation or interpretation of, or

	otherwise in connection with, or arising out of this Agreement;
"Disputes Panel"	the relevant Panel to which Disputes are to be referred in accordance with the Disputes Resolution Procedure;
"Disputes Resolution Procedure"	the procedure set out in Schedule 10;
"District Valuer"	the Valuation Officer of the Valuation Office of the Inland Revenue for the land being valued;
"DLR Change"	a Change required by DLR Limited;
"DLR Change Certificate"	the certificate to be prepared and signed by or on behalf of DLR Limited pursuant to Clause 22 containing details of a DLR Change to be implemented;
"DLR Control Documents"	<p>the following documents established by DLR Limited to control access to, use of and works upon the Railway:-</p> <ul style="list-style-type: none"> (a) Trackside Safety Manual; (b) System Description for the Authorisation and Control of Works by Contractors (ESS/2101) and the procedures document referred to therein; (c) Manual of Rules and Procedures for Mainline Operations; and (d) Manual of Rules and Procedures for Control Room Operations, <p>in the form initialled by the parties at the date hereof for identification purposes as the same may be amended, modified, replaced or added to from time to time by DLR Limited and notified to the Concessionaire;</p>
"DLR Default"	any of the events specified in Clause 6.2;
"DLR Default Notice"	shall have the meaning specified in Clause 6.1.5;
"DLR Existing Land"	such land south of Crossharbour in which DLR Limited has a proprietary interest and intended to form part of the Available Land;

"DLR Facilities"	the Existing Railway and DLR Limited's rolling stock, personnel, equipment, depots and equipment storage facilities;
"DLR Force Majeure"	any event of Force Majeure affecting DLR Limited which does not prevent the Concessionaire from making the Lewisham Extension Available for Service;
"DLR/LE Side Letter"	the letter from DLR Limited to London Electricity plc and London Electricity Services Limited in the agreed form;
"DLR/Lenders Side Letter"	the letter from the Lenders' Agent to DLR Limited in the agreed form;
"DLR Limited"	Docklands Light Railway Limited, the company which is the first party hereto;
"DLR Maintenance Procedures"	the procedures for the planning, notification, authorisation, control, conduct and recording of maintenance works on the Railway set out in DLR Limited's Trackside Safety Manual and System Description for the Authorisation and Control of Works by Contractors (ESS/2101) and the procedures document referred to therein, all of which are to remain consistent with Good Industry Practice;
"DLR Noise and Vibration Policy"	the document issued by London Regional Transport in March 1989 setting out the requirements and practices for the control of noise and vibration caused by the operation of the Railway and associated mitigation measures in the form initialled by the parties at the date hereof for the purposes of identification (such document being deemed to incorporate the modified time periods and noise levels contained in those of the Undertakings that relate to the offer to third parties of noise insulation), as the same may be amended, modified, replaced or added to from time to time by DLR Limited and notified to the Concessionaire;
"DLR Representative"	the representative of DLR Limited to be appointed pursuant to Clause 12.1;
"Enabling Contract"	the contract between DLR Limited and Alcatel dated 7th July 1995 setting out the framework under which Alcatel agrees, inter alia, to undertake feasibility studies, maintenance obligations and development works in relation to the Railway and

	pursuant to which Work Package 5 and Work Package 6 have been let;
"Environment"	all gases, air, vapours, liquids, water, land, surface and sub-surface soils, rock, flora, fauna, wetlands and all other natural resources or part thereof including artificial or manmade buildings, structures or enclosures and electricity and human health;
"Environmental Laws"	all Applicable Requirements relating to or concerning the Environment;
"Equity Commitments"	unconditional commitments by all or any of the Shareholders to subscribe for share capital of the Concessionaire and/or Loan Stock;
"Excepted Hereditaments"	shall have the meaning specified in Clause 14.14.4;
"Existing Railway"	<p>the existing infrastructure and track network of the Docklands Light Railway (comprising the stations, Integrated Systems, Control Centre, maintenance depots and supporting infrastructure) to which the Lewisham Extension is to connect extending at the date of this Agreement at its southern most point to the existing Island Gardens Station and, following closure of the existing spur south of Crossharbour Station, extending to the point at which the existing infrastructure and track network is to be tied into the Works. For the avoidance of doubt the Existing Railway shall not include:-</p> <ul style="list-style-type: none"> (a) any components or systems installed by the Concessionaire as part of the Works within the curtilage of the Existing Railway; or (b) such parts of the existing infrastructure as are to be substituted or replaced by the Lewisham Extension;
"Existing Railway ATC System"	the automatic train control and signalling system for the Existing Railway based upon and incorporating Second Generation VCC Technology which Technology is currently being installed pursuant to Work Package 5;
"Existing Target Completion Date"	shall have the meaning specified in Clause 6.3.16;
"Expected Tax Rate"	shall have the meaning specified in Clause 17.10.1;

"Fare Agreements"	the agreements from time to time between DLR Limited, British Railways Board (and successor train operators), London Underground Limited and the operators of bus services in the Greater London area relating to the Through Ticketing, Travelcard and Exchange of Staff Travel Facilities arrangements;
"Fee Panel"	the panel to be established in accordance with Clause 30.4;
"Fees"	Availability Fees, Usage Fees and Guaranteed Fees or, as the context may require, any of them;
"FM Commencement Date"	shall have the meaning specified in Clause 6.3.16;
"FM Railway"	shall have the meaning specified in Clause 6.3.16;
"Force Majeure"	shall have the meaning specified in Clause 8.1;
"Full Commissioning Certificate"	the certificate to be issued by DLR Limited in accordance with Clause 25 evidencing the completion of a Full System Performance Demonstration;
"Full System Performance Lewisham Demonstration"	a demonstration of the performance of the Extension satisfying the requirements of Part 1 of Schedule 5;
"Funding Agreements"	the Original Funding Agreements and any amendments to such agreements or any further agreements made or entered into by the Concessionaire in relation to the rescheduling of its indebtedness or refinancing the Project as permitted by Clause 46.2;
"Further Amendments"	shall have the meaning specified in sub-clause 6.3.6(e);
"Good Industry Practice"	the exercise of that degree of skill, diligence, prudence, foresight and practice which would ordinarily be expected:- <ul style="list-style-type: none"> (a) in the case of the Concessionaire, of a skilled and experienced contractor and railway engineer engaged in the same industry as the Concessionaire; and (b) in the case of DLR Limited, of a skilled and experienced light railway operator;

"Government Support Letter"	a letter in the form set out in Part 6 of Schedule 1 addressed to the Concessionaire and executed by or on behalf of the Secretary of State for the Environment;
"Grant Milestone"	shall have the meaning specified in Clause 46.3.6;
"Guaranteed Amount"	an amount appearing in Column 5 of Appendix 1 of Part 1 of Schedule 7;
"Guaranteed Fee"	the fee payable in accordance with Clause 30.6;
"Hazardous Substances"	any substance, including a component thereof, or any preparation or component thereof containing such a substance, which:- <ul style="list-style-type: none"> (a) would cause harm to or have a deleterious effect on the Environment or the presence of which has to be notified by virtue of an Applicable Requirement to a regulatory authority either particularly or generally or which restricts or makes more costly the use or ownership or occupation of the Site or the Working Areas; or (b) is categorised or listed under any Environmental Laws as being prescribed or prohibited or restricted or as requiring precautions to be taken in the use or keeping thereof;
"HMRI"	Her Majesty's Railway Inspectorate and any body or bodies which succeed to its statutory functions;
"HSE"	the Health and Safety Executive and any body or bodies which succeed to its statutory functions;
"Immediately Effective Clauses"	Clauses 1, 2, 4, 7, 13, 49 and 52 to 56 (inclusive);
"Incentive Payment"	an amount calculated in accordance with paragraph 1.2 of Part 2 of Schedule 7;
"Independent Technical Adviser"	shall have the meaning specified in Clause 6.3.16;
"Inflated Termination Payment"	shall have the meaning specified in Clause 6.3.16;
"Infrastructure Certificate"	the certificate to be issued by DLR Limited in accordance with Clause 24.6 evidencing that the Works are Physically Complete;

"Infrastructure Controller"	the Infrastructure Controller of the Railway for the purposes of the Railway (Safety Case) Regulations 1994;
"Integrated Systems"	the ATC System, the Power Supply System and the Communication Systems;
"Integration"	shall have the meaning specified in Clause 24.1.2;
"Intellectual Property"	all current and future registered or unregistered trademarks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unregistered designs, inventions, confidential information, know-how or other intellectual property subsisting in or relating to the Design Data and/or the Works;
"Intercreditor Deed"	the Security Trust and Intercreditor Deed which forms part of the Original Funding Agreements;
"Interface Events"	those events within the Works Programme which require the involvement of DLR Limited as specified in Part 9 of Schedule 3;
"Interface Information"	technical information (including design information and specifications but excluding information of a commercial or financial nature) relating to the Existing Railway;
"Interim Commissioning Certificate"	the certificate to be issued by DLR Limited in accordance with Clause 26.4 evidencing the completion of an Interim System Performance Demonstration;
"Interim System Performance Demonstration"	a demonstration of the performance of the Lewisham Extension satisfying the requirements of Part 2 of Schedule 5;
"Invitation to Tender"	the Invitation to Tender issued by DLR Limited on 31st March 1995 inviting pre-qualified bidders to submit tenders for the award of the Concession;
"Junior Lenders"	any person, other than the Senior Lenders, who provides loan and/or credit facilities to the Concessionaire including, without limitation:- <ul style="list-style-type: none"> (a) the Mezzanine Lenders; (b) the Loan Stockholders; and (c) the Sponsors and their Affiliates;

"Junior Lenders' Entitlement"	shall have the meaning specified in paragraph 3 of Section C of Part 5 of Schedule 1;
"Land and Works Costs"	Land Compensation and/or Works Compensation;
"Land Compensation"	all amounts properly paid or payable to third parties under Compensation Law for the value of land or an interest in land taken, disturbance (including compensation in consequence of dispossession or displacement from land and including amounts payable pursuant to Sections 28, 37(5) and 43 of the Land Compensation Act 1973) severance or injurious affection and amounts payable by way of Material Detriment Compensation or other compensation in connection with the service of a notice required by Compensation Law and also including allowable professional fees, (including those of the Agent appointed pursuant to Clause 14.7.1), stamp duty, land registration fees and conveyancing costs in respect of the acquisition of land or an interest in land or for use of land for the Site or the Working Areas (whether pursuant to a purchase by compulsion or private treaty or otherwise) and including statutory or agreed interest, but excluding Works Compensation, Operational Compensation, any costs of the District Valuer, any conveyancing costs incurred by DLR Limited and any amounts paid or payable in connection with the acquisition of further land pursuant to Clause 14.11 and any costs however arising in relation to the acquisition of the Cutty Sark Plots;
"Law"	any law, statute, regulation, directive, resolution, statutory instrument, byelaw or other legislative instrument of the United Kingdom or European Community;
"LE Agreements"	means the LE Master Agreement, the LE Distribution Agreement and the following documents, each in the agreed form, as defined in the LE Master Agreement:- <ul style="list-style-type: none"> (a) the Asset Transfer Agreement; (b) the Cables Lease; (c) the Deed of Surrender; (d) the Internal Sub-Station Lease;

	(e) the LE-Lenders Direct Agreement;
	(f) the Pits and Ducts Lease; and
	(g) the Stand-alone Sub-Station Lease;
"LE Distribution Agreement"	means the Distribution Agreement in the agreed form as defined in the LE Master Agreement;
"LE's Entitlement"	shall have the meaning specified in paragraph 4 of Section C of Part 5 of Schedule 1;
"LE Master Agreement"	the Master Agreement in the agreed form between (1) the Concessionaire, (2) London Electricity plc and (3) London Electricity Services Limited relating to the systems used for distributing electricity to the Lewisham Extension;
"Lease"	a lease of the Site or of part of the Site in the agreed form set out in Part 2 of Schedule 2;
"Lenders"	the Senior Lenders and the Junior Lenders;
"Lenders' Agent"	the Security Trustee as defined in the Intercreditor Deed;
"Lewisham Acts"	the 1993 Act and the No.2 Act;
"Lewisham ATC System Installation"	the items of equipment and embedded software to be installed on or in respect of the Lewisham Extension pursuant to the Lewisham ATC System Contract;
"Lewisham ATC System Works"	all works required to extend the Existing Railway ATC System to control the operation of Train Services on the Lewisham Extension in accordance with the requirements of this Agreement;
"Lewisham ATC System Contract"	the contract in the agreed form to be entered into between John Mowlem Construction plc and Alcatel for the design and installation of the Lewisham ATC System Works, other than those components of the Lewisham ATC System Works that are to be carried out by Alcatel on behalf of DLR Limited pursuant to Work Package 6;
"Lewisham ATC System Maintenance Contract"	the contract in the agreed form to be entered into between the Concessionaire and Alcatel in relation to the maintenance of the Lewisham ATC System Installation;

"Lewisham Extension"	the permanent works constituting the extension of the Existing Railway from the Isle of Dogs, in the docklands area of East London, under the River Thames to Greenwich and Lewisham, to be designed, constructed, integrated, commissioned, tested and completed in accordance with this Agreement as provisionally shown on the plans contained in the Concessionaire's Works Proposals as at the date hereof and as will definitively be shown on the comparable plans of the completed Works to be agreed by the parties within 90 days after the issue of the Infrastructure Certificate;
"Lewisham Grant Agreement"	the agreement in the agreed form between the London Borough of Lewisham and DLR Limited;
"Lewisham Grant Side Letter"	the letter in the agreed form from DLR Limited to the Concessionaire addressing certain matters relating to the Lewisham Grant Agreement;
"LFCDA"	London Fire and Civil Defence Authority and any body or bodies succeeding to its statutory functions;
"Loan Stockholders"	the holders for the time being of the Loan Stock;
"Loan Stock"	each of the convertible redeemable unsecured loan stocks of the Concessionaire constituted by each of the Loan Stock Instruments;
"Loan Stock Instruments"	the Original Loan Stock Instruments and any amendments to such Deed or any further deed made or entered into by the Concessionaire providing for loan stock ranking in point of security pari passu with or after the Loan Stock constituted by the Original Loan Stock Instruments in relation to the rescheduling of its indebtedness or refinancing the Project as permitted by Clause 46.2;
"London Building Acts"	the London Building Acts 1930 to 1939 and the Building Act 1984;
"Maintenance Period"	the period from and including the earlier of the Operating Date and the Completion Date until termination of the Concession;
"Maintenance Programme"	the annual maintenance programme to be prepared in accordance with Clause 36.3;
"Maintenance Quality Plan"	the quality assurance procedures set out in Part 3 of Schedule 4;

"Major Relevant FM Event"	shall have the meaning specified in Clause 6.3.16;
"Mandatory Requirements"	shall have the meaning specified in Clause 36.4;
"Master Programme"	the programme contained in Part 3 of Schedule 3;
"Material Detriment Compensation"	all amounts payable and costs incurred in respect of the acquisition of Additional Material Detriment Land or Notified Material Detriment Land but excluding any sums payable by way of Works Compensation or Operational Compensation;
"Metering System"	the Supply Metering System and the Traction Metering System;
"Mezzanine Facility Agreements"	the Original Mezzanine Facility Agreements and any amendments to such Agreements or any further agreements made or entered into by the Concessionaire providing for loan or credit facilities ranking in point of security pari passu with or after the facilities made available under the Original Mezzanine Facility Agreements in relation to the rescheduling of its indebtedness or refinancing the Project as permitted by Clause 46.2;
"Mezzanine Lenders"	London Electricity plc and Mitsui & Co. UK PLC;
"Minimum Availability Point Amount"	£10 (ten pounds) (real) per Availability Point which amount shall be subject to adjustment in accordance with Clause 2.13 on each anniversary of the date of this Agreement;
"Minor Outstanding Items"	shall have the meaning specified in Clause 24.1.4;
"Neighbouring Land"	land outside the Site and the Working Areas but anticipated in the reasonable opinion of the Concessionaire to be affected by the Works or the operation of the Lewisham Extension and which in any event includes land in respect of which obligations are contained in the Undertakings;
"No. 2 Act"	London Docklands Railway (Lewisham) (No.2) Act 1993;
"Notified Land"	such of the Available Land which the Concessionaire has by the date hereof notified DLR Limited is required for the Works or for the maintenance of the Lewisham Extension as specified in Columns 1 and 2 of the Notified Land Schedule;

"Notified Land Schedule"	the Schedule in Part 1A of Schedule 2 containing details of the Notified Land together with the dates for service of statutory notices and delivery of Vacant Possession in relation to such Notified Land;
"Notified Material Detriment Land"	land which is not the subject of a notice to treat but which is held together with a parcel of Notified Land and is land which DLR Limited is required to acquire or (subject to the Concessionaire's prior approval not to be unreasonably withheld or delayed) agrees to acquire pursuant to Section 12 of the London Transport Act 1964;
"Operating Date"	<p>the earliest to occur of:-</p> <ul style="list-style-type: none"> (a) the date 42 days after service of an Operating Notice; (b) the date specified by DLR Limited in the Full Commissioning Certificate; (c) the date specified by DLR Limited in the Interim Commissioning Certificate; and (d) the date specified by DLR Limited in the Pre-Service Commissioning Certificate;
"Operating Notice"	a notice from DLR Limited to the Concessionaire pursuant to Clause 26.3 requiring the Lewisham Extension to be made available for Train Services prior to the issue of the Completion Certificate;
"Operational Compensation"	all amounts properly payable to third parties whether under Part 1 of the Land Compensation Act 1973, Section 11 of the London Transport Act 1963 or any applicable statutory modification or re enactment thereof and all amounts payable to third parties in respect of nuisance which amounts are payable for claims arising out of the operation of the Railway and including any statutory or agreed interest but excluding amounts payable as Land Compensation or Works Compensation;
"Operational Response"	the initial response activities described in Clause 34.1;
"Original Funding Agreements"	the agreements listed in Sections A and B of Part 5 of Schedule 1 to be entered into by the Concessionaire in relation to the financing of the

	Project in accordance with Clause 4.1, in each case in the agreed form;
"Original Loan Stock Instruments"	the Loan Stock Instruments which form part of the Original Funding Agreements;
"Original Mezzanine Facility"	the Mezzanine Facility Agreements listed in Section Agreements"B of Part 5 of Schedule 1;
"Permitted Security"	the Security Interests that the Concessionaire is permitted to grant in relation to the Concession pursuant to Clause 49 together with any liens that arise by operation of law;
"Physically Complete"	shall have the meaning specified in Clause 24.1.5;
"Planning Obligation"	a planning obligation entered into pursuant to Section 106 of the Town and Country Planning Act 1990;
"Possession"	possession of any part of the Railway for maintenance and/or repair purposes which prevents, impairs or otherwise affects the ability of Train Services to operate on all or part of the Railway;
"Possession Period"	the duration of a Possession;
"Power Supply System"	the connection, transmission and conduction equipment to be installed by the Concessionaire on the Lewisham Extension side of the Supply Metering System in accordance with the Concessionaire's Works Proposals for the purpose of supplying electricity to the Lewisham Extension;
"Preliminary Additional Works Instruction"	notice of potential Additional Works to be served pursuant to Clause 41.1;
"Preliminary Change Instruction"	notice of a potential DLR Change to be served pursuant to Clause 22.1;
"Preliminary Design"	the preliminary design for the Lewisham Extension shown in the Concessionaire's Works Proposals;
"Prescribed Rate"	the rate of one per cent plus London Interbank Offered Rate for deposits in Sterling for a three month period which appears on the page on the Reuter Monitor Money Rate Services displaying such rate at 11.00 a.m. on the due date for the payment in question;

"Pre-Service Commissioning Certificate"	the certificate to be issued by DLR Limited in accordance with Clause 25 evidencing the completion of a Pre-Service System Performance Demonstration;
"Pre-Service System Performance Demonstration"	a demonstration of the performance of the Lewisham Extension satisfying the requirements of Part 3 of Schedule 5;
"Project"	the activities referred to in Clause 3.1;
"Project Documents"	this Agreement, the Transfer Order, the Lease, each Supplemental Lease, the Contractors' Direct Agreement, the Lewisham Grant Agreement and the Ancillary Agreements;
"Property Undertakings"	<p>the undertakings and letters of assurance relating to:-</p> <p>(a) the acquisition of land or rights in respect of land given to petitioners, prospective petitioners, other interested persons or Parliament in connection with the passage of the Lewisham Acts; or</p> <p>(b) the exercise or prospective exercise of the powers in the Lewisham Acts relating to the acquisition of land or rights in respect of land,</p> <p>full details of which have been made available in the Data Room Information;</p>
"Protestor Action"	shall have the meaning specified in Clause 21.3;
"Qualifying Funding Agreements"	the Qualifying Original Funding Agreements and any amendments to such agreements or any further agreements made or entered into by the Concessionaire in relation to the rescheduling of its indebtedness or refinancing the Project as permitted by Clause 46.2;
"Qualifying Original Funding Agreements"	the Original Funding Agreements listed "Agreements" in Section A of Part 5 of Schedule 1;
"Quality Plans"	the Concession Quality Plan, the Works Quality Plan and the Maintenance Quality Plan;
"Railway"	the Existing Railway, the Lewisham Extension and any further extensions or modifications thereto;
"Railways Act Exemption"	exemption from:-

- (a) the requirements for a licence under Section 8 of the Railways Act 1993 granted by the Secretary of State for Transport or the Rail Regulator pursuant to Section 7 of such Act;
- (b) directions for entering into access contracts under Section 17 of the Railways Act 1993 and from the requirement for approval to access contracts under Section 18 of the Railways Act 1993 granted by the Secretary of State for Transport or the Rail Regulator under Section 20 of the Railways Act 1993; and
- (c) designation as eligible for franchise agreement under Section 23 of the Railways Act 1993 granted by the Secretary of State for Transport under Section 24 of the Railways Act 1993;

"Railway Hereditaments"	shall have the meaning specified in Clause 14.14.1;
"Relevant Authorities"	those public and private sector bodies and authorities whose authority, consent or agreement is or may be required for the carrying out of all or part of the Project;
"Relevant FM Event"	shall have the meaning specified in Clause 6.3.16;
"Relevant Period"	for the purposes of sub-clause 6.1.2(a) shall have the meaning specified in Clause 6.1.8;
"Relevant Planning Authority"	the authority charged with responsibility for receiving or determining an Application for Approval of Details at the time of its submission;
"RPI"	the general retail price index (all items) published by the Central Statistical Office or, if such index is not published for any reason, such other comparable index as the parties may agree or, failing such agreement, as may be determined in accordance with the Disputes Resolution Procedure;
"Safety Case"	the safety case for the Lewisham Extension to be submitted for approval by HMRI in accordance with the requirements of the Railway (Safety Case) Regulations 1994;
"SCADA System"	DLR Limited's supervisory control and data acquisition system;

"Second Generation VCC Software"	the vehicle control computer software being developed by Alcatel pursuant to Work Package 5;
"Second Generation VCC Technology"	the Vehicle Control Computers and the Second Generation VCC Software;
"Second Line Maintenance"	the routine and planned maintenance activities described in Clause 36.1;
"Security Interest"	any mortgage, charge (whether fixed or floating), encumbrance, pledge, lien, trust arrangement or other third party right or interest (legal or equitable) over or in respect of the relevant asset, security or right;
"Senior Lenders"	the persons who from time to time provide debt finance or other credit facilities (including leasing facilities) to the Concessionaire in respect of the Project pursuant to the Qualifying Funding Agreements being at the date hereof the persons defined as the Original Bond Creditors and the Banks in the Intercreditor Deed;
"Senior Lenders' Entitlement"	shall have the meaning specified in paragraph 2 of Section C of Part 5 of Schedule 1;
"SG VCC Software Test Version"	Second Generation VCC Software developed to a level which, assuming compliance by the Concessionaire with its obligations pursuant to Clause 20.4.1, will enable the Concessionaire to undertake Commissioning and Integration using a temporary Vehicle Control Computer;
"Shareholders"	the shareholders from time to time of the Concessionaire;
"Site"	such of the Notified Land and the Additional Land as the Concessionaire notifies DLR Limited is permanently required for the Lewisham Extension together with such other land or rights in respect of land required for the Lewisham Extension as may be acquired by DLR Limited pursuant to Clause 14.11 but excluding any land which DLR Limited shall have disposed of in accordance with Clause 14.12 or 14.13;
"Specification"	the specification for the Lewisham Extension contained in Part 1 of Schedule 3 as the same may be amended from time to time by a Change;

"Sponsors"	John Mowlem & Company PLC, Hyder plc, London Electricity plc and Mitsui & Co., Ltd;
"Sponsors' Agreement"	the agreement in the form set out in Part 3 of Schedule 1;
"Subscription Agreement"	the Subscription Agreement which forms part of the Original Funding Agreements;
"Substitute Contractor"	shall have the meaning specified in sub-clause 6.3.6(c);
"Supplemental Lease"	a supplemental Lease of a part of the Site in the agreed form set out in Part 3 of Schedule 2;
"Supply Metering System"	the metering devices installed by the Concessionaire or an appropriate meter operator to measure the consumption of electrical power for the Lewisham Extension in the manner provided in Clause 29.7;
"Surplus Interest"	shall have the meaning specified in Clause 14.13.1;
"System Performance Demonstration"	a demonstration of the performance of the Lewisham Extension to be carried out in accordance with the requirements of Schedule 5 being a Full System Performance Demonstration, an Interim System Performance Demonstration or a Pre Service System Performance Demonstration;
"Target Completion Date"	26th January 2000 as the same may be adjusted in accordance with Clause 21.5;
"Technical Information"	the information listed in Part 8 of Schedule 3;
"Technical Requirements"	the Specification and the Concessionaire's Works Proposals;
"Termination Payment"	shall have the meaning specified in Clause 6.1.8;
"Third Line Maintenance"	the equipment replacement and overhaul activities described in Clause 36.1;
"Traction Metering System"	the metering devices installed by the Concessionaire and used to measure separately the consumption of electricity for the supply of traction power for the operation of Train Services;
"Train Services"	the operation by DLR Limited of trains carrying fare paying passengers on the Railway;

"Transfer Order"	an order made by the Secretary of State pursuant to Section 3 of the No. 2 Act in the form set out in Part 1 of Schedule 1;
"Undertakings"	the undertakings and letters of assurance given to petitioners, prospective petitioners, other interested persons or Parliament in connection with the passage of the 1993 Act or the No. 2 Act;
"Unforeseeable Fossils or Antiquities"	shall have the meaning specified in Clause 21.3;
"Unfunded Additional Cost"	shall have the meaning specified in sub-clause 6.3.10(a);
"Unsanctioned Change of Control"	shall have the meaning specified in Clause 6.1.7;
"Usage Fee"	the fee to be calculated in accordance with the provisions of Part 2 of Schedule 7;
"Vacant Possession"	<p>(a) in relation to any part of the Site (excluding the Crown Land), exclusive possession thereof or (where required by the Concessionaire) making available to the Concessionaire rights therein in its then existing state and condition subject to any relevant restriction on DLR Limited's powers as set out in Clause 14.6.1 and subject further to:-</p> <ul style="list-style-type: none"> (i) those existing rights of public passage which DLR Limited does not have power to stop up under Part II of the 1993 Act or which it is prevented from stopping up pursuant to the Ancillary Agreements, the Property Undertakings or the Undertakings; (ii) the statutory rights of Relevant Authorities (and any statutory undertaker which is not a Relevant Authority) to have access to the Site; (iii) the rights granted to DLR Limited (or any permitted assignee of DLR Limited) under any of the Project Documents; (iv) the rights of DLR Limited (or any permitted assignee of DLR Limited) and its employees, agents and

representatives to exercise their respective functions in relation to the operation of the Railway;

- (v) any requirements of the Project Documents affecting the Site;
 - (vi) other contractual obligations or restrictions on DLR Limited's ability to allow the Concessionaire to enjoy continuing occupation of the Cutty Sark Plots which have been disclosed to the Concessionaire prior to the date hereof;
- (b) in relation to the Crown Land, a right to occupy in accordance with and subject to the terms of the Crown Land Agreement; and
- (c) in relation to any of the Working Areas, access to and/or temporary possession of (as the case may require) such parts of the Working Areas, in their then existing state and condition, as shall be required from time to time for the carrying out of the Works in accordance with the Works Programme;

"Vehicle Control Computer"

the central train control system facility responsible for control system safety by virtue of its control of vehicle movements and point settings within its control area, the vehicle control computer hardware currently consisting of General Automation GA 900 series hardware, replaced or to be replaced by 486 based PC hardware;

"Waste"

waste as defined in Environmental Laws including any substance, material, effluent or article constituting controlled waste, special waste or refuse in each case as defined therein or any unwanted surplus substance, material, effluent or article;

"Wessex Archaeology Report"

the report prepared by Wessex Archaeology on behalf of DLR Limited and dated June 1992;

"Working Areas"

those areas of Available Land (together with such other land or rights in respect of land as may be acquired by DLR Limited pursuant to Clause 14.11) not forming part of the Site but upon which part of the Works are to be carried out;

"Works"	the permanent and temporary works required for the design, construction, integration, commissioning, testing and completion of the Lewisham Extension;
"Works Approvals Regulations"	shall have the meaning set out in Clause 10.6.5;
"Works Compensation"	<p>all amounts properly payable to third parties under Compensation Law or otherwise arising in respect of the carrying out of the Works arising by way of:-</p> <ul style="list-style-type: none"> (a) injurious affection pursuant to Section 68 of the Lands Clauses Consolidation Act 1845; (b) structural loss or damage or damage by reason of noise or vibration as may be claimed under Section 63 of the said Act of 1845; (c) loss or damage under Section 10 of the London Transport Act 1965; (d) compensation payable pursuant to the terms of any Undertakings or Property Undertakings where such compensation might otherwise be the subject of a claim pursuant to (a), (b) or (c) above; or (e) claims in nuisance and/or negligence, <p>in each case including allowable professional fees and any statutory or agreed interest but excluding any amount payable as Land Compensation or Operational Compensation;</p>
"Work Package 5"	the contract dated 1st November 1995 between DLR Limited and Alcatel entered into pursuant to the Enabling Contract and relating to the development of Second Generation VCC Technology for the Existing Railway;
"Work Package 6"	the contract in the agreed form on or about the date hereof between DLR Limited and Alcatel entered into pursuant to the Enabling Contract and relating to the carrying out of modifications to the elements of the Existing Railway ATC System within the Control Centre and certain Assimilation functions for the Lewisham ATC System Works (as therein described);
"Works Programme"	the programme (including, where more practicable or appropriate having regard to the nature of the information to be shown, supporting tables or

schedules) for the Works and for any investigations to be carried out in connection therewith to be submitted and revised in accordance with Clause 19;

"Works Quality Plan" the quality assurance procedures set out in Part 2 of Schedule 4.

2. INTERPRETATION

In this Agreement (including the Recitals, Schedules and Appendices), except where the context otherwise requires:-

- 2.1 references to a "Clause" or "Clauses", a "sub-clause" or "sub-clauses", a "Schedule" or "Schedules" and an "Appendix" or "Appendices" are to a Clause or Clauses, a sub-clause or sub-clauses a Schedule or Schedules or an Appendix or Appendices to this Agreement;
- 2.2 the headings to Clauses, sub-clauses, Schedules and Appendices are for convenience only and shall not affect the interpretation of this Agreement;
- 2.3 reference to a statutory provision shall include a reference to:-
 - (a) the statutory provision as modified or reenacted or consolidated from time to time whether before or after the date of this Agreement; and
 - (b) any subordinate legislation made under the statutory provision whether before or after the date of this Agreement;
- 2.4 reference to a "person" or "persons" includes bodies corporate, statutory bodies, unincorporated associations and partnerships and that person's or those persons' legal personal representatives, successors and permitted assigns;
- 2.5 reference to this Agreement or any other agreement or document includes this Agreement or, as the case may be, such other agreement or document as the same may from time to time be amended, supplemented or replaced;
- 2.6 a reference to an agreement or other document "in the agreed form" is to that agreement or document in the form which has been accepted by DLR Limited and initialled on its behalf and accepted by the Concessionaire and initialled on its behalf for the purposes of identification. Save only as provided in Clause 46.2, agreements or documents which are stated to be in the agreed form shall not be amended without the consent of the parties hereto, such consent not to be unreasonably withheld;
- 2.7 words importing the singular number only shall include the plural number and vice versa;
- 2.8 words importing one gender shall include any other gender;

- 2.9 any obligation on either party to do or not to do any thing shall be deemed to include an obligation to procure or not to permit or suffer such things to be done by such party's agents, servants and contractors or subcontractors of any tier and acts or omissions of either party's agents, servants and Contractors or sub-contractors of any tier shall be deemed to be acts or omissions of such party for the purposes of this Agreement;
- 2.10 the words 'include' and 'including' are to be construed without limitation;
- 2.11 references to any period of 14 days or less shall exclude any public holidays in England falling within any such period;
- 2.12 references to "business day" shall mean any day (excluding Saturday or Sunday) when banks are generally open for business in the City of London;
- 2.13 amounts or sums stated to be expressed in real prices shall be adjusted to take account of the effects of general inflation since July 1996 as measured by changes in the RPI from the level published in August 1996 for the month of July 1996 by applying the following formula:-

$$R_t = \frac{R \times RPI_t}{RPI(\text{July 1996})}$$

where

R_t = the relevant amount or sum after adjustment in accordance with this formula at time t.

n = the calendar month in respect of which the price comparison is to be made.

$RPI(\text{July 1996})$ = the RPI published in August 1996 for the month of July 1996.

R = the amount or sum, expressed in real prices, pertaining in month n.

RPI_t = the RPI published or which is to be published in month n+1 for the preceding month n; and

- 2.14 references to this Agreement include the Recitals, Schedules and Appendices hereto.

PART II

THE CONCESSION

3. GRANT OF THE CONCESSION

3.1 General rights and obligations of the Concessionaire

The Concessionaire shall with effect from the Commencement Date have the right and the obligation at its own cost and risk and without requiring any payment from or contribution on the part of DLR Limited, other than as provided in this Agreement:-

- 3.1.1 to carry out and complete the Works;
- 3.1.2 on and following the Operating Date:-
 - (a) to repair and maintain the Lewisham Extension; and
 - (b) to make available the Lewisham Extension for Train Services;
- 3.1.3 to hand over the Lewisham Extension to DLR Limited on termination of the Concession; and
- 3.1.4 to secure sufficient finance to enable it to observe and perform each and every one of its duties and obligations under or pursuant to the Project Documents,

in each case, subject to and in accordance with the terms of the Project Documents. The Concessionaire shall use its best endeavours to perform its duties, obligations and functions, and exercise its rights, under this Agreement in such a manner as to ensure that such performance or exercise does not, save as expressly permitted by the terms of this Agreement, disrupt the normal operation of the Railway.

3.2 Concessionaire to observe Applicable Requirements, Transfer Order and Undertakings

In undertaking the Project, the Concessionaire shall observe and comply with:-

- 3.2.1 all Applicable Requirements affecting the Works and, following the Operating Date, the Concessionaire's obligations in this Agreement in respect of the Lewisham Extension, whether in existence at the date of this Agreement or becoming applicable to the Project after such date. If at any time either party becomes aware of any divergence between the Applicable Requirements and the duties and obligations of the Concessionaire, it shall forthwith give the other party notice specifying the divergence and, unless the provisions of Clause 47 apply, the Concessionaire shall provide DLR Limited with the Concessionaire's proposals for overcoming the same within a reasonable period thereafter;

- 3.2.2 the terms of any functions transferred to the Concessionaire under the Transfer Order;
- 3.2.3 the obligations contained in those parts of Undertakings and those parts of the Ancillary Agreements described in the Schedule to the Transfer Order; and
- 3.2.4 the terms of any other Undertakings connected with the functions transferred to the Concessionaire under the Transfer Order.

Each party shall use its reasonable endeavours to perform its obligations under the Project Documents and to exercise its functions and powers under the Lewisham Acts in a manner that facilitates:-

- (a) the other party's compliance with all Applicable Requirements and any obligations which it may have in respect of the Undertakings and the Ancillary Agreements; and
- (b) the exercise by the other party of its functions and powers under the Lewisham Acts.

For the avoidance of doubt, Applicable Requirements shall prevail over the terms of this Agreement.

3.3 Concessionaire to obtain consents, licences etc.

Except where DLR Limited has expressly agreed to obtain the same, the Concessionaire shall be responsible at its own expense for obtaining in a timely fashion and maintaining in full force and effect all necessary or appropriate consents, licences, approvals and permissions required for the Project and its implementation and performance. Without any liability for the adequacy or accuracy of such information, DLR Limited shall inform the Concessionaire of all such items which DLR Limited considers that the Concessionaire will require for such purpose. Where such consents, licences, approvals and permissions are required by DLR Limited for the performance of its functions under this Agreement or for the operation, repair and maintenance of the Lewisham Extension following termination of the Concession, the Concessionaire shall use its best endeavours to ensure that such items are obtained on a basis that will ensure that DLR Limited enjoys the benefits thereof both during, and following termination of, the Concession (for whatever reason), provided that this obligation on the part of the Concessionaire shall not apply in respect of those items which, in accordance with Applicable Requirements, can only be granted to the Concessionaire on a personal basis.

3.4 Obligations of the parties to give notices, pay fees, etc.

- 3.4.1 Save as otherwise provided in this Agreement, and subject to Clause 3.4.2, the Concessionaire shall, in undertaking the Project, give all notices, pay all fees, expenses, compensation and other outgoings and

do all other acts or things which are or may be required to be given, paid or done under the Applicable Requirements.

3.4.2 In any case where functions (as defined in the Transfer Order) are transferred by DLR Limited to the Concessionaire by virtue of the Transfer Order and the exercise of all or any of those functions requires service of notices by DLR Limited (including the service of notices in respect of functions under the 1993 Act retained by DLR Limited), DLR Limited shall serve such notices as the Concessionaire may reasonably require to enable the Concessionaire to perform its duties and obligations under this Agreement and the Concessionaire shall indemnify DLR Limited against all fees, liabilities, costs, damages and expenses suffered or incurred by the Concessionaire by reason of the service thereof.

3.4.3 As soon as reasonably practicable following receipt DLR Limited shall pass to the Concessionaire copies of all notices received from third parties to the extent that the subject matter of such notices relate to matters which are obligations of the Concessionaire under the Project Documents.

3.5 Prevention of nuisance etc.

In performing its obligations under the Project Documents, the Concessionaire shall at all times use all reasonable endeavours to prevent any unlawful nuisance (including noisy working operations), obstruction, trespass, interference with any right of light, way, air or water, or other interference with the rights of any adjoining landowners, tenants or occupiers or any statutory undertaker. The Concessionaire shall (save where DLR Limited is protected by the defence of statutory authority) indemnify DLR Limited from and against any and all expenses, liabilities, losses and damages suffered by DLR Limited as a result of claims or demands from third parties arising (other than as Land and Works Costs) from:-

3.5.1 the acquisition of land or an interest in land or use of land for the Lewisham Extension;

3.5.2 the carrying out of the Works; or

3.5.3 Concessionaire's Operational Compensation.

3.6 Freedom to sub-contract

Subject to Clause 33.1 the Concessionaire shall be free to sub-contract any of its obligations under this Agreement. The Concessionaire shall retain full responsibility and liability for the performance of its contractors and their sub

contractors of any tier and shall procure that such contractors and sub contractors, in the performance of their respective obligations, observe and comply with all undertakings on the part of the Concessionaire in the Project Documents.

3.7 Arrangements in respect of certain major transport works

3.7.1 Without prejudice to the Concessionaire's power and obligations under and pursuant to the 1993 Act and the Transfer Order and to its obligations under the Project Documents, and subject always to Clause 3.7.2:-

- (a) DLR Limited will, insofar as it is lawfully able and empowered to do so (but not further or otherwise), permit the Concessionaire to act as its agent for the execution of any major transport works (the term "major transport works" having for the purposes of this Clause 3.7 the meaning given to it in the New Roads and Street Works Act 1991 (the "1991 Act")) for or in connection with the execution of the Works and the Concessionaire shall be entitled to take the benefit of any costs recovered from, or which the Concessionaire is legally entitled to retain from payments to, any undertaker by virtue of Section 85 of the 1991 Act and any regulations made thereunder;
- (b) If and to the extent that the appointment of the Concessionaire as agent of DLR Limited pursuant to sub-clause 3.7.1(a) is challenged at any time DLR Limited shall, in so far as it is lawfully able and empowered to do so (but not further or otherwise), as principal take such steps as the Concessionaire may reasonably request and DLR Limited is reasonably able to take to enforce such rights and powers as DLR Limited may have under the 1991 Act in respect of the execution of any major transport works which form part of the Works and DLR Limited shall promptly pay to the Concessionaire (or otherwise account to the Concessionaire, in the case of retention, for) any costs which DLR Limited recovers or is legally entitled to retain from any payments due to any undertaker by virtue of Section 85 of the 1991 Act and any regulations made thereunder.

3.7.2 The Concessionaire shall at its own risk and cost manage and perform the duties and obligations of DLR Limited in relation to the execution of major transport works and shall, as DLR Limited's representative, undertake all correspondence and communications with undertakers (providing DLR Limited with copies of all such correspondence and with written minutes and records of other communications with such undertakers). The Concessionaire shall inform DLR Limited in good time of any requirement for DLR Limited to take any action or do any thing in relation to the operation of Clause 3.7.1 and the timetable within which such action or thing is to be taken or done, such timetable to be agreed with DLR Limited (such agreement not to be unreasonably withheld or delayed).

3.7.3 The Concessionaire shall indemnify DLR Limited from and against any and all expenses, liabilities, losses, costs, claims and damages suffered or incurred by DLR Limited directly or indirectly in connection with or arising as a result of the operation of Clauses 3.7.1 and 3.7.2. Notwithstanding (but without prejudice to) the indemnity given pursuant to this Clause 3.7.3, if as a result of the operation of Clauses 3.7.1 and 3.7.2 the Concessionaire requests that DLR Limited enters into any agreement or other arrangement with a third party under which DLR Limited is required to make contractual or other payments, DLR Limited shall not be required to enter into any such agreements or arrangements unless the Concessionaire shall first have provided to DLR Limited either:-

- (a) sufficient funds to enable DLR Limited to discharge the total estimated amount of contractual or other payments which may become due and payable pursuant to such agreements or arrangements (before any allowances, discounts or other deductions from such payments); or
- (b) security on terms satisfactory to DLR Limited in respect of the payments referred to in sub-clause 3.7.3(a).

3.7.4 In the event of any dispute with an undertaker in respect of works which are the subject of this Clause 3.7 the Concessionaire shall promptly inform DLR Limited of the nature of the dispute and the actions that it wishes to take (if any) in the light of such dispute. The Concessionaire shall be entitled, at its discretion (but after consultation with DLR Limited), to conduct at the Concessionaire's own expense such dispute provided that:-

- (a) DLR Limited shall be kept fully informed of all matters pertaining to the dispute;
- (b) the Concessionaire shall not be entitled to make or resist any claim before any court unless it has been advised by leading counsel, after disclosure of all relevant information and documents, that it is reasonable to make or resist such claim in the manner proposed by the Concessionaire; and
- (c) DLR Limited is secured to its reasonable satisfaction by the Concessionaire against all losses (including costs, damages and expenses) which may thereby be incurred.

DLR Limited shall give the Concessionaire all reasonable co operation, access and assistance for the purpose of making or resisting such a claim subject as provided in sub-clause 3.7.4(c).

3.7.5 The Concessionaire shall not, in connection with the operation of this Clause 3.7 do or omit from doing any thing which would or might result in DLR Limited's reputation being damaged.

3.8 Provision of documents

Upon request in writing from DLR Limited, the Concessionaire shall make available to DLR Limited without charge all documents and data of any nature acquired or brought into existence in any manner whatsoever by or on behalf of the Concessionaire and which might reasonably be required by DLR Limited for the purposes of carrying out its duties and obligations under this Agreement or in respect of the Lewisham Extension.

