

DATED 25 NOVEMBER 1996

AMENDED AND RE-STATED ON 1 SEPTEMBER 2008

FURTHER AMENDED AND RE-STATED ON 2017

(1) **TRAMTRACK CROYDON LIMITED**

- and -

(2) **TRAM OPERATIONS LIMITED**

OPERATING AGREEMENT

relating to

the Croydon Tramlink System

Amended and Re-stated
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Ref: AM01/BW01/20225.15

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THIS AGREEMENT is made as a Deed this day of 2017 and is supplemental to the Deed with the same subject matter dated 25 November 1996 (as amended and in particular by the Amended and Re-stated Operating Agreement of 1 September 2008) and agreed by the parties hereto to be further supplemented in the amended and re-stated terms of this agreement

BETWEEN

- (1) **TRAMTRACK CROYDON LIMITED** (company number: 3092613) with its registered office at Windsor House 42-50 Victoria Street, London, SW1H 0TL (“the Concessionaire”); and
- (2) **TRAM OPERATIONS LIMITED** (company number: 3097532) with its registered office at Tramlink Depot, Coomber Way, Croydon, CR0 4TQ (“the Operator”).

WHEREAS

- (A) On 2 October 1995 the Corporation issued an invitation to tender for the construction and operation of the Tramlink System and that tender has been awarded to the Concessionaire.
- (B) On 25 November 1996, the parties agreed that the Operator would provide to the Concessionaire operating and maintenance services in respect of the Tramlink System upon and subject to the terms of the Operating Agreement set out in the 1996 Agreement.
- (C) Since the commencement of the 1996 Agreement, contract changes were agreed and implemented, in particular and without limitation, the assumption of the bulk of infrastructure maintenance responsibilities by the Concessionaire from the Operator in and around 2002/2003 and to reflect various operational changes and changes in law and regulation.
- (D) The parties agreed on 1 September 2008 the amendment and re-statement of the 1996 Agreement on the basis of the terms of the Amended and Re-stated Operating Agreement set out in the 2008 Agreement. The agreement was not formally executed but the parties have affirmed that effective consideration was given and that the terms of the agreement were accepted through conduct and performance.
- (E) Since the commencement of the 2008 Agreement, the Concessionaire provided a letter of indemnity dated 31 October 2008 to the Operator in respect of any loss arising from insurance coverage differences from that specified in the 1996 Agreement, and further contract changes were agreed and implemented including, in particular and without limitation, the full assumption of infrastructure maintenance responsibilities by the Concessionaire from the Operator, and the assumption of tram maintenance responsibilities by the Concessionaire from the Operator (and associated novation of Tram Maintenance Contract) in April 2012, and changes to reflect various operational changes and changes in law and regulation.
- (F) The parties have now agreed to the further amendment and re-statement of the 1996 Agreement and the 2008 Agreement on the terms set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITIONS

1.1 Definitions

In this Agreement the following words and expressions shall have the meanings given to them below:-

“The 1996 Agreement”	the agreement a copy of which is set out at Part 1 of Schedule 20 hereto;
“The 2008 Agreement”	the agreement a copy of which is set out at Part 2 of Schedule 20 hereto;
“Act”	the Croydon Tramlink Act 1994;
“Actual Kilometrage”	the aggregate kilometrage travelled by the Trams on the Tramlink System in the course of carrying fare-paying passengers during any Financial Period in complying with the Timetable during such Financial Period including kilometrage that would have been travelled by the Trams where a replacement bus service has been provided during such Financial Period in accordance with this Agreement;
“Actual Opening Date”	the date on which the whole of the Tramlink System opens for fare-paying passenger service (agreed by the parties to be 10 May 2000);
“Additional Services”	additional services or recovery of additional costs or expenses referred to in Clause 6.7;
“Affiliate of the Operator”	(a) a company which owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in the Operator; or (b) a company of which the Operator owns directly or indirectly more than 50 per cent of the voting power or of the ordinary share capital in such company; or

	(c) a third company of which a company within paragraph (a) above owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in such third company;
“Agreement”	this amended and re-stated agreement including the Recitals, Schedules and Appendices;
“Applicable Requirements”	any Law relating to the Services or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Services including the Management of Health and Safety at Work Regulations 1999, the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996 and the Railways and other Guided Transport System (Safety) Regulations 2006;
“Business Day”	a day other than a Saturday or Sunday on which banks are generally open in London for normal business;
“Bye-Laws”	the bye-laws required by the Act and annexed hereto as the Annexure in the agreed form;
“Change of Law”	(i) any amendment, alteration or modification to or repeal of existing Law which takes effect after commencement of the 1996 Agreement; or (ii) the introduction of any new Law which comes into effect after commencement of the 1996 Agreement but excluding any change in the interpretation of any existing Law and any Change of Law which has been published prior to 26 th June 1996 and subsequently comes into force substantially in the form so published;
“Change of Safety Law”	Change of Law which relates to or is connected with safety and requires:-

	(a) physical alterations or modifications to the Tramlink System (or to its method of operation); or
	(b) works to be carried out in addition to the Project Works;
“Commission or Commissioning”	commission or commissioning in accordance with the Construction Programme and the procedures set out in Schedule 11 of the Construction Contract;
“Compensation Event”	each of the following events:- (a) Change of Safety Law; (b) Discriminatory Legislation:
“Concession Agreement”	the agreement entered or to be entered into between the Concessionaire and the Corporation pursuant to award of the tender referred to in Recital A in the agreed form;
“Concession Award Date”	the date when all the conditions precedent referred to in Clause 2 of the Concession Agreement have been satisfied;
“Concessionaire Change Order”	has the meaning given in Clause 28.1(a) of the Concession Agreement to Construction Change Order and Specification Change Order and the meaning given in Clause 1.1 of the Concession Agreement to Change Order.
“Concessionaire Default”	any of the events specified in Clause 24.3.1;
“Concessionaire Delay Period”	such extensions of the relevant period or periods identified in the Construction Programme as may be agreed between the Corporation and the Concessionaire pursuant to Clause 18.7 of the Concession Agreement;
“Concessionaire’s Environmental Damage”	any injury or damage to persons (including offence to their senses) premises or other property or any pollution of the environment resulting from the discharge emission escape or migration of any substance energy noise or vibration and

	which is not Operator’s Environmental Damage;
“Concessionaire Good Industry Practice”	the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced concessionaire of a light rail system over a period of 99 years engaged in the same undertaking as the Concessionaire;
“Concessionaire’s Parliamentary Undertakings”	those undertakings given to a Parliamentary Committee during the passage through Parliament of the Bill for the Croydon Tramlink Act 1994 as set out in Schedule 3 of the Concession Agreement and any undertakings or agreements given to a person in consideration of his refraining from opposition to that Bill as set out in Schedule 3 of the Concession Agreement;
“Concessionaire’s Representative”	the representative of the Concessionaire or any replacement or alternate to be appointed pursuant to Clause 5.1;
“Construction Change”	(a) an addition, deletion or other change to the Project Works from that required by the Specification or envisaged by the Milestone Schedule or (b) an alteration to the sequence of Work anticipated by the Construction Programme;
“Construction Contract”	the contract entered into or to be entered into between the Concessionaire and the Contractor for the construction and procurement of the Project Works;
“Construction Programme”	the construction programme, including the Outline Construction Programme, delivered by the Concessionaire to the Corporation pursuant to Clause 70.5(a) of the Concession Agreement as updated from time to time pursuant to Clause 70.5(b) of the Concession Agreement;
“Contractor”	the McAlpine-Amey joint venture or any other entity or entities appointed by the Concessionaire with the approval of the Corporation to carry out the Project Works pursuant to the Construction Contract;

“Control Centre”	the twenty-four hour control centre of the Tramlink System;
“Corporation”	Transport for London;
“Corporation Service Change”	has the meaning given in Clause 25.2(a) of the Concession Agreement to the term “Service Change”;
“Corporation Service Parameters Change”	has the meaning given in Clause 25.2(b) of the Concession Agreement to the term “Service Parameters Change”;
“Council”	London Borough of Croydon;
“Customer Charter”	the customer charter of the Tramlink System drawn up by the Operator with the co-operation and approval of the Concessionaire, such approval not to be unreasonably withheld or delayed.
“Delay Events”	has the meaning given in Clause 18.2 of the Concession Agreement;
“Depot”	the tram depot at Therapia Lane shown edged red on Drawing No. 95401/300/022 attached to the Heads of Terms set out in Part 1 of Schedule 16
“Deregulation”	bus service deregulation being extended to London either by virtue of Section 46 of the Transport Act 1985 and/or the enactment of other legislation whereby bus operators are granted substantial freedoms to operate bus services in London and to determine for themselves, routes, service levels and frequencies and fares;
“Discriminatory Legislation”	Specific Discriminatory or General Discriminatory Legislation;
“Dispute”	as defined in Schedule 9;
“Excluded Equipment”	the radio communication equipment and cabling thereto and other equipment attached to Trams referred to as “Free Issue Equipment” in the Construction Contract;
“Expert”	a person appointed pursuant to Schedule 9 to determine a Dispute or other difference between the parties arising under this Agreement;

“Fees”	the fees payable to the Operator under Clause 21;
“Final Acceptance Tests”	the final Tramlink System acceptance test to be performed in accordance with Schedule 11 to the Construction Contract;
“Financial Impact Sums”	has the meaning given in Clause 1.1 of the Concession Agreement;
“Financial Period”	each consecutive period as defined in the Off-Tram Revenue Agreement as Payment Periods but the first Financial Period shall be the period between the Actual Opening Date and the commencing date of the first Payment Period under the Off-Tram Revenue Agreement and where the Off-Tram Revenue Agreement is terminated, each consecutive period of 4 weeks following the last Payment Period under the Off-Tram Revenue Agreement;
“Financial Period Payment Date”	in respect of any Financial Period, the third Wednesday of such Financial Period and if such date is not a Business Day, the preceding Business Day;
“Financial Year(s)”	the twelve (12) month period(s) running between 1 April and 31 March;
“Financing Agreements”	the agreements listed in Part 3 of Schedule 3;
“Force Majeure”	shall have the meaning specified in Clause 23.1.1;
“General Discriminatory Legislation”	Change of Law (other than Deregulation) which discriminates against Light Rail Concessionaires in relation to other companies operating a transport service in the Tramlink Bus Area and which results in any actual or prospective change in costs or revenue of the Operator;
“Good Industry Practice”	the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced light rail operator responsible for those aspects of operation of a light rail system