4. CONCESSION COMMENCEMENT

4.1 Conditions precedent to Concession Commencement

The rights and obligations of the parties under this Agreement (other than the rights or obligations arising under the Immediately Effective Clauses which shall be of immediate effect) shall be conditional upon:-

- 4.1.1 the Transfer Order coming into force;
- 4.1.2 the Concessionaire and the relevant counterparties having entered into, and the Concessionaire having delivered to DLR Limited certified copies of:-
 - (a) the Construction Contract;
 - (b) the Original Funding Agreements; and
 - (c) the LE Master Agreement, the LE Distribution Agreement and the Asset Transfer Agreement (as defined in the LE Master Agreement);
- 4.1.3 the Lenders' Agent having delivered to DLR Limited the DLR/Lenders Side Letter, DLR Limited having accepted the same and the Concessionaire having countersigned the same;
- 4.1.4 DLR Limited and the Sponsors having entered into the Sponsors' Agreement;
- 4.1.5 John Mowlem Construction plc and Alcatel having entered into the Lewisham ATC System Contract;
- 4.1.6 DLR Limited, the Concessionaire and the Contractor having entered into the Contractor's Direct Agreement;
- 4.1.7. DLR Limited having issued the DLR/LE Side Letter, London Electricity plc and London Electricity Services Limited having accepted the same and the Concessionaire having counter-signed the same;

- 4.1.8 the Government Support Letter having been duly executed and delivered to the Concessionaire;
- 4.1.9 the London Borough of Lewisham and DLR Limited having entered into the Lewisham Grant Agreement, DLR Limited, the Concessionaire and the London Borough of Lewisham having entered into the Deed of Accession and the Guarantee required to be delivered by the Concessionaire to the London Borough of Lewisham pursuant thereto having been so delivered;
- 4.1.10 DLR Limited having delivered to the Concessionaire the Lewisham Grant Side Letter and the Concessionaire having accepted the same;
- 4.1.11 the Subscription Agreement having become unconditional (including by way of waiver) in all respects, not having been terminated, the Bonds (as defined therein) having been listed on the London Stock Exchange (as defined therein) and completion of the arrangements set out in the Subscription Agreement for the subscription and issue of the Bonds having occurred;
- 4.1.12 all of the other Original Funding Agreements having become unconditional as regards availability (including by way of waiver) in all respects and no event of default (howsoever described and whether actual or potential) having occurred thereunder which has not been remedied or waived;
- 4.1.13 the Concessionaire having delivered to DLR Limited evidence, in a form satisfactory to DLR Limited, that the Equity Commitments have been entered into; and
- 4.1.14 the Concessionaire having delivered to DLR Limited in the agreed form copies of those documents referred to in the definition of the LE Agreements in Clause 1 as being defined in the LE Master Agreement certified as being delivered in the LE Master Agreement certified copies of which are not to be delivered to DLR Limited in accordance with sub-clause 4.1.2(c).

DLR Limited and the Concessionaire shall use their respective reasonable endeavours to procure that the conditions referred to in Clauses 4.1.2 to 4.1.10 and, as regards the Concessionaire only, Clauses 4.1.11 to 4.1.14 are satisfied within ten business days of the coming into force of the Transfer Order.

4.2 Concession Commencement

The Concession shall commence on the Commencement Date. Within 30 days of the Commencement Date, the Concessionaire shall pay to DLR Limited the sum of £1,094,499 (one million and ninety four thousand four hundred and ninety nine pounds) by way of contribution towards DLR Limited's costs in relation to the award of the Concession.

4.3 Effect of non-satisfaction of conditions precedent

Unless all of the conditions precedent in Clause 4.1 are fulfilled or waived in writing by both parties within 14 days of the date of this Agreement (or such later date as the parties may agree) ("the Required Satisfaction Date"), this Agreement (other than the Immediately Effective Clauses) shall have no force or effect and neither party shall have any obligation to the other hereunder save for any antecedent breach or under Clause 52 which shall remain in full force and effect notwithstanding the non-satisfaction of the conditions precedent hereto.

5. DURATION OF THE CONCESSION

5.1 The Concession Period

The Concession shall terminate on the date 24 years and six months after the Commencement Date unless:-

5.1.1 the Concession Period has been extended in accordance with the provisions of Clause 5.2, in which case the Concession shall terminate at the end of such extended Concession Period; or

5.1.2 the Concession shall have been terminated prior thereto in accordance with the provisions of Clause 6.

5.2 Extension of the Concession Period

The Concession Period will not be extended except:-

5.2.1 by a period equivalent to any extension of the Construction Period by operation of Clause 21.5 where such extension has arisen from an event within Clause 21.3.1 or Clauses 21.3.3 to 21.3.8 (inclusive) provided that where an extension of the Construction Period pursuant to Clause 21.5 has arisen from an event of Force Majeure lasting for a continuous period of five days or more, the Concession Period shall be extended in respect of that event of Force Majeure by a period equal to twice the period of the extension of the Construction Period arising from such event of Force Majeure; and

5.2.2 by a period determined in accordance with the provisions of Clauses 8.5 to 8.7 (inclusive) where an event of Force Majeure affecting the Concessionaire occurs after the Completion Date.

6. DEFAULT AND EARLY TERMINATION OF CONCESSION

6.1 Concessionaire Default and termination

6.1.1 Subject to Clause 6.1.2, the following shall constitute Concessionaire Defaults:-

(a) a resolution is passed or an order is made for the winding up or administration of the Concessionaire;

- (b) a receiver (including an administrative receiver) is appointed over or in respect of any material part of the business, undertaking or assets of the Concessionaire;
- (c) except for the transactions to be effected by the LE Agreements and for any similar type of transaction approved by DLR Limited (such approval not to be unreasonably withheld) or as expressly permitted by the Project Documents, the Concessionaire purports to sell, transfer, lease, or otherwise dispose of all or any of the material assets and rights comprised in the Concession;
- (d) there is an Unsanctioned Change of Control of the Concessionaire;
- (e) the Operating Date does not occur within 18 months after the Target Completion Date;
- (f) the Completion Date does not occur within 24 months after the Target Completion Date;
- (g) the Concessionaire:-
 - (i) abandons, without any intention to resume, the Works or any material part thereof prior to the Completion Date;
 - (ii) deliberately ceases to maintain and/or make available the Lewisham Extension;
 - (iii) fails to pay to DLR Limited the sum referred to in Clause 4.2 within 30 days of the Commencement Date; or
 - (iv) applies the sums paid pursuant to Clause 46.3 by way of grant assistance or any part thereof for purposes other than in reimbursement of Land Compensation costs and making payments properly due and payable to the Contractor in respect of civil engineering works pursuant to the Construction Contract;
- (h) the Concessionaire commits some other serious default in relation to its obligations under any of the Project Documents which has a material adverse impact on the Project; or
- (i) the Concessionaire commits persistent and repetitive breaches of its obligations under any of the Project Documents.

6.1.2 It is hereby agreed as follows:-

- (a) Neither the appointment of an administrator pursuant to an order made upon the application of the Lenders' Agent acting

on behalf of the Senior Lenders (such an administrator being hereafter referred to as an "Approved Administrator") nor the appointment of a receiver (including an administrative receiver) or any other officer made pursuant to the security created by the Concessionaire under the Qualifying Funding Agreements shall constitute a Concessionaire Default under sub-clause 6.1.1(a) or (b), respectively, except that:-

- (i) the appointment of a receiver or any other officer (other than an administrative receiver) shall constitute a Concessionaire Default under sub-clause 6.1.1(b) unless, at the same time as such appointment or prior thereto, an administrative receiver shall have been appointed pursuant to such security (such an administrative receiver being hereafter referred to in this Clause 6.1.2. as an "Approved Administrative Receiver");
- (ii) the appointment of an Approved Administrator or, as the case may be, an Approved Administrative Receiver (together, an "Approved Senior Lenders Representative") prior to the Completion Date shall constitute a Concessionaire Default under sub-clause 6.1.1(a) or, as the case may be, (b) at the expiry of the Relevant Period unless, prior to the expiry of the Relevant Period, the Approved Senior Lenders Representative, or any other person acting on behalf of the Senior Lenders (an "Approved Senior Lenders' Agent"), shall have delivered to DLR Limited a written statement which:-
 - (A) sets out a strategy for carrying on the business of the Concessionaire as a going concern which demonstrates that, on the assumption that the Approved Senior Lenders Representative will use all reasonable endeavours to act in accordance with it, will result in the Operating Date (if it has not already occurred) and the Completion Date to occur as soon as is reasonably practicable (having regard to the circumstances prevailing at the time) after the date of his appointment (the "Completion Strategy"); and
 - (B) (in the case where the Completion Strategy has been delivered by an Approved Administrative Receiver or an Approved Senior Lenders' Agent) has been approved in writing by the Lenders' Agent on behalf of the Senior Lenders and, if the approval of the Junior Lenders is also required under any documentation to which they are a party, on behalf of the Junior Lenders also;

(iii) if, except after a transfer made in accordance with sub clause 6.1.2(b), the Approved Administrator or, as the case may be, the Approved Administrative Receiver does not or ceases to:-

(A) carry on the business of the Concessionaire as a going concern; or

(B) fulfil all of the obligations of the Concessionaire under this Agreement in a timely and diligent manner; or

(C) without prejudice to sub-paragraph (B) above, if a Completion Strategy has been delivered pursuant to paragraph (ii) above, use all reasonable endeavours to cause the Operating Date (if it has not already occurred) and the Completion Date to occur in accordance with the Completion Strategy; or

(D) any receiver or other appointed officer under the Permitted Security (including the Approved Administrative Receiver) shall exercise his duties, powers or discretions in any manner which contravenes the restrictions thereon set forth in the Debenture or contravenes or ignores any undertaking or acknowledgment given by the Lenders' Agent in the DLR/Lenders Side Letter,

a Concessionaire Default under sub-clause 6.1.1(a) or, as the case may be, (b) shall then occur; and

(iv) if, except after a transfer made in accordance with sub clause 6.1.2(b), the Approved Senior Lenders Representative ceases to hold office as such and there remains in office any other receiver (including an administrative receiver) or other officer appointed under the Permitted Security (or any other Security Interest), a Concessionaire Default under sub-clause 6.1.1(a) or, as the case may be, (b) shall then occur.

(b) The creation of the Permitted Security by the Concessionaire shall not of itself be a Concessionaire Default under sub-clause 6.1.1(c), but a Concessionaire Default under that sub-clause shall occur if an Approved Administrator exercises any of his powers conferred by law or the Lenders' Agent or an Approved Administrative Receiver or any other officer appointed under the Permitted Security exercises any of the powers under or arising by virtue of the security created by the Debenture in any such case to do any of the matters prohibited by that sub-clause unless:-

- (i) in the case of an exercise of powers conferred by such security, such exercise is by the Lenders' Agent or any other officer appointed under the Permitted Security, in each case acting on the instructions of the Senior Lenders, or an Approved Administrative Receiver by way of transfer (whether or not on sale) to an Approved Transferee; and
- (ii) in any such case, such transfer involves:-
 - (A) a novation of this Agreement on the terms or substantially on the terms of the Deed of Novation; and
 - (B) a transfer to an Approved Transferee of all or substantially all of the assets and rights (including rights arising under or by virtue of the Project Documents (other than the Concession Agreement) and the Funding Agreements) or such of those assets and/or rights as shall be necessary to enable such Transferee to qualify as an Approved Transferee in the light of the definition thereof in Clause 6.1.8 and, in any event, to include all assets and rights of the Concessionaire which would, were termination of the Concession and/or this Agreement to have occurred at the time of the transfer, have fallen to be dealt with under Part VII of this Agreement.
- (c) The creation of the Charge on Shares shall not of itself be a Concessionaire Default under sub-clause 6.1.1(d) or constitute an Unsanctioned Change of Control, but such a Concessionaire Default shall occur upon the exercise of any of the powers of sale under or arising by virtue of the security created by the Charge on Shares unless:-
 - (A) such exercise is not by way of enforcement action in respect of such security taken by, or on the instructions of, the Junior Lenders and is by way of transfer (whether or not on sale) to an Approved Transferee;
 - (B) notwithstanding, and immediately following, such transfer, the Concessionaire will have available to it such financial and technical resources as are necessary to enable the Concessionaire to fulfil its obligations under this Agreement; and
 - (C) such amendments to this Agreement shall have been made as shall be necessary to reflect that the Sponsors

will have ceased to be persons named in the definition of "Sponsors" in Clause 1.

- (d) Without prejudice to sub-clause 6.1.2(a) but subject to sub clauses 6.1.2(b),(e) and (f), the rights of DLR Limited following the appointment of an Approved Senior Lenders Representative in respect of any Concessionaire Default which shall have occurred before, but remain unremedied as at the time of such appointment, or occur after such appointment, shall remain in full force and effect notwithstanding such appointment.
- (e) If at the time of the appointment of any Approved Senior Lenders Representative there exists any Concessionaire Default under sub-clauses 6.1.1(e), (f) or, prior to the Operating Date, (g)(i) or (h) in respect of which DLR Limited has issued a DLR Default Notice under Clause 6.1.5 so that the provisions of sub clause 6.1.5(c), (d) or, as the case may be, (e)(i) apply (a "Paragraph (c)-(e) DLR Default Notice") but has not issued a further notice terminating the Concession pursuant to sub-clause 6.1.5(c), (d) or, as the case may be, (e)(i) (a "Paragraph (c)-(e) Termination Notice"), then:-
 - (i) the Paragraph (c)-(e) DLR Default Notice shall be deemed not to have been issued at the time when it was in fact issued but shall be deemed to have been issued on the date of the appointment of the Approved Senior Lenders Representative; and
 - (ii) DLR Limited's right to issue a Paragraph (c)-(e) Termination Notice shall be suspended so that its only right of termination prior to the Operating Date if an Approved Senior Lenders Representative has been appointed, but only for so long as such appointment is continuing, shall be under sub-clause 6.1.2(a)(ii) or (iii), but, subject thereto, the provisions of sub-clause 6.1.5(c), (d) or, as the case may be, (e)(i) in respect of the Concessionaire Default concerned shall then apply.
- (f) If at the time of the appointment of an Approved Senior Lenders Representative there exists any Concessionaire Default under sub-clause 6.1.1(g)(iii) or (iv) or sub-clause 6.1.1(i) or, after the Operating Date, sub-clause 6.1.1(g)(ii) or (h) in respect of which DLR Limited has issued a DLR Default Notice under Clause 6.1.5 so that the provisions of sub clause 6.1.5(d), (e)(ii) (as regards the disentitlement of the Concessionaire to the payment of Fees) or, as the case may be, (f) apply (a "Paragraph (d)-(f) DLR Default Notice"), then:-
 - (i) the Paragraph (d)-(f) DLR Default Notice shall be deemed not to have been issued at the time when it was

in fact issued but shall be deemed to have been issued on the date of the appointment of the Approved Senior Lenders Representative; and

- (ii) the provisions of sub-clauses 6.1.5(d), (e)(ii) (as regards such disentitlement to the payment of Fees) or, as the case may be, (f) (including, without limitation, DLR Limited's rights to reduce Fees thereunder) in respect of the Concessionaire Default concerned shall then apply.
- 6.1.3 The Concessionaire will notify DLR Limited forthwith upon becoming aware of the occurrence of a Concessionaire Default and will provide DLR Limited with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of the Concessionaire Default or otherwise in connection with it.
- 6.1.4 Subject to Clause 6.1.2, if a Concessionaire Default within sub-clause 6.1.1(a) or (b) has occurred, DLR Limited may at any time thereafter by notice to the Concessionaire terminate the Concession forthwith.
- 6.1.5 If a Concessionaire Default within sub-clauses 6.1.1(c), (d), (e), (f), (g), (h) or (i) has occurred, DLR Limited may, within 56 days of such Concessionaire Default coming to its notice (or at any time thereafter in respect of a Concessionaire Default within sub-clause 6.1.1(e)), serve notice (a "DLR Default Notice") on the Concessionaire specifying the Concessionaire Default concerned and the facts constituting such Concessionaire Default so far as DLR Limited is aware of them. Following service of a DLR Default Notice:-
- (a) in respect of a Concessionaire Default within sub-clause 6.1.1(c) [unlawful disposal], the Concessionaire shall not be entitled to the payment of any Fees from the date of such DLR Default Notice until such Concessionaire Default has been remedied to the reasonable satisfaction of DLR Limited;
 - (b) in respect of a Concessionaire Default within sub-clause 6.1.1(d) [Unsanctioned Change of Control] which has occurred:-
 - (i) prior to the Operating Date, unless such Concessionaire Default has been remedied prior to the date specified in the DLR Default Notice (being not less than 60 days after the date of service) DLR Limited may at any time thereafter by notice to the Concessionaire terminate the Concession forthwith; or
 - (ii) on or following the Operating Date, DLR shall be entitled to withhold payment of Fees until such Concessionaire Default has been remedied;

- (c) in respect of a Concessionaire Default within sub-clauses 6.1.1(e) or (f) [late completion], DLR Limited shall specify in the DLR Default Notice a date (being not less than 60 days after the date of service of such Notice) by which the Operating Date or the Completion Date (as the case may be) must occur and DLR Limited may at any time after such date by further notice to the Concessionaire terminate the Concession forthwith unless the Operating Date or the Completion Date (as the case may be) occurs prior to the service of such further notice. Where the Concession is terminated in accordance with this sub-clause 6.1.5(c), then, provided that the Concessionaire has continued to use all reasonable endeavours to complete the Works up to the date of service of the DLR Default Notice:-
 - (A) DLR Limited shall itself use all reasonable endeavours to complete the Works including the arranging of any necessary funding via government sources or otherwise; and
 - (B) if such reasonable endeavours result in the Works being completed, DLR Limited shall pay to the Concessionaire an amount equal to the Termination Payment in accordance with Clause 6.4;
- (d) in respect of a Concessionaire Default within sub-clause 6.1.1(g) [abandonment etc.], unless such Concessionaire Default has been remedied to the reasonable satisfaction of DLR Limited prior to the date specified in the DLR Default Notice (being not less than 30 days after the date of service) DLR Limited may at any time after such date by notice to the Concessionaire terminate the Concession forthwith;
- (e) in respect of a Concessionaire Default within sub-clause 6.1.1(h) [serious default] which has occurred:-
 - (i) prior to the Operating Date and does not relate to any delay in the completion of the Works, DLR Limited shall specify in the DLR Default Notice a date (being not less than 90 days after the date of service) by which the Concessionaire Default shall be remedied and DLR Limited may at any time after the date so specified by further notice to the Concessionaire terminate the Concession forthwith unless prior to the service of such further notice:-
 - (A) the Concessionaire Default has been remedied wholly or to DLR Limited's reasonable satisfaction;
 - (B) all reasonable steps have been taken by the Concessionaire to remedy such Concessionaire Default and the Concessionaire Default is remedied within a reasonable period thereafter; or

(C) if such Concessionaire Default is incapable of remedy, the Concessionaire has (1) taken measures to the reasonable satisfaction of DLR Limited to ensure that such Concessionaire Default does not occur again, and (2) made good any loss or damage suffered by DLR Limited as a result of such Concessionaire Default;

(ii) on or following the Operating Date, is capable of remedy and has not resulted in a reduction in Availability Fees, DLR Limited shall be entitled to withhold payment of any further Fees to the Concessionaire until the Concessionaire Default has been remedied wholly or to the reasonable satisfaction of DLR Limited. If such Concessionaire Default has not been so remedied within a period of 28 days following service of the DLR Default Notice, the Concessionaire shall not be entitled to the payment of any Fees from the date of such Concessionaire Default until the date when such Concessionaire Default has been remedied wholly or to the reasonable satisfaction of DLR Limited;

(f) in respect of a Concessionaire Default within sub-clause 6.1.1(i) [persistent breach] such notice shall constitute a warning to the Concessionaire to improve its standards of compliance with the requirements of the Project Documents. If the Concessionaire fails to comply with any of its material obligations under the Project Documents (other than any such failure which results in a reduction in Availability Fees in accordance with Part 1 of Schedule 7) within the period of 30 days thereafter, each Fee payment by DLR Limited to the Concessionaire from the date of the DLR Default Notice to the commencement of the period during which the Concessionaire complies with all such material obligations for a continuous period of 30 days shall be reduced by ten per cent.

If DLR Limited is entitled to withhold payment of Fees under this Clause 6.1.5, such Fees shall be paid by DLR Limited to the Concessionaire (without interest accruing in respect thereof) within seven days of the remedying of the relevant Concessionaire Default in accordance with the requirements of this Clause.

6.1.6 If the Concessionaire breaches any of its obligations under the Project Documents at any time prior to the issue of the Completion Certificate, DLR Limited shall be entitled to require an independent third party to investigate (the scope of such investigation to be proportionate to the scale of the breach), at the Concessionaire's cost (such costs to be reasonable), the reasons for such breach and to report upon the implications to DLR Limited of such breach.

6.1.7 Subject to sub-clause 6.1.2(c), there shall be an Unsanctioned Change of Control of the Concessionaire for the purposes of sub-clause 6.1.1(d) if (other than with the prior approval of DLR Limited, such approval not to be unreasonably withheld or delayed):-

- (a) at any time prior to the Completion Date, the right to cast more than 75 per cent;
or
- (b) at any time between the Completion Date and the fourth anniversary of the date of issue of the Completion Certificate, the right to cast more than 50 per cent,

of the votes capable of being cast on a poll at a general meeting of the Concessionaire ceases to be held directly or indirectly by one or more of the Sponsors (or their respective Affiliates).

6.1.8 For the purposes of this Agreement:-

"Approved Transferee" shall mean:-

- (i) in the case of a transfer in accordance with Clause 6.1.2(b), a transferee who has:-

- (A) the legal capacity and power to become a party to this Agreement and the Deed of Novation and to perform all of the obligations to be assumed by such transferee thereunder, and taken all necessary corporate or other steps to authorise the same;

- (B) such financial and technical resources available to it as are necessary to enable it to fulfil such obligations,

and is not under the control, directly or indirectly, of the Sponsors or their Affiliates or any of them;

- (ii) in the case of a transfer in accordance with Clause 6.1.2(c), a transferee who is not or does not include any of the Sponsors or their Affiliates or any person who is directly or indirectly, under the control of the Sponsors or their Affiliates or any of them;

"Contract Price" shall mean the sum of £196,000,000 save only as such sum may have been subsequently varied in accordance with the Construction Contract as a direct result of a DLR Change or as a result of any breach by DLR Limited of its obligations under this Agreement;

"Deed of Novation" shall mean a deed which is substantially in the form set forth in Section D of Part 5 of Schedule 1 with such amendments and/or additions thereto and/or deletions therefrom as DLR Limited, the Concessionaire and the Approved Transferee shall agree are necessary and appropriate having regard to the circumstances prevailing at the time of novation;

"Relevant Period" for the purposes of sub-clause 6.1.2(a) shall be, in the case of an Approved Administrative Receiver, 90 days from the date of his appointment and, in the case of an Approved Administrator, the period specified in Section 23(1) of the Insolvency Act 1986 (or such longer period as the court may, for the purposes of that Section, allow);

"Termination Payment" shall mean the aggregate of:-

- (i) the Contract Price; and
- (ii) all Land and Works Costs paid by the Concessionaire,

after deducting from such amount an amount equal to the aggregate of:-

- (iii) all costs properly incurred by DLR Limited in completing the Works (including any amounts paid to the Contractor pursuant to the Contractor's Direct Agreement in respect of work carried out prior to the date of termination of the Concession Agreement), but excluding any increase in such costs of completion arising from Changes implemented by DLR Limited subsequent to the termination of the Concession except insofar as such Changes were necessary to ensure that the Works met the requirements of the Specification;
- (iv) all sums paid to the Concessionaire pursuant to Clause 46.3 and the Lewisham Grant Agreement less any part of such sums as shall have been or which will be repaid; and
- (v) all sums paid to the Concessionaire pursuant to Clause 42.4.2.

6.2 Early termination by the Concessionaire

6.2.1 The following shall constitute DLR Defaults:-

- (a) an order is made or an effective resolution is passed for the winding up of DLR Limited;
- (b) DLR Limited fails to pay any Fees (including any Guaranteed Amounts) to the Concessionaire pursuant to this Agreement within 30 days of the due date for such payment (except where the amount of such payment is the subject of a bona fide dispute between the parties);

(c) DLR Limited consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:-

- (i) the resulting, surviving or transferee entity fails to assume all the obligations of DLR Limited under the Project Documents to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Concessionaire; or
- (ii) to the extent that any such document remains in force and is of effect at the time of such consolidation, amalgamation, merger or transfer, the benefits of any Project Document or the Government Support Letter fail to extend (without the consent of the Concessionaire) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement;

(d) Her Majesty's Government sequesters, requisitions, expropriates or otherwise seizes the Lewisham Extension or any material part thereof, otherwise than pursuant to this Agreement; or

(e) any change in Law coming into effect after the date hereof renders illegal either the performance of the whole or any substantial part of the Project, or the performance of the whole or any substantial part of DLR Limited's obligations under this Agreement.

6.2.2 If a DLR Default within sub-clause 6.2.1(a) has occurred, the Concessionaire may at any time thereafter by notice to DLR Limited terminate the Concession forthwith. If a DLR Default within sub clauses 6.2.1(b) to (e) (inclusive) has occurred, the Concessionaire may, within 56 days of such DLR Default coming to its attention, serve notice of such DLR Default on DLR Limited in which case the Concession will terminate on the date specified in such notice (being not less than 90 days, after the date of service) unless such DLR Default has been remedied prior thereto to the reasonable satisfaction of the Concessionaire.

6.2.3 In the event of termination under Clause 6.2.2, DLR Limited shall pay to the Concessionaire an amount equal to the aggregate of:-

- (a) (i) the Senior Lender's Entitlement, LE's Entitlement and the Junior Lenders' Entitlement; and
- (ii) all liabilities and obligations of the Concessionaire to third parties (including employees) arising out of or in connection with the Project (other than under the Funding Agreements), which are in existence at the date of termination or arise as a result of or in connection with such termination,

but excluding in the case of paragraph (i) above:-

- (iii) any sums (and any finance charges or other amounts payable by the Concessionaire in respect of such sums) received by the Concessionaire in respect of the Project under the Funding Agreements or the LE Agreements, or otherwise derived from the Project (including pursuant to Clause 46.3 or the Lewisham Grant Agreement), and subsequently applied for purposes other than the Project (such other purposes not to include the application of sums by way of the return of principal or capital or the payment of interest, dividends or distributions pursuant to the Funding Agreements and being, in the case of such principal and capital, in reduction of amounts owing thereunder);

and excluding in the case of paragraph (ii) above:-

- (iv) any liability of the Concessionaire in respect of subscription monies paid by or any other obligations owed to holders of shares in the Concessionaire in respect of such shares;
- (v) all liabilities and obligations arising out of agreements or arrangements entered into by the Concessionaire prior to such termination, to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms (which agreements or arrangements shall, for the avoidance of doubt, not include any such agreements or arrangements in the agreed form) or were not reasonably and properly incurred thereunder;
- (vi) all liabilities and obligations arising out of agreements or arrangements entered into by the Concessionaire on or following such termination and any agreements or arrangements entered into at whatever time with any professional advisers or consultants regarding any claim or potential claim against the Secretary of State arising from or in connection with such termination; and
- (vii) all liabilities and obligations of the Concessionaire arising as a result of a breach of a contract or agreement relating to the Project (except any breach of contract arising as a result of termination of this Agreement pursuant to Clause 6.2.2),

and after deducting from the aggregate of the amounts at paragraphs (i) and (ii) above the aggregate amounts of:-

(viii) the open market value of any assets held by the Concessionaire immediately following termination of the Concession (including those assets (if any) in respect of which the Concessionaire is to receive payment pursuant to Clause 42.4.2 and any undisbursed grant funding received by the Concessionaire to the extent that the Concessionaire has not repaid or is not obliged to repay such funding under the terms of the Project Documents); and

(ix) the amount of any reduction under sub-clause 27.2.3(c); and

(b) (i) in the event of termination before the Operating Date, a sum equal to all cash amounts subscribed for shares in the Concessionaire prior to the date of termination;

LESS any distributions made by the Concessionaire to the holders of shares since the date of this Agreement and any tax benefits derived by any of such persons from the Project to the extent that the same do not become repayable or give rise to a corresponding tax charge in consequence of the termination;

PLUS a sum representing a return on the equity employed in the Concessionaire from time to time during the period from the date of this Agreement to the date of termination, calculated on a monthly basis at an annualized nominal pre-tax rate of return of 19.97 per cent; or

(ii) in the event of termination on or after the Operating Date, a sum equal to the net present value after tax of the Fees to which the Concessionaire would have been entitled from the date of termination to the expiry of the Concession Period (assuming the Concession had remained in force until the date specified in Clause 5.1 including any extension of the Concession Period under Clause 5.2) less any operating, maintenance and capital costs which the Concessionaire would have incurred during such period, the amounts of such Usage Fees, Availability Fees and operating, maintenance and capital costs to be determined by projections as at the date of termination on the basis of the following considerations in order of priority:-

(A) reasonable economic assumptions prevailing at the date of termination;

- (B) technical and economic performance of the Lewisham Extension achieved up to the date of termination;
- (C) the Concessionaire's projections included in its tender for the Project, subject to any changes in such projections agreed with DLR Limited prior to the entering into of this Agreement; and
- (D) an assumption that the tax rate and tax law would remain at the rates in force immediately prior to the date of termination subject to any changes announced prior to that date,

such net present value to be calculated using a nominal discount rate of 12.42 per cent, LESS the aggregate amounts payable by DLR Limited to the Concessionaire pursuant to sub-clause 6.2.3(a).

- 6.2.4 Without prejudice to Clause 56.3, all sums payable by DLR Limited to the Concessionaire pursuant to Clause 6.2.3 shall be paid free and clear of all deductions, withholdings, set-offs or counterclaims whatsoever save only as may be required by law in which event or in the event that the Concessionaire shall incur any liability to make an actual payment of tax in respect of any payment made under this Clause (after taking into account any loss, credit, exemption or relief available to the Concessionaire to mitigate or offset the liability for tax in question). DLR Limited shall be obliged to pay to the Concessionaire such additional amounts as shall be required to ensure that the net amount received and retained by the Concessionaire after tax will equal the full amount which would have been received and retained by it had no such deduction or withholding been made and/or no such liability to tax been incurred.

6.3 Termination as a result of Force Majeure

- 6.3.1 Except where the context otherwise requires, capitalised terms used in this Clause 6.3 which are not defined in Clause 1 or elsewhere in this Clause 6.3 shall have the meanings given to them in Clause 6.3.16.
- 6.3.2 If DLR Limited and/or the Concessionaire is entitled to terminate the Concession under this Clause 6.3, such termination shall be by notice in writing from the party exercising that right to the other party which notice may only be given if the effects and consequences of the Relevant FM Event or, as the case may be, Major Relevant FM Event are continuing. Such notice shall operate to terminate the Concession forthwith with or without compensation according to the provisions of Clause 6.3.14.
- 6.3.3 In the case of the occurrence of a Relevant FM Event or a Major Relevant FM Event, either party shall, subject to Clause 6.3.2, be

entitled to terminate the Concession except that, in the case of a Major Relevant FM Event, if the Concessionaire commences the processes described in Clauses 6.3.4 to 6.3.13:-

(a) the rights of termination under the foregoing provisions of this Clause 6.3.3 shall lapse; and

(b) without prejudice to any specific rights of termination hereafter set forth in this Clause 6.3, each of the Concessionaire and DLR Limited shall, subject to Clause 6.3.2, be entitled to terminate the Concession at any time.

6.3.4 If a Major Relevant FM Event occurs, the Concession has not been terminated under Clause 6.3.3 and the conditions of Clause 6.3.2 as to the giving of notice to terminate the Concession remain fulfilled, the Concessionaire may, by written notice to DLR Limited, given not sooner than 25 days nor more than 30 days after the FM Commencement Date, invoke the provisions of this Clause 6.3.4 and Clauses 6.3.5 to 6.3.13 and, if such notice is given, DLR Limited and the Concessionaire shall, not later than 45 days after the FM Commencement Date, consult with an Independent Technical Adviser (whose fees and expenses shall be borne by the Concessionaire) to ascertain:-

(a) whether or not it is physically possible to complete the FM Railway such that Train Services can be operated thereon substantially as contemplated by this Agreement, regardless of time and cost; and

(b) if so, the extent of the adjustment to the Existing Target Completion Date which would reasonably be required by a competent contractor in order to achieve such completion, but without reference to any adjustment thereto which may become applicable under Clause 21.5 as a result of the occurrence of that Major Relevant FM Event (the "**Additional Completion Time**").

6.3.5 If it is ascertained in accordance with Clause 6.3.4 that it is not physically possible to complete the FM Railway as specified in paragraph (a) of that Clause or that the Additional Completion Time is more than five years or either of such matters has not been definitively ascertained within 90 days after the FM Commencement Date, either party may terminate the Concession.

6.3.6 If no right to terminate the Concession arises under Clause 6.3.5, the Concessionaire shall, not later than 180 days after the FM Commencement Date (or within such longer period as may arise pursuant to the proviso to this Clause 6.3.6), deliver to DLR Limited:-

(a) such amendments to the Technical Requirements as shall be necessary to complete the FM Railway by the Target Completion Date as adjusted under Clause 21.5 (if appropriate) and so as to take account of the Additional Completion Time (the "**Adjusted Target Completion Date**");

(b) a detailed analysis showing the additional cost (if any), including financing costs to completion, of completing the FM Railway by the Adjusted Target Completion Date (the "**Additional Cost**") together with budgetary estimates of all other matters mentioned in Clauses 22.2.1 to 22.2.7 (inclusive) in relation to a Preliminary Change Instruction to the extent that the same are relevant to completing the FM Railway by the Adjusted Target Completion Date in the circumstances;

(c) a construction contract substantially in the form of the Construction Contract (but amended to such extent as shall be necessary to reflect the amendments to the Technical Requirements and the analysis referred to in paragraphs (a) and (b) above respectively and the Adjusted Target Completion Date), such construction contract (the "**Amended Construction Contract**") to be between the Concessionaire and the Contractor or such other contractor as the Concessionaire may have selected for the purpose; and

(d) an undertaking signed by the Concessionaire to procure that the Amended Construction Contract is entered into (with such modifications as may be negotiated as contemplated by Clause 6.3.12(b)) subject only to any Additional Cost having been funded in the manner contemplated by the following provisions of this Clause 6.3,

PROVIDED THAT, if the continuing nature of the Major Relevant FM Event concerned is such that the Concessionaire will be hindered in the performance of any of its obligations under this Clause 6.3.6:-

(a) the Concessionaire shall forthwith notify DLR Limited of that fact, the reasons therefor and its best estimate of the date by which such obligations will be performed;

(b) the Concessionaire shall take all reasonable steps to minimise the extent of such hindrance and shall keep DLR Limited fully informed with regard thereto and the progress being made in the performance of such obligations; and

(c) subject to the Concessionaire complying with paragraph (b) above, the period of 180 days referred to above in this Clause 6.3.6 shall be extended by one day for every day of such hindrance up to a maximum extension of one year.

6.3.7 If the Concessionaire is not able to or does not otherwise comply with the requirements of Clause 6.3.6 within the time specified therein (as extended, if appropriate, pursuant to the proviso thereto), either party may terminate the Concession.

6.3.8 If the Concessionaire complies with the requirements of Clause 6.3.6 within the time specified therein:-

(a) DLR Limited and the Concessionaire shall, for the period of 28 days following the date of such compliance, consult together with regard to the items delivered pursuant to that Clause; and

(b) upon the expiry of such 28 days period, the remaining provisions of this Clause 6.3 shall apply.

6.3.9 If the items delivered pursuant to Clause 6.3.6 show that completion of the FM Railway will not involve any Additional Cost or involve an Additional Cost which is capable of being funded out of Available Funds, Clause 6.3.10 shall not apply and Clause 6.3.11 will apply.

6.3.10 If the items delivered pursuant to Clause 6.3.6 show that completion of the FM Railway will involve an Additional Cost which is not capable of being funded out of Available Funds:-

(a) the Concessionaire shall promptly ascertain that amount of the Additional Cost which is not capable of being funded out of Available Funds (the "**Unfunded Additional Cost**") and shall use all reasonable endeavours to raise Acceptable Funding in an amount at least equal to the amount of the Unfunded Additional Cost not later than 90 days after the date on which all of such items were so delivered;

(b) if the Concessionaire does not, having used such reasonable endeavours, raise such an amount of Acceptable Funding within the time specified in paragraph (a) above, DLR Limited shall, at its option, either:-

(i) arrange Acceptable Funding for the Concessionaire for the balance of the Unfunded Additional Cost; or

(ii) terminate the Concession;

(c) if the Concessionaire fails to comply with paragraph (a) above, DLR Limited shall be entitled to terminate the Concession;

(d) if DLR Limited elects to arrange Acceptable Funding under paragraph (b)(i) above but no such Acceptable Funding has been arranged (within the meaning of Clause 6.3.11) within 90 days of the date of such election, either party shall be entitled to terminate the Concession.

6.3.11 If this Clause 6.3.11 applies pursuant to Clause 6.3.9 or Acceptable Funding has been raised or arranged by or for the Concessionaire pursuant to Clause 6.3.10 (and it shall be treated as having been so raised or arranged if it is committed subject only to documentation and the consents and approvals to be obtained pursuant to this Clause 6.3.11 and compliance with Clause 6.3.12), the Concessionaire shall seek, and use all reasonable endeavours to obtain, such consents and approvals under, and amendments to, the Funding Agreements and the Sponsor's Agreement (including any increase in share capital) as shall be necessary to enable the agreements referred to in Clause 6.3.12 and the documentation for the committed Acceptable Funding to be entered into and the Acceptable Funding to be made unconditionally available to the Concessionaire.

6.3.12 As soon as reasonably practicable following the application of Clause 6.3.9 or 6.3.10 (whichever is applicable), the Concessionaire shall perform the obligations set out in paragraphs (a) to (f) below and DLR Limited shall, at the cost and expense of the Concessionaire, perform the obligations set out in paragraphs (a) and (c) below:-

- (a) negotiate in good faith:-
 - (i) the amendments to the Technical Requirements referred to in sub-clause 6.3.6(a);
 - (ii) the matters shown in the analysis and budgetary estimates referred to in sub-clause 6.3.6(b); and
 - (iii) the amendments required to be made to this Agreement (the "Further Amendments");
- (b) negotiate and enter into the final form of the Amended Construction Contract (as amended to take into account those matters referred to in paragraph (a) above);
- (c) negotiate and enter into an agreement amending this Agreement in accordance with the Further Amendments;
- (d) negotiate and enter into such agreements as shall be necessary to amend the other Project Documents;
- (e) negotiate and enter into such agreement as may be necessary to reflect the terms of the Acceptable Funding; and
- (f) obtain as soon as practicable any consents or approvals which may be required under the Funding Agreements,

PROVIDED THAT:-

- (A) if the Concessionaire and DLR Limited are unable to reach agreement on the matters set out in paragraphs (a) and (c) within 30 days of the delivery to DLR Limited of relevant drafts, either party may refer the matters which are the subject of disagreement to the Disputes Panel as a Dispute;
- (B) DLR Limited undertakes, at the cost and expense of the Concessionaire, to co-operate with the Concessionaire and give such assistance to the Concessionaire as the Concessionaire reasonably requires in carrying out its obligations under paragraph (d) above; and
- (C) no amendment shall be, or be required to be, made to the Specification or to the boundaries of the land made and/or to be made available pursuant to this Agreement for the purposes of the permanent works as described in the definition of FM Railway.

6.3.13 If:-

- (a) the Concessionaire does not or is unable to perform its obligations under Clause 6.3.12; or
- (b) any consent to or approval of any of the items referred to in Clause 6.3.12 is required under any of the Funding Agreements and such consent or approval is not obtained within 180 days of the request therefor by the Concessionaire,

either party shall be entitled to terminate the Concession.

6.3.14 If the Concession is terminated pursuant to this Clause 6.3, the following provisions as regards compensation shall apply:-

- (a) if termination is by the Concessionaire under Clause 6.3.3 (including paragraph (b) thereof), no compensation shall be payable;
- (b) if termination is by DLR Limited under Clause 6.3.3 (other than paragraph (b) thereof) and the Works are capable of being completed such that Train Services can be operated thereon substantially as contemplated by this Agreement, DLR Limited shall pay by way of compensation an amount equal to the greater of:-

- (i) the aggregate of the Senior Lenders' Entitlement and LE's Entitlement; and
- (ii) the Inflated Termination Payment,

after making the deductions specified in Clause 6.3.17 and, save as so provided, no compensation shall be payable;

- (c) if termination is by either party under Clause 6.3.5, 6.3.7 or 6.3.13, no compensation shall be payable;
- (d) if termination is by DLR Limited under sub-clause 6.3.3(b) or 6.3.10(b)(ii) or by either party under sub-clause 6.3.10(d), DLR Limited shall pay by way of compensation an amount equal to the aggregate of the Senior Lender's Entitlement and LE's Entitlement after making the deductions specified in Clause 6.3.17;
- (e) if termination is by DLR Limited under sub-clause 6.3.10(c), no compensation shall be payable,

and the second sentence of Clause 6.4 shall apply to the payment of any such compensation.

6.3.15 DLR Limited shall pay such part of any compensation payment under this Clause 6.3 as constitutes the Senior Lenders' Entitlement direct to the Lenders' Agent (on behalf of the Senior Lenders) and the balance (if any) to the Concessionaire.

6.3.16 For the purposes of this Clause 6.3:-

"Acceptable Funding" means funding by way of equity, unsecured debt or secured debt which such debt must rank as to payment and/or security either behind or pari passu with any of the debt secured by the Qualifying Original Funding Agreements and must, having regard to all the circumstances prevailing at the time (including, without limitation, the matters referred to in the foregoing provisions of this Clause 6.3), be on terms which give no greater rights (other than pricing) to the lenders thereunder in respect of income, maturity, repayment profile or security enforcement than apply under the Qualifying Original Funding Agreements and, subject thereto, are on terms which are consistent with market practice in the City of London for the type of funding concerned;

"Available Funds" means amounts available to the Concessionaire under the Funding Agreements, the Equity Commitments, the Lewisham Grant Agreement, the Government Support Letter and any other source whatsoever and all amounts standing to the credit of any bank account of, or held for the benefit of, the Concessionaire and all insurance proceeds paid to the Concessionaire or to which the Concessionaire is entitled;

"Existing Target Completion Date" means the Target Completion Date immediately prior to the occurrence of the Major Relevant FM Event concerned;

"FM Commencement Date" means the date on which the parties agree that an event has occurred which constitutes a Major Relevant FM Event;

"FM Railway" means the permanent works constituting the extension of the Existing Railway from the Isle of Dogs, in the docklands area of East London, under the River Thames to Greenwich and Lewisham to be designed, constructed, integrated, commissioned, tested and completed so far as is reasonably practicable (having regard to the Major Relevant FM Event concerned and its effects) in accordance with this Agreement, the Works and the Technical Requirements as amended pursuant to sub-clause 6.3.6(a), but in any event in accordance with the Specification without amendment and within the boundaries of the land made and/or to be made available pursuant to this Agreement for the purposes of such permanent works;

"Independent Technical Adviser" means a technical adviser with appropriate expertise having regard to the circumstances who is appointed jointly by DLR and the Concessionaire as adviser to both of them for the purposes of Clause 6.3.4;

the **"Inflated Termination Payment"** shall be calculated in accordance with the following formula:-

$$\text{ITP} = \sum_{m=1}^n \left(\text{CP}_y \times \frac{\text{RPI}_n}{\text{RPI}_y} \right) + \sum_{m=1}^n \left(\text{LWC}_y \times \frac{\text{RPI}_n}{\text{RPI}_y} \right) - \sum_{m=1}^n \left(\text{GP}_y \times \frac{\text{RPI}_n}{\text{RPI}_y} \right)$$

where,

ITP = the Inflated Termination Payment;

n = the month in which the Concession is terminated;

m = the month in which the Concession commenced;

y = a month in which the Construction Contract is in force prior to the termination of the Concession;

CP_y = the amount of the Contract Price paid by the Concessionaire during month y (net of any tax benefits in relation thereto to the extent that the same do not become repayable or give rise to a corresponding tax charge in consequence of the termination);

LWC_y = the amount of Land and Works Costs paid by the Concessionaire in month y (net of any tax benefits in relation thereto to the extent that the same do not become repayable or give rise to a corresponding tax charge in consequence of the termination);

GP_y = the amount paid to the Concessionaire in month y pursuant to Clause 46.3.1 and the Lewisham Grant Agreement;

RPI_n = the RPI published or which is to be published in month n + 1 for the preceding month n; and

RPI_y = the RPI published in month y + 1 for the preceding month y;

"Major Relevant FM Event" means an event of Force Majeure within Clauses 8.1.1, 8.1.2, 8.1.3, 8.1.4, 8.1.5 and 8.1.6 which occurs at any time prior to the Operating Date and renders the performance of the whole or a substantial part of this Agreement impossible for a continuous period of 180 days;

"Relevant FM Event" means an event of Force Majeure within Clause 8.1.7 which occurs at any time prior to the Operating Date and renders the performance of the whole or a substantial part of this Agreement impossible for a continuous period of 180 days.

6.3.17 For the purposes of sub-clause 6.3.14(b)(i) there shall be deducted from the aggregate of the amounts of the Senior Lender's Entitlement,

LE's Entitlement and the Inflated Termination Payment and for the purposes of sub-clause 6.3.14(d), there shall be deducted from the aggregate of the amounts of the Senior Lenders' Entitlement and LE's Entitlement:-

- (i) any sums (and any finance charges or other amounts payable by the Concessionaire in respect of such sums) received by the Concessionaire in respect of the Project under the Qualifying Funding Agreements or the LE Agreements, or otherwise derived by the Concessionaire from the Project (including pursuant to Clause 46.3 of the Lewisham Grant Agreement), and subsequently applied for purposes other than the Project (such other purposes not to include the application of sums by way of the return of principal or capital or the payment of interest, dividends or distributions pursuant to the Funding Agreements and being, in the case of such principal and capital, in reduction of amounts owing thereunder);
- (ii) the open market value of any assets held by the Concessionaire immediately following termination of the Concession (including those assets (if any) in respect of which the Concessionaire is to receive payment pursuant to Clause 42.4.2 and any undisbursed grant funding to the extent that the Concessionaire is not obliged to repay such funding under the terms of the Project Documents); and
- (iii) the amount of any reductions under sub-clause 27.2.3(c).

6.4 Payment of compensation

Where DLR Limited is obliged under this Agreement to pay an amount to the Concessionaire equal to the Termination Payment such amount shall be due and payable by DLR Limited on the date which is 28 days after the completion of the Works. All other compensation amounts shall be due and payable within seven days of the parties agreeing the amount to be paid, or such amount being determined in accordance with the Disputes Resolution Procedure, and shall carry interest at the Prescribed Rate from the date of termination to the date of payment.

6.5 Saving provisions

- 6.5.1 Termination of the Concession in accordance with the provisions of this Agreement shall be without prejudice to any right or remedy of either party against the other accruing or accrued prior to such termination including any right to claim damages for any antecedent breach of this Agreement or accruing after termination in respect of those Clauses referred to in Clause 6.5.4 and any right to claim damages or other relief in relation thereto.
- 6.5.2 The rights of DLR Limited under this Clause 6 are in addition and without prejudice to any right which DLR Limited may have to obtain

redress or relief available at law (whether by way of damages, specific performance or otherwise) in respect of a Concessionaire Default provided that DLR Limited shall not be entitled to recover twice in respect of the same loss.

- 6.5.3 Save as provided in Clauses 6.1 to 6.3 (inclusive) and Clause 6.5.1, the Concessionaire shall have no claim for compensation or otherwise as a result of the termination of the Concession in accordance with the provisions of this Agreement.
- 6.5.4 The following Clauses of this Agreement shall remain in full force and effect notwithstanding the termination of the Concession: Clauses 1, 2, 6, 7, 9, 42 to 45 (inclusive), 49 and 52 to 56 (inclusive).
- 6.5.5 Save as aforesaid this Agreement shall be of no further force and effect following termination of the Concession.

7. INDEMNITIES

7.1 Indemnity by Concessionaire

The Concessionaire shall be responsible for and shall indemnify DLR Limited and its servants, agents, officers, employees, contractors and sub-contractors of any tier ("the indemnified parties") from and against:-

- 7.1.1 all liabilities, losses, costs and expenses (excluding consequential and indirect loss except to the extent that such loss is recoverable under the insurance policies to be taken out by the Concessionaire in accordance with Clause 48) suffered or incurred by the indemnified parties as a result of:-

- (a) claims by third parties; and
- (b) damage to persons employed by or property owned or used by the indemnified parties,

arising from the negligence or default of the Concessionaire or otherwise arising from the performance of the Concessionaire's obligations and undertakings contained in the Project Documents provided that, in the case of any such performance, which does not constitute negligence or a default on the part of the Concessionaire, the Concessionaire shall have no liability under this Clause 7.1.1 to the extent that such claim or damage arose as an unavoidable result of the proper performance of such obligations or undertakings but such exclusion of liability shall not apply if (i) the Concessionaire failed to undertake such performance in the manner that was likely to minimise the amount of such claim or damage, or (ii) such claim or damage is covered by the insurance required to be taken out by the Concessionaire pursuant to Clause 48; and

- 7.1.2 all other liabilities, costs, losses and expenses (excluding consequential and indirect loss except to the extent that such loss is recoverable under the insurance policies to be taken out by the Concessionaire in accordance with Clause 48) suffered or incurred by the indemnified parties as a result of the breach by the Concessionaire of its obligations and undertakings contained in the Project Documents.

For the avoidance of doubt, the provisions of this Clause 7.1 shall not apply in respect of Material Detriment Compensation payable by DLR Limited except to the extent that the liability to pay such Material Detriment Compensation arises from any failure by the Concessionaire to comply with its obligations under Clauses 17.2.6 or 17.2.7.

7.2 Indemnity by DLR Limited

Subject as provided in Clause 33.6, DLR Limited shall be responsible for and shall indemnify the Concessionaire and its servants, agents, officers, employees, contractors and sub-contractors of any tier from and against any and all liabilities, costs, damages and expenses (including loss of Fees but excluding other consequential and indirect loss except to the extent that such loss is recoverable under the insurance policies taken out by DLR Limited from time to time) suffered or incurred by the Concessionaire or any such other persons as a result of:-

- 7.2.1 damage to persons or property (including, for the avoidance of doubt, the Lewisham Extension) resulting from default or the negligent acts or omissions of DLR Limited and its officers, employees, servants and agents;
- 7.2.2 Claims for Operational Compensation (other than claims for Concessionaire's Operational Compensation); and
- 7.2.3 any insurance policy being maintained by the Concessionaire being voided by any negligence or default of DLR Limited and its officers, employees, servants and agents.

7.3 Resistance of Claims

7.3.1 If either party ("the Recipient") becomes aware of any third party claim against the Recipient which may result in a claim by the Recipient against the other ("the Covenantor") under any of the indemnities contained in this Agreement, the Recipient shall give notice to the Covenantor as soon as is reasonably practicable thereafter. The Covenantor shall be entitled at its discretion (but after consultation with the Recipient) to resist at the Covenantor's own expense such claim on behalf of the Recipient provided that:-

- (a) the Recipient shall be kept fully informed of all matters pertaining to the claim;

- (b) the Covenantor shall not be entitled to resist any such claim before any court unless it has been advised by leading counsel, after disclosure of all relevant information and documents, that it is reasonable to resist such claim in the manner proposed by the Covenantor; and
 - (c) the Recipient is indemnified and secured to its reasonable satisfaction by the Covenantor against all losses (including costs, damages and expenses) which may thereby be incurred.
- 7.3.2 The Recipient shall give the Covenantor all reasonable co-operation, access and assistance, technical or otherwise, for the purpose of resisting such a claim subject as provided in sub-clause 7.3.1(c).
- 7.3.3 If the Covenantor does not request the Recipient to take any appropriate action or shall fail to indemnify and secure the Recipient to its reasonable satisfaction within 21 days of the said notice to the Covenantor, the Recipient shall be free to pay or settle the claim on such terms as it may in its absolute discretion think fit. Prior to the expiry of such notice period, the Recipient shall make no admission prejudicial to the resistance of such claim.

7.4 Scope of Liability

Without prejudice to the operation of Part III of this Agreement and Schedule 7, the liability of the parties hereto in respect of the matters which are the subject of the indemnities in Clause 7.1 and 7.2 shall be limited to the scope of such indemnities.

8. FORCE MAJEURE

8.1 Meaning of Force Majeure

In this Agreement "Force Majeure" shall mean any of the following events and circumstances to the extent that they affect materially and adversely a party's ability to perform any of its obligations under or pursuant to this Agreement. Subject to the provisos hereinafter appearing the events and circumstances which constitute Force Majeure are:-

- 8.1.1 war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case within and affecting a member state of the European Union;
- 8.1.2 rebellion, revolution, civil disobedience, commotion or disorder, acts of terrorism or the threat of such acts in each case within and affecting a member state of the European Union;
- 8.1.3 nuclear explosion, radioactive or chemical contamination or ionising radiation unless the source or cause of the explosion, contamination or radiation is brought to or near the Site or Working Areas by the Concessionaire, its contractors or their sub-contractors of any tier;

- 8.1.4 pressure waves caused by aircraft or other aerial devices travelling at supersonic speed;
- 8.1.5 lightning, fire, earthquake, explosion, flooding of the River Thames or extraordinary flooding of the River Ravensbourne (as specified below in this Clause 8.1);
- 8.1.6 a catastrophic failure of the Works occurring as a result of unforeseeable ground conditions;
- 8.1.7 any other event or circumstance outside the reasonable control of the party claiming Force Majeure,

provided that:-

- (a) events and circumstances shall not be treated as Force Majeure if:-
 - (i) they would not have occurred but for a breach by the party claiming Force Majeure of the terms of this Agreement or any other Project Documents; or
 - (ii) they could have been prevented through the exercise of proper foresight and diligence,or to the extent that:-
 - (iii) their occurrence could reasonably have been anticipated and appropriate anticipatory mitigation measures undertaken; and
- (b) the following events and circumstances shall not constitute Force Majeure events:-
 - (i) strikes and other industrial action by a party's workforce or the workforce of a party's contractors and sub-contractors of any tier (other than as part of national or industry-wide strikes);
 - (ii) disputes with a party's contractors and sub-contractors of any tier;
 - (iii) any event or circumstances in respect of which the Concessionaire has assumed responsibility under Clauses 17.2, 17.3, 17.5 or 17.6 (save as provided in Clause 8.1.6);
 - (iv) any Delay Event (other than Force Majeure);
 - (v) lack of funds or increased cost to a party of performing its obligations under this Agreement or any Project Documents;

- (vi) lack of availability of labour and materials other than as a result of national or industry-wide strikes;
- (vii) any breach by Railtrack of its obligations under the Ancillary Agreements.

For the purposes of Clause 8.1.5 extraordinary flooding of the River Ravensbourne shall have occurred if the actual water level, when measured at a monitoring point to be installed and maintained by the Concessionaire at a location downstream but within 100 metres of the diversion channel and to be approved by DLR Limited (such approval not to be unreasonably withheld or delayed), equals or exceeds the "flood level"; for this purpose "flood level" shall be calculated in the manner described in sub-clause (a) or (b) below utilising a steady state fluvial flow of 68.8 cumecs occurring at the same time as the Mean High Water level (3.15m AOD at Greenwich pier) on the River Thames. The flood level shall be ascertained in the manner following:-

- (a) prior to the issue of the Infrastructure Certificate the flood level shall be a level which, by applying a mathematical ONDA model developed to a specification no less detailed than that described in the Halcrow Report (TN47) and approved by DLR Limited (such approval not to be unreasonably withheld or delayed), represents at least the same combination of fluvial flooding and tidal conditions as those described above;
- (b) following the issue of the Infrastructure Certificate the flood level shall be a level which, having regard to the design assumptions actually used by the Concessionaire and applying a mathematical ONDA model developed to a specification no less detailed than that described in the Halcrow Report (TN47) and approved by DLR Limited (such approval not to be unreasonably withheld or delayed), represents at least the same combination of fluvial flooding event (in terms of frequency of occurrence) and tidal surge (in terms of peak still water level) as that described above,

in each case with a measuring tolerance of +/- 25mm. It shall be for the Concessionaire to demonstrate to the reasonable satisfaction of DLR Limited that a flood level has been exceeded and the Concessionaire shall supply such information (including the data files relating to any ONDA model developed by the Concessionaire) and records and analyses made available by the Environment Agency as DLR Limited may reasonably require for the purpose of verifying the Concessionaire's calculations.

8.2 Consequences of Force Majeure

Where a party is affected by an event of Force Majeure it shall take all reasonable steps to mitigate or remove the effects of such event. A party shall not be in breach of its obligations under this Agreement and shall have no liability to pay damages or other compensation under this Agreement to the extent that it is prevented from complying with its obligations hereunder by

reason of an event of Force Majeure affecting either party. The provisions of this Clause 8.2 shall not:-

- 8.2.1 relieve the Concessionaire from its obligations regarding the date for completion of the Works, in respect of which Clause 21 applies; or
- 8.2.2 relieve DLR Limited from its obligation to pay Fees to the Concessionaire in the event that DLR Limited is prevented from operating Train Services on the Lewisham Extension, or such Train Services are substantially disrupted, as a result of an event of Force Majeure affecting DLR Limited unless such event also prevents the Concessionaire from making the Lewisham Extension Available for Service.

8.3 Notification of Force Majeure event

If either party is prevented from performing or is hindered in the performance of one or more of its obligations under this Agreement by an event or circumstance which the party so prevented or hindered considers to be an event of Force Majeure it shall as soon as reasonably practicable, but in any event not later than 21 days after the date when such event became known to it, give notice to the other party identifying:-

- 8.3.1 the event of Force Majeure or (if more than one) each such event that has occurred;
- 8.3.2 the date from which the event has prevented or hindered the party affected in the performance of its obligations;
- 8.3.3 the obligations affected; and
- 8.3.4 its best estimate of the date or dates upon which it will be able to resume the performance of each of its obligations so affected.

Thereafter, until resumption of the performance of its obligations, the party affected by the event of Force Majeure shall keep the other party fully informed of all developments and the steps taken to mitigate or remove the effects of the event of Force Majeure.

8.4 Notice of cessation of Force Majeure event

A party who is prevented from performing or is hindered in the performance of its obligations under this Agreement by an event of Force Majeure shall give notice to the other party forthwith upon the event ending or being removed or its existence no longer preventing performance of an obligation and the party affected by the event shall resume the full performance of those of its obligations no longer affected as soon as possible thereafter.

8.5 Extension to Concession Period due to Force Majeure after the Completion Date

8.5.1 The Concession Period shall be extended by a period calculated in accordance with the provisions of this Clause where:-

- (a) the Lewisham Extension is not Available for Service as a result of; or
- (b) the ability to operate Train Services on the Lewisham Extension is otherwise affected by,

an event of Force Majeure affecting the Concessionaire which occurs after the Completion Date and lasts for a continuous period of not less than one day.

8.5.2 The Concession Period shall be extended:-

- (a) (where sub-clause 8.5.1(a) applies) by a period equivalent to the non Availability of the Lewisham Extension as a result of the relevant event of Force Majeure; and
- (b) (where sub-clause 8.5.1(b) applies) by a period calculated in accordance with the following formula:-

$$E = \frac{RAF}{AF} \times FM$$

where:

E = the period of the extension of the Concession Period;

RAF = the aggregate reduction in Availability Fees received by the Concessionaire during the period of, and resulting from, the event of Force Majeure;

AF = the aggregate Availability Fees to which the Concessionaire would otherwise have been entitled during the period of the Force Majeure; and

FM = the duration in days of the event of Force Majeure,

and the Availability Fee Period shall be extended by the same period. For the purpose of paragraph 1.2 of Part 1 of Schedule 7, APF during such extension shall be calculated in accordance with the following formula:-

$$APF = \frac{DL}{DL-n} \left(\frac{AP_{fm} \times APF_{fm}}{APFA} \right)$$

where:

D = a day (a "Force Majeure Day") on which $BF < BF_{max}$ by operation of paragraph 2.1.2 of Part 1 of Schedule 7;

DL = the last Force Majeure Day during the Availability Fee Period;

n = the number of Force Majeure Days during the Availability Fee Period;

AP_{fm} = the number of Availability Points that have been deducted during each Force Majeure Day by operation of paragraph 2.1.2 of Part 1 of Schedule 7;

APF_{fm} = the amount that would have been paid to the Concessionaire pursuant to paragraph 1.2 of Part 1 of Schedule 7 in respect of each Availability Point (AP_{fm}) during the relevant Force Majeure Day but for the operation of paragraph 2.1.2 of Part 1 of Schedule 7;

APFA = the aggregate number of Availability Points (AP_{fm}) that have been deducted during the Force Majeure Days falling within the Availability Fee Period,

Provided that if such an event of Force Majeure occurs when the Concessionaire is no longer entitled to Availability Fees but only to Usage Fees, the Concession Period shall be extended by such period as is necessary to allow the Concessionaire to recover the Anticipated Usage Fees that are lost as a result of such Force Majeure Event.

8.6 Notice of required extension of Concession Period

Within 14 days after the date of any such notice referred to in Clause 8.4 in respect of an event of Force Majeure which occurs after the Completion Date, the Concessionaire shall give notice to DLR Limited of its estimate of the required extension (if any) to the Concession Period calculated in accordance with Clause 8.4 arising from such event of Force Majeure. The Concessionaire shall also supply DLR Limited with such supporting information and documentation as DLR Limited may reasonably request.

8.7 Disputing notice of Force Majeure

If the recipient of a notice given under Clause 8.3 or 8.6 disputes that an event of Force Majeure has occurred or the effect of such event of Force Majeure, it shall give written notice to the party claiming Force Majeure within 28 days of the notice given under Clause 8.3 or 8.6 (as the case may be) stating the grounds on which it disputes such claim and, if neither the notice under Clause 8.3 or 8.6 nor the notice of dispute under this Clause 8.7 has been withdrawn within 28 days of the date of the notice under this Clause 8.7, the parties shall deal with the matter as a Dispute.

9. INTELLECTUAL PROPERTY

9.1 Licence to use Intellectual Property

The Concessionaire grants to DLR Limited a perpetual, irrevocable, royalty free, non-exclusive licence to use and reproduce Intellectual Property which is vested in the Concessionaire for all purposes relating to the Project including the alteration, modification, extension, repair, use, letting and sale of the Project or any part thereof. Where Intellectual Property is vested in a third party, the Concessionaire shall (except in the case of Intellectual Property vested in Alcatel in respect of which the Concessionaire's obligation to procure the grant of a licence to DLR Limited shall be restricted to and governed by the provisions of the Lewisham ATC System Contract) use its best endeavours to procure the grant of a licence to DLR Limited from the beneficial owner of such Intellectual Property in the same terms as those set out herein mutatis mutandis. The Concessionaire shall ensure that DLR Limited is provided with copies of such items of Intellectual Property as DLR Limited may from time to time reasonably request. The provisions of this Clause 9.1 shall not apply in respect of uncustomised software which can be purchased commercially off the shelf.

9.2 Indemnity against infringement

The Concessionaire shall indemnify DLR Limited against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any rights in the Intellectual Property (an "Intellectual Property Infringement") because of the use by the Concessionaire of the Intellectual Property or the use by DLR Limited of the rights granted under Clauses 9.1 and 9.3 for the purposes specified therein.

9.3 Proprietary software

If the Concessionaire uses software (other than software which can be purchased commercially off the shelf) for the purpose of storing or utilizing records or in respect of its systems for carrying out its maintenance obligations under the Project Documents, the Concessionaire shall procure at its own expense:-

- 9.3.1 that the source codes for all such software (including any updated versions of such software) are deposited with an independent third

party on terms whereby the Concessionaire, DLR Limited or anyone authorised by either of them can obtain access to the same if proprietary software in question is not being maintained or developed in accordance with the provisions of the relevant maintenance or development agreement or if any of the events specified in sub-clauses 6.1.1(a) or (b) occurs in relation to the body with obligations to maintain or develop the proprietary software in question;

9.3.2 that the right to use such software is capable of being assigned or licensed to DLR Limited and thereafter used by DLR Limited on the same terms as applied to the Concessionaire without additional charge; and

9.3.3 that any such licence or sub-licence shall not be determined if the Concession is terminated or expires and shall be assigned or licensed (without additional charge) to, and be capable of being used by, DLR Limited for so long as any such licence fee or other payment referred to below continues to be paid by DLR Limited, or until renewed,

and at all times during the Concession Period the Concessionaire shall pay any licence fee or other payment which the grantor of such licence may require or is obliged to pay to its licensor.

10. SAFETY AND REGULATORY

10.1 Safety Management

Subject to DLR Limited's obligations under Clause 34.2, the Concessionaire shall be responsible for the safety of the Works, and subsequently the Lewisham Extension (other than the manner in which DLR Limited operates its Train Services thereon), during all phases of the Concession, including the safety of the Site and Working Areas. The Concessionaire shall employ an appropriate and effective safety management system which shall include one or more suitably qualified, trained and experienced persons to be responsible for all safety matters associated with the Concession, the Works and the Availability and maintenance of the Lewisham Extension including the following aspects:-

10.1.1 the timely consultation with all relevant regulatory authorities on safety matters relevant to the various construction methods and the Site and Working Areas;

10.1.2 where appropriate developing and promulgating safety procedures, and agreeing these with the relevant regulatory authorities;

10.1.3 defining specific safety measures for particular activities, jobs and sites, producing method statements on safety aspects;

10.1.4 producing safety documentation;

10.1.5 defining and reporting on tests and trials needed to demonstrate safety;

- 10.1.6 performing safety analyses and quantified risk assessments;
- 10.1.7 reporting on safety matters and accident statistics to DLR Limited, HSE, and HMRI as appropriate;
- 10.1.8 training construction and maintenance personnel (including relevant DLR Limited and sub-contractors' staff) on all safety matters;
- 10.1.9 performing safety inspections, audits and spot checks on its own and sub-contractors' personnel;
- 10.1.10 taking appropriate actions on discovery of breaches of safety procedures.

The person or persons referred to above, shall as far as reasonably possible be independent of other functions in the Concessionaire's organisation, and shall have sufficient authority to ensure that safety requirements are complied with by all of the Concessionaire's and sub-contractors' personnel.

10.2 Safety on the Existing Railway

All safety procedures and measures required pursuant to Clause 10.1 which affect the Existing Railway or the operation of Train Services on the Existing Railway shall be agreed with DLR Limited (such agreement not to be unreasonably withheld), whose reasonable requirements shall be complied with. The Concessionaire shall in any event comply with the safety related requirements of the DLR Control Documents.

10.3 Audit of safety procedures

DLR Limited is entitled to perform annually (and otherwise on a random occasional basis) inspections and audits of the Concessionaire's safety related activities, and the Concessionaire shall be required to comply with all reasonable written recommendations made by DLR Limited following any such inspection or audit.

10.4 Upgrades

Subject as provided in Clause 47, the Concessionaire shall implement all upgrades and improvements to the Works and, following the Completion Date, the Lewisham Extension, which are required by any Applicable Requirement relating to safety.

10.5 Safety Case

- 10.5.1 DLR Limited shall have responsibility for the production of the Safety Case for the Railway. The Concessionaire shall be responsible for producing that part of the Safety Case relating to the infrastructure of the Lewisham Extension and DLR Limited shall be responsible for the

production of that part of the Safety Case relating to the operation of the Lewisham Extension.

- 10.5.2 The Safety Case shall be consistent with the safety case for the Existing Railway subject to such amendments as are reasonably necessary to take account of the presence and role of the Concessionaire. The Concessionaire shall comply with DLR Limited's reasonable requirements in relation to the production of the Safety Case. DLR Limited will advise the Concessionaire if any part of the proposed Works will to DLR Limited's knowledge make approval of the Safety Case impossible.
- 10.5.3 Within three months of the Commencement Date, DLR Limited and the Concessionaire shall agree a programme for the production of the Safety Case which shall require the production of the Safety Case in good time for HMRI approval to be obtained prior to the anticipated Operating Date shown in the Works Programme and to meet the requirements of Clause 25.3. Neither party shall unreasonably withhold or delay its agreement to such programme.
- 10.5.4 Subject to the Concessionaire having complied with its obligations to provide part of the Safety Case in accordance with the programme agreed under Clause 10.5.3, DLR Limited shall submit the Safety Case to HMRI for approval in accordance with the requirements of such programme and shall use all reasonable endeavours to obtain such approval. Both DLR Limited and the Concessionaire shall prepare any additions or alterations to those parts of the Safety Case for which they are responsible as shall be required in order to obtain HMRI approval.
- 10.5.5 Both DLR Limited and the Concessionaire shall comply with the Safety Case in performing their respective functions under this Agreement.

10.6 Approvals, Certificates, Licences, Exemptions or Orders

- 10.6.1 DLR Limited shall use all reasonable endeavours to obtain by the Operating Date anticipated in the Works Programme (and, when obtained, shall supply the Concessionaire with copies of) the following approvals, certificates, licences, exemptions, directions, designations or orders required by regulatory authorities:-
- (a) Railways Act Exemption or, if any relevant Railways Act Exemption is not granted, at the discretion of DLR Limited, any necessary licence, direction, approval or designation pursuant to any of Sections 7, 8, 17, 18, 20, 23 and 24 of the Railways Act 1993;
 - (b) approval of the Safety Case by HMRI.
- 10.6.2 DLR Limited undertakes to apply for, and will use all reasonable endeavours to obtain, the Railways Act Exemption in respect of the

Lewisham Extension on terms that exemption from the requirement to be authorised by licence to be the operator of any railway asset consisting of or comprised in the Lewisham Extension is granted to any person who acts as the operator of any such asset.

- 10.6.3 The Concessionaire shall provide DLR Limited with such assistance as DLR Limited may reasonably require in order to obtain the approvals, certificates, licences, exemptions, directions, designations or orders referred to in Clause 10.6.1 or 10.6.2. This support shall include the preparation of relevant parts of the submissions, the provision of necessary information, drawings and reports, assistance with, and attendance at, inspections by the authorities, and the performance of tests or trials required by the authorities. The Concessionaire shall continue to provide such support and assistance throughout the Concession Period so as to enable DLR Limited to maintain the validity of the approvals, certificates, licences, exemptions, directions, designations or orders referred to above. If any Applicable Requirement requires that any application for any of such approvals, certificates, licences, exemptions, directions, designations or orders be made by the Concessionaire or if an application by DLR Limited for an approval, certificate, licence, exemption direction, designation or order is refused on the grounds that the Concessionaire is the person entitled to apply for the same, the Concessionaire shall, if required (and in a form approved) by DLR Limited, make such application and subsequently maintain the validity of any such approvals, certificate, licences, exemptions, directions, designations or orders. Nothing in this Clause shall require the Concessionaire to incur third party expenditure in respect of any matter referred to in this Clause 10.6.3 which DLR Limited could reasonably have procured for itself.
- 10.6.4 Without prejudice to the generality of Clause 3.3, but subject to Clause 10.6.5, the Concessionaire shall be responsible for obtaining all other approvals, certificates, licences, exemptions, directions, designations or orders required for the Lewisham Extension to be available for the operation of Train Services in accordance with the Applicable Requirements and otherwise to observe and perform its obligations pursuant to this Agreement, including fire certificates for underground stations and tunnels from LFCDA. The Concessionaire shall supply DLR Limited with copies of all such approvals, certificates, licences, exemptions, directions, designations or orders. DLR Limited shall at the cost of the Concessionaire provide the Concessionaire with such assistance as the Concessionaire may reasonably require in order to obtain such other approvals, certificates, licences, exemptions, directions, designations or orders.
- 10.6.5 Unless the Secretary of State for Transport (or HMRI on his behalf) shall otherwise direct it is acknowledged that DLR Limited is the operator for the purposes of the Railways and Other Transport Systems (Approval of Works, Plant & Equipment) Regulations 1994 ("the Works Approvals Regulations"). Subject to the Concessionaire complying with its obligations under Clause 10.6.6, DLR Limited

shall, in respect of the Works and on each occasion that the Concessionaire wishes to bring into use on the Lewisham Extension for the first time any altered work, plant or equipment, make application for any necessary approval of the Works or altered work plant or equipment pursuant to regulation 5 of the Works Approvals Regulations. In order to permit DLR Limited to comply with the requirements of the Works Approvals Regulations for the obtaining of such approval the Concessionaire shall, in good time having regard to the progress of the Works and the anticipated Operating Date or in respect of any altered work, plant or equipment, in good time having regard to the date on which such work, plant or equipment is first intended to be brought into use, prepare and obtain DLR Limited's agreement (not to be unreasonably withheld or delayed) to the form and content of all necessary applications under the Works Approvals Regulations and to any information which may be required to be submitted in connection with such application and shall, upon such agreement being given, direct DLR Limited as to the time at which the Concessionaire requires any relevant application to be made.

- 10.6.6 The Concessionaire shall liaise closely with HMRI during the course of the Works or, as the case may be, during the carrying out of alterations to the Lewisham Extension or to any plant or equipment and shall, where necessary or appropriate, request approvals, consents and other acknowledgements from HMRI in accordance with any applicable regulations or guidelines or otherwise as agreed by HMRI in respect of the Concessionaire's proposals for the design and construction of the Works or, as the case may be, of any alteration to the Lewisham Extension or to any plant or equipment. The Concessionaire may request from DLR Limited confirmation that DLR Limited has no objection to any proposals which the Concessionaire intends to submit to HMRI pursuant to this Clause 10.6.6 and with such request the Concessionaire shall submit to DLR Limited the proposal that the Concessionaire intends to submit to HMRI. If DLR Limited is satisfied that there is nothing in such proposal which might affect adversely the safe operation of Train Services on the Railway it shall as soon as reasonably practicable after receipt thereof issue to the Concessionaire confirmation in writing that it has no objection to the same. If DLR Limited (acting reasonably) refuses to issue a letter of no objection to the Concessionaire's proposals or any information to be submitted to HMRI it shall notify the Concessionaire of its reasons for such refusal whereupon the Concessionaire shall make such revisions to the same as may be necessary to address DLR Limited's concerns and shall resubmit the revised proposals or information to DLR Limited and the provisions of this Clause 10.6.6 shall again apply.

10.7 Applicable Requirements relating to safety

DLR Limited shall be responsible for interpreting all Applicable Requirements relating to the safety of the Railway and shall comply with, and apply evenly without discrimination, such interpretation in relation to both the Existing

Railway and the Lewisham Extension. In performing its obligations under Clause 3.2, the Concessionaire shall comply with DLR Limited's interpretation of the Applicable Requirements.

10.8 CDM Regulations

It is acknowledged that the Concessionaire will undertake the role and responsibilities of the "client" in respect of the Works and, following their completion, the Lewisham Extension under the CDM Regulations and shall perform all duties and obligations of the "client" in accordance with the requirements of the CDM Regulations. The Concessionaire shall notify HSE of the assumption by the Concessionaire of such duties at the same time that the notification required by Clause 7(4) of the CDM Regulations is submitted to HSE.

11. QUALITY ASSURANCE

11.1 Management of Quality Assurance

The Concessionaire shall procure that all aspects of the Project are the subject of appropriate quality management systems which comply with:-

- 11.1.1 the relevant ES EN ISO 9000 series standard or other equivalent British or European Standard;
- 11.1.2 the Technical Requirements; and
- 11.1.3 the normal standards of practice in the UK railway industry.

11.2 Quality Plans

Without limitation to the generality of Clause 11.1, in undertaking the Project, the Concessionaire shall comply with the Quality Plans. The Concessionaire shall notify DLR Limited of any proposed changes to the Quality Plans. Any such changes shall require the written consent of DLR Limited provided that DLR Limited shall only be entitled to object to any proposed changes if, acting reasonably, it considers that such changes would not comply with the requirements of Clause 11.1, and, except as aforesaid, DLR Limited shall give its consent within 14 days of a written request from the Concessionaire for such consent, failing which DLR Limited shall be deemed to have granted its consent.

11.3 Effectiveness of contractor's quality systems

The Concessionaire shall monitor its contractors' and their sub-contractors' quality systems and ensure that they operate effective quality systems based on the relevant ES EN ISO 9000 series standard or other equivalent British or European Standard appropriate to their scope of supply. The Concessionaire shall be responsible for monitoring the performance of and ensuring compliance by such persons with the requirements of their respective quality systems.

11.4 Quality assurance audit

DLR Limited shall be entitled to audit compliance with the Quality Plans annually and on an occasional random basis without notice to the Concessionaire. Any such audit may involve the examination or inspection of works or activities on or off the Site and Working Areas. The Concessionaire shall procure that the representatives of DLR Limited conducting such an audit shall be provided with all such assistance and access to facilities and records (including the provision of copies of documents) as they may reasonably require in order to discharge their audit function in a proper manner. The Concessionaire and its contractors and their sub-contractors shall have due regard to any recommendations arising from any such audit.

12. REPRESENTATIVES AND PERSONNEL

12.1 DLR Representative

DLR Limited appoints the DLR Representative to be its agent during the Concession Period to perform the functions of DLR Limited under and pursuant to this Agreement and such further functions as DLR Limited shall from time to time delegate to him. DLR Limited may from time to time replace the DLR Representative and shall forthwith notify the Concessionaire of the identity of any replacement DLR Representative.

12.2 Concessionaire's Representative

The Concessionaire shall appoint the Concessionaire's Representative to direct and control the overall performance by the Concessionaire of the Concession and its duties and obligations under and pursuant to this Agreement. Such person shall have full authority to act on behalf of the Concessionaire for all purposes in connection with this Agreement and (unless DLR Limited otherwise agrees) shall represent the Concessionaire (accompanied by such other personnel as may be necessary) at each meeting in relation to the Project unless DLR Limited shall otherwise agree. The Concessionaire may from time to time replace the Concessionaire's Representative and shall forthwith notify DLR Limited of the identity of any replacement Concessionaire's Representative.

12.3 Personnel

The Concessionaire shall employ and shall ensure that its contractors and their sub-contractors of any tier employ only such persons as are properly qualified, experienced and competent to perform the work assigned to them. Where the Concessionaire's personnel (including those of contractors and sub-contractors of any tier) are engaged in any form of safety critical work, the Concessionaire shall ensure that the requirements of HSE's "Railways (Safety Critical Works) Regulations 1994" are complied with. Evidence that persons have been properly assessed as competent to perform their safety critical duties shall be provided to DLR Limited.

13. REPRESENTATIONS AND WARRANTIES

13.1 Concessionaire's representations and warranties

The Concessionaire represents and warrants to DLR Limited that:-

- 13.1.1 the Concessionaire is duly incorporated and validly existing with limited liability under the laws of England;
- 13.1.2 the Memorandum and Articles of Association of the Concessionaire incorporate provisions which respectively authorise the Concessionaire:-
 - (a) to carry on its business as it is now being conducted; and
 - (b) to sign and deliver and perform the transactions contemplated in the Project Documents and the Funding Agreements;
- 13.1.3 this Agreement has been validly entered into by the Concessionaire and creates legally binding obligations upon the Concessionaire;
- 13.1.4 neither the signing and delivery of the Project Documents or the Funding Agreements nor the performance of any of the transactions contemplated therein will:-
 - (a) contravene or constitute a default under any provision contained in any Applicable Requirement to which it is subject or any agreement or instrument by which the Concessionaire or any of its assets is bound or affected; or
 - (b) cause any limitation on the Concessionaire or the powers of its directors, whether imposed by or contained in any document which contains or established its constitution or in any Applicable Requirement to which it is subject or any agreement or instrument by which the Concessionaire or any of its assets is bound or affected to be exceeded.

13.2 DLR Limited's reliance

The Concessionaire acknowledges that DLR Limited has entered into this Agreement and will enter into the other Project Documents in full reliance on the representations and warranties of the Concessionaire set out in Clause 13.1.

13.3 DLR Limited's representations and warranties

DLR Limited represents and warrants to the Concessionaire that:-

- 13.3.1 DLR Limited is duly incorporated and validly existing with limited liability under the laws of England;

- 13.3.2 the Memorandum and Articles of Association of DLR Limited incorporate provisions which respectively authorise DLR Limited:-
- (a) to carry on its business as it is now being conducted; and
 - (b) to sign and deliver and perform the transactions contemplated in the Project Documents;
- 13.3.3 this Agreement has been validly entered into by DLR Limited and creates legally binding obligations upon DLR Limited;
- 13.3.4 neither the signing and delivery of the Project Documents nor the performance of any of the transactions contemplated therein will:-
- (a) contravene or constitute a default under any provision contained in any Applicable Requirement to which it is subject or any agreement or instrument by which DLR Limited or any of its assets is bound or affected; or
 - (b) cause any limitation on DLR Limited or the powers of its directors, whether imposed by or contained in any document which contains or established its constitution or in any Applicable Requirement to which it is subject or any agreement or instrument by which DLR Limited or any of its assets is bound or affected to be exceeded; or
- 13.3.5 as far as it is aware (but without having made enquiries) it is not at the date of this Agreement in breach of the Ancillary Agreements, the Property Undertakings or the terms of the Undertaking given by London Regional Transport to Tower Hamlets Borough Council dated 21st June 1992 nor (except as disclosed in the Data Room Information) has it received written notice of any breach thereof.

13.4 Concessionaire's reliance

DLR Limited acknowledges that the Concessionaire has entered into this Agreement and will enter into the other Project Documents in full reliance on the representations and warranties of DLR Limited set out in Clause 13.3.

13.5 DLR Limited's Technical Information

- 13.5.1 DLR Limited warrants that the Technical Information is true and accurate in all material respects as at the date of this Agreement.
- 13.5.2 If any of the Technical Information is established to be incorrect in any material respect, then, subject as provided in Clause 13.5.3, DLR Limited shall issue a Preliminary Change Instruction whereupon the provisions of Clause 22 shall have effect on such basis as is necessary to ensure that the Concessionaire is in no worse financial position than it would have been in if such Technical Information had not been incorrect.

- 13.5.3 DLR Limited shall only be obliged to issue a Preliminary Change Instruction under Clause 13.5.2 if the Concessionaire has notified DLR Limited in writing of the inaccuracy of the relevant Technical Information within 28 days of the Concessionaire or the Contractor first becoming aware that such Information may be inaccurate.
- 13.5.4 Save as provided in this Clause 13.5, DLR Limited shall have no liability to the Concessionaire in respect of any inaccuracy in the Technical Information.

PART III

LAND AND PLANNING

14. VACANT POSSESSION

14.1 Responsibility for obtaining Vacant Possession

DLR Limited shall obtain and provide to the Concessionaire and the Concessionaire shall take Vacant Possession of the Site and Working Areas on and subject to the terms and conditions of this Agreement.

14.2 Vacant Possession of the Notified Land

Subject as provided in Clause 14.6, DLR Limited shall provide to the Concessionaire and the Concessionaire shall take Vacant Possession of each parcel of Notified Land at any time prior to the date specified in respect of such parcel in Column 5 of the Notified Land Schedule or prior to such later date as the Concessionaire may specify at any time prior to service by DLR Limited of any relevant statutory notice required in order to allow DLR Limited to acquire such land PROVIDED THAT at any time prior to the issue by DLR Limited of any relevant statutory notice relating to any parcel or parcels of Notified Land the Concessionaire shall be entitled to notify DLR Limited that it no longer requires that parcel or those parcels of Notified Land in which case such parcel or parcels of land shall no longer be Notified Land.

14.3 Notification of requirements for Additional Land

14.3.1 The Concessionaire may notify DLR Limited at any time after the date hereof but on or prior to 18th November 1996 of its requirement for Vacant Possession of any Additional Land. The notification shall:-

- (a) specify whether the Additional Land is required for the Site or a Working Area and, if the latter, the period for which the Additional Land is required;
- (b) include a sufficient description and plans of the Additional Land for DLR Limited to prepare any statutory notices required for the provision of Vacant Possession (and for the avoidance of doubt, this requirement shall be in addition to and not in substitution for the requirements of Clause 14.4); and
- (c) specify the date by which the Concessionaire requires Vacant Possession of the Additional Land, such date to be no earlier than the minimum period after service of such notification as is specified in relation to the Additional Land in Column 3 of the Additional Land Schedule.

14.3.2 Notwithstanding the provisions of Clause 14.3.1 the Concessionaire may notify DLR Limited after 18 November 1996 of its requirement for Vacant Possession of any Additional Land and any such notification shall be subject to the requirements of sub-clauses 14.3.1(a) and (b). The Concessionaire shall specify the date upon which it wishes to have Vacant Possession of such Additional Land having due regard to the time limits imposed by the 1993 Act and all legislation incorporated with it for the service of statutory notices and subject thereto DLR Limited will use reasonable endeavours to deliver Vacant Possession of such Additional Land by the date specified in the Concessionaire's notice or as soon as reasonably possible thereafter.

14.4 Statutory notices

14.4.1 In respect of any particular parcel of Notified Land or Additional Land the Concessionaire shall:-

- (a) in the case of any parcel of Notified Land, not less than twenty business days prior to the date specified for service of any relevant statutory notice as set out in Column 4 of the Notified Land Schedule; and
- (b) in the case of any parcel of Additional Land, not less than twenty business days prior to the latest date upon which statutory notices would have to be served in order to deliver Vacant Possession of such land by the date specified by the Concessionaire allowing for the minimum period after service of such notices as prescribed in Column 3 of the Additional Land Schedule,

furnish to DLR Limited full details of the particular parcel (including measurements) and where only part of a particular parcel is required, the Concessionaire shall accompany such details with a plan on a scale of not less than 1:500.

14.4.2 Following receipt of the details required by Clause 14.4.1 including (where appropriate) a plan DLR Limited shall within ten business days thereafter prepare and submit to the Concessionaire a draft of any statutory notice required in order to allow DLR Limited to acquire such land and the Concessionaire shall advise DLR Limited within five business days of receipt of the draft notice whether the draft notice correctly describes such land but so that DLR Limited subject to Clause 14.4.3 shall otherwise be responsible for the accuracy and effective service of the statutory notice.

14.4.3 Where any relevant statutory notice served pursuant to Clause 14.4.2 relates to Additional Land in respect of which the Concessionaire has given notice to DLR Limited after 18 November 1996 of its requirement for Vacant Possession and the timetable for such Vacant Possession does not enable DLR Limited to make diligent enquiry as to the existence of all relevant interests in the particular parcel of

Additional Land, DLR Limited shall nevertheless use reasonable endeavours to identify such interests as may exist subject to which DLR Limited shall have no liability to the Concessionaire in respect of any failure to serve the statutory notices in relation to any unidentified relevant interests.

14.5 Vacant Possession of Additional Land

Subject as provided in Clauses 14.3.2 and 14.6 DLR Limited shall provide to the Concessionaire and the Concessionaire shall take Vacant Possession of the Additional Land at any time prior to the date specified in the notification given in accordance with sub-clause 14.3.1(c).

14.6 Delivery of Vacant Possession

14.6.1 DLR Limited's obligation to provide Vacant Possession of any particular parcel of Notified Land or Additional Land by the specified date is subject to any relevant restrictions on DLR Limited's powers of acquisition in relation to any part of the Site and Working Areas arising from the Lewisham Acts or any relevant restrictions on DLR Limited's ability to obtain Vacant Possession arising from the Property Undertakings or the Ancillary Agreements.

14.6.2 Where the Concessionaire fails to deliver to DLR Limited the details required by Clause 14.4 in accordance with the time periods set out therein, then:-

- (i) in the case of any parcel of Notified Land the date specified for delivery of Vacant Possession of such parcel in Column 5 of the Notified Land Schedule;
- (ii) in the case of any parcel of Additional Land the date upon which the Concessionaire shall have requested Vacant Possession,

shall be extended by the number of days which elapse before the Concessionaire provides the details specified in Clause 14.4 to DLR Limited.

14.6.3 Where notification of the Concessionaire's requirement for Vacant Possession of any parcel of Additional Land is given to DLR Limited after 18 November 1996, DLR Limited shall have no liability to the Concessionaire for any delay in the grant of Vacant Possession in respect of any parcel of Additional Land or (subject to DLR Limited using reasonable endeavours to identify any relevant interests in such land) any inability to deliver Vacant Possession of any parcel of Additional Land by reason of any relevant interest in such land not having been identified. In all other cases, DLR Limited shall have no liability save as provided in Clause 47.5.

- 14.6.4 DLR Limited shall liaise closely with the Concessionaire on the timetable for delivery of Vacant Possession as set out in Column 5 of the Notified Land Schedule and also in relation to Vacant Possession of Additional Land as provided for in Clauses 14.2, 14.3 and 14.5. DLR Limited shall give prior notice of and in any event use reasonable endeavours to ensure that the Concessionaire is given at least five business days notice of its intention to take possession of any land comprised or to be comprised within the Site or the Working Areas.
- 14.6.5 Where DLR Limited is required to acquire or (subject to the Concessionaire's prior approval not to be unreasonably withheld or delayed) agrees to acquire any Notified Material Detriment Land or Additional Material Detriment Land, then DLR Limited shall liaise closely with the Concessionaire on the timetable for delivery of Vacant Possession and shall give notice of and in any event shall use reasonable endeavours to ensure that the Concessionaire is given at least five business days notice of DLR Limited's intention to take possession of such land and subject thereto DLR Limited shall provide to the Concessionaire and the Concessionaire shall take Vacant Possession of such parcel of Notified Material Detriment Land or Additional Material Detriment Land and thereupon such parcel of Notified Material Detriment Land or Additional Material Detriment Land shall become part of the Site or Working Areas and the provisions of Clauses 14.6.6, 14.6.7, 14.6.8, 14.6.9, 14.9, 14.10 and Clause 15 shall apply accordingly.
- 14.6.6 The Concessionaire may make available a representative to attend whenever DLR Limited takes possession of any land within the Site or Working Areas.
- 14.6.7 The provision of Vacant Possession shall be evidenced by a Certificate of Entry and DLR Limited shall provide a copy of the same to a representative of the Concessionaire who attends pursuant to Clause 14.6.5 or if no representative shall attend shall provide the Concessionaire with a copy of the same within three business days of Vacant Possession being provided to the Concessionaire of any part of the Site or Working Areas.
- 14.6.8 Subject to Clause 14.6.9, after Vacant Possession is provided DLR Limited shall provide to the Concessionaire all such assistance in bringing legal proceedings to evict or prevent occupation by trespassers who enter onto Notified Land or Additional Land after Vacant Possession is given as the Concessionaire may reasonably require, such assistance to include instituting legal proceedings, being joined as a party to legal proceedings or otherwise assisting the Concessionaire to establish entitlement to possession of the Notified Land or Additional Land.
- 14.6.9 The Concessionaire shall indemnify DLR Limited against all costs, claims, expenses and damages in respect of assistance provided to the Concessionaire by DLR Limited pursuant to Clause 14.6.8.