	over a period of 30 years engaged in the same undertaking as the Operator;
“HMRI”	Her Majesty’s Railway Inspectorate and any successor body or bodies;
“HSE”	the Health and Safety Executive and any successor body or bodies responsible for health and safety policy and enforcement on the railways (including the regulation of the operation of railways and other guided transport systems, including heritage, metros and light rail systems);
“Infrastructure”	all of the Tramlink System other than the Trams;
“Infrastructure Maintenance Services”	the services referred to in Clause 6.5;
“Infrastructure Maintainer”	the Concessionaire and/or its servants, agents and/or contractors engaged from time to time in or about the Infrastructure Maintenance Services;
“Insolvency Event”	each of the following events:- <ul style="list-style-type: none"> (a) the issue of a petition for winding-up which petition is not dismissed within 28 days of its issue; or (b) the making of an order or an effective resolution being passed for winding-up except for the purpose of a solvent reconstruction or amalgamation on a basis previously approved by the Concessionaire or the Operator (as appropriate) in writing (such approval not to be unreasonably withheld); or (c) the making of an order for the appointment of an administrative receiver, administrator, trustee or similar officer; or (d) an encumbrancer, receiver (including an administrative receiver) or other similar officer taking possession of the whole or any part (which is material in the context of the performance of the affected person’s

	obligations under the Operating Agreement) of such person's undertaking, property or assets; or
	(e) the making of a composition with creditors generally; or
	(f) being unable to pay debts as they fall due;
“Intellectual Property”	all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unregistered designs, know-how, inventions, confidential information and other intellectual property rights;
“Key Staff Positions”	key staff positions within the Operator's organisation being the general manager, the operations manager, and the contracts manager and, in the event that the Operator's Representative is not one of the aforementioned the Operator's Representative;
“Land Lease”	the form of lease attached as Appendix 5 of Schedule 3 to the Concession Agreement
“Law”	any Act of Parliament or subordinate legislation within the meaning of section 21(1), Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of section 2, European Communities Act 1972;
“Lender[s]”	the banks party to the facility agreement of approximately £93,000,000 with the Concessionaire in its capacity as borrower thereunder on or about the same date as this Agreement;
“Lessor”	Lombard Venture Leasing Limited;
“Libor”	(a) with respect to any period:- (i) the rate per annum of the offered quotation for deposits in sterling for a period comparable to the relevant period which

appears on Telerate Page 3750 at or about 11.00 am. on the first day of the relevant period; or

(ii) if no such offered quotation appears on the Telerate Page 3750 at or about 11.00 am on the applicable date, the arithmetic mean (rounded upward to the nearest 1/16th of 1%) of the rates per annum, as notified to the Facility Agent at which each of the Reference Banks was offering to leading banks in the London Interbank Market deposits in sterling at or about 11.00 am on the first day of the relevant period for a period comparable to the relevant period;

(b) for the purpose of this definition of LIBOR, “**Telerate Page 3750**” means the display designated as “Page 3750” on the Telerate Service (or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Bankers’ Association as the information vendor for the purpose of displaying British Bankers’ Association Interest Settlement rates for deposits in sterling;

(c) for the purposes of this definition of LIBOR, definitions used herein shall have the same meaning as set out in the Facility Agreement.

“Licence Period”

the date on which the Mobilisation Period shall commence until whichever shall be the earlier of:-

(a) the date of the determination of the Concession Agreement; or

(b) (in respect only for that part of the Site which comprises the Depot) the date of grant of the Sub-Lease;

“Light Rail Concessionaires”

companies undertaking the design, construction, financing and maintenance of

	light railways or train systems in the UK pursuant to a single contract similar to the Concession Agreement;
“Lost Kilometrage”	the difference between Scheduled Kilometrage and Actual Kilometrage
“Maintenance Contracts”	the agreements entered into, or to be entered into, by or on behalf of the Concessionaire and any of the Maintenance Contractors (including the Construction Contract);
“Maintenance Contractors”	such person or persons as may be appointed by the Concessionaire from time to time in accordance with this Agreement to carry out certain repairs to and maintenance of the Infrastructure;
“Major Maintenance”	means all aspects of maintenance of the Infrastructure which are not Routine Maintenance Services;
“Milestone”	an event which is the completion in whole of one or more specified activities, such activities being as set out in the Milestone Schedule in the column headed Milestone Description;
“Milestone Schedule”	the schedule of Milestones set out in Schedule 1 to the Concession Agreement;
“Mobilisation Fee”	the fee payable to the Operator under Clause 21.1.2;
“Mobilisation Period”	the period of time of at least 18 months commencing on the date specified in the Construction Programme or such other date as is notified to the Operator in accordance with Clause 8.1 and ending on the Actual Opening Date;
“Mobilisation Services”	the services to be provided by the Operator during the Mobilisation Period as referred to in Clause 6.2;
“Off-Tram Revenue Agreement”	has the meaning given in the Concession Agreement;
“Operating Fee”	the fee payable to the Operator under Clause 21.1.3;

“Operating Period”	the period of time commencing on the Actual Opening Date and ending at the end of the Term;
“Operating Services”	the services to be provided by the Operator during the Operating Period as referred to in Clause 6.4 ;
“Operating Year”	a year ending on an anniversary of the Actual Opening Date;
“Operations Review Meetings”	meetings between the Concessionaire and Operator to be held once every 3 months as per Clause 30.2.1;
“O&M Manuals”	the operation and maintenance manuals in respect of the Tramlink System prepared by the Contractor pursuant to the Construction Contract or prepared by or on behalf of the Concessionaire pursuant to this Agreement;
“O&M Procedures”	the procedures prepared by the Operator in accordance with Clause 8.2.2;
“Operational Land Lease”	the form of agreement attached as Schedule 14 to the Concession Agreement;
“Operator Controlled Lost Kilometrage”	Lost Kilometrage to the extent attributable to a default on the part of the Operator save to the extent such default was attributable to matters beyond the Operator’s reasonable control and could not have been avoided by use of Good Industry Practice;
“Operator Default”	any of the events specified in Clause 24.2.1;
“Operator’s Environmental Damage”	means any injury or damage to persons (including offence to their senses) premises or other property or any pollution of the environment resulting from the discharge emission escape or migration of any substance energy noise or vibration caused by a breach by the Operator of the terms of this Agreement;
“Operator’s Representative”	the representative of the Operator or any replacement or alternate to be appointed pursuant to Clause 5.2;

“Operator’s Safety Plan”	the Operator’s safety plan developed in accordance with Part 2 of Schedule 1 and as revised from time to time in accordance with Clause 12.3.3;
“Operator Specification”	the specification for the operation of the Tramlink System attached as Schedule 8 as amended from time to time;
“Outline Construction Programme”	the outline construction programme referred to in Clause 70.5(a) of the Concession Agreement;
“Party”	a party to this Agreement;
“Performance Specification”	the performance specification for the Tramlink System in the agreed form as between the Corporation and the Concessionaire as referred to in the Concession Agreement;
“Plan”	the Service Delivery Plan;
“Possession”	possession of any part of the Infrastructure for maintenance and/or repair purposes which prevents, impairs or otherwise affects the ability of the Operator to operate to the Tram Service Levels on all or part of the Tramlink System;
“Preliminary Fee”	the fee payable to the Operator under Clause 21.1.1;
“Preliminary Services”	the services to be provided by the Operator as referred to in Clause 6.1;
“Prescribed Rate”	Libor plus 2 per cent;
“Project Agreements”	the agreements listed in Part 2 of Schedule 3;
“Project Works”	all of the works and equipment required for the supply and completion of the Tramlink System in accordance with the Tramlink Agreements (as defined in Clause 1.1 of the Concession Agreement) (without limitation): (a) all work concerning the detailed design, construction and completion of the Tramlink System;

	(b) the Depot and ancillary buildings;
	(c) bridges, structures and other permanent works;
	(d) track work;
	(e) overhead wires and cables;
	(f) other jigs, tools, fixtures and fittings; and
	(g) the Moveable Property (as defined in Clause 1.1 of the Concession Agreement);
“Quality Plans”	the quality plans to be prepared by the Operator in accordance with Clause 19.2.1;
“Railtrack Maintenance Agreement”	the agreement entered into on or about the date of commencement of the 1996 Agreement between the Corporation and Railtrack plc and to be vested in the Concessionaire relating to the future maintenance of parts of the Tramlink System;
“Routine Maintenance Services”	the carrying out of all maintenance services to the Infrastructure of a routine nature which a Concessionaire would be required to undertake in order to maintain a tram system such as the Tramlink System in accordance with Concessionaire Good Industry Practice and to the extent specified in the Routine Maintenance Specification;
“Routine Maintenance Specification”	the Routine Maintenance Services specified in or otherwise to be agreed in accordance with Schedule 5;
“Safety Management System”	A Safety Management System as defined in the Railways and other Guided Transport Systems (Safety) Regulations 2005;
“Safety Plan”	means, as applicable, a Safety Plan as described in Clause 12.3;
“SAT 2”	the second Tramlink System acceptance test to be performed in accordance with Schedule 11 of the Construction Contract;

“Scheduled Kilometrage”	the aggregate kilometrage scheduled to be travelled by the Trams on the Tramlink System carrying fare paying passengers during any Financial Period assuming compliance with the Timetable during such Financial Period excluding for the avoidance of doubt positioning, shunting, testing, tram substitution, incident attendance, training and vehicle washing
“Services”	all of the Preliminary Services, Mobilisation Services, Operating Services and any Additional Services;
“Service Change”	has the meaning set out in Clause 25.2(a) of the Concession Agreement;
“Service Delivery Plan”	means the plan to be produced and maintained by the Concessionaire in accordance with Clause 20 of this Agreement setting out the working arrangements envisaged as required by the Parties for the efficient delivery of the Services in each Financial Year;
“Service Parameter Change”	has the meaning set out in Clause 25.2(b) of the Concession Agreement;
“Site”	the area which is to be made available to the Concessionaire by the Corporation pursuant to the Concession Agreement for the purposes of constructing and operating the Tramlink System;
“Specific Discriminatory Legislation”	<p>Change of Law (other than Deregulation) which discriminates against:-</p> <p>(a) the Tramlink System in relation to other light rail or tram networks in the UK; or</p> <p>(b) the Concessionaire or the Operator (but not other Light Rail Concessionaires) in relation to other companies operating a transport service in the Tramlink Bus Area;</p> <p>and which results in any actual or prospective change in costs or revenues of the Operator;</p>