14.7 Land and Works Costs

14.7.1 DLR Limited and the Concessionaire shall jointly appoint a suitable organisation experienced in the field of compulsory purchase compensation ("the Agents") for the purposes of undertaking and concluding all negotiations with third parties (including references to the Lands Tribunal) in relation to Land Compensation. The following conditions shall apply to the appointment of the Agents:-

- (a) the Agents shall be selected by the Concessionaire (subject to the approval of DLR Limited (not to be unreasonably withheld or delayed) and the Concessionaire shall notify DLR Limited within ten business days of the date hereof of the Agents so selected and the Agents shall be appointed within ten business days thereafter;
- (b) the Agents shall be appointed by a letter of appointment containing terms to be approved by DLR Limited and the Concessionaire (such approval not to be unreasonably withheld or delayed) and signed by both parties and the Agents;
- (c) the terms of the Agents' appointment shall include a description of the services to be provided and shall set out the Agents' obligations in relation to their duty of care, public and professional liability insurance, the provision of personnel, remuneration, termination of the contract, confidentiality and limitation of authority;
- (d) the following provisions shall be incorporated in the Agents' appointment and shall also apply as between DLR Limited and the Concessionaire:-
 - (i) upon the receipt of any claim for Land Compensation, or Works Compensation, DLR Limited shall acknowledge receipt thereof and advise the claimant as to the person responsible for negotiating such claim on behalf of DLR Limited. DLR Limited shall notify the Concessionaire of the receipt of any claim in respect of Land Compensation or Works Compensation and shall provide to the Concessionaire a copy of any such claim within five business days of receipt thereof. In relation to any claim in respect of Land Compensation DLR Limited shall similarly notify the Agents of the receipt of the claim and forward a copy of the same to the Agents within five business days of receipt thereof;
 - (ii) the Agents shall submit regular monthly written reports to DLR Limited and the Concessionaire on the progress of all negotiations with claimants in relation to Land Compensation but DLR Limited and the Concessionaire shall be entitled at any time to request information from the Agents on the progress of all such negotiations and such information shall be

provided to DLR Limited or (as the case may be) the Concessionaire within three business days of any request therefor;

- (iii) the Agents shall notify DLR Limited and the Concessionaire of the dates and times of all meetings with claimants in relation to Land Compensation and both parties shall be entitled to attend such meetings;
- (iv) both DLR Limited and the Concessionaire shall be entitled to make representations to the Agents on the negotiations with claimants in relation to Land Compensation and the Agents shall be directed by DLR Limited and the Concessionaire to take those representations into account;
- (v) the Agents may put forward a proposed settlement of compensation to any claimant and the District Valuer without the prior written approval of DLR Limited or seek District Valuer's certification to a proposed settlement put forward by a claimant and any proposed settlement shall be expressed to be subject to DLR Limited's approval. The Agents shall provide to DLR Limited and the Concessionaire a copy of any certification of the District Valuer in relation to the proposed settlement of any claim within five business days of the receipt of the District Valuer's certification. No settlement shall be agreed with any claimant without the prior written approval of DLR Limited, such written approval of DLR Limited to be given within ten business days of receipt by DLR Limited of a copy of the District Valuer's certification;
- (vi) if the Agents shall advise, or the Concessionaire shall inform, DLR Limited that in their or its opinion there is no reasonable prospect of reaching a settlement with a claimant of the amount of any claim for Land Compensation and that such disputed claim should be referred to the Lands Tribunal and if DLR Limited shall consent to such claim being so referred (such consent not to be unreasonably withheld or delayed) then the claim shall be referred to the Lands Tribunal accordingly provided always that if DLR Limited shall itself at any time (acting reasonably) take the view that there is no reasonable prospect of reaching a settlement with any claimant as to the amount of a claim for Land Compensation then DLR Limited may itself initiate the reference of such disputed claim to the Lands Tribunal;

- (vii) subject to sub-clause 14.7.1(v), where any final agreement or settlement is reached with any claimant or any determination is made by the Lands Tribunal in respect of Land Compensation the Agents shall notify DLR Limited and the Concessionaire of the amount to be paid in accordance with such final agreement or settlement or determination at least ten business days prior to the due date for payment;
- (viii) if for any reason the Agents' appointment shall terminate or be terminated the provisions of this Clause 14.7 shall apply mutatis mutandis to the appointment of a further suitable organisation selected by the Concessionaire (subject to the approval of DLR Limited (not to be unreasonably withheld or delayed)) and the time periods in sub-clause 14.7.1(a) shall apply as if the reference to "the date hereof" were a reference to the date of termination of the Agents' appointment.

14.7.2 The Concessionaire shall be liable (without limitation) for all Works Compensation and Land Compensation in respect of Additional Land, Additional Material Detriment Land and in respect of the plots identified in the Notified Land Schedule and numbered G76.1 and G79.1. Where DLR Limited is obliged, has agreed, proposes to pay, or has paid an amount to a third party as Works Compensation or Land Compensation for Additional Land, Additional Material Detriment Land or in respect of the plots identified in the Notified Land Schedule and numbered G76.1 and G79.1 it may notify the Concessionaire of the amount paid or to be paid not later than ten business days prior to the due date for payment. The Concessionaire shall following receipt from DLR Limited of a valid value added tax invoice in respect thereof pay to DLR Limited, in immediately available funds, a sum equal to the amount payable or paid to the third party as Works Compensation or Land Compensation for Additional Land or Additional Material Detriment Land or in respect of the plots identified in the Notified Land Schedule and numbered G76.1 and G79.1 no later than five business days prior to the due date for payment to the third party.

14.7.3 In respect of Land Compensation (other than Land Compensation in respect of Additional Land, Additional Material Detriment Land and the plots identified in the Notified Land Schedule and numbered G76.1 and G79.1) the Concessionaire shall be liable to DLR Limited in respect of all such payments of Land Compensation up to a maximum sum of (*INFORMATION EXEMPT FROM DISCLOSURE UNDER SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT*). inclusive of all Value Added Tax which is not recoverable by the Concessionaire ("the Costs Cap"). The operation of the Costs Cap shall be subject to the provisions of Clauses 14.7.4 and 14.13. The Concessionaire shall not be liable to pay to DLR Limited any amounts

paid as Land Compensation in respect of Notified Land, Notified Material Detriment Land in the period up to and including 31st March 1996.

- 14.7.4 The amount to be paid by the Concessionaire in respect of any item of Land Compensation pursuant to Clause 14.7.3 shall be calculated as follows:-

(INFORMATION EXEMPT FROM DISCLOSURE UNDER SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT).

- 14.7.5 Subject to the provisions of Clause 14.7.4, where DLR Limited is obliged, has agreed, proposes to pay or has paid an amount to a third party as Land Compensation and the Concessionaire is liable to pay to DLR Limited such Land Compensation or any part thereof pursuant to the provisions of Clauses 14.7.3 and 14.7.4 then DLR Limited may notify the Concessionaire of the amount payable or to be paid not less than ten business days prior to the due date for payment. The Concessionaire shall following receipt of a valid VAT invoice in respect thereof from DLR Limited pay to DLR Limited, in immediately available funds, a sum equal to the amount payable or paid to the third party at least five business days prior to the due date for payment.

- 14.7.6 DLR Limited shall forward to the Concessionaire with the notification in Clause 14.7.2 or 14.7.5 a certificate by the District Valuer that the amount paid or to be paid in respect of Land Compensation or Works Compensation is properly payable to the claimant as part of such compensation.

- 14.7.7 Unless notified to the contrary at any time by DLR Limited, the Concessionaire shall undertake and conclude on behalf of DLR Limited all negotiations with third parties (including references to the Lands Tribunal) in relation to Works Compensation and shall keep DLR Limited advised of the progress of such negotiations. When the Concessionaire has agreed to pay an amount to a third party as part of the Works Compensation, it shall notify DLR Limited of the amount to be paid.

14.8 Schedules of condition of land

- 14.8.1 Except as otherwise provided in any Undertakings, as soon as reasonably practicable following the date upon which Vacant Possession of any part of the Working Areas is provided to the Concessionaire, the Concessionaire shall commission a survey report to be accompanied by photographs describing the condition of the relevant part of the Working Areas and shall deliver a copy of the survey to DLR Limited and the owner of that part of the Working Areas.

- 14.8.2 Save to the extent otherwise required by any Undertaking or Ancillary Agreement the Concessionaire shall not less than twenty business days prior to commencing any part of the Works in the vicinity of any buildings on Neighbouring Land prepare a schedule of defects for any buildings on the Neighbouring Land which in the reasonable opinion of the Concessionaire may be affected by the Works and deliver such schedule to DLR Limited and the owner of the buildings on the Neighbouring Land.
- 14.8.3 The Concessionaire shall undertake all other surveys required by the London Building Acts as a result of the Works or by the terms of the Undertakings and Ancillary Agreements and shall deliver copies of such surveys to DLR Limited and the owner of the land in respect of which the surveys are being undertaken for agreement.

14.9 Licence to occupy Site and Working Areas

- 14.9.1 The Concessionaire (which expression shall for the purposes of this Clause 14.9 and Clause 14.10 only be deemed to extend to the Concessionaire's contractors, sub-contractors, servants and agents) shall immediately upon Vacant Possession being provided, but subject to DLR Limited's compliance with Clause 14.6.4, irrespective of whether a Certificate of Entry has been provided, enter and occupy those parts of the Site and Working Areas in respect of which DLR Limited shall provide Vacant Possession from time to time as licensee on the terms of this Clause 14.9 and as provided in Clause 14.10.
- 14.9.2 The Concessionaire shall use the Site and the Working Areas only for the purposes of the Concession. For the avoidance of doubt the Concessionaire shall, with the consent of Railtrack plc and the Crown Estate Commissioners, as appropriate, be entitled to allow London Electricity plc and/or London Electricity Services Limited (insofar as London Electricity plc and/or London Electricity Services Limited are not included within the expression "Concessionaire" as provided in Clause 14.9.1), their employees, agents and others permitted by them to enter onto and occupying any part or parts of the Site in connection with the LE Agreements until such time as the Leases (as defined in the LE Master Agreement and referred to in the definition of LE Agreements in Clause 1) are granted to London Electricity Services Limited pursuant to the LE Master Agreement.
- 14.9.3 In so far as is not inconsistent with the provisions of this Agreement the Concessionaire and DLR Limited each covenant with the other to observe and perform their respective provisions of the Lease and acknowledge that each of DLR Limited and the Concessionaire shall be entitled to exercise the rights granted and reserved under the Lease and that the Concessionaire shall be entitled to exercise the rights granted to DLR Limited pursuant to the Crown Land Agreement and to the Property Agreement dated 21st June 1996 between Railtrack Plc (1) and DLR Limited (2) ("the Railtrack Property Agreement") as if

the same were in all cases set out herein in full and as if the Lease were to apply to the Site and Working Areas, and the Crown Land Agreement and the Railtrack Property Agreement were to apply in respect of those parts of the Site and Working Areas affected by the Crown Land Agreement and the Railtrack Property Agreement in each case over which a licence has been granted pursuant to Clause 14.9.1.

14.9.4 The Concessionaire covenants to observe and perform the obligations on the part of DLR Limited in clauses 6(1)(b) to (e) (inclusive) and 6(1)(h) to (l) (inclusive) and clause 12(1) of the Railtrack Property Agreement as if the same were set out herein in full in respect of those parts of the Site and Working Areas affected by the said clauses of the Railtrack Property Agreement over which a licence has been granted pursuant to Clause 14.9.1.

14.9.5 The Concessionaire covenants to observe and perform the obligations in Clause 3 of the Crown Land Agreement as if the same were set out herein in full in respect of the Crown Land over which a licence has been granted to the Concessionaire pursuant to Clause 14.9.1.

14.9.6 Save as provided in Clause 15.1, the Concessionaire shall not be entitled to any right or interest in the Site or Working Areas other than as licensee and the provisions of this Clause 14.9 give no proprietary interest therein and, save as provided in Clause 49, the rights hereby granted are not capable of assignment or transfer.

14.9.7 The licence granted by this Clause 14.9 shall continue until terminated:-

(a) in respect of any part of the Site upon the earlier of:-

- (i) the grant of the Lease or Supplemental Lease in accordance with Clause 15 for that part of the Site;
- (ii) disposal of that part of the Site in accordance with Clauses 14.12 and 14.13;
- (iii) the termination of the Concession; and

(b) in respect of any part of the Working Areas upon the earliest to occur of:-

- (i) the date 28 days after the Concessionaire notifies DLR Limited that it wishes to relinquish possession of that part of the Working Areas;
- (ii) the date upon which DLR Limited has agreed to vacate any Working Area pursuant to any Undertaking or such other period as may have been agreed with the person having the benefit of the Undertaking;

- (iii) the fifth anniversary of the date of provision of Vacant Possession or such longer period as DLR Limited may have negotiated for such licence or such other period as may have been agreed between DLR Limited and the owner of any Working Area with the consent of the Concessionaire;
- (iv) the date 28 days after the issue of the Completion Certificate; and
- (v) the termination of the Concession.

14.9.8 Before the termination of the Concessionaire's licence to occupy a Working Area, the Concessionaire shall ensure that all works and temporary structures erected thereon by the Concessionaire shall be removed and that the Working Area is restored to the same state and condition, so far as reasonably practicable that it was in immediately prior to its occupation by the Concessionaire or to such other state and condition as may have been agreed between DLR Limited, the owner of the Working Area and the Concessionaire.

14.10 General provisions in respect of land

The Concessionaire shall, subject to any restrictions in the Undertakings, at all times during the Concession Period in respect of any part of the Site and the Working Areas of which Vacant Possession has been given and, in the case of Working Areas, only until its licence in respect of each particular area has terminated:-

- 14.10.1 erect security fences of not less than 2.4 metres in height and sufficient to prevent unauthorised access to the Site and the Working Areas and, subsequently, the Lewisham Extension;
- 14.10.2 subject to Clause 14.14, pay all rates, taxes, assessments, outgoings and impositions whatsoever which are now or may at any time hereafter be payable in respect of the Site and the Working Areas or assessed upon the owner or occupier in respect thereof (other than those payments which shall arise by virtue of any disposition of or dealing with or the ownership of any estate or interest expectant in the reversion);
- 14.10.3 so far as is consistent with the proper carrying out of the Works in accordance with this Agreement keep and maintain the Site and the Working Areas and each and every part thereof in a good, clean, tidy and safe condition and free from any offensive or noisome matter or other thing whatsoever;
- 14.10.4 subject as provided in Clause 17.9.3, undertake any remedial work which is required in accordance with Applicable Requirements on account of DLR Limited's or the Concessionaire's interest in the Site or the Working Areas;

- 14.10.5 allow DLR Limited and its representatives access to the Site and Working Areas over which a licence has been granted pursuant to Clause 14.9.1 above at all reasonable times upon reasonable notice (except in the case of an emergency) for the performance of DLR Limited's functions under the Project Documents;
- 14.10.6 not commit any act or omission on the Site or Working Areas whereby any property (including the air above, water running on or through or the soil, sub-soil or groundwater beneath) shall become contaminated with a substance which may have a deleterious effect on the Environment or human health; and
- 14.10.7 on the termination of the Concession for whatever reason vacate the Site and leave the same in a good, clean, tidy and safe condition.

14.11 Further land acquired by the Concessionaire

The Concessionaire shall not acquire any further land (whether freehold, leasehold, under licence or otherwise) or right over land which is required for the Works or the Lewisham Extension, as the case may be, otherwise than in accordance with the following procedure:-

- 14.11.1 the Concessionaire shall notify DLR Limited of its intention to acquire any such land or right over any such land and shall provide DLR Limited with details of the interest to be acquired, the terms thereof, the consideration payable and all other relevant details;
- 14.11.2 if DLR Limited so requires, the Concessionaire shall arrange for such land or right to be acquired by DLR Limited at the cost and expense of the Concessionaire and DLR Limited will execute any deeds or documents reasonably required in connection therewith. Following the acquisition of such land or right, DLR Limited shall permit the Concessionaire to occupy such land or exercise such right as licensee upon such terms and conditions as shall reasonably accord with the terms and conditions relating to the acquisition of such land or right and which otherwise shall accord with the provisions of Clause 14.9;
- 14.11.3 if such land or right has been acquired in the name of DLR Limited pursuant to Clause 14.11.2 so as to form part of the Site then such land or right shall be demised to the Concessionaire under the Lease or, as the case may be, a Supplemental Lease;
- 14.11.4 if DLR Limited does not wish the Concessionaire to acquire such land or right in DLR Limited's name then, unless DLR Limited objects to the acquisition of such land or right on the grounds that the same is likely, in DLR Limited's reasonable opinion, to materially increase the cost of constructing the Lewisham Extension or to be materially prejudicial to the operation of the Railway, the Concessionaire shall be entitled to acquire such interest or right in its own name.

14.12 Disposals of Additional Land and Additional Material Detriment Land

- 14.12.1 The Concessionaire may at any time after the issue of the Completion Certificate notify DLR Limited as to any part or parts of the Additional Land, Additional Material Detriment Land or land acquired pursuant to Clause 14.11 (but not any part or parts of Additional Land as shall be comprised within the Cutty Sark Plots or any part or parts of any land as shall comprise Additional Material Detriment Land in relation to the Cutty Sark Plots) which shall not or shall no longer be required for the Project or the Lewisham Extension and may request that DLR Limited dispose of the same. With its notice the Concessionaire shall supply to DLR Limited a detailed description (including conveyancing plans) of that part or parts of the Additional Land, the Additional Material Detriment Land or land acquired pursuant to Clause 14.11 which is the subject of the notice.
- 14.12.2 Upon receipt of the Concessionaire's notice under Clause 14.12.1 and the detailed description of the land to be disposed of DLR Limited shall use reasonable endeavours to dispose of the land the subject of the notice for the best price reasonably obtainable for such land at that time in its existing state and condition and such disposal to be subject to any relevant restrictions arising under the Lewisham Acts, the Property Undertakings or the Project Documents and further subject, in DLR Limited's discretion, to such land first being offered for purchase at such open market value to the person from whom DLR Limited purchased such land. The disposal shall also be subject to DLR Limited securing the certification of the District Valuer (or such other independent valuer as may be appropriate) to the proposed disposal price being the best price reasonably obtainable for such land at that time and in its existing state and condition. The Concessionaire shall on the date upon which DLR Limited is required to transfer such land to the purchaser thereof, surrender to DLR Limited at the Concessionaire's expense any interest in such land which it may then enjoy by virtue of the Lease or a Supplemental Lease or a licence pursuant to Clause 14.9.1.
- 14.12.3 DLR Limited shall pay to the Concessionaire any sums received in respect of the sale of any land pursuant to this Clause 14.12 less the professional fees, conveyancing and other costs (including tax) properly incurred by DLR Limited in connection with the disposal of such land, such payment to be made to the Concessionaire within five business days of receipt by DLR Limited of cleared funds in respect of such disposal.

14.13 Disposals of Other Land

14.13.1 If DLR Limited or the Concessionaire shall consider that any part or parts of:-

- (a) the Notified Land; or

(b) the Notified Material Detriment Land,

(but not any part or parts of Notified Land as shall be comprised within the Cutty Sark Plots or any part or parts of any land as shall comprise Notified Material Detriment Land in relation to the Cutty Sark Plots) which shall have been acquired after 31st March 1996 is or are not or is or are no longer required for the Project or the Lewisham Extension then DLR Limited may notify the Concessionaire or (as the case may be) the Concessionaire may notify DLR Limited accordingly. DLR Limited or (as the case may be) the Concessionaire shall agree to the disposal of such land ("Surplus Interest") unless in its reasonable opinion the Surplus Interest is required for the Project or the Lewisham Extension. Any dispute between the parties as to whether the Surplus Interest is so required shall be subject to the Disputes Resolution Procedure. If the parties shall agree or if it shall be determined that the Surplus Interest should be disposed of then such disposal shall be subject, in DLR Limited's discretion, to the Surplus Interest first being offered for purchase at the open market value to the person from whom DLR Limited purchased the Surplus Interest and shall further be subject to any restrictions on DLR Limited's ability to dispose of the Surplus Interest arising under the Lewisham Acts, the Property Undertakings or the Project Documents. Subject thereto, any disposal of the Surplus Interest to any third party shall be at the best price reasonably obtainable for such Surplus Interest at that time and in its existing state and condition. The disposal shall also be subject to DLR Limited securing the certification of the District Valuer (or such other independent valuer as may be appropriate) to the proposed disposal price being the best price reasonably obtainable for such land at that time and in its existing state and condition.

14.13.2 The Concessionaire shall on the date upon which DLR Limited shall transfer any Surplus Interest pursuant to Clause 14.13.1 to the purchaser thereof, surrender to DLR Limited at the Concessionaire's expense any interest in the Surplus Interest which it may then enjoy by virtue of the Lease or a Supplemental Lease or a licence pursuant to Clause 14.9.1.

14.13.3 Following disposal of any Surplus Interest pursuant to Clauses 14.13.1 and 14.14.2 the proceeds of sale shall be applied as follows:-

(INFORMATION EXEMPT FROM DISCLOSURE UNDER SECTION 43(2) OF THE FREEDOM OF INFORMATION ACT).

14.13.4 Where any Surplus Interest is disposed of and DLR Limited is to pay to the Concessionaire the proceeds of sale thereof or any part of any such proceeds of sale pursuant to Clause 14.13.3, then DLR Limited shall pay to the Concessionaire after the disposal of such Surplus Land such proceeds of sale or (as the case may be) such part of such proceeds of sale, such payment to be made to the Concessionaire

within five business days of receipt by DLR Limited of cleared funds in respect of such disposal.

14.14 National non-domestic rates

14.14.1 DLR Limited and the Concessionaire agree that in relation to such part or parts of the Site as shall comprise railway hereditaments ("the Railway Hereditaments") for the purposes of the regulations for the time being applicable to the non-domestic rating of railways, DLR Limited shall be responsible for the payment to any relevant charging authority of the national non-domestic rates in respect of the Railway Hereditaments notwithstanding that the Concessionaire may be the rateable occupier of the Railway Hereditaments.

14.14.2 The Concessionaire shall forthwith and in any event within five business days of receiving the same from the relevant valuation office provide to DLR Limited a copy of any notice of assessment relating to non-domestic rates received in respect of the Railway Hereditaments and of any demand for payment therefor or of any notice of alteration or proposed alteration of any rating list or any other relevant correspondence received in relation to Railway Hereditaments from any relevant charging authority.

14.14.3 DLR Limited shall pay to the relevant charging authority the national non-domestic rates in respect of the Railway Hereditaments during the Concession Period. For the year of assessment in which non-domestic rates first become payable in respect of the Railways Hereditaments and thereafter in each successive year for the remainder of the Concession Period, the Concessionaire shall pay to DLR Limited the amount of the national non-domestic rates for the Railway Hereditaments but in any event such amount payable by the Concessionaire shall not exceed the sum of one hundred and fifteen thousand pounds (£115,000) (real) in any year of assessment. Such sum shall be paid to DLR Limited by the Concessionaire in each such year of assessment within ten business days of DLR Limited's written demand therefor.

14.14.4 For the avoidance of doubt, there shall be excluded from the Railway Hereditaments any hereditaments (the "Excepted Hereditaments") which involve:-

- (a) any use within Class A(1), (2) or (3) of the Schedule to the Town and Country Planning (Use Classes) Order 1987; or
- (b) a use other than that described in sub-clause 14.14(a) upon any part of the Railway not comprising part of the day to day operational railway or not comprising a station or the access or ancillary offices or facilities thereto.

The Concessionaire shall be liable for the payment of all national non domestic rates in respect of the Excepted Hereditaments.

- 14.14.5 DLR Limited shall be entitled, in its absolute discretion, to pursue any appeal against assessment in any rating list or any notice of alteration of any rating list in relation to the Railway Hereditaments or to pursue any appeal in relation to any rates demand or any other notice in relation to the Railway Hereditaments. To the extent that the Concessionaire may be the rateable occupier in relation to the Railway Hereditaments, the Concessionaire agrees that DLR Limited shall be the agent of the Concessionaire for the purpose of pursuing such appeal. DLR Limited shall notify the Concessionaire in writing as to whether it intends to pursue any appeal under this clause as soon as possible having regard to the time limits imposed for the making of any such appeal and so as to allow reasonable time for the Concessionaire to pursue an appeal as provided for in Clause 14.14.6 should DLR Limited decide not to pursue an appeal.
- 14.14.6 If DLR Limited shall decide not to pursue an appeal as provided for in Clause 14.14.5, then the Concessionaire may (but shall not be required to) pursue such an appeal.
- 14.14.7 In relation to any appeal by DLR Limited pursuant to Clause 14.14.5, the Concessionaire shall provide DLR Limited with all such assistance in promoting such appeal as DLR Limited may reasonably require and DLR Limited shall indemnify the Concessionaire against all costs, claims, expenses incurred in the provision of such assistance in response to any such request by DLR Limited. If the Concessionaire shall pursue an appeal as provided for in Clause 14.14.6, DLR Limited shall provide the Concessionaire with all such assistance in promoting such appeal as the Concessionaire may reasonably require and the Concessionaire shall indemnify DLR Limited against all costs, claims and expenses incurred in the provision of such assistance in response to any such request by the Concessionaire.
- 14.14.8 If in any year of assessment the National Non-Domestic Rates in respect of the Railway Hereditaments shall exceed one hundred and fifteen thousand pounds (£115,000) (real) and if in such year of assessment the Concessionaire shall be required to pay such National Non-Domestic Rates as the rateable occupier in respect of the Railway Hereditaments, then DLR Limited shall indemnify the Concessionaire in respect of such amount of the National Non-Domestic Rates as shall exceed one hundred and fifteen thousand pounds (£115,000) (real) in such year of assessment together with all expenses, liabilities, losses, costs, claims and damages suffered or incurred by the Concessionaire directly or indirectly in connection with or arising out of any breach by DLR Limited of its obligations under Clause 14.14.3.

15. LEASE

15.1 Grant of Lease

- 15.1.1 Within 28 days of the issue of the Completion Certificate in accordance with Clause 26.2, DLR Limited shall grant and the Concessionaire shall accept a Lease of any and all parts of the Site in respect of which DLR Limited shall at the date of the issue of the Completion Certificate have acquired all the land and interests in land which are necessary for DLR Limited to grant a Lease thereof and the Concessionaire shall contemporaneously execute and deliver to DLR Limited a counterpart of that Lease.
- 15.1.2 The Lease shall be granted for a term of 24 years and six months from and including the Commencement Date.
- 15.1.3 The Concessionaire may within 28 days of each anniversary of the issue of the Completion Certificate until the grant of a final Supplemental Lease pursuant to Clause 15.1.4 advise DLR Limited that it requires a Supplemental Lease and within 28 days of receipt of such request DLR Limited shall grant and the Concessionaire shall accept a Supplemental Lease of any and all parts of the Site in respect of which DLR Limited shall, since the grant of the preceding Lease under Clause 15.1.1 or Supplemental Lease under this Clause 15.1.3, have acquired all the land and interests in land which are necessary for DLR Limited to grant a Supplemental Lease thereof and the Concessionaire shall contemporaneously execute and deliver to DLR Limited a counterpart for that Supplemental Lease.
- 15.1.4 The first Supplemental Lease to be granted to the Concessionaire by DLR Limited following the grant to DLR Limited of the Crown Land Deed of Grant (as defined in the Supplemental Lease) shall include the provisions contained in square brackets being Clauses 1.1.1, 5.4, 6.2 and 6.3 of the Supplemental Lease together with the Supplemental Rights (again as defined in the Supplemental Lease), and DLR Limited shall use its reasonable endeavours to procure that the Crown Land Deed of Grant is granted to it in accordance in all respects with the Crown Land Agreement.
- 15.1.5 Within 28 days of the date on which DLR Limited acquires all other land and interests in land which are necessary for DLR Limited to grant a final Supplemental Lease in the remainder of the Site, DLR Limited shall grant and the Concessionaire shall accept a Supplemental Lease of the remainder of the Site and the Concessionaire shall contemporaneously execute and deliver to DLR Limited a counterpart of that Supplemental Lease.
- 15.1.6 DLR Limited shall exercise its powers under the 1993 Act with all reasonable diligence so as to acquire the land and interests in land necessary for the purposes of Clauses 15.1.1 to 15.1.3, subject to any restrictions on DLR Limited's ability to acquire that land and interests

in land arising from the Lewisham Acts, the Property Undertakings or the Ancillary Agreements.

15.1.7 DLR Limited shall use its reasonable endeavours to enforce the provisions of the Property Agreement dated 21 June 1996 made between Railtrack plc (1) and DLR Limited (2) for the grant of a lease from Railtrack plc to DLR Limited pursuant to the provisions of that Property Agreement.

15.2 General provisions applicable to grant of Lease

15.2.1 The Lease and any Supplemental Lease will be granted subject to and (where appropriate) with the benefit of:-

(a) the covenants, agreements, restrictions, stipulations, provisions, conditions and other matters affecting the relevant land, which are subsisting at the date of the grant to the Concessionaire of the Lease and any Supplemental Lease and subject thereto the Concessionaire shall be deemed to enter into the Lease or the Supplemental Lease as the case may be with full knowledge of the title to the relevant land which DLR Limited shall deduce to the Concessionaire;

(b) all Local Land Charges and other matters whensoever registered or registrable (whether registered or not) by the local or other authority and to every charge, notice, direction, order, restriction, agreement, resolution, proposal, condition and other matters affecting the Site; and

(c) details of the matters referred to in paragraphs (a) and (b) above having been made available or the Concessionaire having had the opportunity to obtain details thereof, the Concessionaire shall be deemed to have notice of them and shall not be entitled to raise any requisition or objection in respect thereof.

15.2.2 DLR Limited shall not itself create any new right relating to the Site or which would otherwise prejudice the licence granted to the Concessionaire pursuant to Clause 14.9.1 hereof other than such rights as affect its interest in the immediate reversion to the Lease and any Supplemental Lease or in order to implement the Project Documents.

15.2.3 DLR Limited shall apply to H M Land Registry to register its title to the Site with title absolute (although DLR Limited shall be under no obligation to the Concessionaire to obtain such title absolute) and the grant of the Lease and any Supplemental Lease to the Concessionaire shall be with such covenants for title as DLR Limited can give by reference to the grade of title obtained by DLR Limited at H M Land Registry but where no documentary title is deduced to DLR Limited in respect of any part of the Site then no covenants for title shall be expressed or implied in the Lease or any Supplemental Lease of that part of the Concessionaire.

15.2.4 DLR Limited agree to use reasonable endeavours to assist the Concessionaire with any requisitions it may receive from H M Land Registry in respect of its application to register the Lease and any Supplemental Lease at H M Land Registry.

15.3 Court Order

The Concessionaire shall at the request of DLR Limited made at any time prior to completion of the Lease and any Supplemental Lease join in an application (in such form as DLR Limited shall reasonably require) to such County Court as DLR Limited shall determine for an Order under the provisions of Section 38(4) of the Landlord and Tenant Act 1954 (as amended by Section 5 of the Law of Property Act 1969) excluding the provisions of Sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the Lease or the Supplemental Lease as the case may be and the Concessionaire shall sign (or instruct its solicitor to sign) such application upon receipt of the same from DLR Limited's solicitors.

15.4 Extension of Lease

Where the Concession Period has been extended in accordance with Clause 5.2, DLR Limited shall grant and the Concessionaire shall accept an extension of the term of the Lease and any Supplemental Lease for a period corresponding to the extension of the Concession Period and otherwise on identical terms as set out in Clauses 15.2 and 15.3 of this Agreement.

15.5 Delivery up following termination of the Concession

Upon determination or discharge of this Agreement in any manner, and notwithstanding that the validity of such determination or discharge may be disputed by the Concessionaire, the Concessionaire shall immediately deliver to DLR Limited possession of those parts of the Site and Working Areas then occupied by the Concessionaire in the condition specified in Clause 14.9.6 or 14.10.7 (as appropriate) (but without prejudice to the Concessionaire's remedies).

15.6 Forfeiture of Lease

DLR Limited covenants not to seek forfeiture of the Lease and any Supplemental Lease unless the Concession has been validly terminated.

15.7 Fixtures

DLR Limited and the Concessionaire agree that all track, signalling equipment, conducting media and other plant, equipment and machinery that form part of, and are required for the operation of, the Lewisham Extension are fixtures and form part of the land on which they are situated.

16. PLANNING PERMISSION

16.1 Existing planning permission

The Concessionaire acknowledges that Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 grants planning consent for the Lewisham Extension in respect of the development specified in that Order subject to:-

- 16.1.1 the conditions and restrictions in Section 36 of the 1993 Act; and
- 16.1.2 the prior approval of certain details of the development being obtained from the Relevant Planning Authority to the extent necessary and in accordance with that Order,

and the Concessionaire accepts that the validity or otherwise of the planning consent so granted shall be entirely at the risk of the Concessionaire.

16.2 Approval of details

The Concessionaire shall be responsible for obtaining in its own name and at its own cost any approval of details required to implement the Works and shall obtain all such approvals to enable the Works to proceed in accordance with the Works Programme.

16.3 Preparation of Application for Approval of Details

As soon as is appropriate having regard to the Works Programme, the Concessionaire shall prepare and deliver to DLR Limited such Applications for Approval of Details as may be required for each part of the Works in respect of which such approval of details is required. The Concessionaire shall deliver copies of each Application for Approval of Details and any amendments thereto to DLR Limited not less than seven days prior to submission of such original or amended Application for Approval of Details to the Relevant Planning Authority. DLR Limited shall be entitled, but not obliged, to comment on each such Application for Approval of Details. It shall be at the discretion of the Concessionaire whether or not to take account of any such comments, which will be made by DLR Limited without any responsibility on its part.

16.4 Submission of Applications for Approval of Details

The Concessionaire shall:-

- 16.4.1 submit each Application for Approval of Details to the Relevant Planning Authority and shall procure that all notices required to be given by the Concessionaire and all fees (whether statutory or otherwise) payable in connection with each Application for Approval of Details are duly given and paid;
- 16.4.2 take all steps necessary to secure the approval of the Relevant Planning Authority in relation to an Application for Approval of Details as expeditiously as reasonably possible and in any event so as not to cause delay to the Works or the Completion Date;

- 16.4.3 keep DLR Limited fully informed of the progress of each Application for Approval of Details or any appeal referred to in Clause 16.4.5;
- 16.4.4 notify DLR Limited of any grant or refusal of an Application for Approval of Details by the Relevant Planning Authority within five business days of the Concessionaire having received written notification thereof and provide DLR Limited with a copy of each such grant or refusal in relation to an Application for Approval of Details;
- 16.4.5 in the event of a refusal of an Application for Approval of Details or the non-determination thereof within the period prescribed for determination (and unless the parties shall otherwise agree), take such steps as a reasonable and prudent developer would be expected to take in order to secure such approval of details as will enable the Concessionaire to comply with its obligations under this Agreement including at the Concessionaire's option the submission of an amended or fresh Application for Approval of Details or an appeal against a refusal of an Application for Approval of Details or non-determination thereof within the prescribed period in a manner most likely to achieve the grant of the required approval of details.

16.5 Planning Obligations

DLR Limited shall, upon being so required by the Concessionaire enter into any Planning Obligation reasonably required by the Concessionaire, and on terms reasonably acceptable to DLR Limited, in order to obtain the approval of the Relevant Planning Authority pursuant to an Application for Approval of Details provided that the Planning Obligation contains no terms binding upon DLR Limited prior to termination of the Concession other than:-

- 16.5.1 those confirming that the Planning Obligation is enforceable after termination of the Concession against DLR Limited and successors to DLR Limited's interest in the Site and providing for registration against such interest; or
- 16.5.2 terms relating to matters which are DLR Limited's responsibility under this Agreement or which relate to matters under DLR Limited's control outside the Site or the Working Areas,

and the Concessionaire shall indemnify DLR Limited its servants, agents, officers and employees from and against all liabilities, losses, costs and expenses suffered or incurred arising from any terms of a Planning Obligation binding on DLR Limited prior to termination of the Concession.

16.6 Related Development Opportunities

The Concessionaire shall notify DLR Limited if it proposes to undertake or participate in any property development, asset management or other commercial or business activity on or over any part of the Site which is not expressly permitted by the Project Documents and shall supply DLR Limited

with such additional information in relation to such development or other activity as DLR Limited may reasonably require. The Concessionaire shall not undertake such development or activity without the prior written consent of DLR Limited (such consent not to be unreasonably withheld) and without complying with any requirements which DLR Limited may impose as a condition of its consent.

PART IV

THE WORKS

17. DESIGN AND CONSTRUCTION OF THE LEWISHAM EXTENSION

17.1 General obligations of the Concessionaire

- 17.1.1 The Concessionaire shall carry out and complete the Works so as to meet the requirements of the Specification and, subject thereto, in accordance with the Concessionaire's Works Proposals.
- 17.1.2 The Concessionaire acknowledges that the acceptance by DLR Limited of the Concessionaire's Works Proposals does not in any way absolve the Concessionaire from responsibility to ensure that the Works meet the requirements of the Specification.
- 17.1.3 The Concessionaire shall not terminate the Construction Contract without the prior consent of DLR Limited, such consent not to be unreasonably withheld.
- 17.1.4 If the Construction Contract is terminated for any reason prior to the issue of the Completion Certificate, the Concessionaire shall procure that the Lewisham ATC System Contract is novated in favour of the replacement Contractor employed to complete the Works or that alternative contractual arrangements are put in place in relation to the Lewisham ATC System Works to the reasonable satisfaction of DLR Limited.

17.2 Concessionaire's warranties and undertakings

The Concessionaire warrants to and undertakes with DLR Limited that:-

- 17.2.1 the Concessionaire has carefully studied the Specification, the Invitation to Tender and the Data Room Information and is entirely familiar with the contents thereof;
- 17.2.2 the Concessionaire has satisfied itself in relation to the operational and integration requirements of, and standards used by, the Existing Railway as at 28th June 1996;
- 17.2.3 the Works will in all respects meet the requirements of the Specification and all Applicable Requirements;
- 17.2.4 subject as provided in Clause 17.2.3, the Works will be carried out in accordance with the Concessionaire's Works Proposals and all workmanship will be in accordance with best modern engineering principles and practices according to recognised United Kingdom or internationally accepted standards and, where none exist, in accordance with Good Industry Practice applicable at the time of construction;

- 17.2.5 the Works will comprise only materials and goods which will be of sound and merchantable quality and have been manufactured or prepared in accordance with the Technical Requirements and the quality assurance procedures set out in Schedule 3;
- 17.2.6 in relation to that part of the Works which is to be carried out at the property known as Royal Hill Court, Greenwich, London SE10 which property is shown on the Deposited Plans submitted in relation to the 1993 Act and is numbered G86 and G88 to G96 (inclusive) the Concessionaire shall use all reasonable endeavours in the design and construction of the Works so as to minimise the possibility of any counter notice being served pursuant to Section 12 of the London Transport Act 1964 in response to service by DLR Limited of notice to treat in respect of part only of that property;
- 17.2.7 in relation to that part of the Works which is to be carried out at the property known as Lewisham College, Lewisham, London SE13 which property is shown on the Deposited Plans submitted in relation to the 1993 Act and is numbered L9, L10, L11, L13, L16, G144, G146 and G148, the Concessionaire shall not deviate from the alignment of the Lewisham Extension so as to require the four principal buildings on the land numbered L9 (three buildings) and G148 (one building) on the Deposited Plan (as shown hatched blue on the plan included at Part 11 of Schedule 3) to be demolished and shall further use all reasonable endeavours in the design and construction of the Works to minimise the possibility of any counter-notice being served pursuant to Section 12 of the London Transport Act 1964 in response to service by DLR Limited of notice to treat in respect of part only of that property; and
- 17.2.8 it will not issue a Variation Order, approve a Contractor's Change or otherwise permit a variation under the Construction Contract which is inconsistent with the requirements of the Cutty Sark Slab Agreement.

17.3 Site conditions

The Concessionaire agrees to take possession of the Site and Working Areas in whatever condition they are in at the date of Vacant Possession being provided in accordance with Clause 14.6. No warranty is given or representation made by DLR Limited that the Site or the Working Areas or any existing structures, foundations and services are or will be fit or adequate for any particular purpose including without limitation for the purpose of enabling the Concessionaire to comply with its obligations pursuant to the Project Documents. Without in any way limiting the foregoing, but without prejudice to Clauses 7.2, 8.1.6 and 17.9.3, the Concessionaire accepts responsibility for and, subject to Clause 21, has made full provision for all risks arising from:-

- 17.3.1 the climatic, hydrological, ground, subsoil, sub-strata and general conditions of and affecting the Site and Working Areas and the environment in which they are situated (including river beds) at whatever time those conditions may arise;

- 17.3.2 injury or damage to property on or adjacent to the Site and Working Areas and to the owners or occupiers of such property arising from the performance of the Project;
- 17.3.3 the possibility of interference by persons other than DLR Limited with the performance of the Project.

In addition the Concessionaire confirms that it has satisfied itself as to and made full provision for:-

- 17.3.4 the form and nature of the Works and materials necessary for the execution of the Works;
- 17.3.5 the means of communication with and access to the Site, the Working Areas and any other areas where work is to be carried and goods and materials delivered or from where goods and materials are to be obtained;
- 17.3.6 the accommodation that the Concessionaire and others may require in connection with the Project.

17.4 No right to claim against DLR Limited

Save as expressly provided herein, but without prejudice to Clause 8.1.6, the Concessionaire shall not be entitled to make any claim against DLR Limited or to seek any relief or remedy of any nature nor shall the Concessionaire be relieved from any risks or obligations imposed on or undertaken by it under the Project Documents on the grounds:-

- 17.4.1 of any misunderstanding or misapprehension in respect of the matters referred to in Clauses 17.2 and 17.3; or
- 17.4.2 that incorrect or insufficient information (including the information made available to the Concessionaire at any stage) was given to it by any person whether or not in the employ of DLR Limited; or
- 17.4.3 that, at the date hereof, it did not or could not foresee any matter which may affect or have affected the ability of the Concessionaire to comply with its obligations under the Project Documents,

provided that Clause 17.4.2 shall not apply in relation to any incorrect information which was deliberately or recklessly provided by DLR Limited (or any of its officers, employees or agents) to the Concessionaire or in relation to any information which was deliberately withheld by any of such persons from the Concessionaire.

17.5 Fossils and antiquities

Save as provided in Clause 21, the Concessionaire agrees to assume all risks arising from the discovery of any fossils, coins, relics or other articles or

structures of historical, antiquarian or archaeological interest on or adjacent to the Site or Working Areas. The Concessionaire undertakes to act in such a manner in respect of any such items so as to ensure that any such discovery does not prevent the performance of its obligations hereunder and that DLR Limited incurs no liability as a result of the discovery, treatment and subsequent dealings with such items.

17.6 Relevant Authorities

The Concessionaire shall be responsible for liaising with all Relevant Authorities in relation to the Works and, in carrying out the Works, will comply with all reasonable requirements of the Relevant Authorities. Without prejudice to the generality of the foregoing, the Concessionaire shall:-

- (a) procure that the Contractor complies with the Construction Practice Specification; and
- (b) be responsible at its own cost for complying with the requirements of all statutory undertakers affected by the Works.

The Concessionaire shall supply DLR Limited with copies of all notices received by the Concessionaire from Relevant Authorities within seven days of receipt. The Concessionaire shall be entitled to amend any part of the Construction Code of Practice provided it obtains the written consent of all persons to whom binding assurances were given in respect of that part.

17.7 Access to and use of DLR Facilities and Interface Information

17.7.1 DLR Limited shall, at the request of the Concessionaire, allow the Concessionaire access to:-

- (a) the DLR Facilities to the extent reasonably required for the carrying out of the Works (subject to the Concessionaire complying with the procedures set out in DLR Control Documents and carrying out all Works in accordance with requirements of such Documents); and
- (b) (subject always to any applicable confidentiality undertakings) such Interface Information in the possession of DLR Limited as the Concessionaire may reasonably require for the purposes of the Works.

17.7.2 DLR Limited shall use reasonable endeavours to assist the Concessionaire in obtaining Interface Information from DLR Limited's contractors and consultants (subject always to any applicable confidentiality undertakings) which assistance shall include authorising Alcatel to provide such Interface Information as Alcatel may possess relating to the Existing Railway ATC System.

17.8 Facilities for DLR Representative

The Concessionaire shall provide to DLR Limited as licensee, for use by the DLR Representative for so long as the Works are being carried out, a single area of not less than 50m² fully serviced (it being understood that DLR Limited shall be responsible for, and shall reimburse to the Concessionaire, telephone charges which the DLR Representative incurs in excess of £100 in any year) office accommodation in a location close to the Lewisham Extension south of the River Thames for the sole use of DLR Limited but so that, on reasonable notice, the Concessionaire may change the location of such accommodation to another location which meets the requirements of this Clause.

17.9 Hazardous Substances and Waste

17.9.1 The Concessionaire shall not use, transport, store or dispose of Hazardous Substances on the Site or the Working Areas nor emit, discharge or release Hazardous Substances on or from the Site or the Working Areas or permit any other person to do so other than as may be essential in the interests of safety or in order to carry out the Works.

17.9.2 The Concessionaire shall not keep, deposit, accumulate, dispose or treat Waste at, on or under the Site or the Working Areas nor permit any other person to do so other than the temporary storage of Waste prior to its removal.

17.9.3 If during the carrying out of the Works or the performance of its maintenance obligations under this Agreement, the Concessionaire excavates, dislodges, discovers, discharges or allows to escape any Hazardous Substances or Waste the Concessionaire shall, to the extent required to ensure that:-

- (a) the Works are rendered safe and are carried out in accordance with all Applicable Requirements, Good Industry Practice and the requirements of the Project Documents; and
- (b) the Lewisham Extension, following completion of the Works, can be operated and maintained safely and in accordance with all Applicable Requirements, Good Industry Practice and the requirements of the Project Documents,

remove, or otherwise deal with, such Hazardous Substances and Waste in accordance with all Applicable Requirements, Good Industry Practice and the requirements of the Project Documents and in the case of Hazardous Substances or Waste which it dislodges, discharges or allows to escape outside any Site or Working Area, take all such actions as are necessary to ensure that such Hazardous Substances or Waste are removed or otherwise dealt with in accordance with all Applicable Requirements.

17.9.4 Except to the extent required by Clause 17.9.3, the Concessionaire shall not otherwise be responsible for the removal of Hazardous Substances or Waste from any part of any Site or Working Area or

from land outside any Site or Working Area or for taking any other remedial action in relation thereto.

- 17.9.5 In addition to the provisions of Clause 17.9.4, the parties acknowledge and agree that if the Concessionaire is at any time obliged by any Applicable Requirement to remove or otherwise remedy any Hazardous Substance or Waste from or under any Site or Working Area by reason of the Concessionaire being the lessee or occupier of the relevant parcel of land, then, except to the extent that the Concessionaire would have been obliged to remove (or otherwise deal with) such Hazardous Substances or Waste as a result of the operation of Clause 17.9.3, the cost of removing or remedying the same shall (if arising during the Construction Period) be treated as a Deemed DLR Change or (if arising during the Maintenance Period) be treated as Additional Works to which the provisions of Clause 41.1.2 shall apply.

17.10 Closure of Island Gardens Spur and Replacement Bus Services

- 17.10.1 DLR Limited shall, upon receipt of not less than 90 days' notice from the Concessionaire requiring it to do so, exercise the powers contained in Section 35(2) of the 1993 Act to discontinue railway passenger services on the Existing Railway south of Crossharbour Station to permit the connection of the Lewisham Extension to the Existing Railway and shall thereafter provide the Concessionaire access to such remaining part of the Existing Railway south of Crossharbour Station on the basis set out in sub-clause 17.7.1(a).
- 17.10.2 For those periods during the Construction Period when DLR Limited is unable to operate Train Services between Crossharbour, Mudchute and Island Gardens as a result of the Works, the Concessionaire shall reimburse DLR Limited for the cost of providing replacement bus services (in accordance with DLR Limited's normal practice) for DLR Limited's passengers to travel between such stations. DLR Limited shall provide the Concessionaire with the opportunity to tender for the provision of any such replacement bus services.

18. DISCREPANCIES IN TECHNICAL REQUIREMENTS

18.1 Concessionaire satisfied regarding discrepancies and errors

The Concessionaire confirms that it has studied in detail the Technical Requirements and each document comprised therein and, subject to Clause 13.5, has satisfied itself that no discrepancies or errors exist within or between each such document. The Concessionaire acknowledges that, save as provided in sub-clause 18.2.3(a) and subject to Clause 13.5, it accepts all risks arising from any discrepancies or errors that subsequently appear within or between such documents and that, subject as aforesaid, it shall not be entitled to make any claim against DLR Limited for extension of time, payment or otherwise in respect of any such errors or discrepancies.

18.2 Manner in which errors and discrepancies to be resolved

The Concessionaire will notify DLR Limited forthwith upon becoming aware of a discrepancy or error within the Technical Requirements. The Concessionaire agrees with DLR Limited that:-

- 18.2.1 where there appears a discrepancy between the Specification and the Concessionaire's Works Proposals, the Specification shall prevail;
- 18.2.2 subject as provided in Clause 18.2.1, where there appears a discrepancy within the Technical Requirements which cannot be resolved by the Specification the Concessionaire shall provide with the notice of such discrepancy an explanation of how the discrepancy can be so resolved. Unless, within 14 days of the Concessionaire's notice, DLR Limited notifies the Concessionaire in accordance with Clause 18.2.3 to resolve the discrepancy in a different manner, the Concessionaire shall resolve the discrepancy in the manner proposed by it (subject always to that means of resolving the discrepancy being in compliance with the Applicable Requirements);
- 18.2.3 subject as provided in Clauses 18.2.1 and 18.2.2:-
 - (a) where there is a discrepancy or error within the Specification, DLR Limited shall decide how such discrepancy or error should be dealt with, and shall notify the Concessionaire of such decision within 14 days of the Concessionaire's notice of such discrepancy or error. The Concessionaire shall comply with such decision in carrying out the Works. In the case of an error in the Specification which does not constitute a discrepancy, DLR Limited's notification under this sub-clause (a) shall constitute a Preliminary Change Instruction and the provisions of Clause 22 shall apply;
 - (b) where there is a discrepancy or error within the Concessionaire's Works Proposals, the Concessionaire shall at its own cost resolve such discrepancy or error in accordance with the provision of Clause 23.
- 18.2.4 Without prejudice to Clauses 18.2.1 to 18.2.3 (inclusive), whenever a discrepancy or error appears within the Technical Requirements, the parties shall endeavour to consult with each other over the manner in which the error or discrepancy should be resolved.

19. PROGRAMMES AND PROGRESS REPORTS

19.1 Preparation and submission of programmes

The Concessionaire shall prepare and submit to DLR Limited:-

- 19.1.1 within 90 days after the Commencement Date, the Works Programme prepared in accordance with the Technical Requirements showing in reasonable detail the various activities comprised in the Works which

shall be based on, and include at least the activities shown in, the Master Programme and shall show the anticipated timing and duration of Interface Events;

- 19.1.2 within 90 days after the Commencement Date, a draft programme for the Commissioning, Integration and Assimilation activities to be undertaken pursuant to Clauses 24 and 25 including the activities to be carried out and the resources and facilities (including Possessions) to be provided by DLR Limited (such activities to be no more onerous on DLR Limited than those activities identified in the Concessionaire's Works Proposals) and allowing a sufficient period having regard to the information and specifications referred to in Clause 20.4.1 (and in any event a period of not less than 64 days) for the carrying out of Assimilation;
- 19.1.3 not less than 180 days before the date when the Concessionaire requires the resources and facilities referred to in Clause 19.1.2 for the start of the testing, Commissioning, Integration and Assimilation activities referred to in Clause 19.1.2, a programme showing in reasonable detail each activity and test to be undertaken or performed during Commissioning, Integration and Assimilation and allowing a sufficient period having regard to the information and specifications referred to in Clause 20.4.1 (and in any event a period of not less than 64 days) for the carrying out of Assimilation.

The Programmes referred to in this Clause shall be produced in paper format.

19.2 Revisions to Works Programme

If the Concessionaire has failed or anticipates that it will be unable to progress the Works in accordance with the Works Programme, or proposes to change the Works Programme, such that in any such case the timing of any Interface Event is or is likely to be materially altered, it shall forthwith notify DLR Limited of such fact accompanied, if required by DLR Limited, by an explanation of the events or circumstances giving rise to the requirement to revise the Works Programme. Within 14 days of such notice, the Concessionaire shall notify DLR Limited of the steps that it proposes to take to regain the original Works Programme or shall produce a revised Works Programme showing the revised timing for the Interface Events.

19.3 Progress reports and meetings

With effect from the Commencement Date until the issue of the Completion Certificate, the Concessionaire shall submit to DLR Limited quarterly progress reports covering the following matters:-

- 19.3.1 the progress of the Works against the Works Programme and the Milestones shown therein as at a date being not more than seven days prior to the date on which the progress report is required to be made;

- 19.3.2 a schedule of all Works carried out since the period covered by the progress report for the preceding quarter;
- 19.3.3 all Changes proposed and made;
- 19.3.4 a record of all safety and Environment related incidents or matters occurring on the Site or Working Areas which are known to the Concessionaire or the Contractor;
- 19.3.5 all actual or potential problems of a material nature affecting the Works Programme, achievement of the Technical Requirements and safety;
- 19.3.6 all dealings with Relevant Authorities,

together with such further information as DLR Limited may from time to time reasonably request in connection with the Works and the Works Programme. Each progress report shall be accompanied by a comprehensive colour photographic record of the progress of the Works (anticipated to consist of approximately 50 photographs per month). For each photograph, the Concessionaire shall supply one negative, two proof prints (not less than 50 mm x 50 mm) and two half plate prints mounted in an album each marked with the location and date. DLR Limited shall be entitled to require a progress meeting with the Concessionaire and, if it so requires, the Contractor to be held within 14 days of receipt of each progress report.

19.4 Quarterly progress updates

DLR Limited will inform the Concessionaire on a quarterly basis of the activities carried out by Alcatel under Work Package 6.

19.5 Suspension of Works

DLR Limited shall be entitled to order the suspension of any relevant part of the Works in the event of an emergency or where it has reasonable grounds for considering that damage to the DLR Facilities or any DLR Limited assets on the Site or Working Areas or personal injury to DLR Limited's employees, contractors or passengers is likely to result from their continuation. Any such suspension shall last for the duration of such emergency or until the Concessionaire has undertaken appropriate remedial action to prevent such damage or injury to the reasonable satisfaction of DLR Limited.

19.6 Co-ordination with DLR Limited Possession plan

In planning the Works, the Concessionaire shall take account of DLR Limited's activities on the Existing Railway as shown in DLR Limited's rolling six months Possession plan and shall use all reasonable endeavours to co-ordinate the Works with such activities. In drawing up each rolling six months Possession plan DLR Limited shall take reasonable steps to co-ordinate the activities included in such Possession plan with the Works if it is possible to do

so without interfering with the operational requirements of the Existing Railway.

20. DESIGN AND CHECKING

20.1 Concessionaire's obligations

The Concessionaire shall procure that:-

- 20.1.1 the Designer prepares and supervises the preparation of the Detailed Design in accordance with the requirements of this Agreement and, in particular complies with the procedures set out in Part 4 of Schedule 3;
- 20.1.2 the Detailed Design will enable the Works to comply with the requirements of the Specification and, subject thereto, will meet the requirements of the Concessionaire's Works Proposals;
- 20.1.3 the checking and safety audit procedures set out in Part 6 of Schedule 3 are complied with;
- 20.1.4 the Contractor and the Designer comply with the Works Quality Plan.

20.2 Submission of designs to DLR Limited

The Concessionaire shall procure that all Detailed Designs are submitted to the DLR Representative in accordance with the provisions of Part 5 of Schedule 3. DLR Limited shall be entitled to comment on all designs so submitted but the Concessionaire shall not be obliged to take account of DLR Limited's comments. Where DLR Limited has a safety comment, it will respond to the Concessionaire within 14 days of the submission of the relevant design. Where DLR Limited's comments are stamped "Safety Comment" and the Concessionaire does not amend the Detailed Design to take account of such comment, the Concessionaire shall, within 14 days of receipt of such comments, provide a written explanation to DLR Limited's reasonable satisfaction explaining why it has not taken account of such comment. The Concessionaire shall be entitled to consult with DLR Limited at any time on reasonable notice regarding the Detailed Designs and, in particular, regarding safety issues.

20.3 Safety Comments

DLR Limited shall be entitled to make a "Safety Comment" in respect of designs submitted in accordance with Clause 20.2 where:-

- 20.3.1 in DLR Limited's reasonable opinion, the design does not meet the requirements, spirit or intent of the Safety Case;
- 20.3.2 in DLR Limited's experience the design is unlikely to obtain the required statutory consent (eg HSE, HMRI or LFCDA) because of the safety implications;

- 20.3.3 the design will or is likely to result in a contravention of the procedures set out in the DLR Control Documents; or
- 20.3.4 in DLR Limited's reasonable opinion, the design is unsafe or unsuitable for passengers, DLR Limited's employees or affected third parties.

20.4 Development of the Lewisham ATC System Works

20.4.1 At least 15 months before the date on which the Concessionaire anticipates that it will require DLR Limited to supply the SG Software Test Version for the purposes of Commissioning and Integration, the Concessionaire will provide to DLR Limited:-

- (a) guideway listings and other information specified in, and in the format required by Part 10 of Schedule 3 to enable the Second Generation VCC Software to be developed so that, once installed in a temporary Vehicle Control Computer, it will allow such temporary Vehicle Control Computer to recognise the configuration of, and to operate, the Lewisham ATC System Installation;
- (b) performance specifications showing the modifications to the elements of the Existing Railway ATC System within the Control Centre that are required to be implemented to allow the operation of the Lewisham Extension to the standard required by the Specification;
- (c) the scope of those activities to be undertaken by DLR Limited (including the definition of tests (performance or otherwise) that the Concessionaire requires to be performed) on the Lewisham ATC System Installation, once connected to the Existing Railway ATC System, as part of Assimilation.

20.4.2 Following receipt of the information and specifications referred to in Clause 20.4.1 DLR Limited will incorporate the guideway listings and other information referred to in sub-clause 20.4.1(a) into the Second Generation VCC Software and carry out the modifications to the elements of the Existing Railway ATC System referred to in sub

clause 20.4.1(b) in accordance with a programme consistent with the anticipated date (as shown in the Works Programme) for commencement of Assimilation.

21. TIME FOR COMPLETION AND EXTENSIONS OF TIME

21.1 Time for completion

The Concessionaire shall use all reasonable endeavours to ensure that the whole of the Works shall be completed such that the Completion Certificate has been issued by the Target Completion Date and will in any event ensure that the Works are so completed by the second anniversary of such Date.

21.2 Concessionaire's notice of Delay Event

The Concessionaire shall closely monitor the progress of the Works and shall notify DLR Limited forthwith upon the Concessionaire becoming aware of any event the foreseeable effect of which is to cause the date upon which the Lewisham Extension is Available for Service to be extended beyond the Target Completion Date. The Concessionaire's notice:-

21.2.1 shall not in any event be given later than 28 days after the date when the event first became known to the Concessionaire or the Contractor (whichever is earlier); and

21.2.2 shall state as precisely as possible the likely period of delay and specify whether the Concessionaire considers that it is, or may become, entitled to an extension of time for completing the Works and, if so, which of the Delay Events the Concessionaire will rely upon in support of its entitlement.

In the case of a Delay Event which is Force Majeure, the Concessionaire shall also supply the information required pursuant to Clauses 8.3 and 8.4. Following the service of a notice pursuant to this Clause 21.2 the Concessionaire shall supply DLR Limited with such further supporting documentation and information as DLR Limited may reasonably require.

21.3 Delay Events

The following events are Delay Events entitling the Concessionaire to an extension of time for completing the Works:-

21.3.1 Force Majeure;

21.3.2 any Compensation Event;

21.3.3 any DLR Change;

21.3.4 any breach by DLR Limited of its obligations under this Agreement;

- 21.3.5 the discovery of unexploded bombs or other munitions on or adjacent to the Site or Working Areas or in a location sufficiently close to the Site or Working Areas as to require the Site or Working Areas to be cleared at the direction of the police or military authorities;
- 21.3.6 the discovery of Unforeseeable Fossils or Antiquities;
- 21.3.7 any Protestor Action; or
- 21.3.8 any delay in the obtaining of the approval of details required to implement the Works, as referred to in Clause 16.2, which could not reasonably have been anticipated at the commencement of the Concession and which impacts on the critical path of the Works Programme.

For the purposes of this Clause 21.3:-

- (a) "Unforeseeable Fossils or Antiquities" means:-
 - (i) those fossils, antiquities or other matters of archaeological interest that neither the Concessionaire nor the Contractor could reasonably be expected to have discovered by carrying out investigations and tests to a similar standard and scope to those recommended by the Wessex Archaeology Report having regard to any difference between scope of the Works and the scope of the proposed works in respect of which such Report was compiled; and
 - (ii) those fossils, antiquities or other matters of archaeological interest that are discovered as a result of such investigations and tests,

which in either case, either in isolation or cumulatively, impact on the critical path of the Works Programme and in respect of which appropriate mitigation action cannot be undertaken by the Concessionaire or the Contractor;
- (b) "Protestor Action" means the presence on the Site or Working Area (or land adjacent thereto in a manner which affects or impedes the progress of the Works) of persons protesting against the construction of the Lewisham Extension and whose presence could not have been prevented by the Concessionaire or the Contractor undertaking reasonable security measures in relation to the Site and Working Areas (including access thereto).

No other events, circumstances or requirements shall entitle the Concessionaire to an extension of time for completing the Works.

21.4 Duty to mitigate effects of delay

In all cases where the Concessionaire has given notice under Clause 21.2, the Concessionaire shall use all reasonable endeavours to minimise or remove the actual or anticipated delay and the adverse effects thereof.

21.5 Extensions of time

If DLR Limited, acting reasonably, is satisfied that a Delay Event has occurred and that, notwithstanding the mitigation measures undertaken by the Concessionaire pursuant to Clause 21.4, the Concessionaire is entitled to an extension of time for completion of the Works, DLR Limited will adjust the Target Completion Date and, subject to Clause 5.2, the Concession Period to the extent of the delay suffered by the Concessionaire. If there is a dispute between the parties as to whether or not a Delay Event has occurred or regarding the length of the extension of time to which the Concessionaire is entitled the matter shall be referred to the Disputes Panel as a Dispute.

21.6 Restrictions on entitlement to extensions of time

Notwithstanding the powers of DLR Limited under this Clause 21, the Concessionaire shall not be entitled to exercise any right or seek any relief or remedy in respect of a Delay Event if and to the extent that the Delay Event or any delay resulting from such Delay Event would not have occurred but for any negligent act or omission or default of the Concessionaire or its contractors or sub-contractors of any tier.

21.7 Acceleration in lieu of extensions of time

In any circumstances where the Concessionaire is or would be entitled to an extension of the Target Completion Date or to the Concession Period but for the provisions of this Clause 21.7, DLR Limited may:-

21.7.1 prior to granting an extension of time to which the Concessionaire would otherwise be entitled, instruct the Concessionaire, at DLR Limited's cost, to submit (which the Concessionaire will do as soon as reasonably practicable and in any event within 28 days of DLR Limited's instruction) written proposals to DLR Limited stating:-

- (a) the extent to which any extension of time to which the Concessionaire would be entitled after complying with its obligations under Clauses 21.2 to 21.4 can be cancelled or reduced; and
- (b) the additional costs which the Concessionaire reasonably expects to incur and any other right which the Concessionaire would wish to exercise and/or relief or remedy which it would wish to claim if the Concessionaire's proposals for cancelling or reducing the effect of delay were to be accepted by DLR Limited; and

21.7.2 following receipt of the Concessionaire's proposals made pursuant to Clause 21.7.1, and if DLR Limited wishes to accept such proposals, issue a DLR Change Certificate to proceed on the basis of such proposals and confirming in accordance with those proposals:-

- (a) the revised Target Completion Date and/or Concession Period; and
- (b) any other appropriate relief or remedy to be given to the Concessionaire under this Agreement.

21.8 Delayed Operating Date - Adjustments to Availability Fee Periods

21.8.1 If for any reason the Operating Date has not occurred by 26th January 2000:-

- (a) Availability Period 0 shall commence on the day on which the Operating Date shall occur; and
- (b) the commencement date for each subsequent Availability Period shall be postponed by the number of days which shall have elapsed between 26th January 2000 and the Operating Date (inclusive of both such dates).

21.8.2 To the extent that the Operating Date is delayed beyond 26th January 2000 for reasons other than a Delay Event, the Availability Fee Period shall be reduced such that the number of days of delay which were caused by such reasons shall be excluded from the end of the Availability Fee Period. In respect of such excluded days APF shall, for the purposes of paragraph 1.2 of Part 1 of Schedule 7, be deemed to be zero.

22. DLR LIMITED CHANGES

22.1 Notice of DLR Change

22.1.1 Subject to Clause 22.1.2 DLR Limited may at any time during the Construction Period issue to the Concessionaire a Preliminary Change Instruction which shall be accompanied by sufficient explanation and information to allow a full appreciation of the DLR Change required.

22.1.2 If in the opinion of the Concessionaire a Preliminary Change Instruction issued by DLR Limited requires a Change to be made which, if implemented, would result in the Concessionaire being in breach of its obligations or incurring liabilities under any of the Cutty Sark Slab Agreement then, provided that the Concessionaire has used all reasonable endeavours to identify ways (if any) in which the Preliminary Change Instruction might be implemented without breaching the terms of or incurring liabilities under the Cutty Sark Agreement, the Concessionaire may within 21 days of such Preliminary Change Instruction being issued notify DLR Limited that

it objects to the Preliminary Change Instruction and with such notice the Concessionaire shall provide particulars of the obligations or liabilities that it expects it will breach or incur. Upon receipt of the Concessionaire's notice, DLR Limited shall:-

- (a) subject to it assuming responsibility for and indemnifying the Concessionaire against such obligations and liabilities, confirm the Preliminary Change Instruction (in which case the provisions of Clauses 22.2 to 22.6 shall apply); or
- (b) issue a modified Preliminary Change Instruction in place of that to which the Concessionaire objected and in respect of which (for the avoidance of doubt) the provisions of this Clause 22.1.2 shall likewise apply; or
- (c) withdraw the Preliminary Change Instruction.

22.1.3 Following receipt of a Preliminary Change Instruction to which Clause 22.1.2 applies, the Concessionaire shall, subject always to the provisions of the Cutty Sark Slab Agreement, use all reasonable endeavours to avoid and minimise the extent of the obligations that would be breached or liabilities that would be incurred under the Cutty Sark Slab Agreement if the Preliminary Change Instruction were to be implemented and where DLR Limited confirms a Preliminary Change Instruction in accordance with sub-clause 22.1.2(a), the Concessionaire shall use all reasonable endeavours to implement the Preliminary Change Instruction in a manner that minimises the extent of any such breach or liability.

22.2 Concessionaire's estimates

Subject to Clause 22.9 the Concessionaire shall, within 21 days of receipt of a Preliminary Change Instruction, supply DLR Limited with budgetary estimates of:-

- 22.2.1 the additional costs (including financing costs) which the Concessionaire reasonably expects to incur should the DLR Change be implemented (providing with such estimate all necessary supporting calculations and information including detailed particulars of additional sums to be paid to the Concessionaire's contractors, financiers and professional advisers);
- 22.2.2 the value attributable to any rights under the Project Documents the benefit of which would be lost or reduced should the DLR Change be implemented;
- 22.2.3 the length of any extension of the Target Completion Date and/or to the Concession Period to which the Concessionaire considers itself entitled should the DLR Change be implemented (including details of any corresponding extensions of time sought by the Contractor under

the Construction Contract) and any adjustments to the Works Programme which the Concessionaire reasonably requires;

22.2.4 the Concessionaire's requirements for access to the DLR Facilities and other facilities and for assistance and resources from DLR Limited;

22.2.5 any impact on the level of Fees payable by DLR Limited which the Concessionaire foresees as being likely to result from the DLR Change;

22.2.6 the extent to which the DLR Change, if implemented, would prevent the Concessionaire from complying with any of its obligations under the Project Documents; and

22.2.7 any further effects (including benefits) which, after careful consideration, the Concessionaire foresees as being likely to result from the DLR Change, if implemented,

and with such estimates the Concessionaire shall propose how any increased costs to the Concessionaire resulting from the DLR Change might be funded. Unless, within 21 days of receipt of the Concessionaire's budgetary estimates under this Clause 22.2, DLR Limited requests the Concessionaire to proceed to prepare firm priced proposals (which shall be submitted to DLR Limited within a reasonable period thereafter) the Preliminary Change Instruction shall be deemed to have been withdrawn.

22.3 Agreement of Concessionaire's estimates

Following receipt by DLR Limited of the Concessionaire's budgetary estimates and proposals pursuant to Clause 22.2, the parties shall endeavour to agree the effects of the DLR Change and any agreement so reached in writing shall, if recorded in a DLR Change Certificate, signed by DLR Limited and the Concessionaire, be binding upon DLR Limited and the Concessionaire as to the subject matter thereof. Where a DLR Change, if implemented, would require the Concessionaire to incur additional expenditure, the Concessionaire shall use reasonable endeavours to raise the finance required and to the extent that it is able to do so the DLR Change Certificate shall record the agreed adjustments to be made to the Fees. To the extent that the Concessionaire is unable to raise such finance either at all or on terms acceptable to DLR Limited, DLR Limited will fund such expenditure in accordance with the requirements of this Clause 22 by way of appropriate lump sum payment(s) to the Concessionaire.

22.4 Disagreement over Concessionaire's estimates

If the parties are unable to agree the Concessionaire's estimates and proposals pursuant to Clause 22.2, DLR Limited may either withdraw the Preliminary Change Instruction (in which case the Concessionaire shall have no claim arising out of or in connection with such Preliminary Change Instruction or any action taken by the Concessionaire in relation thereto unless DLR Limited has required the Concessionaire to submit firm priced proposals in which event DLR Limited shall reimburse the Concessionaire for all reasonable costs which

it incurred in the preparation of such proposals) or may issue to the Concessionaire a DLR Change Certificate stating DLR Limited's determination of the matters referred to in Clauses 22.2.1 to 22.2.7 other than any consequential adjustment to the Works Programme which shall be the responsibility of the Concessionaire in accordance with Clause 22.5. If the Concessionaire disagrees with all or any of the determinations made by DLR Limited pursuant to this Clause 22.4 either party may refer the determinations which are the subject of disagreement to the Disputes Panel as a Dispute.

22.5 Implementation of DLR Changes

Upon receipt of a DLR Change Certificate the Concessionaire shall immediately cause the DLR Change therein described to be implemented (irrespective of whether or not the matter has been or is to be referred to the Disputes Panel in accordance with Clause 22.4) and shall submit a revised Works Programme showing how the DLR Change is to be effected in accordance with the timetable set out in the DLR Change Certificate. For the avoidance of doubt, DLR Limited shall pay all undisputed amounts agreed or determined to be due and payable in respect of the DLR Change pursuant to Clause 22.4 during the period of the Disputes Resolution Procedure.

22.6 Responsibility for DLR Changes

Subject to a DLR Change being within the scope referred to in Clause 22.1 and as hereinafter provided, DLR Limited shall bear no risk or liability whatsoever arising from any such change, other than the liability to make payment for such Change as agreed under Clause 22.3 or as specified by DLR Limited or determined by the Disputes Panel pursuant to Clause 22.4. DLR Limited shall be liable for any particular design, materials, goods, workmanship or method of construction which it specifies must be incorporated in the Change and which is subsequently shown to be defective provided that the Concessionaire objected to the incorporation of such item prior to the issue of the relevant DLR Change Certificate and such objection was considered by DLR Limited, or, in the case of disagreement, determined pursuant to the Disputes Resolution Procedure to be reasonable.

22.7 Deemed DLR Changes

Where:-

- 22.7.1 DLR Limited changes or proposes to change any of the DLR Control Documents either voluntarily or as a result of a Change of Law;
- 22.7.2 subject as provided in Clause 22.8, DLR Limited changes or proposes to change the DLR Noise and Vibration Policy;
- 22.7.3 DLR Limited introduces or proposes to introduce new rolling stock on the Railway or makes or proposes to make material alterations to the characteristics of its rolling stock;
- 22.7.4 any of Clauses 13.5, 17.9.5, 18.2.3 or 26.3 applies;

- 22.7.5 in order to comply with Applicable Requirements the Concessionaire is required to increase the number of cross passages between the running tunnels from one to a number not exceeding three;
- 22.7.6 DLR Limited changes its interpretation of Applicable Requirements relating to the safety of the Railway;
- 22.7.7 HMRI or LFCDA revokes an undertaking or assurance in relation to the Works which it had previously confirmed either in writing or in agreed minutes, provided that:-
- (a) the Concessionaire had notified DLR Limited in writing in advance of its intention to base its Detailed Design on the relevant undertaking or assurance and DLR Limited either agreed within 10 days (or such earlier date as the parties hereto may agree) of the receipt of such notification that the Concessionaire could rely on such undertaking or assurance or failed to respond to such notification within 10 days (or such earlier date as the parties hereto may agree) of the receipt thereof; and
 - (b) such revocation does not arise as a result of any change in the Works implemented by the Concessionaire or the Contractor at any time following receipt of such undertaking or assurance or as a result of any act or omission of the Concessionaire;
- 22.7.8 DLR Limited makes any change to the Existing Railway ATC System which requires a change to be made to the Lewisham ATC System Works provided that such change to the Existing Railway ATC System has not resulted from:-
- (a) any act or omission of the Concessionaire; or
 - (b) the performance by DLR Limited of its obligations under Work Package 6,

such circumstances shall be deemed to constitute a DLR Change in respect of which DLR Limited shall be obliged to issue a Preliminary Change Instruction. Where DLR Limited implements any of the changes referred to in Clauses 22.7.1 to 22.7.3, 22.7.6 or 22.7.8 or any of Clauses 22.7.4, 22.7.5 or 22.7.7 applies, DLR Limited shall not be permitted to withdraw the relevant Preliminary Change Instruction.

22.8 Change to DLR Noise and Vibration Policy

DLR Limited confirms to the Concessionaire that the DLR Noise and Vibration Policy will be changed so as to ensure that it complies with Applicable Requirements from time to time. Where Clause 22.7.2 applies, the Concessionaire shall only be entitled to make a claim under Clause 22.2 in so far as the matters referred to therein result directly from the change in the DLR

Noise and Vibration Policy but not in so far as such matters relate to any then existing failure by the Concessionaire to meet the requirements of the Specification in relation to noise emissions or the DLR Noise and Vibration Policy in force immediately prior to such change (whichever imposes greater obligations).

22.9 Cross-Passages

Where a DLR Change is deemed to have been made in accordance with Clause 22.7.5 the additional costs for the purposes of Clause 22.2.1 and the value of rights lost or reduced for the purposes of Clause 22.2.2 for each additional cross-passage is agreed to be:-

22.9.1 upgrade to two cross passages. Second cross-passage at chainage 6840 : £250,000.

22.9.2 upgrade to three cross passages. Second cross-passage at chainage 6840 and third cross passage at chainage 7495 : £450,000. If the third cross-passage at chainage 7495 is required by HMRI or LFCDA to be located more centrally between the South portal and Cutty Sark station this will be implemented at no extra cost to DLR Limited.

23. CONCESSIONAIRE'S CHANGES

23.1 Request for Concessionaire's Change

Subject as provided in Clause 23.2, at any time during the Construction Period, the Concessionaire may submit to DLR Limited a request in writing to permit the Concessionaire to make a Concessionaire's Change and with such request the Concessionaire shall supply such technical and other information as may be necessary to explain the reason for the Concessionaire's Change being requested and a draft of the proposed Concessionaire's Change Certificate.

23.2 Issue of Concessionaire's Change Certificate

The Concessionaire shall not proceed to implement a Concessionaire's Change unless and until such Change has been approved by DLR Limited and a Concessionaire's Change Certificate has been issued by DLR Limited. DLR Limited shall only be entitled to refuse the issue of a Concessionaire's Change Certificate where, acting reasonably, it considers that such Change, if implemented, would adversely affect the safety or, in a materially adverse manner, the scope, quality or standard of the Works or reduce the performance of the Works below the requirements of the Specification or where the Concessionaire's Change relates to a Change in the Specification (in which case DLR Limited shall be entitled to refuse to approve such Change at its absolute discretion). DLR Limited shall either:-

23.2.1 notify the Concessionaire that it refuses to approve a Concessionaire's Change (in which case it shall also state the grounds for such lack of approval); or

23.2.2 issue a Concessionaire's Change Certificate,

within 28 days of receipt by DLR Limited of the information referred to in Clause 23.1 and so that if it fails to do either within such time it shall be deemed to have issued a Concessionaire's Change Certificate in the form of the draft referred to in Clause 23.1.

23.3 No claims by Concessionaire

All Concessionaire's Changes shall be implemented solely at the risk and cost of the Concessionaire. Accordingly, the Concessionaire shall not be entitled to any form of payment, any extension of time for completion of the Works or any other relief or remedy as a result of the implementation of a Concessionaire's Change. In addition, no liability shall attach to, and the Concessionaire shall have no claim against, DLR Limited by reason of a refusal to approve a Concessionaire's Change on the grounds allowed under Clause 23.2.

24. PHYSICAL COMPLETION, COMMISSIONING, INTEGRATION AND ASSIMILATION

24.1 Meaning of terms

24.1.1 Meaning of "Commissioning"

The "Commissioning" of the Lewisham Extension involves the inspection and testing of, and performance of trials upon, various elements comprising the Lewisham Extension (either singly or in combination) at appropriate stages in the Works Programme, but with the Lewisham Extension (or the element in question) isolated from the Existing Railway.

24.1.2 Meaning of "Integration"

The "Integration" of the Lewisham Extension involves the testing of, and performance of trials upon, the various elements comprising the infrastructure of the Lewisham Extension (either singly or in combination) and the test or performance of trials involve the operation of elements of the Existing Railway in combination with elements of the Lewisham Extension but with the Lewisham Extension (or the element in question) isolated from the Existing Railway.

24.1.3 Meaning of "Assimilation"

"Assimilation" involves the carrying out of tests and trials upon the various elements comprising the Lewisham Extension (either singly or in combination) when the infrastructure is connected to the Existing Railway to demonstrate that the whole of the Lewisham Extension can be operated on an integrated basis and in a manner which will satisfy the requirements of the Specification and shall include:-

- (a) those activities specified by the Concessionaire pursuant to sub clause 20.4.1(c); and
- (b) such other tests and trials as DLR Limited shall consider to be desirable and are notified to the Concessionaire.

24.1.4 Meaning of "Minor Outstanding Items"

"Minor Outstanding Items" means minor defects or items of outstanding work which do not, in the reasonable opinion of DLR Limited, affect the Contracted Capacity, usability or safe operation of the Lewisham Extension.

24.1.5 Meaning of "Physically Complete"

"Physically Complete" means that all elements of the Works have been constructed and installed and are complete subject only to the carrying out of Commissioning, Integration, Assimilation and System Performance Demonstrations and that those systems and facilities which are not subject to commissioning and testing as part of the Commissioning, Integration, Assimilation and System Performance Demonstrations are functioning correctly.

24.2 Responsibility for Commissioning, Integration and Assimilation

24.2.1 The Concessionaire shall:-

- (a) plan and co-ordinate all Commissioning, Integration and Assimilation activities;
- (b) carry out Commissioning and Integration;
- (c) undertake all Assimilation activities other than those Assimilation activities in relation to the Lewisham ATC System Installation referred to in sub-clauses 24.1.3(a) and (b); and
- (d) liaise in an effective and efficient manner with all personnel of DLR Limited, its contractors and subcontractors nominated by DLR Limited as being responsible for representing DLR Limited in relation to such activities,

in such manner as shall cause the minimum possible disruption to the operation of the Existing Railway.

24.2.2 Where the Commissioning, Integration and Assimilation activities affect the infrastructure or operation of the Existing Railway, the programme delivered to DLR Limited in accordance with Clause 19.1.3, and the activities specified therein, shall be subject to approval by DLR Limited such approval not to be unreasonably withheld or delayed. DLR Limited reserves the right to comment on all other Commissioning, Integration and Assimilation activities and

the Concessionaire shall consider and take account of these comments as far as possible.

24.2.3 DLR Limited undertakes to make available to the Concessionaire for the purposes of Commissioning, Integration and Assimilation the resources and facilities specified in the Concessionaire's Works Proposals at the date of this Agreement as being required from DLR Limited. If the programme to be submitted in accordance with Clause 19.1.3 imposes additional obligations on DLR Limited then, subject as provided in Clause 24.4, DLR Limited will use all reasonable endeavours to make available such additional resources and facilities, to the extent that they are within DLR Limited's control or ownership, subject always to the operational requirements of the Existing Railway.

24.2.4 The Concessionaire shall give DLR Limited:-

- (a) not less than 60 days notice of the anticipated dates for the start of Commissioning or Integration; and
- (b) 14 days notice stating a date (being not earlier than the date stated in the Concessionaire's notice pursuant to sub clause 24.2.4(a)) when the Concessionaire will require the SG VCC Software Test Version to be delivered.

24.2.5 DLR Limited shall ensure that:-

- (a) a Vehicle Control Computer is installed at the Control Centre by no later than 4th January 1999 of sufficient capacity to allow the Lewisham Extension to achieve the Specification subject to the Concessionaire complying fully with its obligations in relation to the Works; and
- (b) subject to the Concessionaire having supplied the information and specifications referred to in Clause 20.4.1 at the time and in the form required by this Agreement, the SG VCC Software Test Version (and any subsequent version of Second Generation VCC Software) is developed and commissioned to a level which, subject to the Concessionaire complying fully with its obligations in relation to the Works, is technically capable both of allowing the Concessionaire to undertake Commissioning and Integration by no later than 1st March 1999 and of enabling the Lewisham Extension to achieve the Specification, or by such later date as the Concessionaire shall agree, acting reasonably, having regard to the order and progress of the Works.

24.2.6 The Concessionaire will have no responsibility if the operation of the Lewisham Extension from the ATC System causes disruption to the operation of the Existing Railway unless such disruption occurs as a result of any act or omission of the Concessionaire.

24.3 Procedures for Commissioning, Integration and Assimilation

- 24.3.1 The Commissioning, Integration and Assimilation procedures developed by the Concessionaire shall ensure that all activities involving train movements are segregated from other construction, Commissioning, Integration or Assimilation activities and that responsibility for the control of train movements is clearly defined.
- 24.3.2 Without prejudice to the requirements of Clause 17.7, not less than 14 days prior to the date when any of DLR Limited's trains are required to operate on the Lewisham Extension for construction, Commissioning, Integration or Assimilation activities, the Concessionaire shall provide DLR Limited with documentation (namely drawings, survey inspections, and test results) which demonstrate that trains can operate safely on the Lewisham Extension without risk of damage under the proposed conditions of usage.
- 24.3.3 Commissioning and Integration of the Lewisham ATC System Installation shall be performed in isolation from the Existing Railway ATC System. When the Lewisham ATC System Installation has been demonstrated to operate successfully in isolation, it shall be connected by DLR Limited to the Existing Railway ATC System in the Control Centre prior to the performance of Assimilation activities.
- 24.3.4 DLR Limited shall be entitled to witness any of the Commissioning and Integration activities and the activities of the Concessionaire in relation to Assimilation. The results of all such activities shall be supplied to DLR Limited and where appropriate to relevant regulatory authorities. DLR Limited shall also be entitled to comment upon such results and the Concessionaire shall consider and take account of these comments provided that where the Concessionaire reasonably considers that such comments constitute a DLR Change the Concessionaire shall forthwith notify DLR Limited of such fact and DLR Limited shall, if it wishes such comments to be taken into account, issue a Preliminary Change Instruction in respect thereof. If DLR Limited does not consider that such comments constitute a DLR Change it shall be entitled to refer the matter to the Disputes Resolution Procedure.
- 24.3.5 The Concessionaire shall ensure that, as part of the Commissioning and Integration procedures, DLR Limited's staff receive induction and training regarding the operation and maintenance of the Lewisham Extension (together with appropriate operating and maintenance manuals) to the reasonable satisfaction of DLR Limited.
- 24.3.6 DLR Limited will permit the Concessionaire access to the Existing Railway for the purposes of carrying out Commissioning and Integration activities and the activities of the Concessionaire in relation to Assimilation provided that such access shall be subject to the Concessionaire complying with the rules and procedures set out in

the DLR Control Documents. Where the DLR Control Documents do not set out rules and procedures for the type of activities which the Concessionaire intends to carry out the Concessionaire shall develop and obtain the approval of DLR Limited to interim rules and procedures which shall define, inter alia, the point and limits of responsibility for the Concessionaire and DLR Limited and include safe systems of work.

24.3.7 The Concessionaire shall give DLR Limited:-

- (a) not less than 60 days notice of the anticipated date for the start of Assimilation which date shall be not earlier than 1st July 1999 (or such earlier date as DLR Limited may agree); and
- (b) 14 days notice stating a date (being not earlier than the date stated in the Concessionaire's notice pursuant to sub-clause 24.3.7(a)) when the Concessionaire will require Assimilation to commence,

and following the date stated in the Concessionaire's notice pursuant to sub-clause 24.3.7(b) DLR Limited shall commence and carry out the Assimilation activities that it is required to undertake.

24.3.8 If either of the notices served by the Concessionaire pursuant to Clause 24.3.7 identifies a date for starting Assimilation earlier than the date shown in the programme submitted in accordance with Clause 19.1.3 DLR Limited will use reasonable endeavours to commence and proceed with Assimilation on the earlier date notified by the Concessionaire but DLR Limited will not be liable to the Concessionaire for any delay in Assimilation occurring prior to the date for Assimilation shown in the Clause 19.1.3 programme.

24.3.9 Before Assimilation of the Lewisham ATC System Installation with the Existing Railway ATC System takes place (or afterwards in limited specific cases if agreed to by DLR Limited), the Concessionaire shall provide DLR Limited with evidence that the following pre-conditions have been satisfied:-

- (a) Alcatel having certified to the Contractor (with a copy to the Concessionaire and to DLR Limited) that the following have been carried out and completed satisfactorily:-
 - (i) post-installation check-out (PICO) procedures on all components of the Lewisham ATC System Installation;
 - (ii) track to train correspondence tests;
 - (iii) functional testing of the Lewisham ATC System Installation (SCS/ACE);
 - (iv) standalone Vehicle Control Computer regression tests;

- (b) delivery to DLR Limited of a record of the station to station journey times achieved during Commissioning and Integration (a minimum of 5 readings in each case);
- (c) testing of Lewisham Extension specific functions, including those required by Appendix 1 to the Specification, having been completed and such tests demonstrating that the functions required by the Technical Requirements are present;
- (d) trial running of two trains following one another closely from Mudchute Station to Lewisham Station, reversing and proceeding back to Mudchute Station in accordance with the Specification.

24.4 DLR Limited costs

24.4.1 Subject as provided in Clause 24.4.2, the Concessionaire shall pay to DLR Limited the sum of £6,468,000 together with value added tax thereon in respect of the costs of DLR Limited under and in connection with Work Package 6 in accordance with the following schedule of milestones:-

Milestone	Indicative Date for Payment	%	Cumulative %	PMT (£)	Cumulative PMT (£)	Milestone (all terms to be construed by reference to Work Package 6)
M1	30/09/1996	5.00	5.00	323,400	323,400	Issue of Notice to Proceed
M2	01/12/1996	5.00	10.00	323,400	646,800	Requirement Definition Complete
M3	31/05/1997	7.50	17.50	485,100	1,131,900	Submit Preliminary Design Review Package
M4	30/11/1997	13.38	30.88	865,600	1,997,500	Submit Final Design Review Package
M5	01/12/1997	4.12	35.00	266,200	2,263,700	Delivery of Training Plan

M6	01/03/ 1998	1.5 5	36.54	100,0 00	2,363,7 00	Delivery of Equipment Installation Plan
M7	01/05/ 1998	1.5 5	38.09	100,0 00	2,463,7 00	Delivery of Commissionin g Test Plan
M8	01/07/ 1998	1.5 5	39.64	100,0 00	2,563,7 00	Simulator Software VDD release
M9	01/08/ 1998	1.5 5	41.18	100,0 00	2,663,7 00	VCC Software VDD Release*
M10	01/09/ 1998	1.5 5	42.73	100,0 00	2,763,7 00	SMC Software VDD Release*
M11	01/10/ 1998	1.5 5	44.27	100,0 00	2,863,7 00	Delivery of Central Control Equipment
M12	01/11/ 1998	1.5 5	45.82	100,0 00	2,963,7 00	Performance of V & V Testing
M13	31/01/ 1999	21. 68	67.50	1,402 ,100	4,365,8 00	Completion of Software FAT
M14	31/01/ 1999	5.5 0	73.00	356,0 00	4,721,8 00	Finish ATC Central Control Hardware Installation
M15	01/03/ 1999	5.5 0	78.51	356,0 00	5,077,8 00	Delivery of Stand Alone Software
M16	16/05/ 1999	5.5 0	84.01	356,0 00	5,433,8 00	Commenceme nt of Integration Test
M17	01/07/ 1999	5.5 0	89.51	356,0 00	5,789,8 00	Commenceme nt of Full System

M18	01/09/1999	5.48	95.00	354,700	6,144,500	Completion of Performance Demonstration
R1	01/12/1999	2.00	97.00	129,360	6,273,860	Retention Payment 3 months after Substantial Completion
R2	01/09/2000	3.00	100.00	194,140	6,468,000	Retention Payment 12 months after completion of Performance Demonstration

24.4.2 If any of the information or specifications referred to in Clause 20.4.1 require a change to be instructed under Work Package 6:-

- (a) the amount to be paid by the Concessionaire pursuant to Clause 24.4.1 shall be adjusted so as to take into account any increase or decrease in the price payable by DLR Limited under the terms of Work Package 6 which arises from such change; and
- (b) the time within which DLR Limited is required to do any act or thing, the performance of which is affected by or dependent upon the content or scope of or the programmes contained in such information or specifications, shall be extended by such period as may be reasonable having regard to the actual content or scope of such information or specifications or the programmes contained therein.