“Specification”	the specification for the Tramlink System attached as Schedules 2 and 3 to the Construction Contract as amended from time to time;
“Specification Change”	a variation to the Specification, Performance Specification or Operator Specification which requires a change in operating practices or procedures on the Tramlink System which is not a Construction Change, a Service Change or a Service Parameters Change;
“Step-in Undertakings”	<p>the undertakings entered into, or to be entered into:-</p> <ul style="list-style-type: none"> (i) between, inter alia, the Operator and the Lenders (or an agent on their behalf) and (ii) between, inter alia, the Tram Maintenance Contractor and the Lenders (or an agent on their behalf);
“Sub-Lease”	the sub-lease of the Depot to be entered into between the Concessionaire (1) and the Operator (2) in such form as may be agreed between the parties both acting reasonably but based on and incorporating the terms contained in the Heads of Terms set out in Part 1 of Schedule 16 and otherwise being consistent with the Land Lease;
“Supplemental Sub-Lease”	supplemental sub-lease(s) the purpose of which is to include within the demise in the Sub-Lease and on exactly the same terms as the Sub-Lease those parts (if any) of the Depot which may be comprised in the Supplemental Lease(s) granted pursuant to paragraphs 7.7 and/or 7.8 of Part 1 of Schedule 3 to the Concession Agreement in such form as may be agreed between the parties both acting reasonably;
“Taking-Over Certificate”	the Taking-Over Certificate issued in accordance with Clause 49 of the Construction Contract;
“Term”	the period of time commencing on the date of this Agreement and ending upon

	termination or expiry of this Agreement in accordance with its terms;
“Ticket Machines”	the automatic ticket vending machines described in the Specification or such other type and/or number of automatic ticket vending machines as the Operator shall agree with the Concessionaire to manage in accordance with this Agreement;
“Timetable”	the timetable for the operation of Tram services on the Tramlink System referred to in or determined in accordance with Section 9 of the Operator Specification as amended from time to time in accordance with Clause 16;
“Tram Maintenance Contract”	the agreement entered into between the Operator and the Tram Maintenance Contractor in relation to maintenance of the Trams and novated to the Concessionaire on 20 September 2012 with effect from 1 April 2012;
“Tram Maintenance Contractor”	Bombardier Prorail Limited or such other person appointed to maintain the Trams or, where the Concessionaire undertakes Tram Maintenance Services itself, the Concessionaire;
“Tram Maintenance Services”	any services in connection with the maintenance of the Trams being the responsibility of the Concessionaire and whether undertaken directly by the Concessionaire or through an appointed Tram Maintenance Contractor;
“Tramlink Applicable Requirements”	any Law relating to the Tramlink System or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Tramlink System;
“Tramlink Bus Area”	the area edged in red on the Tramlink Bus Area Plan;
“Tramlink Bus Area Plan”	the plan at Part 1 of Schedule 7 of the Concession Agreement;
“Tramlink General Agreement”	the agreement entered into on or about the date of commencement of the 1996 Agreement between the Council and the Concessionaire, relating, inter alia, to the

	procedures for the Concessionaire to obtain approvals and consents requested from the Council and specific requirements of the Council in respect of the Tramlink System in the agreed form;
“Tramlink System”	the system of light rail transit to be constructed and operated in certain parts of the London Boroughs of Merton, Sutton, Croydon and Bromley, as more fully described in the Specification including the Excluded Equipment and the Trams (and any spares for Trams held from time to time by or on behalf of the Concessionaire (including by the Tram Maintenance Contractor));
“Tram Service Levels”	the level (including passenger carrying capacity and journey times) pattern and frequency of service for the Tramlink System specified in Section 9 of the Operator Specification as the same may be amended from time to time in accordance with this Agreement;
“Trams”	<p>the 35 Trams to be provided by the Concessionaire for operation on the Tramlink System or any substitutes for any of them:-</p> <p>(i) including, in the case of each of the Trams, the pantograph attached to its roof and any equipment or spare parts which are subsequently fitted to such Trams or any substitutes for any of them, save for the Excluded Equipment; and</p> <p>(ii) the number of such Trams having been (a) increased from 24 to 30 during 2012, from 30 to 34 during 2015, and from 34 to 36 during September/October 2016 and (b) decreased from 36 to 35 in November 2016;</p>
“Travelcard”	shall have the meaning ascribed to it by the Off-Tram Revenue Agreement;
“Vesting Order”	the Croydon Tramlink (Transfer of Functions) Order 1996;
“Warning Notice”	a notice issued by the Expert to the Operator pursuant to Clause 16.6.3.

1.2 Interpretation

In this Agreement:-

- 1.2.1 where the context requires words importing the singular shall include the plural and vice versa;
- 1.2.2 where the context requires words importing persons shall include firms and corporations;
- 1.2.3 a reference in this Agreement to any clause, sub-clause, paragraph, schedule or appendix is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or appendix of this Agreement;
- 1.2.4 headings are for convenience of reference only;
- 1.2.5 each reference to this Agreement or to any other document, contract or agreement shall include a reference to each lawful variation of or supplement to this Agreement and of such document, contract or agreement as amended, varied or supplemented from time to time;
- 1.2.6 references to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under any such statute;
- 1.2.7 a person includes its successors and permitted assigns or transferees;
- 1.2.8 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 such thing to be done by any subcontractor, agent or employee of such Party;
- 1.2.9 the words 'include' and 'including' are to be construed without limitation;
- 1.2.10 references to any period of 14 days or less shall exclude any public holidays in England falling within any such period;
- 1.2.11 a reference in this Agreement to any document being in the agreed form is a reference to such document in the form agreed by the Concessionaire and the Operator at the date of signature and as may be subsequently amended
- 1.2.12 a reference to the date of the Agreement or the date of this Agreement or the date hereof (or similar expressions) shall be a reference to the date of the 1996 Agreement unless otherwise expressly provided.

1.3 Notices, Consents, Approvals, Certificates & Determinations

- 1.3.1 Wherever in this Agreement provision is made for the giving or issue of any notice, endorsement, consent, approval, certificate or determination by any person, unless otherwise specified such notice, endorsement, consent, approval, certificate or determination ("Consent") shall be in writing and the

words “notify”, “endorsed”, “certify” or “determine” shall be construed accordingly.

1.3.2 Where this Agreement expressly states that any Consent is not to be unreasonably withheld or delayed it is agreed that the Consent shall be treated as being reasonably withheld or delayed where a similar consent is required to be obtained by the Concessionaire under the terms of the Concession Agreement or the Tram Maintenance Contract and such consent has been withheld or delayed for any reason whatsoever not connected with unreasonable behaviour on the part of the Concessionaire (including default by the Concessionaire under any of the Project Agreements) as the case may be.

1.3.3 Neither Party shall be obliged to investigate as to whether the other has obtained any consents or approvals which may be required to be given by any third parties prior to such other giving any notice, endorsement, consent, approval, certification or other determination.

1.4 Change in Project Agreements

1.4.1.1 Where the Operator incurs costs or expenses in relation to its obligations under the Agreement which are not recoverable in full from the Concessionaire, the Concessionaire shall take all reasonable steps in consultation with the Operator to mitigate the extent of the costs or expenses so incurred.

1.4.1.2 Subject to any express provision of this Agreement, in the event that any of the following are proposed to be amended or altered in a way which materially affects the Operator in its provision of the Services in accordance with the terms of this Agreement, the Concessionaire shall notify the Operator and, where reasonably practicable, shall consult with the Operator in respect of such amendment or alteration prior to the making thereof but in the event that such prior consultation is not reasonably practicable shall consult after the making of such amendments or alteration. The following are:-

- (a) the Specification;
- (b) the Construction Contract;
- (c) Concession Agreement (including the Performance Specification)
- (d) Railtrack Maintenance Agreement;
- (e) Off-Tram Revenue Agreement;
- (f) Tramlink General Agreement;

or any other agreement or document relating to the Tramlink System. Such consultation shall be for the purposes of assessment by the Parties of the implications and effects on the Operator of such amendment or alteration. The Operator shall provide the Concessionaire with its estimate of the costs and an assessment of the impact arising from such amendment or alteration as soon as reasonably practicable.

1.4.1.3 Where the provision of the Services by the Operator under this Agreement is affected by any amendment or alteration to any of the documents referred to in Clause 1.4.1.2(a) to (f) above then Clause 6.7 shall apply.

1.4.1.4 If the Concessionaire fails to notify the Operator of such proposed amendment or alteration in accordance with Clause 1.4.1.2, then the Operator's only remedies shall be pursuant to the provisions of Clause 1.4.1.3 and 2.5.2.1.

1.4.2 Where under this Agreement the Parties are required to assess, consider, discuss, reimburse, claim for or mitigate the costs or expenses or profit of the Operator then the fees of any sub-contractors of the Operator shall also be taken into account.

1.5 Limitation

No claim may be made under this Agreement unless proceedings are commenced within six years of the date of the breach or other cause of action first arising unless the claiming Party did not know and could not reasonably have known of such breach or other cause of action within six years of the date of the breach or other cause of action. For the purpose of this Clause 1.5 "commence proceedings" means the first notice to be served by the claiming Party giving notice of a Dispute in relation to the breach of the Agreement in accordance with Clause 38 and Schedule 9.

1.6 Other Agreements between the Parties

Following the execution of the 1996 Agreement, the parties entered into a Supplemental Operating Agreement, dated 20 April 2000, and a Phase Opening Agreement, dated 10 May 2000. On the basis that the definition of Actual Opening Date within this Agreement is now recorded as being 10 May 2000, the parties agree that neither the Supplemental Opening Agreement nor the Phase Opening Agreement is now required, both Agreements cease to have any effect and are therefore hereby terminated. Each party acknowledges that it has and shall have no claim against the other arising from either the Supplemental Operating Agreement, or the Phase Opening Agreement.

2. APPOINTMENT

2.1 Appointment of Operator

The Concessionaire hereby appoints the Operator to provide to the Concessionaire on an exclusive basis the Services (save in respect of Additional Services which shall be treated in accordance with Clause 6.7) in accordance with and subject to the terms and conditions of this Agreement and the Operator hereby accepts such exclusive appointment in accordance with and subject to such terms and conditions.

2.2 Operator's general obligations

2.2.1 In performing the Services the Operator shall, at all times observe and comply with the following, in the order of priority listed:-

- (a) all Applicable Requirements;
- (b) the Operator's Safety Management System and, where applicable to the Operating Services, the Concessionaire's Safety Management System;
- (c) the relevant parts of the Operator Specification where obligations are imposed therein on the Operator except for those in respect of the Infrastructure Maintainer and the Tram Maintenance Contractor;
- (d) terms and conditions of this Agreement;
- (e) Good Industry Practice.

If at any time either Party becomes aware of any conflict between any of the above or any divergence between any of the above and the activities of the Operator, it shall within two Business Days of becoming aware of such divergence give notice to the other Party specifying the conflict or divergence. Without prejudice to the obligations of the Operator under this Agreement the Parties shall discuss with the aim of agreeing how to provide for such divergence or conflict.

- 2.2.2 Where the standards imposed by Good Industry Practice at any time change, the Operator shall not be entitled to any additional payment in respect thereof unless expressly entitled under this Agreement save that it shall be entitled to recover amounts where relevant pursuant to the rebasing effected in accordance with Clause 21.2.2.