24.4.3 The Concessionaire shall indemnify DLR Limited against any additional costs (and in the case of the cost of additional resources and facilities, to be calculated where relevant using the rates and prices in Schedule 6) reasonably incurred by DLR Limited in connection with the Lewisham ATC System Works and in performing the activities required of it in relation to Commissioning, Integration, Assimilation and any System Performance Demonstration arising from:-

- (a) any alteration in the programme for such activities from the programme submitted in accordance with Clause 19.1.3 provided that the requirement for such alteration does not arise as a result of any act or omission on the part of DLR Limited (which act or omission has not resulted from any negligence or default on the part of the Concessionaire); or

- (b) the programme to be submitted in accordance with Clause 19.1.3 imposing more onerous requirements on DLR Limited than those envisaged in the Concessionaire's Works Proposals; or
- (c) any requirement to repeat Commissioning, Integration or Assimilation procedures or the System Performance Demonstration in whole or in part except to the extent that such requirement was the consequence of any act or omission on the part of DLR Limited in performing the activities and making available the facilities required of it in relation to the Commissioning, Integration, Assimilation or System Performance Demonstrations.

24.5 Notice of Physical Completion

When the Concessionaire reasonably considers that the Works are Physically Complete the Concessionaire shall notify DLR Limited that the Works are ready for inspection with a view to the issue of an Infrastructure Certificate.

24.6 Inspection and Issue of Infrastructure Certificate

Upon receipt of the Concessionaire's notice given pursuant to Clause 24.5 DLR Limited shall carry out an inspection of the Works over a period of 14 days. Within a further 14 days of completion of such inspection DLR Limited shall:-

- 24.6.1 issue the Infrastructure Certificate and with such Infrastructure Certificate notify the Concessionaire of any Minor Outstanding Items identified during the course of such inspection; or
- 24.6.2 notify the Concessionaire that the Works are not Physically Complete and shall state in what respects DLR Limited considers that the Works remain to be completed in order to permit the issue of the Infrastructure Certificate.

DLR Limited shall not be obliged to issue the Infrastructure Certificate unless the Works are Physically Complete provided that DLR Limited will not withhold the Infrastructure Certificate on account of Minor Outstanding Items. The issue of the Infrastructure Certificate shall not release, diminish or in any other way affect the obligations of the Concessionaire under this Agreement in respect of, nor shall it result in DLR Limited assuming any responsibility for, the adequacy, completeness, condition and performance of the Works.

24.7 Service of Further Notice

If DLR Limited has notified the Concessionaire in accordance with Clause 24.6.2 that the Works are not Physically Complete the Concessionaire shall undertake such further work as may be necessary and shall serve a further notice in accordance with Clause 24.5 when the Concessionaire reasonably considers that the Works are Physically Complete. The further notice shall be accompanied by a schedule stating what action (if any) was taken in respect of

the statements made by DLR Limited in the notice previously served pursuant to Clause 24.5 and the provisions of Clause 24.6 shall again apply.

24.8 Minor Outstanding Items

The Concessionaire shall complete or make good any Minor Outstanding Items as soon as reasonably practicable and in any event by the date which is the later to occur of:-

24.8.1 the date 120 days after the issue of the Infrastructure Certificate; and

24.8.2 the date 42 days after the Operating Date.

If any Minor Outstanding Items shall remain to be completed or made good after the later of such dates, they shall be treated as failures on the part of the Concessionaire to maintain the Lewisham Extension to the required condition and be subject to the deduction of Availability Points in accordance with Schedule 7.

25. SYSTEM PERFORMANCE DEMONSTRATIONS

25.1 Requirement for System Performance Demonstration

Following the completion of Commissioning, Integration and Assimilation, System Performance Demonstrations shall be conducted upon the Lewisham Extension in accordance with the provisions of this Clause 25 in order to assess the level of performance of the Lewisham Extension in revenue service.

25.2 Detailed procedure and programme

The Concessionaire shall give to DLR Limited not less than 90 days' notice of the date upon which it requires DLR Limited to carry out the first Full System Performance Demonstration or, if the Concessionaire wishes a Pre-Service System Performance Demonstration to be carried out before an attempt is made to carry out a Full System Performance Demonstration, not less than 42 days' notice of the date upon which it requires DLR Limited to carry out a Pre-Service System Performance Demonstration (or in either case such lesser period of notice as DLR Limited may agree). In the period between such notice and the date of the relevant System Performance Demonstration, the Concessionaire shall submit to DLR Limited evidence of the steps that it is taking to satisfy the pre-conditions referred to in Clause 25.3.

25.3 Pre-conditions to System Performance Demonstration

Prior to carrying out a System Performance Demonstration (or afterwards in limited specific cases if agreed to by DLR Limited such agreement not to be unreasonably withheld but in any case as a pre-condition to a Commissioning Certificate being issued by DLR Limited), the Concessionaire shall provide DLR Limited with evidence that the following pre-conditions have been satisfied:-

- 25.3.1 the findings of all audits pursuant to Clause 11.4 of the Concessionaire's methods and procedures have been successfully addressed;
- 25.3.2 designs requiring the approval of regulatory authorities or third parties have been duly approved;
- 25.3.3 the Concessionaire has complied with its obligations under Clause 20.2;
- 25.3.4 those elements of the Works required for the purposes of performing the System Performance Demonstration have been constructed, installed, tested, and commissioned, both separately and in relevant combinations;
- 25.3.5 those elements of the Works which integrate with the Existing Railway have been Commissioned and Integrated to DLR Limited's reasonable satisfaction when operating in combination with the relevant parts of the Existing Railway, including the operation of DLR Limited's rolling stock on the Lewisham Extension;
- 25.3.6 the above tests and trials indicate with a high degree of confidence that the System Performance Demonstration will be successful;
- 25.3.7 all relevant safety documentation has been produced to DLR Limited's reasonable satisfaction;
- 25.3.8 LFCDA have granted a fire certificate for underground operations;
- 25.3.9 HMRI have expressed no outstanding reservations about the design of the Works or operation of the Lewisham Extension, and have indicated a willingness to approve the Safety Case or have already done so, whether or not this is conditional on the successful conduct of the System Performance Demonstration;
- 25.3.10 DLR Limited staff have received induction and training in accordance with the requirements of Clause 24.3.5; and
- 25.3.11 adequate maintenance organisation, facilities, and resources are established, including the training of maintenance staff, to enable the effective maintenance of the Lewisham Extension to be carried out in accordance with the requirements of this Agreement.

In the case of a System Performance Demonstration other than the first such System Performance Demonstration the pre-conditions referred to in Clauses 25.3.1 to 25.3.11 inclusive shall be deemed to have been satisfied if the Concessionaire warrants to DLR Limited in writing not earlier than seven days prior to the start of the System Performance Demonstration that the evidence previously submitted in respect of such pre-conditions remains true and accurate in all material respects.

25.4 Conduct of System Performance Demonstration

Subject to the Concessionaire having complied with its obligations under Clause 25.3, DLR Limited and the Concessionaire shall undertake the System Performance Demonstration on the date specified in the Concessionaire's notice given pursuant to Clause 25.2 and in accordance with the requirements of the relevant Part of Schedule 5 and the programme specified in Clause 19.1.3.

25.5 Evaluation of results

The results of a System Performance Demonstration shall be compiled and evaluated jointly by DLR Limited and the Concessionaire. In the case of a Full System Performance Demonstration the results shall be compiled and evaluated within 14 days of the Demonstration being completed and in the case of a Pre-Service System Performance Demonstration the parties will use best endeavours to compile and evaluate the results within four days of the Demonstration being completed, and any necessary adjustments to the results to take account of the measuring tolerances and any other factors referred to in the relevant Part of Schedule 5 shall be made in such manner as is fair and reasonable in the opinion of DLR Limited, acting reasonably, and after consultation with the Concessionaire.

25.6 Successful Demonstration

If the relevant requirements for the System Performance Demonstration set out in Schedule 5 have been satisfied or satisfied to DLR Limited's reasonable satisfaction DLR Limited shall issue a Commissioning Certificate within seven days of the completion of the evaluation procedure referred to in Clause 25.5 (but in the case of a Pre-Service System Performance Demonstration DLR Limited shall use reasonable endeavours to issue the Pre-Service Commissioning Certificate within three days of the completion of such procedures) provided that the following pre-conditions have been satisfied:-

- (a)
- (a) the pre-conditions set out in Clause 25.3 have been satisfied;
- (b) the Infrastructure Certificate has been issued, and any items which affect the operation of Train Services or which have a material effect upon the useability of the Lewisham Extension by passengers have been remedied or completed or a programme for their completion has been accepted by DLR Limited; and
- (c) the approvals, certificates or orders referred to in Clause 10.6 have been granted,

and the Commissioning Certificate shall state the Operating Date which shall not be later than seven days following the date of issue of the Commissioning Certificate.

25.7 Consequences of Failure

25.7.1 If the relevant requirements for a System Performance Demonstration set out in Schedule 5 are not satisfied in any respect and the Concessionaire is unable to demonstrate to DLR Limited's reasonable satisfaction that the reasons for the failure were not attributable to any defect or deficiency in the Works or any other act or omission on the part of the Concessionaire then:-

- (a) the Concessionaire shall implement any modifications or repairs to the Works to ensure that the requirements for the System Performance Demonstration are satisfied and shall notify DLR Limited forthwith following completion of such modifications or repairs;
- (b) in respect of a Full System Performance Demonstration or an Interim System Performance Demonstration DLR Limited shall require a complete re-performance of the System Performance Demonstration unless DLR Limited consents to a partial re-performance of the Demonstration which may include alternative methods or pass criteria for the Demonstration approved by DLR Limited and such re-performance or partial re-performance shall take place as soon as practicable thereafter; and
- (c) in respect of a Pre-Service System Performance Demonstration the Concessionaire shall be entitled (but not obliged) to repeat the System Performance Demonstration on a date agreed with DLR Limited (whose agreement shall not be unreasonably withheld).

25.7.2 If the Concessionaire can demonstrate to DLR Limited's reasonable satisfaction that the reasons for the failure were not attributable to any defect or deficiency in the Works itself or any other act or omission on the part of the Concessionaire, and that the System Performance Demonstration would otherwise have been successful, sub-clauses 25.7.1(a) and (b) shall not apply, the re-performance of the System Performance Demonstration will not be required and DLR Limited shall issue a Commissioning Certificate in respect of the System Performance Demonstration within seven days of receipt of evidence satisfactory to DLR Limited that the Works are capable of achieving the relevant requirements for the System Performance Demonstration set out in Schedule 5.

25.7.3 the Concessionaire shall reimburse to DLR Limited all wasted incremental employment, publicity and directly related administration costs reasonably incurred by DLR Limited in preparing the Railway for, and informing the public of the opening of the Lewisham Extension in anticipation of, the requirements of a System Performance Demonstration being satisfied.

25.8 Issue of qualified Commissioning Certificate

If any aspect of a System Performance Demonstration shall fail and the Concessionaire cannot demonstrate to DLR Limited's reasonable satisfaction

that the reasons for the failure were not attributable to any defect or deficiency in the Works DLR Limited may nevertheless agree to issue a Commissioning Certificate in respect of that System Performance Demonstration provided that the Concessionaire undertakes to DLR Limited on such reasonable and relevant terms as DLR Limited shall direct to implement any modifications or repairs and to take all necessary measures to allow the System Performance Demonstration to be performed satisfactorily after the issue of the Commissioning Certificate in accordance with a programme acceptable to DLR Limited.

25.9 System Performance Demonstration treated as Interim

If:-

25.9.1 a Full System Performance Demonstration has been conducted but the requirements of Part 1 of Schedule 5 have not been satisfied in any respect; or

25.9.2 following the giving of notice by the Concessionaire pursuant to Clause 25.2 and at any time prior to completion of a Full System Performance Demonstration the Concessionaire is of the opinion that it will fail to meet the requirements of Part 1 of Schedule 5,

but the Concessionaire believes that the Demonstration has satisfied or will satisfy the requirements of Part 2 of Schedule 5 the Concessionaire may request that the Demonstration be conducted or, as the case may be, evaluated as an Interim System Performance Demonstration for the purposes of Clause 26.4. If DLR Limited is satisfied, acting reasonably, that the results of the Demonstration are, or will be, sufficient for evaluation purposes (and subject to the parties agreeing on the matters requiring agreement in accordance with Part 2 of Schedule 5) DLR Limited shall not unreasonably withhold its consent to the Concessionaire's request.

26. COMPLETION AND EARLY OPENING

26.1 Service of Completion Notice

Following the issue of an Infrastructure Certificate and a Full Commissioning Certificate the Concessionaire shall cause to be issued a Completion Notice. The Completion Notice shall be accompanied by detailed configuration for the Lewisham Extension as built at the date of such Notice which shall include:-

26.1.1 the specification for materials, components and equipment used in the Lewisham Extension;

26.1.2 "as built" engineering drawings;

26.1.3 the results of all inspections, tests and trials; and

26.1.4 operating procedures and manuals.

If any of the information referred to in Clauses 26.1.1 to 26.1.4 inclusive has previously been supplied to DLR Limited then the obligation of the Concessionaire shall be satisfied if the Concessionaire warrants to DLR Limited in writing that the information remains true and accurate in all material respects.

26.2 Issue of Completion Certificate

Subject to the Concessionaire having complied with Clause 26.1, and provided that the Works have been completed in accordance with this Agreement, DLR Limited shall within ten days of receipt of the Completion Notice issue the Completion Certificate which shall state that the Works have been so completed. The issue by DLR Limited of the Completion Certificate shall not release, diminish or in any other way affect the obligations of the Concessionaire under this Agreement in respect of, nor shall it result in DLR Limited assuming any responsibility for, the adequacy, completeness, condition and performance of the Works.

26.3 Early Opening by DLR Limited

26.3.1 At any time following the issue of the Railways Act Exemption and the approvals, certificates and orders referred to in Clause 10.6 that are required for the operation of the Lewisham Extension, DLR Limited may serve a Preliminary Change Instruction requiring the Concessionaire to make the Lewisham Extension available for the operation of Train Services in accordance with the requirements of Parts V and VI of this Agreement. Following the issue of a DLR Change Certificate DLR Limited may by service of an Operating Notice require the Concessionaire to make the Lewisham Extension available as aforesaid with effect from the date 42 days after the service of the Operating Notice.

26.3.2 Service of an Operating Notice by DLR Limited and the commencement of Train Services on the Lewisham Extension shall not release, diminish or otherwise affect the responsibility of the Concessionaire to satisfy the requirements of a Full System Performance Demonstration and the requirement to obtain a Completion Certificate in accordance with Clauses 25 and this Clause 26.

26.3.3 If a DLR Change Certificate is issued prior to the Target Completion Date applicable at the date of issue of such Certificate, DLR Limited's liability to compensate the Concessionaire as a result of a DLR Change under this Clause 26.3 shall be limited to the amount by which such compensation exceeds (if at all) the amount of Availability Fees and Usage Fees that are paid to the Concessionaire in respect of the period between the date of early opening and the Target Completion Date. The Concessionaire shall not be entitled to any compensation (other than to receive Availability Fees and Usage Fees) if the DLR Change Certificate is issued after the Target Completion Date applicable at the date of issue of such Certificate.

26.3.4 An Interim System Performance Demonstration shall be carried out within the 42 day period following service of an Operating Notice, modified in a manner decided by

DLR Limited following consultation with the Concessionaire, to take account of the configuration of the Railway at the time that the Demonstration is to be carried out in order to determine the entitlement of the Concessionaire to the payment of Availability Fees for the purposes of paragraph 2.2.1 of Part 1 of Schedule 7. DLR Limited shall provide such of its labour, equipment and facilities as are required for such System Performance Demonstration without charge to the Concessionaire.

26.4 Early Opening by the Concessionaire

26.4.1 If the tests and trials carried out during the Commissioning, Integration and Assimilation procedures indicate with a high degree of confidence that the performance standards of an Interim System Performance Demonstration can be achieved the Concessionaire may, on not less than 60 days notice to DLR Limited, require that an Interim System Performance Demonstration take place.

26.4.2 If DLR Limited has consented to a request made by the Concessionaire in accordance with Clause 25.9 that a Full System Performance Demonstration be treated as an Interim System Performance Demonstration then the requirements of Clause 26.4.1 for the giving of notice shall be deemed to have been complied with. Any notice given or deemed to have been given by the Concessionaire under Clause 26.4.1 shall be accompanied by:-

- (a) a document detailing the procedures and programme for the Interim System Performance Demonstration (such procedures to be in accordance with Part 2 of Schedule 5) together with the labour, facilities and equipment which it requires DLR Limited to supply for the purposes of such Demonstration; and
- (b) a revised Works Programme showing how the Concessionaire intends to achieve completion of the Works without disruption to Train Services so as to allow the Completion Certificate to be issued.

26.4.3 Subject to the Concessionaire having complied with its obligations under Clauses 26.4.1 and 26.4.2, DLR Limited and the Concessionaire shall undertake the Interim System Performance Demonstration on the date specified in Clause 26.4.1 and in accordance with the procedures and programme specified in Clause 26.4.2.

26.4.4 Clauses 25.5 to 25.8 (inclusive) shall apply in respect of the evaluation of the results of the Interim System Performance Demonstration, the issue of an Interim Commissioning Certificate and the consequences of failure *mutatis mutandis*.

26.4.5 If the Completion Certificate is not issued within twelve months of the Operating Date stated in the Interim Commissioning Certificate (disregarding any delay in the issue of the Completion Certificate which is due to the default of DLR Limited or an event of Force Majeure), DLR Limited shall be entitled to withhold Availability Fee payments due to the Concessionaire from the date twelve months following the Operating Date until

the issue of the Completion Certificate or earlier termination of the Concession in the manner following:-

- (a) if and for so long as the requirements for a Full System Performance Demonstration have not been satisfied, DLR Limited may withhold 20 per cent of each Availability Fee payment which shall become due to the Concessionaire;
- (b) following the satisfaction of the requirements of a Full System Performance Demonstration, DLR Limited may withhold two per cent of each Availability Fee payment which shall become due to the Concessionaire.

Upon the issue of the Completion Certificate all sums withheld in accordance with this Clause 26.4.5 shall be paid to the Concessionaire by DLR Limited but without any liability for accrued interest thereon.

26.5 Early Opening following Pre-Service System Performance Demonstration

26.5.1 From the date stated on the Pre-Service Commissioning Certificate until the performance of a System Performance Demonstration as referred to in Clause 26.5.3 the Concessionaire shall be entitled to payment of Fees calculated as if the Lewisham Extension were capable of achieving the Contracted Capacity, but subject to any deduction of Availability Points calculated in accordance with paragraphs 2.2.2 and 2.2.3 of Part 1 of Schedule 7.

26.5.2 The Concessionaire shall use reasonable endeavours to perform a Full System Performance Demonstration or an Interim System Performance Demonstration within 90 days of the Operating Date stated in the Pre Service Commissioning Certificate. In the event that the requirements for such a System Performance Demonstration are not satisfied within such period (disregarding any delay which is due to the default of DLR Limited or an event of Force Majeure), DLR Limited shall be entitled to withhold 20 per cent of each Availability Fee payment due to the Concessionaire from the date 90 days following the Operating Date stated in the Pre-Service Commissioning Certificate until the requirements for a Full System Performance Demonstration or Interim System Performance Demonstration (whichever is the earlier) have been satisfied, at which time the Availability Fees withheld will be paid by DLR Limited to the Concessionaire but without any liability for accrued interest thereon.

26.5.3 If, following the issue of a Pre-Service Commissioning Certificate, the System Performance Demonstration subsequently performed pursuant to Clause 26.5.2 demonstrates that the Lewisham Extension is not capable of achieving the Contracted Capacity, all Availability Fees thereafter shall, subject as provided in Clause 26.5.2, be calculated and paid in accordance with the requirements of Part 1 of Schedule 7 and the deduction of Availability Fees pursuant to paragraph 2.2.1 of Part 1 of Schedule 7 arising from the performance of such System Performance Demonstration will be backdated to the Operating Date, and DLR Limited will be entitled to recover from the Concessionaire any overpayment of Fees which has arisen as a result of such backdating.

26.6 Insurance

26.6.1 In the event of the commencement of Train Services on, or Early Opening of, all or part of the Lewisham Extension as provided for in Clauses 26.3, 26.4 and 26.5 the Concessionaire shall extend or procure the extension of the insurance policies taken out or maintained in accordance with Clause 48.1 such as to provide cover for and in respect of the use of the Lewisham Extension or part thereof of no lesser scope than would be required under Clause 48.2 had the Completion Certificate been issued.

26.6.2 The Concessionaire shall not less than fourteen days before the events referred to in Clause 26.6.1 supply to DLR Limited evidence of compliance with the provisions thereof in the form of a certificate of insurance from the underwriters or insurers issuing or subscribing to the insurance policies referred to in Clause 48.1 or from the Lloyd's insurance broker acting on their behalf that cover has been so extended, failing which DLR Limited shall have the same rights to arrange alternative insurance (without prejudice to any other rights under or pursuant to this Agreement) and to indemnity from the Concessionaire as are provided for in Clause 48.8.

27. DAMAGE TO LEWISHAM EXTENSION

27.1 Reinstatement following damage or destruction

27.1.1 Upon the occurrence of any damage to or destruction of the Works or, following their completion, the Lewisham Extension (whether or not caused by any of the risks insured against) the Concessionaire shall (subject to all necessary approvals being obtained which the Concessionaire and DLR Limited covenant to obtain, and, where relevant, DLR Limited complying with its obligations under Clause 7.2 (which, where DLR Limited is liable under Clause 7.2, shall include making stage payments against the production of appropriate certificates providing satisfactory evidence of the progress of reinstatement works)) promptly reinstate the Works and, following their completion, the Lewisham Extension and the provisions of this Agreement shall apply to such reinstatement works fully as if they formed part of the Works.

27.1.2 The obligations of the Concessionaire and DLR Limited to obtain any necessary approvals to reinstate the Works under Clause 27.1.1 shall respectively relate to such approvals as are equivalent to those they respectively are obliged to obtain in relation to the Project and their respective obligations under Clause 27.1.1 shall be as strong but not stronger than the relevant equivalent obligations elsewhere under this Agreement.

27.2 Application of insurance proceeds

27.2.1 Where the damage or destruction referred to in Clause 27.1 has been caused by a risk against which the Concessionaire is insured in accordance with Clause 48 ("Insured Damage") then, subject as provided in Clauses 27.2.2 to 27.2.4, the Concessionaire shall procure that the proceeds of such insurance are applied in reinstating the Works or, following their completion, the Lewisham Extension and that no Security Interest granted

to the Lenders or provision of the Funding Agreements will prevent or restrict such application.

27.2.2 Clause 27.2.1 shall not apply if:-

- (a) (i) the Insured Damage occurs after the Operating Date;
 - (ii) the Government Support Letter is no longer in force; and
 - (iii) the Concessionaire is able to establish that there is no reasonable prospect of DLR Limited being able to meet its obligations to pay Availability Fees and Usage Fees in respect of the reinstated Lewisham Extension; or
- (b) the Insured Damage is of such a nature that it is physically impossible to reinstate the Works or the Lewisham Extension, as the case may be; or
- (c) if the Concessionaire is able to effect such reinstatement utilising other resources available to the Concessionaire.

27.2.3 Where the Insured Damage ("Tunnel Damage") relates to the tunnel between the South portals of Island Gardens Station and the North portals of Greenwich Station (the "Tunnel") and the proceeds of insurance attributable to Tunnel Damage (the "Tunnel Damage Insurance Proceeds" which expression at any time after receipt thereof means the unexpended portion thereof) are not, or cease to be, regarded pursuant to Clause 27.2.4 as sufficient to reinstate or, as the case may be, complete the reinstatement of that part of the Works or, following their completion, that part of the Lewisham Extension which comprises the Tunnel ("Tunnel Reinstatement"):-

- (a) the obligation under Clause 27.2.1 to apply or, as the case may be, to continue to apply the Tunnel Damage Insurance Proceeds in Tunnel Reinstatement shall cease;
- (b) if Clause 6.3 applies because the Tunnel Insured Damage has been caused by a Major Relevant FM Event, the Tunnel Damage Insurance Proceeds (or so much thereof as have not been so applied) shall be retained by the Concessionaire unless and until the Concession has been terminated in accordance with any of the provisions of that Clause; and
- (c) if the Concession and/or this Agreement is terminated and DLR Limited is obliged to pay to the Concessionaire any amount under Clause 6.2 or 6.3 at a time when there exists any Tunnel Damage Insurance Proceeds, the amount concerned shall be reduced by the amount of such Tunnel Damage Insurance Proceeds and sub-clause 27.2.3(a) shall apply.

27.2.4 The Tunnel Damage Insurance Proceeds shall be regarded as being and continuing to be sufficient to carry out Tunnel Reinstatement unless and until the Concessionaire

fails to deliver a certificate pursuant to paragraph 8(c) of Schedule 7 to the Bond Trust Deed that the Concessionaire has no current reason to believe that, having regard to other funds available to the Concessionaire, the Tunnel Damage Insurance Proceeds are insufficient to complete the Tunnel Reinstatement. The Concessionaire shall supply to DLR Limited a copy of each such certificate which is so delivered and shall give written notice to DLR Limited of any failure to do so, immediately after such delivery or failure, as the case may be.

PART V

USAGE

28. AVAILABILITY OF LEWISHAM EXTENSION

28.1 Concessionaire's obligation to make available

With effect from the Operating Date, the Concessionaire shall make the Lewisham Extension Available to DLR Limited for the operation of Train Services on the basis set out in Clause 28.2.

28.2 Standard of Availability

Save as otherwise permitted by the terms of this Agreement, including (for the avoidance of doubt) the carrying out of the Concessionaire's maintenance obligations in accordance with the requirements of, and as permitted by, Part VI of this Agreement, the Concessionaire shall make the Lewisham Extension available so as to meet the requirements of the Specification for twenty four hours per day throughout the whole of the Maintenance Period.

28.3 Non-availability of the Lewisham Extension

If for any reason other than:-

28.3.1 the default or negligence of DLR Limited;

28.3.2 Force Majeure; or

28.3.3 any failure in the ATC System which has not occurred as a result of:-

(a) the negligence or default of the Concessionaire;

(b) any deficiency in the information provided by the Concessionaire pursuant to Clauses 19.1 or 20.4; or

(c) any other act of the Concessionaire which results in damage to the ATC System,

any part of the Lewisham Extension is not available (otherwise than during non-operational hours) for the operation of Train Services, the Concessionaire shall be responsible for reimbursing to DLR Limited the cost of providing, during such period of non-availability, replacement bus services, in accordance with DLR Limited's normal practice, for DLR Limited's passengers between those stations on the Lewisham Extension where no Train Services can be operated. DLR Limited will give the Concessionaire the opportunity to tender for the provision of such bus services.

29. OPERATION OF LEWISHAM EXTENSION

29.1 Right of DLR Limited to operate Train Services

Subject to the terms of this Agreement, from and including the Operating Date, DLR Limited shall have the sole right to pass and repass along the Lewisham Extension for the purpose of operating trains and Train Services and exercising or performing any other rights or obligations under this Agreement and, in connection therewith, to enter on and to use the stations and other facilities on the Lewisham Extension free from interruption by the Concessionaire save as provided in this Agreement.

29.2 DLR Limited's Operational Covenants

Unless prevented from doing so by Force Majeure or by some failure on the part of the Concessionaire in the performance of its duties and obligations under or pursuant to this Agreement, DLR Limited shall comply with the undertakings, standards and objectives set out in Schedule 9.

29.3 Access for passengers

From and including the Operating Date, during such periods as DLR Limited operates Train Services, the Concessionaire shall permit (without charge) DLR Limited's passengers to pass and repass through, and to use, those parts of the stations and other facilities on the Lewisham Extension as are to be made available for public use in accordance with the Technical Requirements (except where such facilities are undergoing repair or maintenance as permitted by this Agreement).

29.4 Operation of Integrated Systems

Without prejudice to the provisions of Clauses 28.1 and 28.2, DLR Limited shall operate the Integrated Systems.

29.5 Revenue Collection

DLR Limited shall be responsible for collecting fares from passengers on trains and the Concessionaire shall be responsible for emptying the ticket vending machines on the Lewisham Extension and passing the proceeds on the day of collection to DLR Limited. The Concessionaire shall be entitled from time to time at its own cost (but not more than once in any calendar year) to require that an audit be carried out in respect of DLR Limited's revenue collection. Where any such audit reveals material errors in DLR Limited's accounting for such revenue, DLR Limited shall reimburse the Concessionaire's costs in respect of such audit.

29.6 Operation of other facilities

All facilities on the Lewisham Extension (other than those referred to in Clauses 29.1, 29.4 and 29.5) shall be operated by the Concessionaire or its sub-contractors. Where relevant, such facilities shall be operated in such a manner

so as to meet the requirements of Clauses 28.1 and 28.2 and otherwise in accordance with the requirements of this Agreement and the Specification and the Concessionaire's Maintenance Proposals.

29.7 Supply and Metering of Electrical Power

29.7.1 The Concessionaire shall at its own cost:-

- (a)
- (a) procure the supply and installation of electrical plant, electric lines and other facilities required for the connection of the Power Supply System to the local electricity distribution network and a suitable Supply Metering System; and
- (b) install and maintain the Traction Metering System at a location allowing convenient access for meter reading by DLR Limited such metering to be at a maximum of 11kV.

29.7.2 DLR Limited shall enter into an agreement with a meter operator of its choice for the maintenance of the Supply Metering System. The Concessionaire shall contribute to the costs incurred by DLR Limited under such agreement in accordance with the formula set out in Clause 29.7.7.

29.7.3 Subject to the Concessionaire having complied with its obligations under Clauses 29.7.1 and 29.7.2 on and from the Operating Date DLR Limited shall purchase at its own cost, and shall use all reasonable endeavours to procure a continuous supply of, electricity for the Lewisham Extension provided that the Concessionaire shall be responsible for the cost of electricity required by the Concessionaire for the performance of its obligations under this Agreement in accordance with the formula set out in Clause 29.7.7.

29.7.4 The Concessionaire shall conduct regular inspections and testing of the Traction Metering System in order to establish that the System remains accurate to the appropriate British or equivalent international standards and shall submit to DLR Limited a condition report specifically identifying any defects or inaccuracies which are discovered during such inspections and testing. The Concessionaire shall correct any defects or inaccuracies within four weeks of their discovery. If it is discovered that the Traction Metering System has not been maintained to the required tolerances the Concessionaire and DLR Limited shall agree an estimate of consumption based on historical data and the degree of metering inaccuracy recorded.

29.7.5 Following the Operating Date DLR Limited shall arrange for the Metering Systems to be read at intervals which coincide with the reading of the Supply Metering System by the person from whom DLR Limited purchases supplies of electrical power and shall give the Concessionaire at least 48 hours notice of the time at which DLR Limited intends to undertake such readings. The Concessionaire shall

have the right to be present during any such reading provided that if a representative of the Concessionaire is not present at the time notified by DLR Limited to the Concessionaire for such reading DLR Limited may proceed to read the Metering Systems in the absence of the Concessionaire and the Concessionaire shall accept the accuracy of the readings.

29.7.6 Within a reasonable period following the reading of the Metering Systems DLR Limited shall deliver to the Concessionaire a statement showing the amount due from the Concessionaire in respect of supplies of electricity for which the Concessionaire is responsible in accordance with this Agreement calculated by applying the formula set out in Clause 29.7.7, and shall supply with such statement full details of the calculations used by DLR Limited in ascertaining the liability of the Concessionaire together with all relevant supporting information on which such calculations have been based. The amount stated as due from the Concessionaire to DLR Limited shall be included in a supplementary invoice rendered by DLR Limited in accordance with Clause 30.7.

29.7.7 The Concessionaire shall be responsible for the cost of electricity consumed and of maintenance of the Supply Metering System in accordance with the following formula:-

$$D = \frac{C(A-B)}{A} + \frac{E(A-B)}{A} + \frac{F(G-H)}{G}$$

where

D = that part of the cost of units of electricity consumed and of maintaining the Supply Metering System to be paid by the Concessionaire;

A = following a reading of the Supply Metering System in accordance with Clause 29.7.5 the number of units of electricity shown to have been consumed (KWh) since the last such reading;

B = following a reading of the Traction Metering System in accordance with Clause 29.7.5 the number of units of electricity shown to have been consumed (Kwh) since the last such reading;

C = the amount paid or to be paid by DLR Limited to the supplier of electricity for units of electricity consumed since the last reading of the Supply Metering System and the Traction Metering System in accordance with Clause 29.7.5;

E = the costs paid or to be paid by DLR Limited in accordance with the metering agreement referred to in

Clause 29.7.2 since the last calculation made pursuant to this Clause 29.7.7;

F = the standing costs paid or to be paid by DLR Limited to the supplier of electricity excluding C and E since the last calculation made pursuant to this Clause 29.7.7;

G = following a reading of the Supply Metering System in accordance with Clause 29.7.5 the electrical Maximum Demand (kVA) shown to have been recorded since the last such reading; and

H = following a reading of the Traction Metering System in accordance with Clause 29.7.5 the electrical Maximum Demand (KVA) shown to have been recorded since the last such reading.

29.8 Operational Staff

DLR Limited agrees at its cost to provide all staff required in connection with the operation of the Train Services on the Lewisham Extension including, without limitation, all staff (if any) required in connection with such operation to man stations (including underground stations). The Concessionaire shall be responsible for providing at its cost all staff required for the performance of its obligations under this Agreement.

30. PAYMENT

30.1 Availability and Usage Fees

With effect from the Operating Date, DLR Limited shall pay to the Concessionaire in the manner hereinafter provided:-

30.1.1 an Availability Fee calculated in accordance with the provisions of Part 1 of Schedule 7;

30.1.2 a Usage Fee calculated in accordance with the provisions of Part 2 of Schedule 7;

30.1.3 fees ascertained in accordance with Clause 30.5.3; and

30.1.4 Guaranteed Fees in accordance with Clause 30.5.2.

30.2 Delivery of Fee Statements

30.2.1 Within 14 days of the end of each Availability Period DLR Limited shall deliver to the Concessionaire a statement showing:-

(a) the proposed Availability Fee (excluding the Guaranteed Amount) for that Availability Period;

- (b) subject to Clause 30.2.2, the proposed Usage Fee for that Availability Period; and
- (c) any fees ascertained in accordance with Clause 30.5.3; and

and shall supply with such statement full details of the calculations used to ascertain such sums together with all relevant supporting information on which such calculations have been based.

30.2.2 If the calculation of the proposed Usage Fee to be paid to the Concessionaire for an Availability Period is dependent upon information to be received from or agreed with a third party DLR Limited shall use reasonable endeavours to obtain or agree such information so as to include in the statement referred to in Clause 30.2.1 the proposed Usage Fee for that Availability Period. If the information is not received or agreed within the period of 14 days referred to in Clause 30.2.1 DLR Limited shall within the next seven days deliver to the Concessionaire a statement showing the proposed Usage Fee for that Availability Period based on a fair and reasonable estimate of the Usage Fee for the relevant Availability Period and such estimate shall be corrected and any necessary adjustment shall be made to the amounts shown in the statement pursuant to Clause 30.2.1 for the Availability Period next following the date upon which the information is received or agreed.

30.3 Approval of calculations

Within 14 days of receipt of the fee statement prepared in accordance with Clause 30.2, the Concessionaire shall notify DLR Limited whether or not it agrees with the calculations contained in the statement. If the Concessionaire disagrees with anything contained in the statement it shall with its notice give reasons for such disagreement and state what it considers to be the correct amount due to it. Unless the parties have in the interim period resolved any differences between them, the Fee Panel shall meet within seven days of service of notice by the Concessionaire under this Clause that it disagrees with the calculations contained in a statement.

30.4 Fee Panel

The Fee Panel shall consist of four persons (comprising two representatives nominated from time to time by each of DLR Limited and the Concessionaire). Any decision by the Fee Panel on an alteration in the amount of an Availability Fee or a Usage Fee from that shown in the fee statement under Clause 30.2, requires the approval of at least one representative of DLR Limited and one representative of the Concessionaire. Meetings of the Fee Panel shall take place at such time and place as shall be agreed from time to time between DLR Limited and the Concessionaire.

30.5 Payment of Fees

30.5.1 At any time after service of the Concessionaire's notice pursuant to Clause 30.3 the Concessionaire shall submit to DLR Limited an

invoice (in such form as the parties may agree from time to time) for the Availability Fee and the Usage Fee due in respect of the Availability Period to which the fee statement relates. Subject as provided in Clause 30.5.2 such invoice shall be for the amount specified in the fee statement or such other sum as may have been agreed by the Fee Panel. If, following receipt of the fee statement under Clause 30.2, the Concessionaire disputes the amount of the Availability Fee or the Usage Fee and such dispute cannot be resolved by the Fee Panel, then the provisions of Clause 30.8 shall apply in respect of the difference between the amounts specified by DLR Limited and the amounts calculated by the Concessionaire.

30.5.2 (a) On the later of 2nd April 2000 and seven days after the Cutty Sark Slab Completion Date (the "First Guaranteed Amount Payment Date") the Concessionaire shall submit an invoice for and DLR Limited shall pay to the Concessionaire an amount equal to the thirteen Guaranteed Amount instalments payable in respect of Availability Periods 0 to 12; and

(b) on the later of the anniversary of the First Guaranteed Amount Payment Date and the Operating Date the Concessionaire shall submit an invoice for and DLR Limited shall pay to the Concessionaire an amount equal to the thirteen Guaranteed Amount instalments payable in respect of Availability Periods 13 to 26.

Such payments shall be on account of DLR Limited's obligation to pay the relevant Guaranteed Amount instalments as and when they fall due and DLR Limited shall have no further obligation in respect of such instalments.

30.5.3 Within 14 days of receipt of the fee statement prepared in accordance with Clause 30.2 in respect of the Availability Period during which the Operating Date occurs DLR Limited shall (against delivery of an appropriate invoice) pay to the Concessionaire a fee equal to the aggregate of:-

(a) interest at the Prescribed Rate (less one percent) on the sum of £2,700,000 (two million seven hundred thousand pounds), from the Cutty Sark Slab Completion Date until the Operating Date; and

(b) interest at the Prescribed Rate (less one percent) on the sum of £1,700,000 (one million seven hundred thousand pounds) from the Cutty Sark Completion Date until the Operating Date.

30.6 Payment of further guaranteed amount

In addition to the payments to be made by DLR Limited in accordance with Clause 30.5, DLR Limited shall pay to the Concessionaire (against delivery of an appropriate invoice) by way of additional consideration for the provision of its services hereunder:-

30.6.1 on 2nd April 2000, the sum of £1,747,807.00;

30.6.2 on 2nd April and 2nd October in each subsequent year up to and including 2nd October 2009, the sum of £220,524.00.

30.7 Supplementary Invoices

The parties may from time to time (but no more frequently than once in every month) render an invoice to the other in respect of any additional sums which shall become due in accordance with this Agreement (including for the avoidance of doubt any previously disputed sum as determined by the Fee Panel or the Disputes Panel) provided that if the party shall dispute the amount of any such invoice then the provisions of Clause 30.8 shall apply.

30.8 Disputed Sums

Any dispute concerning the amounts properly payable to either party by the other shall (in the case of a dispute in respect of Fees or Incentive Payments, after reference of such dispute to the Fee Panel in accordance with Clause 30.4) be referred to the Disputes Panel for decision. If it is subsequently agreed or determined by the Disputes Panel that a payment due from one party to the other should have been greater or less than the amount actually paid then the party to which additional payment is due or which has made an overpayment (as the case may be) shall be entitled to claim for such sum from the other party for such sum (together with accrued interest at the Prescribed Rate) in accordance with Clause 30.7 and such additional VAT invoices or credit notes shall be issued as may be appropriate.

30.9 Time for payment and interest

30.9.1 All amounts properly due (including undisputed amounts and amounts determined to be payable by a decision of the Disputes Panel) in respect of an invoice submitted pursuant to Clause 30.5, 30.6 or 30.7 shall be paid within 30 days of receipt by the paying party of the relevant invoice.

30.9.2 Subject as provided in Clause 30.9.3, any amount properly due from DLR Limited to the Concessionaire pursuant to this Agreement and which shall remain unpaid after the date when payment becomes due shall bear interest at the Default Rate, such interest to accrue from day to day and be compounded monthly from and including the date when payment was due up to but excluding the date of actual payment.

30.9.3 Interest shall accrue in respect of amounts determined to be payable by a decision of the Disputes Panel in accordance with Clause 30.8 from the due date of the original underpayment or overpayment as the case may be.

31. POLICING, EMERGENCY EXERCISES AND ENQUIRIES

31.1 Policing the Lewisham Extension

DLR Limited shall be responsible, and shall make all necessary arrangements, after the Operating Date, for the policing at its cost of the public areas of the Lewisham Extension to meet with all Applicable Requirements both for regular operation and for special events. For this purpose DLR Limited shall enter into such agreements with the British Transport Police or other constabularies or private security firms as it considers appropriate. The Concessionaire shall cooperate with DLR Limited in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of special events. DLR Limited shall, in the course of operating Train Services on the Lewisham Extension, co-operate with the British Transport Police or other constabularies or private security firms, as appropriate, with a view to protecting the security of members of the public using the Lewisham Extension and to notifying the Concessionaire of any breach of security or potential breach of security on the Lewisham Extension that is brought to DLR Limited's attention.

31.2 Emergencies and emergency exercises

The Concessionaire undertakes to cooperate with DLR Limited and the relevant statutory authorities in relation to any emergencies that occur on, or emergency training and other exercises that are required to be carried out in relation to, the Lewisham Extension. Each party will bear its own costs in relation to any such emergencies or exercises and the Concessionaire will ensure that DLR Limited is afforded the opportunity to be party to all discussions and communications with the statutory authorities in respect of any emergency exercises.

31.3 Cooperation with special enquiries

The Concessionaire shall cooperate with any special enquiries or investigations carried out by DLR Limited or regulatory authorities as a result of accidents, incidents or changes in legislation and shall promptly provide all information, resources and facilities within its control which are reasonably required for such enquiries or investigations.

32. ADVERTISING

32.1 Advertising on Trains

DLR Limited will control and retain all revenue arising from advertising on trains operating on the Lewisham Extension.

32.2 Advertising on stations

Subject to Clause 32.7, the Concessionaire will control and retain all revenue arising from advertising on stations within the Lewisham Extension, provided that DLR Limited shall have the right to require the Concessionaire to remove immediately any advertising which is, in DLR Limited's reasonable opinion:-

- 32.2.1 inconsistent with the Advertising Standards Authority's then current standards;
- 32.2.2 damaging to DLR Limited's business; or
- 32.2.3 offensive to the public or likely to endanger public safety.

32.3 Other advertising

No other advertising or promotional activity shall take place on the Lewisham Extension without the prior written consent of DLR Limited (not to be unreasonably withheld).

32.4 DLR Limited corporate image

The Concessionaire shall consult with, and obtain the approval (such approval not to be unreasonably withheld) of DLR Limited to, the use in any manner of the name, logos and corporate image of DLR Limited. DLR Limited is to be referred to in all promotional literature to be published by the Concessionaire in relation to the Lewisham Extension in a format to be agreed between the parties.

32.5 Station names

Subject to Clause 32.7, the Concessionaire shall obtain DLR Limited's approval for the names of the stations on the Lewisham Extension. Subject to Clause 32.7, the Concessionaire shall be entitled to retain all revenues derived from the sponsorship of station names and DLR Limited will retain all other rights in relation to the use of such names (to the extent property exists in such names) of the stations other than:-

- 32.5.1 the use of such names on directional signs;
- 32.5.2 the use of such names in promotional material to be published or broadcast by or on behalf of the Concessionaire in relation to the Lewisham Extension in a format previously approved in writing by DLR Limited (such approval not to be unreasonably withheld).

If the Concessionaire wishes to change the name of any station on the Lewisham Extension, it shall bear all costs (including any costs reasonably incurred by DLR Limited) associated with or resulting from such change.

32.6 Passenger Information

DLR Limited shall be entitled free of charge to use the passenger information boards (to be provided by the Concessionaire on each station in accordance with the Specification) for the purpose of displaying information regarding Train Services and promotional or other material relating to the Railway.

32.7 Cutty Sark Station

- 32.7.1 DLR Limited shall be entitled to name the station at Cutty Sark for a period of five years after the Operating Date and, subject as provided in Clause 32.7.2, shall be entitled to retain all revenues derived from the sponsorship of such station name during such period. DLR Limited shall ensure that any conditions attaching to such sponsorship shall not unreasonably restrict the ability of the Concessionaire to permit advertising on Cutty Sark Station.
- 32.7.2 If and to the extent that the sponsorship income referred to in Clause 32.7.1 exceeds £875,000, DLR Limited shall forthwith upon receipt pay such excess to the Concessionaire.
- 32.7.3 Subject to complying with the sponsorship conditions referred to in Clause 32.7.1, the Concessionaire shall be entitled to all other advertising revenue derived from Cutty Sark Station during the five year period referred to in such Clause.
- 32.7.4 With effect from the end of the five year period referred to in Clause 32.7.1, the provisions of Clause 32.5 shall apply with respect to the station naming rights at Cutty Sark.

32.8 Promotion of Railway

DLR Limited and the Concessionaire will collaborate to promote fully the Railway in order to maximise revenues and awareness of the Railway and, to this end, DLR Limited and the Concessionaire will discuss measures to promote, market and otherwise advertise the services of the Railway (including promotion prior to opening the Lewisham Extension) and will seek to agree how costs of such promotion will be borne between them.

PART VI

MAINTENANCE

33. CONCESSIONAIRE'S OBLIGATIONS

33.1 Concessionaire's obligation to maintain

- 33.1.1 Save as provided in Clause 34, the Concessionaire shall at all times during the Maintenance Period be responsible for maintaining the Lewisham Extension in good and substantial repair and condition and, without prejudice to the generality of the foregoing, to the standards required by Clause 33.2 and otherwise in accordance with the provisions of this Agreement. For the purposes of Parts VI and VII of this Agreement, "maintenance" shall be deemed to include all repairs required to maintain the Lewisham Extension in the condition and to the standards required by this Agreement.
- 33.1.2 If and to the extent that the Concessionaire intends to delegate or sub let all or part of its obligations under this Part VI of this Agreement, the Concessionaire shall obtain the prior consent of DLR Limited to such appointment, such consent not to be unreasonably withheld or delayed.

33.2 Standard of Maintenance

The Concessionaire shall perform its maintenance obligations under this Agreement in a good and workmanlike manner in accordance with the standards applicable to the United Kingdom light railway industry and so as to ensure that:-

- 33.2.1 the Lewisham Extension performs at all times during the Maintenance Period in accordance with the requirements of the Specification;
- 33.2.2 such maintenance is carried out at least in accordance with the standards and frequencies specified in the Concessionaire's Maintenance Proposals;
- 33.2.3 such maintenance is carried out in accordance with all Applicable Requirements; and
- 33.2.4 the Lewisham Extension is handed over at the end of the Maintenance Period in the condition specified in Clause 44.1.

For the avoidance of doubt:-

- (a) maintenance of the Lewisham Extension to the standards referred to in this Clause 33.2 shall not in any respect release the Concessionaire from, or diminish, its obligation to make the Lewisham Extension available in accordance with the requirements of the Specification; and

- (b) where either DLR Limited or the Concessionaire requires Train Services to be operated on the Lewisham Extension, in accordance with Clause 26.3 or Clause 26.4, prior to the issue of the Completion Certificate, the failure of the Lewisham Extension to be capable of achieving a successful System Performance Demonstration shall not constitute a breach of the Concessionaire's obligations under this Clause 33 provided that the Concessionaire complies with its other maintenance obligations hereunder.

33.3 Changes to Concessionaire's Maintenance Proposals

The Concessionaire shall not make any change to the Concessionaire's Maintenance Proposals unless such change has been approved by DLR Limited. DLR Limited shall only be entitled to refuse its approval of a proposed change where:-

- 33.3.1 the proposed change is to any of the Appendices to the Concessionaire's Maintenance Proposals; or
- 33.3.2 acting reasonably, it considers that such a change, if implemented, would adversely affect the safety or have a material adverse effect on the performance or condition of the Lewisham Extension or is otherwise inconsistent with the requirements of the Project Documents.

33.4 Maintenance Quality Plan

In performing its maintenance obligations under this Agreement the Concessionaire shall implement and adhere to the Maintenance Quality Plan. The Concessionaire shall also procure that the Maintenance Contractor implements and adheres to the Maintenance Quality Plan.

33.5 Failure to maintain or repair

If the Concessionaire shall fail to maintain or repair the Lewisham Extension to the standards required by this Agreement or shall fail to carry out its maintenance or repair obligations under any of the Ancillary Agreements, then, without prejudice to any other right or remedy available to DLR Limited and without in any way relieving the Concessionaire from its duties and obligations under or pursuant to this Agreement, DLR Limited may take all such steps as, acting reasonably, it considers appropriate to maintain or repair the Lewisham Extension or to comply with such obligations for so long as the Concessionaire shall fail to do so and the Concessionaire shall indemnify DLR Limited from and against all costs and expenses properly incurred by DLR Limited in the exercise of its rights under this Clause 33.5. Unless the failure on the part of the Concessionaire either:-

- 33.5.1 in DLR Limited's opinion has resulted in a danger to the safety of Train Services and/or passengers and/or DLR Limited staff on the Lewisham Extension; or

33.5.2 is likely to prevent Train Services from operating on the Lewisham Extension in accordance with the then scheduled timetable,

DLR Limited shall give the Concessionaire not less than 14 days notice prior to exercising its rights under this Clause 33.5 and shall not exercise such rights if within such 14 day period the Concessionaire has either remedied, or taken all reasonable steps to remedy, such failure and, in the latter case, such breach is remedied within a reasonable period thereafter. DLR Limited shall be entitled to set off any amounts due to it under this Clause 33.5 against the amounts due from DLR Limited to the Concessionaire pursuant to Clause 30.

33.6 Maintenance resulting from DLR Limited breach of covenant

If the Concessionaire is of the opinion that its maintenance obligations have been adversely affected as a result of a breach by DLR Limited of any of its covenants contained in Schedule 9, the Concessionaire shall forthwith notify DLR Limited of the nature of the breach and the probable consequences thereof on the ability of the Concessionaire to perform its maintenance obligations should DLR Limited continue to commit such breach. If, following receipt of such notice, DLR Limited continues to commit such breach, DLR Limited shall pay to the Concessionaire any additional costs properly and reasonably incurred, and loss of Fees suffered, by the Concessionaire after the date of such notice as a direct result of such act or omission provided that DLR Limited shall have no liability for the consequences of such breach in respect of the period prior to the receipt of the Concessionaire's notice other than to reimburse the Concessionaire for the replacement cost of any equipment or structure damaged by such breach (including for the avoidance of doubt compensation for any reduction in the useful life of such equipment or structure).

33.7 Training of maintenance personnel

The Concessionaire shall ensure that all of its maintenance personnel (including those of sub-contractors of any tier) are fully trained in safety matters, including attendance at DLR Limited's training courses and familiarisation with DLR Limited's safety procedures and documentation.

33.8 Communications

The Concessionaire shall at its own cost provide radio and telephone communication facilities between its management centre and DLR Limited's office, depots and the Control Centre. The Concessionaire shall also provide contact telephone numbers which are manned by suitably qualified personnel for twenty four hours a day, each day of the year during the Maintenance Period.

34. OPERATIONAL RESPONSE

34.1 Definition

Operational Response is the initial response to a failure of, damage to or other incident occurring on the Lewisham Extension which actually or, in DLR Limited's reasonable opinion, potentially interrupts or delays Train Services on the Railway. Operational Response includes the following activities:-

- 34.1.1 initial reporting of the occurrence of a failure, damage or other incident to the Control Centre;
- 34.1.2 attendance at the site of the occurrence of DLR Limited operations and/or maintenance staff to assess the cause of the problem;
- 34.1.3 determination of the appropriate course of action;
- 34.1.4 where possible and safe and within the capabilities immediately available to DLR Limited, rectification of the problem in situ;
- 34.1.5 implementation of measures to overcome and/or mitigate the disruption to Train Services; and
- 34.1.6 where possible and safe and within DLR Limited's immediately available capabilities, implementation of temporary repairs.

Operational Response does not include the performance of permanent repairs except where these are of a minor or trivial nature.

34.2 DLR Limited's obligation to perform

34.2.1 DLR Limited shall:-

- (a) initiate a response to an incident requiring Operational Response within 15 minutes of the earlier of:-
 - (i) DLR Limited identifying that such incident has occurred; and
 - (ii) the Concessionaire notifying DLR Limited of such incident; and
- (b) undertake all Operational Response on the same basis and to the same standards as it undertakes Operational Response on the Existing Railway.

34.2.2 Without prejudice to Clause 34.2.1, DLR Limited shall, acting reasonably, have complete discretion regarding the manner in which it undertakes Operational Response including any action which it chooses to take to mitigate disruption to Train Services.

34.2.3 DLR Limited shall have no liability to the Concessionaire for any liability, damages or loss suffered by the Concessionaire (including by way of reduction in Fees) arising from DLR Limited's response to the requirement to undertake Operational Response unless and to the extent that DLR Limited's action in undertaking or failing to respond to the requirement for such Operational Response were:-

- (a) in breach of its undertakings in Clause 34.2.1; or
- (b) negligent.

34.2.4 If DLR Limited is in breach of its undertakings in Clause 34.2.1, DLR Limited shall not make any deduction from the Concessionaire's Availability Fee entitlement to the extent that, the requirement for such deduction arose as a result of DLR Limited's breach as aforesaid.

34.3 Notification to Concessionaire

Except where the Concessionaire has notified DLR Limited in accordance with Clause 34.2.1, DLR Limited shall notify the Concessionaire by telephone or radio (as appropriate) immediately following a report to the Control Centre of the occurrence of a failure, damage or other incident requiring Operational Response. Representatives of the Concessionaire shall be entitled to attend the site of the incident in order to consult on the appropriate measures to be taken to restore normal Train Services and to observe any actions taken by DLR Limited. As soon as possible following the incident, DLR Limited shall issue a written report to the Concessionaire describing the incident, its cause (so far as known), its duration, its location, the actions taken and any follow up actions required.

34.4 Costs of Operational Response

To the extent that the requirement for Operational Response resulted from inadequate maintenance or repair by the Concessionaire in accordance with its obligations under this Agreement, the Concessionaire shall reimburse DLR Limited for all costs that it properly incurs in carrying out the relevant item of Operational Response at the rates specified in Schedule 6. The written report referred to in Clause 34.3 shall specify all costs incurred by DLR Limited in respect of each such incident.

35. REPAIR OF FAILURES AND DAMAGES

35.1 Concessionaire's obligation to repair

Subject as provided in Clause 35.4, the Concessionaire shall promptly effect the permanent repair of all failures of or damages to the Lewisham Extension howsoever caused. The Concessionaire shall effect all such repairs at its own cost (except as provided in Clauses 7.2 and 33.6) and in a manner which causes the minimum disruption to the operation of Train Services on the Railway.

35.2 Standard of repairs

All repairs to the Lewisham Extension shall be carried out to a standard that restores the failed or damaged item to a condition which meets with requirements of the Specification and, subject thereto, the Concessionaire's Works Proposals.

35.3 Modification to the Detailed Design

Where a repair requires a material modification to the Detailed Design of the Lewisham Extension, the Concessionaire shall notify DLR Limited of that fact immediately and shall forward copies of all Design Data relating to the modification to DLR Limited as soon as possible. The provision of Clause 20.2 shall apply in respect of such Design mutatis mutandis.

35.4 Temporary repairs

The Concessionaire shall be entitled to carry out temporary repairs to failures or damages to the Lewisham Extension subject to obtaining the prior approval of all appropriate regulatory authorities. All temporary repairs shall be permanently repaired at the earliest opportunity and in any event forthwith upon receipt of written notice from DLR Limited stating that it no longer considers such temporary repairs to be safe and/or fit for their purpose.

36. SECOND AND THIRD LINE MAINTENANCE

36.1 Definitions

"Second Line Maintenance" is the routine and planned maintenance of the Lewisham Extension. "Third Line Maintenance" is the replacement with new or the off-site overhaul of main items of equipment used on the Lewisham Extension.

36.2 Concessionaires' obligations

Subject as provided in Clauses 33.5 and 33.6, the Concessionaire shall at its own cost undertake or procure the undertaking of all Second Line Maintenance and Third Line Maintenance in respect of the Lewisham Extension.

36.3 Annual Maintenance Programme

Not less than 90 days before the beginning of each financial year of DLR Limited, commencing with the financial year during which it is anticipated that the Operating Date will fall, the Concessionaire shall prepare and submit in duplicate for review by DLR Limited a proposed Maintenance Programme for the forthcoming year. Each Maintenance Programme shall be consistent with all Applicable Requirements and the requirements of the DLR Maintenance Procedures and shall show:-

- 36.3.1 all Second Line Maintenance and Third Line Maintenance activities which the Concessionaire considers to be necessary for the forthcoming year;
- 36.3.2 the periods during which each maintenance activity is to be carried out;
- 36.3.3 the Possessions that the Concessionaire requires for such maintenance activities; and
- 36.3.4 such other information as DLR Limited may from time to time reasonably require in relation to the maintenance of the Lewisham Extension.

In relation to maintenance activities that cannot be accommodated within non operational hours, the Concessionaire shall consult with DLR Limited so as to ensure that such activities are co-ordinated with the heavy maintenance activities of DLR Limited that require shutdown of the Existing Railway.

36.4 Approval of Maintenance Programme

Within 28 days of receipt of a proposed Maintenance Programme, DLR Limited shall return to the Concessionaire one copy thereof either marked "No Comments" or with written comments and/or amendments. If DLR Limited shall fail to return a proposed Maintenance Programme within such 28 day period, such Maintenance Programme shall be deemed to be marked "No Comments". If the proposed Maintenance Programme is returned by DLR Limited with written comments and/or amendments, the Concessionaire shall have due regard to such comments and/or amendments but shall only be required to take into account those which DLR Limited has identified in writing as being "Mandatory Requirements". DLR Limited shall only be entitled to specify as Mandatory Requirements any such changes to the Maintenance Programme as are necessary to ensure consistency with the DLR Maintenance Procedures. If the Concessionaire amends a proposed Maintenance Programme as a result of any comments and/or amendments made by DLR Limited the amended version shall be resubmitted to DLR Limited for review and the provisions of this Clause 36.4 shall again apply.

36.5 Changes to Maintenance Programme

Except in the case of emergency maintenance, the Concessionaire shall provide DLR Limited with not less than 60 days' notice of any changes to an annual Maintenance Programme. Any such changes shall be consistent with the requirements of Clause 36.3. DLR Limited shall only be entitled to object to the proposed change if it would have been entitled to impose a Mandatory Requirement in respect of such change had it been included in the original Maintenance Programme submitted to DLR Limited in accordance with Clause 36.4 and, if it does so, within 28 days of the Concessionaire's notice.

36.6 Closure of Railway

Notwithstanding the provisions of Clause 36.5 the Concessionaire shall be entitled, subject to compliance with DLR Maintenance Procedures, to carry out maintenance on the Lewisham Extension if DLR Limited closes the Railway or a part thereof that includes the Lewisham Extension for any reason, whether at Christmas or on any other day and whether through holidays or undertaking maintenance or repair itself or as a result of an actual or anticipated emergency or otherwise; and the Concessionaire shall not (other than where such closure arises from any default on the part of the Concessionaire under this Agreement) thereby be subject to any deductions being made in Availability Fees.

37. ACCESS TO EXISTING RAILWAY AND POSSESSIONS

37.1 Engineering hours

37.1.1 The Concessionaire may, in accordance with the DLR Control Documents, request that DLR Limited isolate the traction power system on the Lewisham Extension through the operation of the SCADA System for the purpose of allowing the Concessionaire to perform its maintenance obligations under this Agreement. Except where the DLR Maintenance Procedures otherwise permit such requests may only be made in respect of the following periods:-

Tuesdays to Saturdays	between 0130 hours and 0430 hours (or, with the prior agreement of DLR Limited, 0500 hours on Saturdays).
Sundays	between 0130 hours and 0430 hours (or, with the prior agreement of DLR Limited, 0630 hours).
Mondays	between 0030 hours and 0430 hours.

37.1.2 DLR Limited shall be entitled to reduce or cancel the periods referred to in Clause 37.1.1 in the following circumstances:-

- (a) to permit trains which have been delayed for any reason to complete their scheduled journeys;
- (b) to permit the recovery of trains which have been stranded or stabled on the Lewisham Extension;
- (c) to run a 24 hour service on every New Year's Eve;
- (d) to deal with emergencies not under DLR Limited's control;

- (e) upon service of seven days notice, to carry out training exercises or system wide tests which require the traction current on the Lewisham Extension;
- (f) upon service of 13 weeks notice, to operate the train service for longer periods than those published in the Customer Charter Standard.

37.1.3 Notwithstanding the circumstances referred to in Clause 37.1.2, but subject to DLR Limited's operational and maintenance requirements, following the Operating Date DLR Limited shall use reasonable endeavours to ensure that:-

- (a) for the period from and including 31st December 1999 to 1st January 2001 inclusive 60 hours are made available to the Concessionaire during each Availability Period for maintenance purposes; and
- (b) at all other times 80 hours are made available to the Concessionaire during each Availability Period for such purposes,

provided that if the dates referred to in sub-clause 37.1.3(a) fall between the first and last day of an Availability Period the hours referred to above shall be applied to that Availability Period pro rata.

37.1.4 Following the completion of its maintenance activities the Concessionaire shall promptly confirm to DLR Limited that there are no circumstances resulting from the maintenance activities which would prevent the traction power system on the Lewisham Extension from being re-energized safely.

37.1.5 The Concessionaire shall ensure that all relevant safety procedures (including those in the DLR Control Documents and the DLR Maintenance Procedures) are complied with before maintenance activities are commenced and, following their completion, before confirming to DLR Limited that the traction power system for the Lewisham Extension can be re-energized safely.

37.2 Compliance with DLR Maintenance Procedures

Any maintenance or repair work to be carried out by the Concessionaire which:-

37.2.1 requires access to or involves work upon or has an effect upon the DLR Facilities; or

37.2.2 requires the cessation of or imposes restrictions upon the operation of Train Services on the Railway,

shall only be carried out in accordance with the DLR Maintenance Procedures. Without prejudice to the generality of the foregoing, the Concessionaire shall inform DLR Limited immediately of any incomplete work, potential hazards or necessary restrictions on Train Services following completion of a Possession Period.

37.3 Possessions

The Concessionaire shall have the right to request and obtain Possessions from time to time. In requesting Possessions, the Concessionaire shall use all reasonable endeavours to programme its maintenance activities so as to coincide with the Possessions already planned by DLR Limited for the Existing Railway. To this end the Concessionaire shall attend quarterly consultation meetings with DLR Limited to review their respective requirements for Possessions in subsequent quarters. DLR Limited shall also have due regard to the Concessionaire's maintenance programme in formulating its own maintenance programme. DLR Limited shall not unreasonably withhold or delay its consent to any request for a Possession by the Concessionaire.

37.4 Railtrack property

The Concessionaire shall only carry out maintenance or repair work alongside or upon property belonging to Railtrack in compliance with Railtrack's rules and procedures relating to possessions of its property and the carrying out of such work.

37.5 Training and Licences

The Concessionaire shall procure that all of its personnel, and those of its contractors, who undertake work on or about the Railway have attended and passed the DLR Health and Safety training course. Any work party of the Concessionaire or any of its contractors undertaking work on or about the Railway is required to be personally supervised at all times by a person who has attended and passed the DLR Contractors Person in Charge (CPIC)/Person In Charge Of Work (PICOW) training course. Additionally any person undertaking work on the following assets or disciplines must be licensed by DLR Limited:-

- 37.5.1 ATC System;
- 37.5.2 automatic fare collection systems;
- 37.5.3 Communication Systems;
- 37.5.4 high voltage equipment;
- 37.5.5 track and associated infrastructure;
- 37.5.6 electricity sub station access; and
- 37.5.7 750 Volt DC systems.

Before undertaking maintenance work upon the items referred to in Clauses 37.5.1 to 37.5.7 on the Railway, the Concessionaire shall provide DLR Limited with details of the training, qualifications and experience of the personnel nominated to undertake such work. DLR Limited shall issue a licence to such personnel provided it is satisfied that they are competent to perform such work. No person who has not been assessed and licensed by DLR Limited shall be permitted to perform such work. The issue of licences by DLR Limited to personnel pursuant to this Clause shall import no liability on DLR Limited in respect of the performance of the relevant maintenance works by such personnel which shall remain the full responsibility of the Concessionaire.

38. REPORTS, MEETINGS AND RECORDS

38.1 Reports

With effect from the Operating Date, the Concessionaire shall provide to DLR Limited within 14 days following the end of each quarter a report on the activities of the Concessionaire during that quarter setting out:-

- 38.1.1 details of all major maintenance performed by the Concessionaire within that quarter and all major maintenance projected to take place during the quarter following the quarter in which the report is delivered (including a programme in respect of such maintenance) and an explanation for any difference between the projected programme of maintenance for the following quarter and the activities identified in the Maintenance Programme within which the following quarter falls;
- 38.1.2 details of any other matter which is likely to affect the operation of Train Services on the Lewisham Extension during such following quarter;
- 38.1.3 copies of any notices (not previously shown to DLR Limited) received by the Concessionaire during the quarter to which the report relates pursuant to any Applicable Requirement or from any Relevant Authority and a statement of the action taken by the Concessionaire in respect of such notices;
- 38.1.4 details of any special investigations carried out in relation to the state and condition of any element of the Lewisham Extension together with copies of all associated reports where DLR Limited requires the same;
- 38.1.5 details of all material outstanding maintenance obligations incurred by the Concessionaire under the Ancillary Agreements; and
- 38.1.6 such other information as DLR Limited shall reasonably have requested the Concessionaire to provide during such quarter in relation to the Concessionaire's maintenance activities.

With effect from the Operating Date DLR Limited shall supply the Concessionaire with copies of its monthly operational reports relating to the Lewisham Extension. Such reports shall set out:-

- (a) details of all Operational Response provided by DLR Limited within that month;
- (b) details of any other maintenance or repair work carried out on the Lewisham Extension by DLR Limited within that month;
- (c) details of any matters which affected the operation of trains on the Lewisham Extension during the month and of any matters which DLR Limited are aware of at that time which are likely to affect such operations in the coming month; and
- (d) copies of any notices received by DLR Limited during the month pursuant to any Applicable Requirement or from any Relevant Authority and a statement of action taken by DLR Limited in respect of such notices.

38.2 Meetings

With effect from the Operating Date, the parties shall attend and cooperate with:-

38.2.1 quarterly progress and performance review meetings at which the parties shall review the Concessionaire's quarterly reports; and

38.2.2 monthly meetings to review current and proposed maintenance activities.

These meetings are to be attended by suitable senior managerial staff and by appropriate technical staff (depending on the agenda).

38.3 Records and Manuals

The Concessionaire shall maintain, continuously update and make available to DLR Limited records and reports of all maintenance work performed on the Lewisham Extension in accordance with the requirements of Part 3 of Schedule 4. The Concessionaire shall also prepare and continuously update operating and maintenance manuals for the Lewisham Extension in accordance with the requirements of such Schedule.

39. SUB-CONTRACTS AND SPARES

39.1 Freedom to sub-contract

The Concessionaire shall be free to sub-contract any aspect of its maintenance work for any period of the Concession.

39.2 Concessionaire to remain responsible

The Concessionaire shall retain full responsibility and liability for the work of sub-contractors of any tier. The Concessionaire shall ensure that all sub

contractors' personnel are suitably qualified, trained and experienced and have been fully familiarised with DLR Limited's and the Concessionaire's working methods and safety procedures. The requirement of Clause 37.5 apply equally to sub-contractor's staff.

39.3 Concessionaire to provide spares

The Concessionaire shall provide all spare equipment, components and materials needed to maintain the Lewisham Extension in accordance with the requirements of this Agreement and, in particular, the procedures set out in Appendix 2 of Part 1 of Schedule 7. If the Concessionaire has available spares which are required by DLR Limited in relation to the performance of any of its rights and obligations in relation to the Lewisham Extension under this Agreement, it shall make such spares available to DLR Limited at the same price as the replacement cost of such spares to the Concessionaire (except where Clause 33.5 applies, in which event such spares shall be made available at no cost to DLR Limited).

40. ACCESS AND INSPECTIONS

40.1 Access to the Lewisham Extension

40.1.1 Following the Operating Date, DLR Limited shall be entitled to operate trains on the Lewisham Extension for training and testing purposes subject to DLR Limited's access requirements not exceeding the Contracted Capacity and subject as provided in Clause 37.1.

40.1.2 The Concessionaire shall afford to DLR Limited and persons duly authorised by it and to other persons in the exercise of their powers and functions under or pursuant to this Agreement or Applicable Requirements, or for the purposes of or in connection with the operation of the Railway, unrestricted access to all parts of the Lewisham Extension which are necessary for the proper exercise of such powers or functions, provided that in exercising rights of access, DLR Limited and persons duly authorised by it shall cause as little interference to the Concessionaire in the performance of its duties and obligations as reasonably practicable.

40.2 Attendance during maintenance

DLR Limited shall be entitled to attend any maintenance activities planned to be undertaken by the Concessionaire and, on being requested to do so the Concessionaire, shall forthwith notify DLR Limited of the time and place at which any particular activities will be carried out.

41. ADDITIONAL WORKS

41.1 Notice of Additional Works

41.1.1 DLR Limited may at any time during the Maintenance Period issue a Preliminary Additional Works Instruction which shall be accompanied

by sufficient explanation and information to allow a full appreciation of the Additional Works required.

- 41.1.2 DLR Limited shall be obliged to issue (and not withdraw) a Preliminary Additional Works Instruction in respect of any requirement to remove Hazardous Substances and Waste from the Site or any Working Area which is imposed upon DLR Limited or the Concessionaire at any time following the issue of the Completion Certificate provided that the provisions of this Clause 41.1.2 shall not apply to any such requirement to remove the same which arises as a result of a failure by the Concessionaire to comply with the provisions of Clause 17.9.3.

41.2 Effect of Preliminary Additional Works Instruction

The provisions of Clauses 22.2 to 22.7 shall apply following service of a Preliminary Additional Works Instruction as if:-

- 41.2.1 the references therein to DLR Change, Preliminary Change Instruction and DLR Change Certificate were to Additional Works, Preliminary Additional Works Instruction and Additional Works Certificate respectively;
- 41.2.2 the provisions of Clause 22.2.3 were deleted and replaced with the following: "the length of time that it would take to implement the Additional Works together with a works programme showing how the Additional Works would be implemented";
- 41.2.3 the reference in Clause 22.4 to consequential adjustments to the Works Programme were replaced with a reference to the works programme referred to in Clause 41.2.2;
- 41.2.4 the reference to and the requirement for a revised Works Programme in Clause 22.5 were deleted; and
- 41.2.5 otherwise mutatis mutandis.

41.3 Additional extensions to the Railway

For the avoidance of doubt, nothing in this Agreement shall prevent DLR Limited from constructing or procuring the construction of further extensions to the Railway. The Concessionaire shall cooperate with DLR Limited, without being required to incur material additional costs, with regard to the planning, implementation and operation of any further extensions including the provision of all necessary rights of access to the Lewisham Extension, subject to the Concessionaire being compensated by DLR Limited for any disruption caused to the Concessionaire's business and appropriate adjustments being made to the Usage Fees and Availability Fees to reflect any reduction or increase in the level of Fees payable as a result of the addition of any further extension. DLR Limited will consult with the Concessionaire prior to implementing any further

extension to the Railway which connects directly into or otherwise directly affects the Lewisham Extension.

PART VII

HANDOVER

42. OBLIGATIONS OF THE PARTIES FOLLOWING TERMINATION

42.1 Provision of documents

Save as otherwise provided in this Agreement, upon termination of the Concession (howsoever caused), the Concessionaire shall forthwith provide to DLR Limited free of charge (to the extent that such documents have not been previously supplied to DLR Limited):-

- 42.1.1 full particulars of all items of plant, materials and equipment ordered, procured or provided by the Concessionaire for the performance of its obligations hereunder (including those items forming part of or intended to form part of or for use or used in connection with the Works and the hardware comprised in the Computer System) the terms on which they were procured and their location and condition;
- 42.1.2 the originals or (if the originals are unavailable for reasons beyond the Concessionaire's control) copies of all agreements in force at the date of termination, or which evidence the matters referred to in Clause 42.1.3, for the supply to the Concessionaire in relation to the Concession of any goods, materials or services and/or for the execution of any work;
- 42.1.3 full particulars of all obligations, guarantees, warranties or other commitments of any kind which DLR Limited may be entitled to require to be assigned to it pursuant to sub-clause 42.4.1(b);
- 42.1.4 copies of all Design Data;
- 42.1.5 "as built" drawings, manufacturers or suppliers instructions and brochures for all those parts of the Works which have been completed or which have been acquired for incorporation into the Works, maintenance manuals or any preparatory materials therefor and details of any amendments to the Works;
- 42.1.6 the originals of all then current licences, manuals and other materials and agreements (including without limitation relating to the deposit of source codes) relating to the Computer System and the Intellectual Property;
- 42.1.7 the originals of all consents, licences, approvals, permissions, and easements granted to the Concessionaire in relation to the Works and for the maintenance, renewal or up-grading of the Lewisham Extension in accordance with this Agreement and the Usage and Maintenance Agreement.

42.2 Condition of records and systems

The Concessionaire shall ensure that all records, documentation, methods, drawings and manuals are complete, up-to-date, properly catalogued and in a tidy condition for hand-over to DLR Limited. The Concessionaire shall also ensure that the maintenance management systems and procedures including the Computer System are operating effectively. The computer hardware and software users' manual shall be available and in good condition. Computer databases shall be up-to-date, complete, properly catalogued, backed-up and archived.

42.3 Assignment of warranties and guarantees

The Concessionaire shall assign to DLR Limited the benefit free from any Security Interest of all warranties and guarantees in respect of maintenance work carried out on the Lewisham Extension that remain in force at the date of termination of the Concession and shall procure that all such warranties and guarantees are capable of assignment.

42.4 Transfer of title

42.4.1 Each of the items specified in sub-clauses 42.4.1 (a) to (c) below shall vest in DLR Limited (or such other person(s) as it shall nominate) free from any Security Interest and otherwise on the basis set out in the relevant sub-clause:-

- (a) on the 28th day following termination, unless DLR Limited notifies the Concessionaire in writing that it does not wish such vesting to occur in respect of such items, legal and beneficial title in the items referred to in Clause 42.1.1 (other than those items in respect of which title has previously vested in DLR Limited) on the basis set out in Clause 42.4.2;
- (b) without charge, the benefit of the obligations, undertakings, guarantees, warranties or other commitments given by the Contractor, the Designer and, insofar as it is legally able to do so, by any sub-contractors and suppliers of any tier;
- (c) without charge, the benefit of the agreements, licences and other instruments, and any other intellectual property rights vested in the Concessionaire in respect of the items referred to in Clauses 42.1.2, 42.1.6 and 42.1.7.

42.4.2 Where any of the items specified in sub-clause 42.4.1(a) vests in DLR Limited pursuant to the operation of and in accordance with the requirements of Clause 42.4.1, DLR Limited shall pay the Concessionaire for such items at their then current open market value (to be agreed between the parties). If the parties cannot agree a price for such items within 14 days of the expiry of the 28 day period referred to in Clause 42.4.1, the price will be determined by an independent valuer appointed on the application of either party by the

President for the time being of the Institute of Chartered Accountants. Any such valuer shall act as an expert and not as an arbitrator and his decision shall be final and binding. The costs of his appointment shall be borne equally by the parties.

43. TERMINATION PRIOR TO THE COMPLETION DATE

43.1 Hand-over provisions

On termination of the Concession (for whatever reason) prior to the Completion Date, the Concessionaire shall:-

- 43.1.1 co-operate fully with DLR Limited to secure a safe and orderly handover of the Works to DLR Limited (or as DLR Limited shall direct) free from any Security Interest and so as to cause the minimum possible disruption to the Works, if continuing;
- 43.1.2 forthwith vacate the Site and any Working Areas as required by Clause 15.5;
- 43.1.3 with all reasonable despatch remove from the Site and Working Areas all items referred to in sub-clause 42.1.1 that have not been the subject of a notice from DLR Limited pursuant to Clause 42.4.1; and
- 43.1.4 deliver up to DLR Limited forthwith all items to be vested in DLR Limited pursuant to Clause 42.4.1.

43.2 Condition of Works

Without limitation to any other provision hereof, the Concessionaire shall ensure that the Works and all items to be handed over, sold or made available by the Concessionaire to DLR Limited on termination of the Concession prior to the Completion Date are in a condition which will enable DLR Limited or any third party forthwith to proceed with the carrying out of the Works without the need to take any further action to ensure that such items are in a fit condition to be used in continuing the Works.

44. TERMINATION ON OR AFTER THE COMPLETION DATE

44.1 Condition of the Lewisham Extension

Without limitation to any other provision hereof, on the termination of the Concession at any time on or after the Completion Date, the Lewisham Extension shall be handed over to DLR Limited, in a condition which:-

- 44.1.1 could reasonably be expected of a railway infrastructure which has been in existence and used for the operation of a railway service for a period equal to the period that has elapsed between the Completion Date and the date of termination and which has been properly maintained during that period; and

44.1.2 shall be capable of achieving the criteria of a System Performance Demonstration to be performed in accordance with Clause 44.2.

Without prejudice to the generality of the foregoing the following criteria shall be considered relevant in determining whether aspects of the Lewisham Extension shall be replaced or repaired by the Concessionaire prior to hand over:-

44.1.3 the main civil and structural works shall not exhibit any undue signs of damage, wear, stress, cracking, settlement, corrosion, or weather erosion, such that they cannot reasonably be expected to satisfy their full design life specification. Any shortfalls against this requirement shall be replaced or repaired by the Concessionaire to the satisfaction of DLR Limited (acting reasonably);

44.1.4 limited life and "wear and tear" components and equipment have been replaced by the Concessionaire prior to hand-over in the normal way as and when they failed, wore out, or reached their design life or normal replacement frequency, as part of on-going maintenance activities;

44.1.5 major electrical and mechanical components or equipment which have a normal design life (under the duty and conditions of the Lewisham Extension) of five or more years shall be repaired, refurbished, or replaced as appropriate prior to hand-over if their condition indicates that they are unlikely to operate (without recourse to major repair) for a further five years after the end of the Concession.

44.2 Documentation and records

Following termination of the Concession on or after the Completion Date, the Concessionaire shall (to the extent not previously provided) provide DLR Limited with a complete record of the maintenance activities undertaken by the Concessionaire throughout the Concession Period, and with all the documentation required to enable DLR Limited to continue to maintain the Lewisham Extension which shall, in any event, include:-

44.2.1 current regulations and standards governing the infrastructure;

44.2.2 inspection records for at least the previous five years;

44.2.3 statutory inspection records for the entire Concession Period;

44.2.4 history of major modifications, repairs and replacements for the entire Concession Period;

44.2.5 routine maintenance job catalogue, showing job descriptions, work instructions, and frequencies;

44.2.6 safety procedures;

- 44.2.7 any special working instructions;
- 44.2.8 maintenance staff training records;
- 44.2.9 records of alignment and datum checks;
- 44.2.10 maintenance records and manuals;
- 44.2.11 spares catalogue; and
- 44.2.12 maintenance computer system users manual.

Where appropriate and with the prior agreement of DLR Limited (such agreement not to be unreasonably withheld) the documentation can be in the form of computer databases, microfilm or CAD data.

44.3 Continuance of maintenance activities

The Concessionaire shall continue to perform its maintenance work activities under this Agreement as normal up to the date of termination of the Concession as though it were responsible for continuing such activities thereafter, unless other phased hand-back procedures are agreed between the parties prior to hand-back. The Concessionaire shall also give full cooperation to DLR Limited to ensure a smooth and trouble free transition of such maintenance activities with no degradation of the standard of the maintenance.

44.4 Ancillary Agreements

The Concessionaire shall, prior to the termination of the Concession, complete all outstanding maintenance activities under the Ancillary Agreements, failing which the Concessionaire shall indemnify DLR Limited against any liability or cost which DLR Limited may incur as a result of the non or partial performance of such activities by the Concessionaire.

44.5 Inventory of spares

The Concessionaire shall ensure that its inventory of spares shall be maintained at the levels appropriate to the continuation of maintenance activities (but subject always to the provisions of Appendix 2 of Part 1 of Schedule 7) and shall not be depleted prior to handback except with the prior written consent of DLR Limited.

44.6 TUPE

The Concessionaire shall indemnify DLR Limited in respect of any liability which DLR Limited may incur in relation to the employees of the Concessionaire following termination of the Concession (other than any such employees which DLR Limited voluntarily employs) whether through the operation of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or otherwise.

44.7 Termination of the Concession

In this Clause 44 references to the termination of the Concession shall be deemed to include termination of the Concession for whatever reason including the expiry of the Concession Period.

45. HAND-OVER PROCEDURE ON EXPIRY OF CONCESSION PERIOD

45.1 Establishment of hand-over procedure

At least 36 months, but not more than 42 months, prior to the expiry by effluxion of time of the Concession Period, DLR Limited and the Concessionaire shall establish a committee comprising two appropriately qualified and experienced representatives of each party who shall be responsible for agreeing procedures and programmes to ensure that the Lewisham Extension is handed over to DLR Limited in accordance with the requirements of Clause 44.1 with the least inconvenience and disruption to Train Services. The procedures and programmes for handing the Lewisham Extension over to DLR Limited shall include as a minimum the following activities:-

- 45.1.1 examination of maintenance records and delay statistics by DLR Limited;
- 45.1.2 a detailed inspection of the infrastructure by DLR Limited or an appointed representative 24 months prior to the end of the Concession Period;
- 45.1.3 corrective actions and equipment replacements required to be implemented by the Concessionaire prior to the end of the Concession Period;
- 45.1.4 follow-up inspections and joint progress reviews of the above actions at least at three monthly intervals;
- 45.1.5 further detailed inspections by DLR Limited of the infrastructure at periods of 12 months, three months and one week prior to the end of the Concession Period, and agreement on further corrective actions;
- 45.1.6 the examination by DLR Limited of the spares inventory, maintenance facilities, documentation and training proposals 12 months prior to the end of the Concession Period;
- 45.1.7 corrective actions needed to rectify any deficiency in the aspects examined in accordance with Clause 45.1.6;
- 45.1.8 the performance of a Full System Performance Demonstration in accordance with Clause 45.4.

45.2 Concessionaire's obligation to remedy defects

Where any of the inspections or tests referred to in Clause 45.1 reveal any defects in the Lewisham Extension such that the Lewisham Extension cannot be handed over to DLR Limited in the condition specified in Clause 44.1, the Concessionaire shall, so that such matters are completed prior to termination of the Concession, at its own cost remedy all such defects and undertake all such repairs as are required to ensure that the Lewisham Extension can be handed over on termination of the Concession in a condition which meets the requirements of such Clauses. DLR Limited shall be entitled to withhold payment of Fees (subject to a maximum retention of 50 per cent of the Fees due in respect of each Availability Period) equal to the estimated likely costs of remedying all such defects and the carrying out of all such repairs, until such defects have been remedied and repairs carried out to the reasonable satisfaction of DLR Limited. All such retained Fees shall be placed by DLR Limited in an interest bearing deposit account in its name ("the Retention Account"). If at the termination of the Concession such remedial and repair works have not been taken by the Concessionaire, DLR Limited shall be entitled to carry out such works itself and to meet its costs incurred out of the monies in the Retention Account. The balance of monies in the Retention Account (if any) shall be paid to the Concessionaire upon the completion of such remedial and repair works.

45.3 Failure to agree on hand-over procedures

If DLR Limited and the Concessionaire fail to reach agreement in respect of any of the procedures, programmes and requirements referred to in Clause 45.1 by the date 30 months prior to the expiry of the Concession Period by effluxion of time or, if either party disagrees with any findings following inspections and the corrective actions to be taken, either party may refer the matter to the Disputes Panel who shall decide the appropriate course of action to be taken so as to meet the requirements of this Agreement.

45.4 System Performance Demonstration

Three months prior to the expiry of the Concession Period by effluxion of time, a Full System Performance Demonstration shall be performed to satisfy DLR Limited that the Lewisham Extension will still be capable of achieving the performance requirements as stated in the Specification. When technical variations, modifications or upgrades to the Lewisham Extension have been implemented following the Completion Date the Full System Performance Demonstration shall be modified by agreement to take reasonable account of any such variations, modifications or upgrades.

45.5 Training and technical support

Commencing 12 months prior to the expiry of the Concession Period the Concessionaire, at DLR Limited's cost, shall conduct an effective training programme for various categories of DLR Limited staff and third party staff nominated by DLR Limited who will be responsible for maintenance of the Lewisham Extension following the expiry of the Concession Period to ensure

the successful continuation of maintenance activities. The content and style of and programme for the training shall be submitted to DLR Limited by the Concessionaire for review 18 months prior to the expiry of the Concession Period and the Concessionaire shall comply with DLR Limited's reasonable requirements in relation thereto. The training shall be supported by appropriate documentation and training manuals and shall include practical fieldwork or "on-the-job" training in addition to classroom sessions.

45.6 Continued technical support

For a period of two years after the expiry of the Concession Period the Concessionaire shall provide DLR Limited, at DLR Limited's cost, with such access as DLR Limited may reasonably require to persons having the appropriate knowledge and experience of the history of the Lewisham Extension and associated technical matters for the following purposes:-

- 45.5.1 general technical advice on subjects for which the Concessionaire was responsible during the Concession Period; and
- 45.5.2 interpretation of maintenance history data, drawing modifications, regulations and the like.

PART VIII

FINANCE

46. FUNDING THE PROJECT

46.1 No responsibility for DLR Limited

Save as provided in this Agreement, DLR Limited shall have no responsibility for raising or providing funding for the Project.

46.2 Changes to Funding Agreements

Where the Concessionaire proposes to effect any material change to the Funding Agreements or to enter into agreements in connection with the funding of the Project in addition to or to refinance the Funding Agreements:-

- 46.2.1 the Concessionaire shall not less than 14 days prior to effecting such change or entering into such agreement provide a copy thereof to DLR Limited accompanied by a memorandum explaining the requirement for and the nature of each such proposed change or agreement;
- 46.2.2 DLR Limited shall only be entitled to object to the Concessionaire effecting such a proposed change or entering into such agreement if, acting reasonably, DLR Limited considers that such proposed change or agreement:-
 - (a) if occurring prior to the Completion Date, would be likely to have a material adverse affect on the likelihood of the Works being completed successfully;
 - (b) breaches the terms of the Project Documents or any Applicable Requirements; or
 - (c) potentially creates a materially greater liability on DLR Limited, in respect of any obligation which DLR Limited may have to pay compensation under this Agreement to the Concessionaire or the Lenders, than that which would otherwise be required by market practice in the City of London for financial instruments or agreements similar to such proposed change or agreement at the time of such change; and
- 46.2.3 If DLR Limited does not object to such a proposed change or agreement within 14 days of receipt of such notification and accompanying memorandum it shall be deemed to have raised no objection.
- 46.2.4 If DLR Limited objects to a proposed change or agreement under this Clause 46.2 and the Concessionaire refuses to withdraw such proposed change or agreement, the question of whether or not DLR Limited was

validly entitled to object under Clause 46.2.2 shall be referred to the Dispute Resolution Procedure.

- 46.2.5 DLR Limited shall be provided within 7 days of their execution with copies of all changes to the Funding Agreements, and of all other agreements entered into by the Concessionaire in connection with the funding of the Project.

46.3 Grant Assistance

- 46.3.1 Subject as provided in Clause 46.3.3, the Concessionaire may request and DLR Limited shall pay by way of grant assistance:-

- (a) £15,000,000 (fifteen million pounds) within 10 days after the later to occur of 1st April 1997 and the achievement of the Grant Milestone referred to in sub-clause 46.3.6(a); and
- (b) £35,000,000 (thirty-five million pounds) within 10 days after the later to occur of 1st April 1998 and the achievement of the Grant Milestone referred to in sub-clause 46.3.6(b).