2.3 Information provided by the Corporation

- 2.3.1 The Operator shall not be relieved in any way from any obligation under this Agreement should any information produced by the Corporation whether obtained from the Concessionaire or otherwise in respect of the Tramlink System and the Operator's obligations under this Agreement be incorrect and/or insufficient (whether or not contained in the Performance Specification) and shall make its own enquiries as to the accuracy and adequacy of such information.
- 2.3.2 The Operator acknowledges and confirms that prior to the date of this Agreement it has reviewed the Performance Specification, the Specification and the Operator Specification and on successful completion of the Construction Contract (including the successful completion of SAT 2 and the issuing of the Taking-Over Certificate), the Operator, subject to Clause 6.2.4, will operate the Tramlink System in accordance with this Agreement and accordingly the Operator shall, without prejudice to any express rights in this Agreement, have no right to any increase in the fees payable in respect thereof.

2.4 Concessionaire's general obligations

2.4.1 The Concessionaire shall in performing its obligations under this Agreement, at all times observe and comply with the following in order of priority listed:-

- (a) all Laws or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Tramlink System;
- (b) the Safety Management System;
- (c) Concessionaire's Parliamentary Undertakings;
- (d) the Performance Specification and the Specification;
- (e) terms and conditions of this Agreement;
- (f) Concessionaire Good Industry Practice;

save that it shall be under no such obligation where it is prevented from so observing and complying as a result of any breach or any act or omission by the Operator of any term or condition of this Agreement or as a result of a breach by the Corporation of any term or condition of the Concession Agreement or breach by the Council of any term or condition of the Tramlink General Agreement. If at any time either Party becomes aware of any conflict between any of the above or any divergence between any of the above and the activities of the Concessionaire, it shall within two Business Days of becoming aware of such divergence give notice to the other Party specifying the conflict or divergence. Without prejudice to the obligations of the Concessionaire under this Agreement, the Parties shall discuss with the aim of agreeing how to provide for such divergence or conflict.

2.5 Other Project Agreements

2.5.1 The Operator shall carry out its obligations under this Agreement and perform the Services so as not to put the Concessionaire in breach of obligations of the Concessionaire in other of the Project Agreements, such obligations specified at Schedule 7.

2.5.2.1 The Operator shall not be in breach of the terms and conditions of this Agreement or have failed to perform its obligations hereunder for so long and/or to the extent that such breach or failure has been caused as a result of any act or omission by the Concessionaire or the Concessionaire or any other party breaching any of the terms and conditions of this Agreement or any of the Project Agreements or failing to perform its obligations thereunder or enforce any right thereunder save to the extent that such breach is caused by the Operator breaching any of the terms and conditions of this Agreement. The Operator shall notify the Concessionaire forthwith upon becoming aware that the Operator is in breach of any of the terms and conditions of this Agreement and shall notify details of such breach to the Concessionaire. The Operator shall use all reasonable endeavours to mitigate the effect of such breach.

- 2.5.2.2 If the Concessionaire instructs the Operator to perform any specific obligation pursuant to this Agreement the Operator shall notify the Concessionaire if it considers that complying with such obligation would put it in breach of other provisions of this Agreement. If the Concessionaire thereafter confirms such instruction then the Operator shall not be liable to the Concessionaire to the extent that complying with such instruction puts it in breach of this Agreement save always that relief from such liability shall be in respect only of those obligations of the Operator under this Agreement identified to the Concessionaire and the Operator shall use reasonable endeavours to mitigate the effect of such breach.
- 2.5.2.3 The Operator shall be entitled to a reimbursement of all additional costs and expenses in accordance with Clause 6.7 suffered by it as a result of a failure on the part of the Concessionaire to comply with its obligations to enforce its rights under any Project Agreement or in Law. The Operator shall mitigate such costs and expenses.
- 2.5.3 The Concessionaire may determine in its absolute discretion whether to enforce its rights under any of the Project Agreements or in Law save always that in the event that it does not so enforce then to the extent that the Operator is as a result unable to perform any of its obligations hereunder then the Concessionaire:-
- (a) shall continue to pay the relevant amounts due to the Operator pursuant to this Agreement as if the Operator had been able to perform its obligations hereunder; and
 - (b) shall not be entitled to make any deduction from amounts due and payable to the Operator pursuant to this Agreement as it would otherwise have been entitled under Clause 21.2.1.2 and Schedule 4.

2.6 Notification

The Concessionaire shall, as soon as reasonably practicable after becoming aware, notify and inform the Operator of the following, save always it shall only be under an obligation to do so:-

- (a) to the extent that the Operator is reasonably likely to be affected thereby; and
 - (b) insofar as the Concessionaire is actually aware of such facts or circumstances; and
 - (c) subject to the confidentiality provisions set out in any of the Project Agreements to which the Concessionaire is a party;
- 2.6.1 any breach or alleged breach of the Concession Agreement whether by the Corporation or the Concessionaire (including any persistent minor breach) and any “Warning Notice” (for the purpose of this Clause 2.6.1 such Warning Notice being that as may be issued to the Concessionaire under the Concession Agreement) and other notice to terminate or the

- occurrence of a Suspension Period (for the purpose of this Clause 2.6.1 as defined in Clause 63 of the Concession Agreement);
- 2.6.2 any Construction Change or Concessionaire Change Order and the effect and implications of the same;
 - 2.6.3 any delays to the Actual Opening Date, any Delay Events and the length of any Concessionaire Delay Period;
 - 2.6.4 the results of any audit or inspection of the Tramlink System carried out by the Corporation and any remedial work or change in operating procedures or management of safety critical aspects of operations required by the Corporation to be carried out to the Tramlink System;
 - 2.6.5 the level and structure of fares to apply to the Tramlink System;
 - 2.6.6 arrangements to introduce the Concessionaire's own tickets or passes;
 - 2.6.7 any assignment of the Concession Agreement;
 - 2.6.8 any Compensation Amounts and Financial Impact Sums and other relevant information in relation thereto provided by the Corporation;
 - 2.6.9 any Compensation Event and any allegation of Discriminatory Legislation by the Concessionaire;
 - 2.6.10 any breach of, notice served pursuant to or any other matter arising from the Tramlink General Agreement, the Off-Tram Revenue Agreement or the Financing Agreements;

and in each case shall consult with the Operator in respect thereof.

- 2.7 The Concessionaire shall notify the Operator as soon as practicable in respect of any matter arising from the Tramlink General Agreement to the extent that such matter affects the obligations of the Operator hereunder and shall consult with the Operator in respect thereof.
- 2.8 If either Party becomes aware that the other Party is in breach of any of the terms and conditions of this Agreement it shall as soon as practicable notify the other Party of such breach.

3. COMMENCEMENT OF AGREEMENT

3.1 Conditions precedent

The rights and obligations of the Parties under this Agreement shall be conditional upon, and accordingly shall have no force or effect until the satisfaction of all conditions precedent to the Concession Agreement being, for the avoidance of doubt, where such conditions precedent are satisfied by confirmations, only when such confirmations are given in accordance with the Concession Agreement in good faith or the Operator has agreed that the same may be amended or waived where such conditions precedent relate to the rights and obligations of the Operator under

this Agreement or to the Tramlink System, save in respect of the rights and obligations of the Parties under this Agreement which relate to the Preliminary Services which shall have immediate effect.

4. TERM, AMENDMENT AND RESTATEMENT OF AGREEMENT

4.1 The Term

Subject to Clause 4.2 and 4.3 below, this Agreement shall commence on the date hereof and shall terminate on the thirtieth anniversary of the Actual Opening Date unless this Agreement shall have been terminated earlier in accordance with the provisions of this Agreement.

4.2 Extension of the Term

4.2.1 No later than 2 years prior to the thirtieth anniversary of the Actual Opening Date the Parties shall make arrangements to meet and consider the terms (if any) upon which the Operator is willing to be engaged as operator of the Tramlink System after the thirtieth anniversary of the Actual Opening Date and the terms (if any) upon which the Concessionaire is willing to engage the Operator as operator of the Tramlink System after such date.

4.2.2 The Parties shall use all reasonable endeavours to meet to discuss such terms no later than two years prior to the thirtieth anniversary of the Actual Opening Date to ascertain whether there is a prospect of extending the term of this Agreement on its expiry.

4.3 Amendment and Re-Statement

4.3.1 As noted at recitals (B) to (F) of this Agreement (and subject to clause 4.3.3) the Parties:

- (a) entered into the 1996 Agreement on 25 November 1996;
- (b) agreed to the amendment and re-statement of the 1996 Agreement (on the terms set out in the 2008 Agreement on 1 September 2008;
- (c) have agreed to the amendment of the terms of the 2008 Agreement on the terms of this Agreement and from the dates detailed in Part 3 of Schedule 20; and
- (d) hereby agree to the further amendment and restatement of the 1996 Agreement and the 2008 Agreement on the terms set out herein.

4.3.2 Accordingly, without prejudice to the operation of Clause 4.3.1 above and, subject to Clause 4.3.3 below, the Parties hereby acknowledge and agree that:

- (a) The 1996 Agreement governs the relationship and respective liabilities of the parties between 25 November 1996 and 31 August 2008;
- (b) The 2008 Agreement governs the relationship and respective liabilities of the parties between 1 September 2008 and the date of this (Further Amended and Re-stated) Agreement, subject to the amendments in Part 3 of Schedule 20 to the extent and from the date that they are stated to apply; and

- (c) this (Further Amended and Re-stated) Agreement shall govern the relationship and respective liabilities of the parties from the date hereof for the remainder of Term unless and until varied in accordance with the provisions of this (Further Amended and Re-stated) Agreement.

4.3.3 For the further avoidance of doubt:

- (a) the 1996 Agreement and the 2008 Agreement (to the extent amended in Part 3 of Schedule 20 shall apply to the periods set out at Clauses 4.3.2(a) and 4.3.2(b) above in such form as amended or supplemented by (i) agreement in writing or (ii) (subject to Clause 4.3.3(b)) by conduct from time to time, and in each case such amendments or supplemental agreements will take effect from the dates on which each was agreed in writing or by conduct;
- (b) where a Party claims that there has been an amendment or supplemental agreement by conduct as described in Clause 4.3.3(a), it shall be for that Party to prove the existence of that agreement by conduct;
- (c) re-stated provisions within the 2008 Agreement and/or this (Further Amended and Re-stated) Agreement (including those contained in Part 3 of Schedule 20 which are inconsistent with any prior amendments or supplemental agreements described in Clause 4.3.3(a) are not intended to remove the continuing effect and validity of such prior amendments or supplemental agreements (notwithstanding the relevant re-stated provisions); and
- (d) notwithstanding any other provision in this Clause 4.3, nothing in this Clause 4.3 or otherwise in this Agreement shall be interpreted as meaning that the Parties were not obliged to (or that they did not) comply with Applicable Requirements from the effective date of such Applicable Requirements.

5. REPRESENTATIVES

5.1 Concessionaire's Representative

The Concessionaire shall notify the Operator of the identity of the Concessionaire's Representative who is to act as the representative of the Concessionaire under and pursuant to this Agreement. The Concessionaire's Representative may by notice to the Operator appoint a temporary alternate in the event of his absence from the office for any reason. The Concessionaire may from time to time replace the Concessionaire's Representative and shall forthwith notify the Operator of the identity of any replacement Concessionaire's Representative.