- 46.3.2 If upon receipt of a request for payment in accordance with Clause 46.3.1, in DLR Limited's reasonable opinion the Grant Milestone applicable to that instalment has not been achieved, DLR Limited shall inform the Concessionaire of the work required to be carried out in order to achieve such Grant Milestone and the Concessionaire shall carry out the work required in order to achieve the relevant Grant Milestone. Upon completion of such work to the reasonable satisfaction of DLR Limited, the Concessionaire shall be entitled to payment of the grant assistance to which the Grant Milestone relates.

- 46.3.3 DLR Limited may, at its sole discretion, pay the grant assistance referred to in Clause 46.3.1 to the Concessionaire after the 1st April in the relevant year of payment but prior to achieving the Grant Milestone applicable to that payment, subject to the Concessionaire putting in place security arrangements which are satisfactory to DLR Limited to safeguard the proper utilisation and, where relevant, repayment of such early paid grant assistance in the period prior to the date when DLR Limited would otherwise have been obliged to pay the relevant grant assistance to the Concessionaire.

- 46.3.4 The grant assistance paid by DLR Limited pursuant to this Clause shall be applied by the Concessionaire:-

- (i) first, in reimbursement of all Land Compensation costs paid or payable by the Concessionaire pursuant to Clause 14.7.3; and
- (ii) secondly, as regards the balance of such grant assistance, in making payments properly due and payable to the Contractor in respect of civil

engineering works pursuant to the Construction Contract or in reimbursement of amounts borrowed or raised to make such payments.

46.3.5 Where DLR Limited has made early payment of grant assistance in accordance with Clause 46.3.3, all such early paid grant assistance (other than sums which have been disbursed by the Concessionaire in relation to the Project with the prior consent of DLR Limited) shall become immediately due and repayable by the Concessionaire to DLR Limited if the Concession is terminated for any reason prior to the relevant date on which such grant assistance would otherwise have become payable by DLR Limited to the Concessionaire in accordance with Clause 46.3.1.

46.3.6 For the purposes of this Clause 46.3 "Grant Milestones" are:-

(a) in respect of the sum referred to in sub-clause 46.3.1(a):-

- (i) the retaining walls to the railway cutting south of Elverson Road station being 30 per cent complete
- (ii) the launch chamber having been constructed so as to be available to receive the tunnel boring machine and associated equipment;
- (iii) the main body of the tunnel boring machine has been manufactured and all factory testing completed and is ready for despatch to the Site;
- (iv) cut and cover construction in the section of the Lewisham Extension has progressed to a point where 75 per cent of the diaphragm walls are complete and 33 per cent (by volume) of the remainder of concrete structures is complete.

(b) in respect of the sum referred to in sub-clause 46.3.1(b):-

- (i)
- (i) (aa) Tarves Way subway structure is complete; or

(bb) running tunnel structures under the North Kent main line at Lewisham are complete; and

- (ii) diversion of East Ferry Road complete; and
- (iii) first running tunnel drive complete between north and south launch chambers; and
- (iv) second running tunnel drive has progressed 20 metres; or

(c) in respect of either sum, such other Grant Milestones as the parties hereto may agree (such agreement not to be

unreasonably withheld or delayed) demonstrate that the value of the Works carried out exceed the amount of the grant assistance payable in respect thereof.

47. COMPENSATION DURING CONCESSION PERIOD

47.1 DLR Limited's compensation obligation

Subject to the Concessionaire complying in all material respects with the provisions of this Clause 47, DLR Limited shall compensate the Concessionaire in respect of:-

47.1.1 all actual and verifiable arm's length increases in costs; and

47.1.2 any reductions in Availability Fees and Anticipated Usage Fees,

which the Concessionaire properly and reasonably suffers or incurs (or is likely to suffer or incur) as a result of a Compensation Event so that, taking fully into account the relief granted to the Concessionaire pursuant to any other provision of this Agreement, the Concessionaire is placed in the same financial position that it would have been in if such Compensation Event had not occurred and, in particular, so as to ensure that the Concessionaire suffers no adverse cashflow consequences as a result of such Compensation Event. The Concessionaire shall take all reasonable steps to mitigate the financial effects of Compensation Events.

47.2 Compensation Events

The following shall constitute Compensation Events for the purpose of this Clause 47:-

47.2.1 DLR Limited's failure to comply with, or delay in complying with, its obligations under all or any of Clauses 17.10.1, 24.2.3, 24.2.5 and 25.4;

47.2.2 any failure to complete Commissioning and Integration or to satisfy the requirements of a System Performance Demonstration to the extent that such failure is due to:-

- (a) the default of DLR Limited; or
- (b) deficiencies in the ATC System which have not occurred as a result of:-
 - (i) the negligence or default of the Concessionaire;
 - (ii) any deficiency in the information provided by the Concessionaire pursuant to Clause 19.1 or 20.4; or
 - (iii) any other act of the Concessionaire which results in damage to the ATC System;

47.2.3 any failure by DLR Limited to perform the activities specified pursuant to sub-clause 20.4.1(c) in accordance with the programme referred to in Clause 19.1.3;

47.2.4 DLR Limited's failure to deliver Vacant Possession of any parcel of Notified Land or Additional Land by the date referred to in Clause 14.2 or Clause 14.5 (whichever is applicable);

47.2.5 DLR Limited's failure to produce that part of the Safety Case relating to the operation of the Lewisham Extension in accordance with the requirements of Clause 10.5 or HMRI failing to approve the Safety Case by the Anticipated Operating Date solely as a result of deficiencies in that part of the Safety Case produced by DLR Limited;

47.2.6 DLR Limited's failure or delay in issuing the Infrastructure Certificate, any Commissioning Certificate or the Completion Certificate in accordance with the requirements of Clauses 24.6, 25.6, 26.2 or 26.4.4 respectively;

47.2.7 DLR Limited's failure, notwithstanding the use of its reasonable endeavours as set out in Clause 10.6.1, to obtain the Railways Act Exemption for the Lewisham Extension by the Anticipated Operating Date or to comply with its obligations under Clause 10.6.2;

47.2.8 any suspension of the Works pursuant to Clause 19.5 which has not resulted from any default or neglect on the part of the Concessionaire or its officers, employees, agents, contractors or sub-contractors of any tier;

47.2.9 subject as provided in Clause 47.8:-

- (a) the coming into force of any Discriminatory Legislation; or
- (b) any increased Capital Costs incurred by the Concessionaire as a result of Changes of Safety Law;

47.2.10 the Concessionaire being obliged pursuant to the Transfer Order to comply with an Undertaking which was not disclosed or referred to in the documentation contained in the Data Room; and

47.2.11 the Concessionaire being obliged to surrender up all or part of the land demised by the Lease as a result of the operation of Clause 5.2 thereof.

It is acknowledged by DLR Limited that the fact that breaches of certain of DLR Limited's obligations are stated to be Compensation Events (in respect of which the Concessionaire's rights are exhaustively set out in this Clause 47) does not affect the Concessionaire's right to seek full legal redress against DLR Limited as a result of any other breach of this Agreement (subject always to any limitations expressed herein) and for the avoidance of doubt Clause 53.1 shall not prevent that right from being exercised or limit the redress which would otherwise be available in respect of such breach.

47.3 Notice of Compensation Event

The Concessionaire shall give DLR Limited notice of a Compensation Event within 14 days of it becoming aware of the occurrence of such Event. The Concessionaire shall also, either in the notice of the Compensation Event or by a subsequent notice to be served on DLR Limited within 28 days of the occurrence such Event:-

47.3.1 specify the Compensation Event that has occurred;

47.3.2 identify the effects that the Compensation Event has had or is likely to have upon the performance of the Concessionaire's obligations;

47.3.3 provide details of the additional costs and the loss of and/or increase in Fees that the Concessionaire has incurred or enjoyed or is likely to incur or enjoy as a result of the Compensation Event such details to identify (if applicable):-

- (a) the capital cost of the physical works and any other loss and expense properly payable to the Contractor;
- (b) the financing costs in relation to the amount in sub-clause 47.3.3(a) above; and
- (c) the delay costs arising from the extension of time given to the Contractor to complete the Works;

47.3.4 provide details of the mitigation measures being undertaken by the Concessionaire; and

47.3.5 put forward proposals as to the form and amount of any compensation payments by DLR Limited.

47.4 Consequences of Concessionaire's notice

47.4.1 Following receipt of a notice from the Concessionaire under Clause 47.3, the Concessionaire shall supply such further supporting information as DLR Limited may reasonably require. If requested by DLR Limited, DLR Limited and the Concessionaire shall meet to discuss the implications of the Compensation Event.

47.4.2 If DLR Limited is satisfied regarding the financial consequences to the Concessionaire of the Compensation Event and the Concessionaire's compensation payment proposals, it shall compensate the Concessionaire in accordance with Clause 47.1. If the parties have not agreed the amount of the costs or loss of Fees in respect of which the Concessionaire is entitled to reimbursement under Clause 47.1, or the form and amount of any requisite compensation payments, within 28 days of the provision of the further information referred to in this Clause 47.4, the matter shall, subject as provided below, on the request of either party, be referred to the Disputes Panel as a Dispute.

47.4.3 Subject as provided below, any agreement or determination pursuant to this Clause 47.4 as to the amount and form of compensation payable by DLR Limited shall represent the sole entitlement of the Concessionaire to compensation in relation to the relevant Compensation Event and, the Concessionaire shall have no right to make any further claims for compensation as a result of or in connection with the relevant Compensation Event.

47.4.4 This Clause 47.4 shall not preclude the Concessionaire from seeking redress at law for any failure by DLR Limited to pay any amount agreed or determined to be due and payable by DLR Limited to the Concessionaire under this Clause 47.

47.5 Payment of Compensation

Subject as provided in Clause 47.6 DLR Limited shall pay to the Concessionaire any compensation due under this Clause 47 within 30 days of DLR Limited's agreement to the amount to be paid or, where agreement cannot be reached on the amount to be paid, within 30 days of any determination of the Disputes Panel as to the amount of compensation payable (if any).

47.6 Method of Payment

DLR Limited shall at its option be entitled to pay any compensation due under this Clause 47 in one or more of the following ways:-

47.6.1 in immediately available funds on the due date for such payment under Clause 47.5; or

47.6.2 in the case of any future increased costs or loss of Fees to be suffered by the Concessionaire as a result of a Compensation Event, by payment of the agreed compensation as and when such increased costs are incurred by the Concessionaire or by making appropriate adjustments to the Fees payable hereunder provided always that in making such adjustment account shall be taken of the Concessionaire's obligations under the Funding Agreements; or

47.6.3 in the case of any increased capital costs incurred or to be incurred by the Concessionaire as a result of a Compensation Event, where the Concessionaire is able to raise additional funding for such costs on terms acceptable to DLR Limited (which the Concessionaire undertakes to use its reasonable endeavours to achieve), by an appropriate adjustment to the Fees.

47.7 Examination of Records

DLR Limited shall have the right at reasonable hours upon giving the Concessionaire reasonable notice and at its own expense to examine the books and records of the Concessionaire to the extent necessary to verify the accuracy of any accounting statement, charge, computation or claim made pursuant to any of the provisions of this Agreement.

47.8 Change of Law

47.8.1 For the purpose of this Agreement:-

(a) "Change of Law" shall mean:-

- (i) any amendment, alteration or modification to or repeal of any existing Applicable Requirement which takes effect after the date hereof; or
- (ii) the introduction of any new Applicable Requirement which comes into effect after the date hereof

but excluding any change in the interpretation of any existing Applicable Requirement;

(b) "Change of Safety Law" shall mean any Change of Law which relates to or is connected with safety and requires or has the effect of requiring the Concessionaire to:-

- (i) make alterations or modifications to the Works or, following the issue of the Completion Certificate, the Lewisham Extension; or
- (ii) carry out additional Works;

(c) "Discriminatory Legislation" shall mean any Change of Law which discriminates against:-

- (i) the Lewisham Extension in relation to the Railway or other light rail networks;
- (ii) the Concessionaire in relation to other companies;
- (iii) Light Rail Concessionaires in relation to other companies; or
- (iv) the Railway in relation to other railways or rail networks,

and which has or will have a material adverse effect on the rights, interests or obligations of the Concessionaire under this Agreement and/or results in any actual or prospective change in costs or revenues of the Concessionaire, provided that a Change of Law which also affects railways other than Private Sector Light Railways or companies other than Light Rail Concessionaires in the same terms shall not be deemed to be discriminatory on the grounds that its effect upon the Lewisham Extension or the Concessionaire is greater than that upon such other railways or other companies unless it can be established that the purpose of such Change of Law is to discriminate on the basis set-out in paragraphs (i) to (iv) above. A Change in Government Fare Policy as referred to in paragraph 3 of Part 2 of Schedule 7 shall not constitute Discriminatory Legislation;

- (d) "Capital Costs" shall mean any increased capital expenditure and any costs arising from the financing of such expenditure;
- (e) "Private Sector light railways" means light railways whose design, construction, financing and maintenance are procured principally under a single contract on a similar basis to the Lewisham Extension;
- (f) "Light Rail Concessionaires" means companies undertaking the design, construction, financing and maintenance of light railways pursuant to a single contract similar to this Agreement;
- (g) for the purpose of this Clause 47.8 only, there shall be excluded from Applicable Requirements the requirements of any statutory undertakers or local authorities (other than any such requirements as are lawfully imposed upon the Concessionaire solely as a result of a Change of Law).

47.8.2 The Concessionaire shall use its reasonable endeavours to minimise any additional Capital Costs incurred in connection with a Change of Safety Law. DLR Limited will have the right to require that any such costs be audited at its own cost by an independent third party nominated by DLR Limited and approved by the Concessionaire (such approval not to be unreasonably withheld or delayed).

47.8.3 If at any time after the date hereof any Act of Parliament, statutory instrument made thereunder, resolution or direction of the European Union, byelaw or other similar instrument having the force of law comes into force in the United Kingdom which constitutes a Change of Safety Law, the Concessionaire shall bear, without recourse to DLR Limited, the first £50,000 of additional Capital Costs incurred by the Concessionaire as a result of each and every such Act, statutory instrument, resolution, directive, bye-law or other instrument.

47.8.4 The aggregate cumulative Capital Costs (x) incurred by the Concessionaire in connection with Changes of Safety Law in excess of those referred to in Clause 47.8.3 shall be borne between DLR Limited and the Concessionaire in the following proportions:-

Aggregate Costs	Percentage to be borne by Concessionaire	Percentage to be borne by DLR Limited
$x \leq \text{£}100,000$	100%	0%
$\text{£}100,000 < x \leq \text{£}2,100,000$	20%	80%
$x > \text{£}2,100,000$	0%	100%

47.8.5 Where the Concessionaire has received compensation under this Clause 47 as a result of Discriminatory Legislation and such

Discriminatory Legislation is subsequently repealed or a further Change or Changes of Law has or have the effect of neutralising the discriminatory effect of such Discriminatory Legislation, there shall be an appropriate adjustment to the Fees payable to the Concessionaire after such repeal or Change(s) of Law so as to place the Concessionaire in the same position, with effect from the date of the further Change or Changes of Law having such neutralising effect as aforesaid, it would have been in if such Discriminatory Legislation had not come into force, or had not discriminated against the Concessionaire on the basis set out in sub-clauses 47.8.1(c)(i) to (iv), as the case may be.

47.9 Tax adjustment

Any compensation payable to the Concessionaire by DLR Limited under this Clause 47 shall be calculated by reference to the Concessionaire's after tax financial position (on the basis of the most recently announced tax rates) and, in particular, account shall be taken of (and the amount due by way of compensation reduced to reflect) the extent to which:-

- 47.9.1 any lost receipts or profits to which the compensation relates would have been subject to tax; or
- 47.9.2 any cost, expense or loss to which the compensation relates would have attracted a tax deduction.

47.10 Tax gross up

Subject as provided in Clause 56.3, all sums payable by DLR Limited under this Clause 47 shall be paid free and clear of all deductions or withholdings (including tax) unless the deduction or withholding is required by law, in which event or in the event that the Concessionaire shall incur any liability for tax chargeable or assessable in respect of any payment pursuant to this Clause 47, DLR Limited shall pay such additional amounts as shall be required to ensure that the net amount received and retained by the Concessionaire (after tax) will equal the full amount which would have been received and retained by it had no such deduction or withholding been made and/or no such liability to tax been incurred provided that if the Concessionaire shall subsequently derive any tax saving, repayment or other benefit from such deduction or withholding the amount payable under this Clause 47 shall be recomputed to reflect the same and payments or repayments shall be made as applicable.

48. PROJECT INSURANCE

48.1 Insurance prior to the Operating Date

Subject to the availability of such policies in the market at rates which, in DLR Limited's opinion (reasonably arrived at), are commercially reasonable, the Concessionaire shall take out and maintain or procure that there are taken out and maintained policies of insurance which (subject to reasonable deductibles and usual market exclusions) provide cover on the basis set out in this Clause

48.1 until the Operating Date and thereafter for so long as the Contractor shall have the right and the obligation to make good defects in the Works:-

- 48.1.1 insurance against loss or damage from any and all risks as is customarily provided by a contractors "all risks" insurance on the Works, on anything for incorporation therein, on any unfixed goods and materials delivered to the Site or to the Working Areas or to other places where such goods and materials are to be stored pending their delivery as aforesaid, and on property of DLR Limited for use or used in connection with the Works to the full replacement value thereof plus an adequate provision for any additional costs that may arise incidental to the rectification of any loss or damage including professional fees, cost of demolition and removal of debris; and insurance against loss or damage from any and all risks as is customarily provided by a plant "all risks" insurance to the full replacement value thereof on the equipment used by the Contractor to provide the Works but not required to be included in the Works;
- 48.1.2 insurance against loss or damage to DLR Limited's property (other than that for use or used in connection with the Works) arising in connection with or as a result of the carrying out of the Works such insurance to be in an amount of at least £5,000,000 for each and every occurrence of loss or damage. Such amount shall be adjusted annually on each anniversary of the Commencement Date to reflect the change in RPI (in the case of the first such anniversary) from the Commencement Date and (in the case of subsequent anniversaries) from the immediately preceding anniversary date;
- 48.1.3 insurance covering liabilities to third parties (including liability for death, personal injury and damage to property) which arise in relation to, or out of the execution of, the Works and the Concessionaire's possession of the Site, Working Areas or any other Neighbouring Land, such insurance to be in an amount of at least £50,000,000 for each and every occurrence;
- 48.1.4 employer's liability insurance in respect of claims relating to the death or disease of, or bodily injury to, any person employed by the Concessionaire in connection with the Project, which insurance shall comply with all Applicable Requirements including the requirements of the Employer's Liability (Compulsory Insurance) Act 1969.

The Concessionaire shall procure that the Contractor and its sub-contractors of any tier maintain insurance in respect of their liability to their employees in terms similar to the obligations of the Concessionaire set out in Clause 48.1.4.

48.2 Insurance following the Operating Date

Subject to the availability of such policies in the market at rates which, in DLR Limited's opinion (reasonably arrived at), are commercially reasonable, the Concessionaire shall take out and maintain or shall cause to be taken out and maintained as from the Operating Date:-

- 48.2.1 insurance against loss or damage to the Lewisham Extension from any and all risks as are customarily covered by property insurance policies in an amount equal to the full replacement value of the Lewisham Extension;
- 48.2.2 insurance against loss or damage to DLR Limited's property arising in connection with or as a result of the performance or non performance of the Concessionaire's duties under the Project Documents, such insurance to be in an amount of at least £5,000,000 for each and every occurrence;
- 48.2.3 insurance covering liabilities to third parties (including liability for death, personal injury and damage to property) which arise in relation to or out of the performance or non-performance of the Concessionaire's duties under the Project Documents, such insurance to be in an amount of at least £50,000,000 for each and every occurrence;
- 48.2.4 employer's liability insurance on the terms set out in Clause 48.1.4.

The amounts referred to in Clauses 48.2.2 and 48.2.3 shall be adjusted annually on each anniversary of the Operating Date to reflect the change in RPI (in the case of the first such anniversary) from the Operating Date and (in the case of subsequent anniversaries) from the immediately preceding anniversary date.

48.3 Terms of insurances to be approved

All insurances required by Clauses 48.1 and 48.2 shall be taken out with such insurance companies, in such amounts and upon such terms as shall have been previously approved by DLR Limited, such approval not to be unreasonably withheld.

48.4 Insurances to be in joint names

Each insurance maintained or procured by the Concessionaire in accordance with Clauses 48.1.1. to 48.1.3 and 48.2.1 to 48.2.3 shall be in the joint names of the Concessionaire, DLR Limited, the Contractor and its sub-contractors of any tier (and others with the prior consent of DLR Limited) and shall hold harmless directors and employees of every insured party against any subrogation action by the insurers. The terms of the relevant policies shall entitle DLR Limited to maintain the policies in force after termination of the Concession to the extent that this is achievable with the users. Except in respect of any liability of DLR Limited pursuant to Clause 7.2 each insurance maintained or procured by the Concessionaire in accordance with Clauses 48.1.4 and 48.2.4 and such similar insurances maintained by the Contractor and its sub-contractors shall indemnify DLR Limited as if it were an insured party under the relevant policy of insurance.

48.5 Rights of subrogation and notice of cancellation

All insurance policies where the Concessionaire and DLR Limited are not named as joint insured shall contain a term to the effect that, except in respect of any liability of DLR Limited pursuant to Clause 7.2, the insurers have agreed to waive all rights of subrogation against DLR Limited and the Concessionaire and shall provide for 30 days written notice to be given to DLR Limited and the Concessionaire prior to any cancellation or purported cancellation and on any renewal or material modification of any such policy.

48.6 Concessionaire to supply insurance policies

Upon being required to do so by DLR Limited the Concessionaire shall produce, and shall cause each Contractor and sub-contractors of any tier to produce for inspection by DLR Limited a copy of the certificates and policies of insurance maintained in compliance with the provisions of this Clause 48 together with evidence satisfactory to DLR Limited that all premiums payable in respect of the insurance has in fact been paid up to date. Where the Concessionaire has failed to pay any such premium by the due date, DLR Limited shall be entitled to pay such premium on behalf of the Concessionaire and to deduct an amount equivalent to such premium from the next subsequent payment(s) of Fees.

48.7 Compliance with requirements of insurers

The Concessionaire and DLR Limited shall comply with all requirements of the insurers and shall not do anything which might render void or voidable any policy of insurance effected in accordance with the provisions of this Clause 48 or as a result of which payment of insurance moneys might be withheld in whole or in part.

48.8 DLR Limited's right to insure

If the Concessionaire fails or refuses for any reason to maintain or cause to be maintained any insurance required to be effected and maintained by this Clause 48 or upon being requested to do so to provide DLR Limited with the evidence required by Clause 48.6 DLR Limited shall (without prejudice to any other rights under or pursuant to this Agreement) have the right to arrange alternative insurances. The Concessionaire shall indemnify DLR Limited against all premiums and other costs payable by DLR Limited in exercising its rights under this Clause 48.8 with interest at the Prescribed Rate from the date on which premiums are paid or other costs incurred until the date of payment by the Concessionaire to DLR Limited.

48.9 Notification of claims

Each party shall give to the other prompt notification of any claim in excess of £25,000 (real) or of any claims which exceed in aggregate more than £100,000 (real) within any 12 month period under any of the insurance policies referred to in this Clause accompanied by full details of the incident giving rise to such claim and shall afford each other all such assistance as may be required for the preparation and negotiation of insurance claims. It shall be the responsibility of

the Concessionaire to pursue with all due diligence claims under such insurance policies.

48.10 Saving provision

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Concessionaire of its liabilities and obligations under this Agreement and in particular the Concessionaire's obligation to hold DLR Limited harmless in compliance with any indemnity provisions contained in this Agreement.

48.11 DLR Limited's obligation to insure

If the Government Support Letter is no longer in force, DLR Limited undertakes to take out and maintain in force, subject to their availability in the market, policies of insurance which provide in all material respects a level and extent of coverage which is equal to or greater than that provided by DLR Limited's policies of insurance in force at the date hereof.

49. ASSIGNMENT AND SECURITY

49.1 Prohibition against assignment by the Concessionaire

The Concessionaire shall not (save as permitted pursuant to Clause 49.2):-

49.1.1 assign any of the Project Documents or any right or obligation arising under or pursuant thereto or any benefit or interest therein or create or permit to subsist any Security Interest over any of the Project Documents or any right or obligation arising under or pursuant thereto or any benefit or interest therein; or

49.1.2 create or permit to subsist any Security Interest on the Site or the Working Areas or any part thereof or over any of the Works or any plant, materials and equipment used therein or used in connection therewith.

In addition, the Concessionaire shall procure that the Contractor shall not be permitted to assign the Construction Contract without the prior consent of DLR Limited.

49.2 Creation of Security by the Concessionaire

The Concessionaire may:-

49.2.1 by way of security assign to the Lenders' Agent all rights, title, benefit and interest of the Concessionaire (including the right to receive any present or future revenues or accounts receivable or any other monies) in, under and to the Project Documents other than the Contractor's Direct Agreement;

49.2.2 grant in favour of the Lenders' Agents the fixed and floating security created by the Debenture;

49.2.3 create such other security as may from time to time be approved in writing by DLR Limited,

in each case on and subject to the terms and conditions of the Funding Agreements and the provisions of Clause 6.1.2.

49.3 Charge on Shares

Notwithstanding the provisions of sub-clause 6.1.1(d), the Shareholders shall be entitled to grant the Charge on Shares in favour of the Lenders' Agent. The Concessionaire shall procure that no other Security Interest in its shares is created or permitted to subsist.

49.4 Prohibition against assignment by DLR Limited

Without prejudice to Clauses 49.5 and 49.7 and subject to Clause 49.6, DLR Limited shall not assign any of the Project Documents or any right or obligation arising under or pursuant thereto or any benefit or interest therein or create or permit to subsist any Security Interest over any of the Project Documents or any right or obligation arising under or pursuant thereto or any benefit or interest therein.

49.5 Franchise

49.5.1 It is acknowledged by the parties that DLR Limited is proposing to contract with a third party (a "Franchisee") for the franchise, either as principal or as DLR Limited's agent, to undertake the maintenance of the Existing Railway and the operation of the Railway. In this respect, the Concessionaire acknowledges that:-

(a)

(a) DLR Limited is entitled to sub-contract all or any of its obligations and functions under this Agreement to the Franchisee; and

(b) the Franchisee is entitled to exercise all or any of DLR Limited's rights, powers and entitlements under this Agreement as agent for DLR Limited,

provided always that DLR Limited shall, in addition to its existing liability under this Agreement, retain full responsibility and liability under, and subject to the terms and conditions (including limitations) of, this Agreement for the acts and omissions of the Franchisee as if such acts and omissions were those of DLR Limited itself and, where relevant, references in this Agreement to DLR Limited, shall be deemed to include references to the Franchisee.

49.5.2 Without prejudice to Clause 49.5.1 DLR Limited shall be entitled to notify the Concessionaire from time to time of any specific functions

which the Franchisee will be carrying out and, following any such notification, the Concessionaire shall cooperate with the Franchisee in the performance of such functions as if they were being carried out by DLR Limited.

- 49.5.3 For the purposes of Clause 7.1 the Franchisee shall be deemed to be an indemnified party in relation to any liabilities, losses, costs and expenses suffered by the Franchisee as a result of the matters referred to in Clauses 7.1.1 and 7.1.2.
- 49.5.4 If DLR Limited appoints any subsequent Franchisee or Franchisees the terms of this Clause shall apply in relation to such subsequent Franchisee or Franchisees *mutatis mutandis*.
- 49.5.5 Without in any way affecting the right of DLR Limited to enforce the terms of this Agreement to the fullest extent, DLR Limited undertakes not to offer or pay to the Franchisee any special financial incentive for the purpose of inducing the Franchisee to take extra-ordinary measures to maximise the deduction of Availability Points in accordance with paragraph 2.2 of Part 1 of Schedule 7.
- 49.5.6 DLR Limited and the Concessionaire shall negotiate in good faith and seek to agree any amendments to this Agreement that may be required for or in connection with the appointment of the Franchisee and/or which will facilitate the performance by the Franchisee of the obligations and functions referred to in Clauses 49.5.1 and 49.5.2.
- 49.5.7 References in this Clause to the "Franchisee" or "Franchisees" shall be deemed to include any agents, sub-contractors of any tier, officers and employees of such Franchisee or Franchisees.

49.6 Vesting in Government owned company

The vesting of the assets and liabilities of DLR Limited (including its rights and obligations under the Project Documents) in a company which is wholly owned directly or indirectly by Her Majesty's Government, and in respect of which a further support letter is issued by Her Majesty's Government to the Concessionaire and the Lenders' Agent in the same form as the Government Support Letter, *mutatis mutandis*, shall not constitute a breach of the restriction contained in Clause 49.4.

49.7 Sub-contracting by DLR Limited

Nothing in this Agreement shall preclude DLR Limited from sub-contracting any of its obligations under this Agreement. DLR Limited shall retain full responsibility and liability for the performance of its contractors and their sub contractors of any tier.

PART IX

MISCELLANEOUS

50. PAYMENT

50.1 Time for payment and interest

In the event of an entitlement to payment arising under the terms of this Agreement, the following provisions shall apply in the absence of any express provision or written agreement to the contrary:-

- 50.1.1 the person entitled to payment ("the payee") shall deliver an invoice setting out adequate details of the payment required or the cost, expense or liability incurred or assumed (and any value added tax applicable thereto) and identifying the Clause or other basis upon which entitlement to such payment is claimed;
- 50.1.2 the person receiving the invoice ("the payer") shall settle the said invoice or any undisputed part within 28 days of the date of receipt thereof and the balance (if any) upon resolution of the Dispute;
- 50.1.3 without prejudice to the payee's right to receive payment on the due date and subject as provided in Clause 38.2, interest shall accrue on any sum due and owing to the payee at the Prescribed Rate calculated on a daily basis and on the basis of a 365 day year if and to the extent that payment is not received on the due date unless the payee failed to supply an invoice in accordance with Clause 50.1.1 in which case interest at the Prescribed Rate calculated as aforesaid will accrue from 28 days after the date such information is made available; and
- 50.1.4 where a payment falls to be made on a day which is not a business day, it shall be paid on the next business day.

50.2 Value added tax

- 50.2.1 All amounts expressed to be payable by either party under this Agreement are exclusive of any value added tax which may be properly chargeable thereon. Each party shall pay to the other party any value added tax properly chargeable to it in respect of any supply made to it under this Agreement provided that it shall first have received from the other party a valid tax invoice in respect of that supply which complies with the requirements of Part III Value Added Tax (General) Regulations 1985.
- 50.2.2 Where any amount is payable under this Agreement to reimburse or indemnify a party for any expenditure which that party may have incurred, such expenditure shall be taken to include an amount equal to any value added tax comprised therein which is not recoverable by that party as input tax under Section 25 of the Value Added Tax Act 1994 (or any modification or re-enactment thereof).

51. UNDERTAKINGS

The Concessionaire undertakes to DLR Limited that from the date of this Agreement until termination of the Concession:-

51.1 it will deliver to DLR Limited:-

51.1.1 as soon as practicable and in any event within 180 days from the end of each of its financial year commencing with the financial year in which the Concession Agreement is signed six copies of its audited accounts and (if appropriate) audited consolidated accounts of the Concessionaire and its Affiliates in each case for that financial year together with copies of all related directors and auditors reports;

51.1.2 as soon as practicable and in any event within 90 days from the end of each six month accounting period falling within each financial year commencing as aforesaid six copies of the interim results of the Concessionaire for that six month period and (if appropriate) consolidated results as aforesaid;

51.1.3 copies of all notices, circulars, reports and statements sent to the Concessionaire's shareholders in accordance with Applicable Requirements or the Articles of Association of the Concessionaire at the same time as they are made available to such shareholders; and

51.1.4 such further information as DLR Limited may reasonably require at any time in order to assess the ability of the Concessionaire to comply with its obligations under the Project Documents;

51.2 it will maintain in full force and effect (and will ensure that its Affiliates will do likewise) all relevant authorizations (governmental and otherwise) necessary and will promptly obtain any further authorization which may become necessary to enable it to perform any of the transactions contemplated by the Project Documents or carry on their respective businesses;

51.3 it will not sell, transfer, lease, lend or otherwise dispose of or cease to exercise direct control over the Concession or the whole or any part of its present or future undertakings, assets or revenues and whether by one or a series of transactions whether related or not, save that the restriction contained in this Clause 51.3 shall not apply:-

51.3.1 to the disposal of stock-in-trade in the ordinary course of trading;

51.3.2 to the application of cash in the purchase or acquisition of goods and services in the ordinary course of trading;

51.3.3 to the exchange of assets for other assets of a similar nature and value, or the sale of assets on normal commercial terms for cash which is payable in full on the completion of the sale and is to be, and is, applied in or towards the purchase of similar assets within six months;

- 51.3.4 to the creation of Permitted Security;
- 51.4 it will notify DLR Limited forthwith upon the occurrence of any event which could reasonably be expected materially and adversely to affect its ability to perform its obligations under the Project Documents or the Funding Agreements;
- 51.5 it will not allot, issue or purchase, or register any transfer of any of its share capital in favour of any person, firm or company which would result in a Concessionaire Default in accordance with sub-clause 6.1.1(d);
- 51.6 it will (promptly upon becoming aware that the same is threatened or pending and in any case immediately after the commencement thereof) give to DLR Limited notice in writing of any litigation, arbitration or administrative proceedings or any dispute affecting the Concessionaire or any of its assets, rights or revenues which if determined against it might have a material adverse effect on the ability of the Concessionaire duly to perform and observe its obligations under the Project Documents;
- 51.7 it will promptly pay all taxes, imposts or other duties to which it may become subject during the Concession.

52. CONFIDENTIALITY

52.1 Restrictions on publicity

The Concessionaire shall not, without the prior approval in writing of DLR Limited, take or authorise to be taken any photographs of the Existing Railway or any parts thereof or publish alone in conjunction with any other person any article relating to or photographs or other illustrations of, the Existing Railway, nor shall the Concessionaire impart to any publication, journal, newspaper, radio or television programme or other media source information describing the Railway or its operation. The Concessionaire will co-operate with DLR Limited in relation to DLR Limited's publicity of the Lewisham Extension.

52.2 Obligations as to confidentiality

Subject to Clause 52.3, and except as otherwise provided in the Project Documents, DLR Limited and the Concessionaire undertake to each other that they will each hold in strict confidence the terms of the Project Documents and any Confidential Information and that neither party will without the prior consent in writing of the other at any time (whether before or after the termination of the Concession for whatsoever reason) disclose to any person or use for purposes unconnected with the Concession the terms of the Project Documents or any Confidential Information.

52.3 Permitted disclosures

Clause 52.2 shall not prevent either party disclosing terms of the Project Documents or any Confidential Information:-

- 52.3.1 to the Sponsors and the Shareholders, or to actual or potential Lenders or Franchisees (as referred to in Clause 49.5) or their respective professional advisers or to insurers of the Railway or as may be required for the purposes of a Dispute;
- 52.3.2 when unavoidably required to do so by reason of any Applicable Requirements or compelled to do so by or pursuant to the rules or an order of any court, authority, relevant stock exchange or regulatory person of competent jurisdiction;
- 52.3.3 to the extent that the terms of the Project Documents or the Confidential Information is or are in the public domain except as a result of a breach of a duty of confidentiality;
- 52.3.4 to the extent that the Confidential Information is already in the possession of the recipient prior to the date of this Agreement (and such prior possession is evidenced by written record) and does not constitute Data Room Information or information which was disclosed to the Concessionaire, the Sponsors, the Lenders, the Contractor or the Shareholders and their respective officers, employees, agents, contractors and advisers under the terms of any confidentiality undertaking given to DLR Limited prior to the date hereof;
- 52.3.5 to sub-contractors of the Concessionaire (including the Contractor and Alcatel) where such disclosure is necessary for them to perform properly their respective sub-contracts;
- 52.3.6 to recipients of Undertakings to the extent reasonably required to enable them to understand the effect upon them of the Transfer Order.

52.4 Return of Confidential Information

Save to the extent that the same may reasonably be required in respect of any current or anticipated litigation, on termination of the Concession howsoever occurring, the Concessionaire shall return to DLR Limited or destroy any Confidential Information (including all copies thereof) supplied to it at any time (including at a time before the date of this Agreement) by DLR Limited or any other person with the knowledge and consent of DLR Limited.

52.5 Continuing obligation following termination of Concession

The obligations of the parties under this Clause 52 shall continue in full force and effect notwithstanding termination of the Concession.

53. LIMITATIONS ON LIABILITY AND DISCLAIMER

53.1 Liability of DLR Limited

This Agreement together with the other Project Documents is exhaustive as to the duties, obligations and liabilities of DLR Limited to the Concessionaire and

neither DLR Limited nor any of its officers, employees or agents shall be liable to the Concessionaire whether in contract, tort or otherwise except for fraud, wilful default or gross negligence or as expressly provided in or as a result of breach of the Project Documents (subject to the limitations expressed therein) or for death or personal injury caused by negligence.

53.2 Disclaimer

Without prejudice to Clause 53.1, and subject to Clauses 13.5 and 47 and except in the case of fraud, wilful default or gross negligence on the part of DLR Limited or any of its officers, employees and agents, DLR Limited shall not be liable to the Concessionaire (whether in contract, tort or otherwise howsoever) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in Interface Information or in the Disclosed Data. For the purpose of this Clause "Disclosed Data" shall mean the materials, documents and data made available by DLR Limited to the Concessionaire prior to the date hereof in relation to the Works, the operation and maintenance of the Railway, the Site, the Working Areas, passenger records and forecasts and other matters which are or may be relevant to the Project and the obligations undertaken by the Concessionaire under this Agreement. The Disclosed Data includes, without limitation, all such materials, documents and data which were provided to the Concessionaire, the Sponsors, the Lenders, the Contractor or the Shareholders or their respective officers, employees, agents, contractors and advisers in connection with the Invitation to Tender (including the Data Room Information).

54. DOCUMENTS, DUTIES AND FEES

54.1 Supply of documents

The following provisions shall apply where the Concessionaire is obliged under the Project Documents to supply documents and drawings to DLR Limited:-

- 54.1.1 all paper based documents and drawings shall be of a suitable quality for reproduction, microfilming or scanning into electronic databases;
- 54.1.2 documents and drawings may be supplied on suitable electronic media provided such media is in a format which is compatible with the relevant DLR Limited systems; and
- 54.1.3 the Concessionaire shall ensure that secure back-ups or archive copies of originals and revisions are maintained in respect of data supplied on electronic media.

54.2 Stamp duty and other costs

Subject to the limitations on the Concessionaire's liability for Land Compensation under Clause 14 the Concessionaire shall be responsible for and shall forthwith discharge (and shall fully indemnify DLR Limited against) all stamp duties and registration fees on or for the registration of the Project Documents or any of them and any deed or document relating to the Project to

which DLR Limited and the Concessionaire (or either of them) shall be a party following exchange of this Agreement.

55. NOTICES

55.1 Requirement for notice in writing

Wherever in this Agreement provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any person (a "Notice"), unless otherwise specified such Notice shall be in writing and the words "notify", "consent", "approval", "certify" and "determined" shall be construed accordingly.

55.2 Service of notices

Save as otherwise expressly provided in this Agreement any notice to be given under this Agreement shall be in writing and shall be deemed duly given if delivered by and or sent by first class post or by facsimile transmission to the party to be served at or to that party's address or to its facsimile number given below or to such other address or numbers in England as the party to be served may from time to time select by prior notice to the other party:-

DLR Limited

Address: P.O. Box 154,
Castor Lane,
Poplar,
London E14 0DX
Facsimile No: 0171 363 9532
Attention: The Company Secretary

Concessionaire

Address: CGL Rail,
C/o Mitsui & Co. UK PLC,
20 Old Bailey,
London EC4M 7QQ
Facsimile No: 0171 236 0638
Attention: W. Kenrick

55.3 Time of service

A notice shall be deemed to have been received:-

- 55.3.1 if delivered by hand, at the time when the notice is left at the address of the party to be served;
- 55.3.2 if sent by post on the business day next following the day of posting or, if the day of posting was not a business day, the business day next following the first business day after the day of posting;
- 55.3.3 if sent by facsimile transmission, at the time of transmission,

and in proving service it will be sufficient to prove, in the case of a notice sent by post, that the envelope containing the notice was properly stamped or franked with the appropriate first class postage, addressed to the recipient of the notice and placed in the post and, in the case of a facsimile transmission, a printed record is given of all pages of the transmission having been received at the correct number.

56. GENERAL PROVISIONS

56.1 Entire Agreement

This Agreement (together with the other Project Documents) constitute the entire agreement between the parties hereto in connection with the subject matter of this Agreement. No party has relied upon any representation save for any representation expressly set out in the Project Documents.

56.2 Waivers

Any failure or delay on the part of either party in availing itself of any right or remedy it may have hereunder against the other shall not be deemed to be a waiver of such right or remedy and shall not preclude the subsequent exercise by either party of the same unless recorded in a written instrument executed as a deed by representation of each party. The rights and remedies provided herein are cumulative and, save as provided in Clause 53, are not exclusive of any other rights or remedies provided by law.

56.3 Set Off

Whenever any definite and ascertained sum of money shall be due and payable by the Concessionaire to DLR Limited under this Agreement, such sum may be deducted from or reduced by the amount of any sum then due and payable or which at any time thereafter may become due and payable by DLR Limited to the Concessionaire under this Agreement.

56.4 Partial invalidity

If at any time any provision of this Agreement (or part thereof) is or becomes illegal or invalid or unenforceable in any respect under the law of any relevant jurisdiction, such illegality, invalidity or unenforceability shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other part of that provision or any other provision of this Agreement or, in any other jurisdiction, of that provision or part thereof or any other provision of this Agreement.

56.5 No liability for review and approval by DLR Limited

The Concessionaire acknowledges that it must rely entirely on its own skill and judgement in the performance of its duties and obligations under this Agreement. Accordingly, subject as provided in Clauses 22.6 and 56.5.3:-

- 56.5.1 the duties, obligations and liabilities of the Concessionaire shall not be released, diminished or in any other way affected by any instruction, direction, admission, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of DLR Limited or by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of DLR Limited nor by any act or omission of any person carrying out such enquiry, whether or not such act or omission might give rise to an independent liability of such person to DLR Limited; and
- 56.5.2 the Concessionaire shall not be entitled to make any claim against DLR Limited or to seek any relief or remedy of any nature by reason of any such action by or on behalf of DLR Limited, provided that this Clause 56.5.2 shall not apply in respect of any negligent instruction provided by or on behalf of DLR Limited to the Concessionaire pursuant to the procedures established by the DLR Control Documents.

56.6 No partnership or agency

Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, a partnership, unincorporated association or other co-operative entity. The Concessionaire shall not be or be deemed to be the agent of DLR Limited and the Concessionaire shall not hold itself out as having authority or power to bind DLR Limited in any way.

56.7 Further assurance

Each party agrees that it shall now or at any time during the subsistence of this Agreement, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the other party, as the other party may reasonably require for giving full effect to and obtaining the full benefit of the rights powers and remedies conferred upon such other party by this Agreement.

56.8 Restrictions

No provision of this Agreement, by virtue of which this Agreement is subject to registration (if such be the case) under the Restrictive Trade Practices Act 1976 shall take effect until the day after particulars of this Agreement have been furnished to the Director General of Fair Trading pursuant to Section 24 of that Act. For this purpose, the expression "this Agreement" includes any agreement of arrangement of which this Agreement forms part and which is registrable or by virtue of which this Agreement is registrable.

56.9 Counterparts

This Agreement may be executed in any number of counterparts and by the several parties hereto on separate counterparts, each of which when so executed

and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

56.10 Language of Agreement

The language of this Agreement is the English language.

56.11 Settlement of Disputes

Except where expressly provided to the contrary any Dispute shall be resolved in accordance with the procedures set out in Schedule 10. The Concessionaire and DLR Limited shall provide the members of the Disputes Panel with such briefings and other information in relation to the Project as they may reasonably require.

56.12 Proper law

This Agreement is subject to the Law of England and Wales and, subject to the provisions of Clause 56.11, to the non-exclusive jurisdiction of the Courts of England and Wales.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

THE COMMON SEAL of)
DOCKLANDS LIGHT RAILWAY)
LIMITED was hereunto affixed)
in the presence of:-)

Company Seal affixed

Malcolm Hutchinson Director

David Keep Secretary

Company Seal affixed

(EXECUTED AS A DEED by
(CITY GREENWICH LEWISHAM
(RAIL LINK plc acting by
(Wynn Kenrick (director) and
(John Whittington (director/secretary)

Wynn Kenrick

Director

John Whittington

Director/Secretary