5.2 Operator's Representative

The Operator shall notify the Concessionaire of the identity of the Operator's Representative who is to act as the representative of the Operator under and pursuant to this Agreement. The Operator's Representative may by notice to the Concessionaire appoint a temporary alternate in the event of his absence from the office for any reason.

5.3 Replacement of the Operator's Representatives

The Operator may from time to time replace the Operator's Representative provided that the Operator shall only replace such person with a person who shall have been previously approved in writing by the Concessionaire (such approval not to be unreasonably withheld or delayed).

5.4 Authority

The Concessionaire's Representative and the Operator's Representative shall have full authority to act on behalf of his principal for all purposes in connection with this Agreement and (unless otherwise agreed) may represent the principal (accompanied by such other personnel as may be necessary) at any meeting in relation to the Services.

6. SERVICES

6.1 Preliminary Services

The Operator shall from the date of this Agreement until the commencement of the Mobilisation Period carry out the services set out in Part 1 of Schedule 1 and all other services which are necessarily ancillary to or are necessarily implied as part of those services.

6.2 Mobilisation Services

6.2.1.1 The Operator shall during the Mobilisation Period carry out all such preparation as may be necessary to enable it to provide the Services it is required to provide for the Actual Operating Date including the services set out in Part 2 of Schedule 1, and all other services which are necessarily ancillary to or are necessarily implied as part of those services.

6.2.1.2 The Concessionaire shall procure that the Operator is appointed as contractor to the Contractor for the purpose of providing drivers and operational staff required for commissioning and testing.

6.2.2 Where there is a delay to the programmed Actual Opening Date specified in the Construction Contract and providing the appropriate periods of notice required by Clause 7.1 of the Actual Opening Date have been given, then to the extent that such delay has been caused by the Operator in acting as Operator under this Agreement, but for the avoidance of doubt not in respect of any obligation in respect of Trams up to SAT 2, the Operator shall pay to the Concessionaire an amount equivalent to any loss suffered or incurred by the Concessionaire as a result of such delay which amount shall be determined by the Expert provided that in no event shall the liability of the Operator under this Clause exceed £1.25 million. The Concessionaire shall substantiate and mitigate its losses save that such obligation shall not require the Concessionaire to suffer any adverse financial or other effect as a result of taking steps to so mitigate.

6.2.3 Where the Mobilisation Period continues for longer than 19 months then to the extent that such continuation has not been caused by the Operator in acting as Operator under this Agreement the Concessionaire shall pay to the Operator all costs or expenses incurred by the Operator as a result of such

continuation in accordance with Part 7 of Schedule 2. The Operator shall co-operate with all reasonable requests of the Concessionaire to mitigate such costs and expenses and where such continuation is as a result of Force Majeure then Clause 23.7.1 shall apply in respect of such mitigation and costs in accordance with Clause 23.7.2 shall be paid.

- 6.2.4 If the Tramlink System is opened for the carrying of fare paying passengers after the SAT 2 have been commenced but before the Taking-Over Certificate is issued under the Construction Contract, the Operating Period shall commence on the date that the Tramlink System is so opened and the Operator shall operate the Tramlink System in accordance with the terms of this Agreement. If such early opening, the non completion of any part of the Tramlink System or the failure of the Tramlink System to have achieved taking-over so that the Taking-Over Certificate is not issued and SAT 2 not completed has an impact on the cost to the Operator of operating the Tramlink System then such early opening, non completion or failure shall be treated as a change to the Tramlink System for the purposes of Clause 6.7.
- 6.2.5 The Concessionaire shall provide the Operator with all information it has which is necessary for the Operator to assess the effect of such early opening, non-completion, failure or change and shall procure that the Operator is permitted to attend, through the Concessionaire, in the procedures for issuing the Taking-Over Certificate, SAT 2 and Final Acceptance Tests.
 - 6.2.6.1 The Concessionaire shall ensure that the Operator receives copies of all notices issued to it pursuant to the Construction Contract relating to the issue of the Taking Over Certificate including the Certificate itself and copies of any reasons for not issuing such Certificate and shall keep the Operator informed of all matters (whether minor or not) in respect of which the Project Works are not completed in accordance with the Specification.
 - 6.2.6.2 The Concessionaire shall fully appraise the Operator in writing in the event that Project Works do not comply in all respects with the Specification and the Performance Specification including the consequences thereof and in the event that all of the commissioning, the Final Acceptance Tests including SAT 2, have not been completed and satisfied to the level required to meet the Specification and the Performance Specification including the consequences thereof and will agree with the Operator in writing a method of dealing with such non-compliance including changes to the operating programme and operating procedures and or the Fees. In the absence of agreement the provisions of Schedule 9 shall apply.
 - 6.2.6.3 The Concessionaire shall give to the Operator the information provided in accordance with Schedule 11 of the Construction Contract and shall in particular ensure that the Operator receives the monthly progress report together with all incorporated documents and the monthly notification of trial runs and performance tests and has the right granted to the Corporation and Lenders in respect of the matters referred to in paragraph 1(c) of Schedule 4 to the Construction Contract.

6.3 Achievement of Final Acceptance Tests

Where there is a delay to the date for the achievement of the Final Acceptance Tests as a result of a breach of the Operator's obligations under this Agreement, then without prejudice to the rights of the Concessionaire under Clauses 16 and 24 the Operator shall pay to the Concessionaire an amount of £1,340 for each day that the Final Acceptance Tests remain unpassed after the date such tests would otherwise have been passed save for such breach but only to the extent that the delay is caused by the Operator and to the extent that all or any part of the payment contingent upon completion of milestone SB12 in Schedule 1 of the Concession Agreement is not received under the Concession Agreement on the basis that such amounts is:-

- 6.3.1 a genuine pre-estimate of all or part of the loss suffered by the Concessionaire based upon interest or other amounts payable to the Contractor under the Construction Contract for failure to make such payment; and
- 6.3.2 the only amounts payable by the Operator for delay in achieving the Final Acceptance Tests due to a breach of the Operator's obligations under this Agreement.

6.4 Operating Services

6.4.1 The Operator shall during the Operating Period operate the Tramlink System and perform all operational obligations of the Concessionaire under the Concession Agreement as specified in the relevant parts of the Operator Specification where obligations are imposed therein on the Operator including the services set out in Part 3 of Schedule 1 but subject to the limitations and assumptions set out therein, and all other services which are necessarily ancillary to or are necessarily implied as part of those services and shall assume the risks arising from the economic conditions prevalent in the area in which the Tramlink System is to be located as such conditions relate to such Services provided that the obligation assumed by the Operator pursuant to this Clause 6.4 shall not include the performance of or responsibility or liability for the following activities or the consequences of any of the following events save to the extent expressly set out in this Agreement and save to the extent that such liability arises from a breach of the terms and conditions of this Agreement by the Operator:-

- (a) defects in the design and construction of the Tramlink System or defects in the maintenance of the Infrastructure and/or of the Trams for which the Concessionaire is responsible provided that nothing in this Clause 6.4.1(a) or otherwise shall relieve the Operator from liability for any failure to exercise reasonable skill and care in the use of the Trams in the performance of the Services (including where the Concessionaire is able to evidence that additional Tram Maintenance Services and/or repairs is/are required as a consequence of any such failure);
- (b) failures of Existing Structures (as defined in the Construction Contract) on the Tramlink System;

- (c) the O&M Manuals save to the extent that such liability is caused by a breach of the Operator's obligation hereunder in contributing to or commenting on such O&M Manuals;
- (d) compliance with operating noise levels and electro-magnetic fields;
- (e) compliance with all planning requirements and other licences and consents to implement the Project Works and operate the Tramlink System;
- (f) any matter with respect to land including the right to occupy land;
- (g) insurance management;
- (h) traffic management in the London Borough of Croydon.

6.4.2 The Operator shall not be obliged to carry out its obligations under this Agreement to the extent there are not granted to it or made available to it all rights necessary to enable it to do so (including rights to access to all or any part of the Site or where the Site is subject to third party rights or obligations in favour of third parties or restrictions which affect performance of the Services) save to the extent that it is obliged to procure the granting of such rights pursuant to Clause 6.4.3. To the extent that such rights are not granted the costs and expenses of the Operator incurred as a result of the same shall be dealt with in accordance with Clause 6.7.1.

6.4.3 As between the Operator and the Concessionaire, the Concessionaire shall be responsible for obtaining all consents and licences which are necessary to enable the performance of this Agreement save for licences required by the Operator to enable it to provide Mobilisation Services up to SAT 2 and to enable it to provide the Services after SAT 2 have been passed which licences shall be obtained by the Operator. The Operator shall assist the Concessionaire in obtaining such consents and licences in accordance with Clause 12.6.

6.5 Infrastructure Maintenance Services

6.5.0 The Concessionaire shall have responsibility for the maintenance of the Infrastructure as set out at Schedule 5, Part 1 except for the responsibilities of the Operator (if any) stated therein.

6.5.1 On receipt by the Operator of the Service Delivery Plan in accordance with Clause 20.1.2 the Concessionaire shall consult the Operator on the most efficient and economical basis for carrying out the Major Maintenance of the Infrastructure.

6.5.2 The Concessionaire shall perform the Routine Maintenance Services in accordance with the terms and conditions of this Agreement.

6.5.3 Clause not used

6.5.4 Clause not used

6.6 Clause not used

6.7 Additional Services

This Clause 6.7 shall apply where either this Agreement specifies that the Operator is entitled to additional costs or expenses or where the Concessionaire requests the Operator from time to time to carry out services additional to those specified in this Agreement or omit services specified in this Agreement or otherwise change the Services (each a “Change”) provided that this Clause shall not apply to changes in Tram Service Levels to which Clause 16 shall apply or where this Agreement provides otherwise. Where the Concessionaire requests the Operator to so provide or omit services all such requests shall be in writing and the Operator shall respond to any such request in accordance with this Clause.

6.7.1 Upon the issue of such a request or where there is an entitlement to additional costs or expenses the Operator and the Concessionaire shall negotiate in good faith and shall use all reasonable endeavours to reach agreement on the basis and terms of provision of Additional Services within a reasonable timescale. In the event that no agreement is reached or there is an entitlement to additional costs and expenses which have been incurred the Operator shall provide free of charge a quotation based on substantiated costs required to carry out such Additional Services in an economic and efficient way together with profit (including any group management charges) not to exceed ■% as appropriate to the Additional Services required for carrying out the proposed Additional Services) which shall show, as requested by the Concessionaire:-

6.7.1.1 the proposed revision to the Fees specified in Clause 21; and/or

6.7.1.2 a lump sum;

in each case with an itemised breakdown and calculation of the revised Fees or lump sum. The Operator shall provide the above with all reasonable speed and in any event not less than 18 Business Days following the date it is clear no agreement can be reached.

6.7.2 The Operator and the Concessionaire shall negotiate in good faith and shall use all reasonable endeavours to reach agreement on the basis and terms of provision of any Additional Services within a reasonable timescale. The Operator shall if so required by the Concessionaire (and at the Concessionaire’s expense) at the time of negotiation for such Additional Services, obtain competitive tenders on terms and from a list of tenderers previously approved by the Concessionaire (such approval not to be unreasonably withheld) in respect thereof and shall provide the Concessionaire with copies of any bid documentation and evidence that competitive tenders have been requested.

6.7.3 The Concessionaire may either:-

6.7.3.1 accept the quotation provided by the Operator; or

- 6.7.3.2 require further clarification as to the proposed quotation and the Parties shall use all reasonable endeavours to reach an agreement on the appropriate revision to the Fees or lump sum for the Additional Service ; or
- 6.7.3.3 reject the proposed quotation and notify the Operator that it does not wish the Operator to carry out the proposed Additional Service.
- 6.7.4 Where the Concessionaire requires the Operator to omit any part of the Services the same procedure shall be applied as set out in Clause 6.7.1, 6.7.2 and 6.7.3 (mutatis mutandis) in order to determine the resulting reduction in the Fees (including a proportionate reduction in Operator's profit).
- 6.7.5 If the Concessionaire and the Operator are unable to agree on the terms on which the Operator is prepared to provide any Additional Services, the Concessionaire shall, having complied with Clauses 6.7.2 and 6.7.8, have the right to engage such other person or persons to perform the Additional Services on such terms as the Concessionaire and such person may agree. The Concessionaire shall obtain the approval of the Operator as to the identity of any such other person and the basis upon which they may be permitted access to the Tramlink System or provide their services to the Tramlink System but such approval may only be withheld where there are reasonable grounds for believing that such person is not acceptable to the Operator for safety reasons. The Concessionaire shall reimburse to the Operator all additional costs or expenses incurred by it as a result of the appointment of such other person and such Additional Services in accordance with Clause 6.7.1.
- 6.7.6 Where Sub-Clause 6.7.3.1 applies or the Concessionaire accepts a revised quotation under Sub-Clause 6.7.3.2 the Fees shall be amended accordingly and Clause 21.10 shall apply. The Fees agreed for such Additional Services shall be re-based in accordance with Clause 21.2.2 and shall be Indexed in accordance with Clause 21.2.1.1 where appropriate save where paid as a lump sum.
- 6.7.7 Where the Additional Services require amendments to the Service Delivery Plan such amendments shall be made in accordance with Clause 20.8.
- 6.7.8 Where negotiating such Additional Services, the Parties shall agree in writing upon the amendments (if any) required to be made to this Agreement and any other related agreement or arrangement to reflect such Additional Services. In the absence of any written agreement no such amendment shall be made pursuant to this Clause 6.7.8.
- 6.7.9 Where the procedures in this Clause 6.7 cannot be followed completely because costs have already been incurred then such costs shall be reimbursed in accordance with the principles set out in Clause 6.7.1.

7. ACTUAL OPENING DATE

7.1 Notice of Actual Opening Date

The Concessionaire shall give the Operator no less than 6 weeks notice of the programmed Actual Opening Date and no less than 10 weeks notice in the event that the programmed Actual Opening Date is to be advanced.

7.2 Extent of available access to the Site

During the period between the Handover Date (as defined in the Concession Agreement) and the commencement of the Licence Period the Concessionaire shall make available to the Operator (and/or its contractors any sub-contractors of any tier and its and/or their work persons, servants and agents) the relevant part or parts of the Site to which the Operator requires access (subject to clause 7.3 below) provided that:-

7.2.1 the Operator shall consult with the Concessionaire regarding the relevant part or parts of the Site to which the Operator requires access prior to notifying the Contractor in accordance with clause 7.2.2 below and the Operator shall take due account of any comments the Concessionaire may have; and

7.2.2 the Operator shall then notify the Contractor that it (and/or its contractors any sub-contractors of any tier and its/or their work persons, servants and agents) wish(es) to access the relevant part or parts of the Site on a date which is not less than seven days hence and the Concessionaire shall procure that the Contractor shall give consent to such access.

7.3 Compliance with Construction Site Regulations Prior to the Mobilisation Period

Prior to the commencement of the Mobilisation Period the Operator shall procure that any of its personnel (or those of its contractors or sub-contractors of any tier or its (or their) work persons, servants and agents) present on the Tramlink System comply with any regulations and instructions made or given by the Contractor pursuant to the Construction Contract for the safe and efficient construction and Commissioning of the Tramlink System and in addition the Operator shall procure that any such personnel work persons servants and agents shall comply with the conditions set out in Part 2 of Schedule 16.

8. MOBILISATION

8.1 Mobilisation Period

The Mobilisation Period shall commence on the date specified in the Construction Programme. The Concessionaire shall notify the Operator as soon as the Concessionaire becomes aware of any circumstances which, in the reasonable opinion of the Concessionaire may require the Mobilisation Period to commence on a date which is different from that set out in the Construction Programme. In any event it shall give the Operator no less than 6 weeks' notice of the date on which the Mobilisation Period shall commence.

8.2 Operating and Maintenance Procedures

8.2.1 The Concessionaire shall in accordance with the Construction Programme provide to the Operator the O&M Manuals and the maintenance plan prepared by the Contractor pursuant to the Construction Contract. The Operator shall within eight weeks of receiving such O&M Manuals provide to the Concessionaire its written comments on the same having reviewed such in accordance with Good Industry Practice. The Operator and the Concessionaire shall consult with each other and agree, acting reasonably,

any amendments which they require the Contractor to make to the O&M Manuals and which the Concessionaire is entitled to require under the terms of the Construction Contract.

- 8.2.2 Within 12 weeks of receipt of the finally approved O&M Manuals, the Operator shall prepare and submit to the Concessionaire draft O&M Procedures setting out details of the procedures which are necessary for the operation and maintenance of the Tralink System in accordance with this Agreement. The Concessionaire shall be entitled to require the Operator to make such amendments to the draft as the Concessionaire may reasonably require in order that they shall comply with Clause 8.2.3 and the Operator shall issue the O&M Procedures as so amended.
- 8.2.3 The O&M Procedures shall be drawn up so as to:-
- (a) comply with the Safety Management System;
 - (b) provide the Services in accordance with this Agreement; and
 - (c) be compatible with the O&M Manuals, the Service Delivery Plan and the Operator Specification.
- 8.2.4 Following the adoption of the O&M Procedures pursuant to Clause 8.2.2 the Concessionaire shall be entitled to require the Operator to make such reasonable amendments, modifications or supplements to the O&M Procedures, either generally or in any specific instance, as are required in order that the O&M Procedures shall comply with Clause 8.2.3. The Concessionaire shall consult with the Operator before making any such requirement.
- 8.2.5 Following the adoption of the O&M Procedures pursuant to Clause 8.2.2 the Operator shall also be entitled to make reasonable amendments, modifications or supplements to the O&M Procedures provided that the Operator requests the prior consent of the Concessionaire to such amendments, modifications or supplements and the Concessionaire is reasonably satisfied that such amendments will not prevent the O&M Procedures from complying with Clause 8.2.3. The Concessionaire's consent to any amendment, modifications or supplements proposed by the Operator shall not be unreasonably withheld or delayed.
- 8.2.6 The Operator shall, where required by the Concessionaire, prepare a report setting out the cost implications of any changes made pursuant to Clause 8.2.4 and 8.2.5. Any changes made pursuant to Clause 8.2.4 and 8.2.5 shall be treated as Additional Services unless such changes are required because of a failure by the Operator to comply with this Agreement.
- 8.2.7 If the Concessionaire introduces different Infrastructure or Trams to the Tralink System after the Actual Opening Date which requires the introduction of new O&M Manuals and which thereby affects the existing and current O&M Procedures as drawn up or the manner in which the Operator performs its Services under this Agreement then Clause 6.7 shall apply. Where the effect of the introduction of new O&M Manuals reduces

the costs or expenses of the Operator in performing its obligations under this Agreement then such reduction to be determined in accordance with Clause 6.7 shall be deducted from the Operating Fee.

8.3 Licence to use the Site

8.3.1 Subject to the Operator complying with its obligations in Part 2 of Schedule 16 the Operator shall have the right to use the Site (excluding the Depot) during the Licence Period for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement.

8.3.2 The licence to use the Site (excluding the Depot) contained in Clause 8.3.1 is granted subject to the provisions of the Act which the Operator hereby covenants to comply with insofar as it relates to the provision of the Services under this Agreement and are not required to be complied with by the Concessionaire by virtue of the other provisions of this Agreement.

8.3.3 The Concessionaire and the Operator agree that

(a) the right to use granted pursuant to Clause 8.3.1 shall determine on termination of the Concession (as defined in the Concession Agreement) in accordance with Part 11 of the Concession Agreement;

(b) the Operator's right to use the Site (excluding the Depot) will be as licensee only and nothing shall confer on the Operator any greater interest than that of licensee and in particular the licence granted by Clause 8.3.1 shall not create any relationship of landlord and tenant;

(c) the benefit of the licence granted by Clause 8.3.1 is personal to the Operator, its contractors, any sub-contractors of any tier and its and/or their work persons, servants and agents and is not assignable and the rights given in Clause 8.3.1 may only be exercised by the Operator, its contractors and sub-contractors of any tier and its and/or their work persons servants and agents.

8.3.4 Notwithstanding the other terms of this Clause 8.3 (and Part 2 of Schedule 16) it is agreed that, prior to the Actual Opening Date, all costs and expenses incurred in maintaining and running the Site (excluding the Depot) including rates, police and vandalism and cleaning shall be the responsibility of the Concessionaire. Thereafter such cost and expenses shall remain the responsibility of the Concessionaire save and to the extent only that any of the same shall become the responsibility of the Operator by virtue of the other terms of this Agreement.

8.4 Occupation of the Depot

8.4.1 Subject to the Operator complying with its obligations in Part 2 of Schedule 16 the Operator shall have the right during the Licence Period to enter on and remain on and occupy those parts of the Depot over which the Concessionaire has been granted a licence by the Corporation in accordance with Schedule 3 to the Concession Agreement for the purposes of carrying out and performing

the Services and other obligations assumed by the Operator under and in accordance with this Agreement.

8.4.2 The licence to occupy the Depot contained in Clause 8.4.1 is granted subject to the provisions of the following which the Operator hereby covenants to comply with:-

- (a) the Sub-Lease as if the same had been granted (so far as its provisions are applicable to a licence);
- (b) the Act insofar as it relates to the provision of the Services and is not required to be complied with by the Concessionaire by virtue of the other provisions of this Agreement;
- (c) Clauses 6(4) and 7(7) of the Agreement between London Regional Transport and the London Borough of Sutton dated 1st March 1993.

8.4.3 The Concessionaire and the Operator agree that:-

- (a) the right to occupy granted pursuant to Clause 8.4.1 shall determine on termination of the Concession in accordance with Part 11 of the Concession Agreement;
- (b) the Operator's occupation of the Depot will be as licensee only and nothing pending the grant of the Sub-Lease, shall confer on the Operator any greater interest than that of licensee and in particular the licence granted by Clause 8.4.1 shall not create any relationship of landlord and tenant;
- (c) the benefit of the licence granted by Clause 8.4.1 is personal to the Operator, its contractors and sub-contractors of any tier and its and/or their work persons, servants and agents and is not assignable and the rights given in Clause 8.4.1 may only be exercised by the Operator, its contractors and sub-contractors of any tier and its and/or their work persons servants and agents.

8.4.4 The Concessionaire agrees and undertakes with the Operator during the Licence Period, without prejudice to the other terms of this Clause 8.4 to perform the covenants in the Sub-Lease as if the Sub-Lease had already been granted.

8.4.5 Notwithstanding the other terms of this Clause 8.4 (and Part 2 of Schedule 16) it is agreed that, during the Licence Period, all costs and expenses incurred in maintaining and running the Depot including rates, police and vandalism and cleaning shall be the responsibility of the Concessionaire save that with effect from the Actual Opening Date:-

- (a) the Operator will be responsible for the service charges in respect of the following services:-
 - low voltage electricity;

- gas;
 - telecommunications;
 - water and sewerage; and
- (b) the Operator will be responsible for:-
- cleaning of the office premises at the Depot internally and externally (including the windows thereof);
 - cleaning the remainder of the Depot (including the service roads and car park);
 - de-icing and snow clearance at the Depot

8.5 Sub-Lease grant

8.5.1 The Concessionaire shall within 10 working days of the plans for the Land Lease having been approved or determined in accordance with paragraphs 7.1 – 7.4 of Part 1 of Schedule 3 to the Concession Agreement, submit to the Operator for approval proposed demise plans for the Sub-Lease. Such plans shall be appropriate for the Sub-Lease and shall be either in the same form as the relevant plans approved or determined as aforesaid or otherwise consistent in all respects with such plans.

8.5.2 The Operator's approval of such plans shall not be unreasonably withheld and if the Operator shall not have objected to them within 20 working days of receipt then such plans shall be deemed to be approved. The Concessionaire and the Operator shall each use all reasonable endeavours to agree the form of the Sub-Lease as soon as reasonably practicable following the submission of such plans by the Concessionaire pursuant to Clause 8.5.1. Any dispute between the parties as to the demise plans for the Sub-Lease or the form of the Sub-Lease shall be determined under the provisions of Schedule 9, save that for these purposes the Nominating Authority means, in respect of any dispute regarding such plans, The Royal Institution of Chartered Surveyors and, in respect of any dispute regarding the form of the Sub-Lease, The Law Society and, in respect of any dispute regarding such plans, the decision of the Expert shall be final and binding on the parties (save in the case of manifest error).

8.5.3 Within 20 working days of the later of:-

- (a) the demise plans for the Sub-Lease being approved or determined;
- (b) the form of the Sub-Lease being agreed or determined;
- (c) the Land Lease being completed in accordance with the Concession Agreement; and

- (d) the grant of a court order authorising the exclusion of the provision of sections 24-28 (inclusive) of Part II of the Landlord and Tenant Act 1954 (as amended) from the Sub-Lease.

the Concessionaire shall grant and the Operator shall accept, the Sub-Lease of the Depot or such part thereof as shall be included in the land and premises demised to the Concessionaire by the Land Lease.

8.5.4 In the event (and if applicable on each occasion) that the Concessionaire shall complete a Supplemental Lease, pursuant to paragraphs 7.7 or 7.8 of Part 1 of Schedule 3 to the Concession Agreement, of any part or parts of the Depot not included in the Sub-Lease completed pursuant to Clause 8.5.3, then the Concessionaire shall:

- (a) within 10 working days of completing each such Supplemental Lease, notify the Operator accordingly; and
- (b) within 20 working days of service of such notice pursuant to Clause 8.5.4(a), grant (and the Operator shall accept) a Supplemental Sub-Lease of the relevant part or parts of the Depot and the Operator shall contemporaneously execute and deliver to the Concessionaire a counterpart of that Supplemental Sub-Lease.

8.5.5 The Concessionaire confirms that it will, at the earliest practicable date, exercise its right to require the grant of a Supplemental Lease pursuant to the said paragraph 7.8 of the Concession Agreement in respect of any part or parts of the Depot not included in the Sub-Lease completed pursuant to Clause 8.5.3.

8.5.6 The Concessionaire shall not itself create any new rights relating to the Site and/or the Depot which would affect the grant of the Sub-Lease (or any Supplemental Sub-Lease) to the Operator or which would prejudice the licences granted pursuant to Clause 8.3.1 and Clause 8.4.1.

8.6 Title

8.6.1 The Concessionaire shall provide to the Operator:-

- (a) certified copies of all documents of title, conveyances, transfers and other instruments provided to it which relate to the Depot pursuant to paragraph 9.1 of Part 1 of Schedule 3 to the Concession Agreement within fifteen working days of receipt thereof; and
- (b) certified copies of the Land Lease and any documents referred to therein not provided pursuant to Clause 8.6.1(a) within fifteen working days of the completed Land Lease being stamped in accordance with Clause 8.6.2.

8.6.2 The Concessionaire shall procure that the Land Lease is stamped with any applicable ad valorem stamp duty and a PD stamp as soon as reasonably practicable after being completed and in accordance with the relevant statutory requirements.

- 8.6.3 The Concessionaire shall use all reasonable endeavours to register itself at HM Land Registry with absolute leasehold title in respect of the premises demised by the Land Lease and any Supplemental Lease, granted pursuant to the Concession Agreement as soon as reasonably practicable following completion of the Land Lease or any such Supplemental Lease so as to enable the Operator to similarly register itself with absolute leasehold title in respect of the premises demised by the Sub-Lease and any Supplemental Sub-Lease.
- 8.6.4 The Concessionaire agrees at the Operator's cost to use all reasonable endeavours to provide such assistance as the Operator may reasonably require to deal with any requisitions it may receive from HM Land Registry in respect of its application to register the Sub-Lease and any Supplemental Sub-Lease at HM Land Registry including (without limitation) providing to the Operator, on completion of the Sub-Lease and any Supplemental Sub-Lease, certified copies of all consents required from any chargee or chargees to such completion.
- 8.6.5 In so far as they may be relevant to the premises demised by the Sub-Lease and any Supplemental Sub-Lease the Concessionaire shall place its land certificate(s) or cause its charge certificate(s) to be placed on deposit at HM Land Registry as soon as reasonably practicable after completion of the registration of the Land Lease and any Supplemental Lease granted pursuant to the Concession Agreement, to meet the Operator's applications for registration of the Sub-Lease and any Supplemental Sub-Lease and shall on each occasion notify the Operator of the allocated deposit number.
- 8.6.6 The Operator shall not incur any liability hereunder to the extent that it is unable properly to carry out the Services and its other obligations hereunder due to:-
- (a) a failure on the part of the Concessionaire to make the Site (or any part thereof) available to the Operator at the times referred to in Clause 7.2 or at any time or times during the Licence Period; or
 - (b) the Site being subject to rights and/or obligations in favour of third parties or restrictions whether contained or referred to in the Land Lease or otherwise; or
 - (c) the Site or any part thereof not having the benefit of the rights necessary to provide the Services and/or to comply with such other obligations or any of them.

9. AVAILABILITY OF TRAMLINK SYSTEM

9.1 Concessionaire's obligation to make available

- 9.1.1 The Concessionaire shall ensure that at Actual Opening Date the Infrastructure and the Trams shall comply with the Specification and Performance Specification, and meet all Tramlink Applicable Requirements

and the Safety Case provided that the Parties acknowledge that the issuing of the Taking-Over Certificate shall be conclusive thereto.

- 9.1.2 The Concessionaire shall ensure that throughout the Term the Infrastructure and Trams are made available to the Operator to a standard which allows the Operator to operate the Tramlink System to the Operator Specification.
- 9.1.3 The Concessionaire shall ensure that throughout the Term the Infrastructure and Trams meet all Tramlink Applicable Requirements and the Concessionaire's Safety Management System.
- 9.1.4 With effect from the Actual Opening Date, the Concessionaire shall, in accordance with the terms of this Agreement, subject to the requirements of the Tramlink General Agreement and Possessions, make the Tramlink System available to the Operator for the provision of all the Services other than the Preliminary and Mobilisation Services.
- 9.1.5 The Operator shall supply the equipment it requires to perform its obligations under this Agreement as specified in Schedule 14. The Operator shall use all equipment supplied by the Concessionaire in accordance with Good Industry Practice.

9.2 Possessions

The Operator shall make the Infrastructure available for such periods during non-operational or operational hours for Possessions:-

- (a) in the event that the Concessionaire is required to give Possessions pursuant to its obligations under any Project Agreement;
- (b) otherwise as may be reasonably required by prior written notice from the Concessionaire; or
- (c) as may be required for the purpose of Infrastructure Maintenance Services.

The Concessionaire shall, in determining when Possessions are to take place pursuant to Clause 9.2(c), whenever possible schedule such for periods during which the Tramlink System is non-operational taking into account noise, nuisance and other relevant matters. Without prejudice to Clause 9.2(a), (b) or (c), the Parties shall agree the basis for Possessions.

9.3 Replacement Bus Service

- 9.3.1 Where any part or parts of the Infrastructure is required to be made available for scheduled Possessions, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate a replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage and operate such service and the Concessionaire shall bear the costs of the same.

- 9.3.2 If as a result of an unplanned event affecting the Tramlink System not caused as a result of a breach by the Operator of its obligations hereunder, a replacement bus service is required to be operated, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate such replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage and operate such service and the Concessionaire shall bear the costs of the same.
- 9.3.3 If as a result of an unplanned event affecting the Tramlink System caused as a result of a breach by the Operator of its obligations hereunder, a replacement bus service is required to be operated, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate such replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage, operate such service and bear the costs of the same.
- 9.3.4 Where the Concessionaire fails to make available the Trams as set out in Clause 9.1 and decides that a replacement bus service is required to be operated by the Operator then the Operator shall organise, manage and operate such service and the Concessionaire shall bear the costs of the same.
- 9.3.5 All replacement bus services shall be sufficient to meet actual demand and shall be provided in accordance with Good Industry Practice.

9.4 Co-operation of the Concessionaire's Contractors

The Concessionaire shall use reasonable efforts to procure that the Contractor and the Concessionaire's Maintenance Contractors co-operate with the Operator as the Operator may reasonably require in order to facilitate the performance by the Operator of the Services.

9.5 Extensions to the Tramlink System

For the avoidance of doubt, nothing in this Agreement shall prevent the Concessionaire from constructing or procuring the construction of extensions to the Tramlink System and the Operator shall, subject to agreement with the Concessionaire as to the basis and terms of any Additional Services, cooperate with regard to the planning, implementation and operation of any extensions.

9.6 Clause not used

10. BREAKDOWNS/EMERGENCIES

10.1 Operator's obligation to perform

The Operator shall subject to the requirements of the emergency services and the legal requirements of the other relevant authorities (if any) undertake all breakdown/emergency response on the Tramlink System. If the Concessionaire

becomes aware of any incidents requiring breakdown/emergency response it shall notify the Operator immediately.

10.2 Breakdown/Emergency Response

Breakdown/emergency response is the initial response to a failure of, damage to or other incident occurring on the Tramlink System which affects or, in the Operator's reasonable opinion, is likely to affect Tram Service Levels on the Tramlink System. Breakdown/emergency response comprises the following activities and all other activities which are necessarily ancillary to or necessarily implied as part of these activities:-

- 10.2.1 initial reporting of the occurrence of a failure, damage or other incident by the Operator, Concessionaire or Maintenance Contractor to the Control Centre unless already reported;
- 10.2.2 where necessary attendance at the site of the occurrence by the Operator's (and, if appropriate, Concessionaire's) staff to assess the cause of the problem;
- 10.2.3 determination by the Operator, in consultation with the Concessionaire if appropriate, of the appropriate course of action;
- 10.2.4 where relevant possible and safe and within the capabilities immediately available to the Operator and/or Concessionaire, rectification of the problem in situ or where not relevant possible and safe removal of the Tram to the Depot or to any other place which causes minimum disruption to the operation of Tram Service Levels on the Tramlink System;
- 10.2.5 implementation by the Operator and/or Concessionaire of measures to overcome and/or mitigate the effect to Tram Service Levels;
- 10.2.6 where relevant possible and safe and within the Operator's and/or Concessionaire's immediately available capabilities, implementation by the Operator of temporary repairs;
- 10.2.7 notification of the emergency services in the event of an accident requiring their presence;
- 10.2.8 notification of the ambulance service in the event of illness on the Tram where ambulance services are necessary;
- 10.2.9 call out of the relevant Maintenance Contractors in the event of a pantograph, track, signal, power or other fault or incident requiring their attention.

Breakdown/emergency response does not require the performance by the Operator of repairs except where these are of a minor or trivial nature or otherwise part of the Operator's obligations under this Agreement.

10.3 Notification to Concessionaire

Except where the Concessionaire has notified the Operator in accordance with Clause 10.1, the Operator shall notify the Concessionaire's Representative 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 Breakdown/Emergency Response or in accordance with any other notification procedure the Parties may otherwise agree in writing.

10.4 Concessionaire Attendance

Representatives of the Concessionaire shall be entitled to attend the site of any incident in order to consult on the appropriate measures to be taken to restore normal Tram Service Levels and to observe any actions taken by the Operator. As soon as practicable following the incident, the Operator 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.

10.5 Costs of Breakdown Emergency Response

Save to the extent that the Concessionaire is in breach of its obligations pursuant to Clauses 9.1 and 11.1 the Operator shall not be entitled to recover from the Concessionaire its additional costs and expenses incurred in complying with its obligations under this Clause 10.

10.6 Tram Maintenance Contractor Breakdown Emergency Response

The Operator shall not be in breach of Schedule 4 to the extent that such breach is caused by the Tram Maintenance Contractor failing to provide assistance in response to a Tram emergency breakdown provided nothing in this Clause shall relieve the Operator of its obligation to alert and liaise with the Control Centre for the Tramlink System in relation to any Tram emergency breakdown or to make use of its own emergency response facilities including its own incident response vehicle.

11. REPAIR OF FAILURES AND DAMAGES AND SPARE PARTS

11.1 Concessionaire's obligation to repair

The Concessionaire shall as soon as practicable effect the repair of defects in, failures of or damage to the Infrastructure including such repairs required to be undertaken as part of the Routine Maintenance Services. The Concessionaire shall effect all such repairs at its own cost but without prejudice to its rights against the Operator hereunder. The Concessionaire shall liaise with the Operator in relation to any such repair.

11.2 Standard of repairs

All repairs to the Infrastructure shall be carried out by the Concessionaire to a standard that meets the obligations of the Concessionaire set out in Clause 9 save where, in the reasonable opinion of either Party it is uneconomic, unsafe or impractical in which event the relevant items shall be replaced or alternative arrangements shall be agreed between the Parties.

11.3 Temporary repairs

Where necessary the Concessionaire shall be entitled to carry out temporary repairs to failures or damage to the Infrastructure subject, where necessary, to obtaining the prior approval of all appropriate regulatory authorities. All temporary repairs shall be fully repaired at the earliest opportunity.

12. SAFETY REGULATORY AND ENVIRONMENTAL

12.1 Safety Management

- 12.1.1 The Concessionaire shall be responsible for all matters relating to safety on the Tramlink System save that the Operator shall be responsible for all safety matters related to the performance of the Services.
- 12.1.2 The Concessionaire shall be responsible for interpreting all Applicable Requirements relating to the safety of the Tramlink System. In performing its obligations under this Agreement, the Operator shall comply with the Concessionaire's interpretation of the Applicable Requirements relating to safety save always that to the extent that the Operator incurs additional costs or expenses in performing such obligations as a result of the Concessionaire modifying or amending its interpretation of the Applicable Requirements from the interpretation originally given to the Operator, then the Operator shall be entitled to recover such additional costs or expenses from the Concessionaire in accordance with Clause 6.7.1.
- 12.1.3 The Concessionaire shall have the right to require the Operator to suspend the operation of the Tramlink System. In such circumstances the normal fees payable to the Operator shall be paid together with any additional costs and expenses incurred by the Operator in accordance with Clause 6.7.1 save to the extent such suspension is justified by a breach by the Operator hereunder, in which event no profit element shall be paid in respect of such fees and a replacement bus service may be provided at the discretion of the Concessionaire in accordance with Clause 9.3.3.
- 12.1.4 The Concessionaire is responsible for the scope of its own undertaking, both as Concessionaire and in respect of the Concessionaire's responsibilities for maintaining the Infrastructure items and Trams for which it has that responsibility. The Concessionaire will liaise with HMRI in respect of its responsibilities.
- 12.1.5 The Operator is responsible for the scope of its undertaking in providing the Services. The Operator will liaise with HMRI in respect of its responsibilities.
- 12.1.6 The Concessionaire shall be the responsible authority for the purposes of the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996.

12.1.7 The Operator shall employ an appropriate system for managing safety, the management of safety matters, including the following matters to the extent that they fall within the scope of the Operator's undertaking:-

- 12.1.7.1 where appropriate developing and promulgating safety procedures and providing all reasonable assistance to the Concessionaire for the purposes of agreeing these with the relevant regulatory authorities;
- 12.1.7.2 defining specific safety measures for particular activities, jobs, and sites and producing method statements on safety aspects;
- 12.1.7.3 producing safety documentation;
- 12.1.7.4 defining and reporting on tests and trials needed to demonstrate safety;
- 12.1.7.5 performing safety analyses and quantified risk assessments;
- 12.1.7.6 reporting on safety matters and accident statistics to the Concessionaire, the Corporation, the London Boroughs of Merton, Sutton, Croydon and Bromley, HSE, RAIB and HMRI as appropriate. The Concessionaire will ensure that any of its contractors and sub-contractors provide the Operator with the information required to enable the Operator to comply with this obligation. This obligation does not relieve any Party (or the contractor or sub-contractor of any party) of their own obligations under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 and the Railways (Accident Investigation and Reporting) Regulations 2005;
- 12.1.7.7 training the Operator's personnel on all safety matters (and, to an appropriate level, the Concessionaire's directly employed personnel in respect of track safety awareness and depot familiarisation) and ensuring relevant staff of sub-contractors of the Operator of any tier have adequate safety procedures and have received sufficient training to enable them to carry out their functions with respect to the Tramlink System safely;
- 12.1.7.8 performing safety inspections, audits and spot checks on its own and sub-contractors' personnel;
- 12.1.7.9 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 Operator's organisation and shall have sufficient authority to ensure that safety requirements are complied with by all of the Operator's and sub-contractors' personnel.

12.1.8 The Operator hereby agrees to comply with any reasonable request that the Concessionaire may make as respects any aspect of the operation which affects or is likely to affect the performance of the health and safety duties which it has as Concessionaire. Where such a requirement imposes an obligation to provide Additional Services, Clause 6.7 shall apply.

12.2 Safety Management Systems

12.2.1 Within 28 days of the execution of the 2008 Agreement, the Safety Management Systems for the Tramlink System shall be prepared:

- (a) by the Concessionaire in respect of requirements relating to the maintenance of those elements of the Infrastructure maintained by the Concessionaire and of Trams (the "Concessionaire's Safety Management System"); and
- (b) by the Operator in respect of all other safety issues (the "Operator's Safety Management System"), including those elements of the Infrastructure maintained by the Operator,

following the guidelines for the preparation of Safety Management System to comply with the Railways and other Guided Transport Systems (Safety) Regulations 2006, Regulation 6;

12.2.2 The Operator's Safety Management System shall incorporate the Operator's responsibilities for operating the system and its maintenance responsibilities (set out in Schedule 5, Part I) (if any) and shall distinguish between these separate responsibilities. The Operator shall consult the Concessionaire in preparing the Operator's Safety Management System and obtain approval before finalising and issuing the Operator's Safety Management System.

12.2.3 The Concessionaire's Safety Management System will incorporate the Concessionaire's responsibilities as Concessionaire and its responsibilities for maintaining the Infrastructure (set out in Schedule 5, Part I) and Trams and will distinguish between these separate responsibilities. The Concessionaire shall consult the Operator in preparing those aspects of the Concessionaire's Safety Management System relating to infrastructure maintenance and tram maintenance affecting operations and shall obtain the Operator's agreement before finalising the Concessionaire's Safety Management System.

12.2.4 If agreement cannot be reached between the Concessionaire and the Operator in the preparation/revision of a Safety Management System then either party may request non-binding guidance from the Concessionaire's Safety Committee. If it is not possible to obtain agreement after receiving guidance from the Concessionaire's Safety Committee then either party may refer the matter to dispute resolution in accordance with the terms of this Agreement.

12.2.5 The Operator shall review and revise the Operator's Safety Management System as necessary, any revisions shall be subject to the prior approval of the Concessionaire.

12.2.6 The Concessionaire shall review and revise the Concessionaire's Safety Management System as necessary, consulting the Operator and obtaining its agreement to any revisions in relation to Infrastructure and Tram maintenance affecting operations.

12.2.7 Each of the Operator and Concessionaire shall procure that its subcontractors of every tier shall comply with its own Safety Management System.

12.3 Safety Plans

12.3.1 The Concessionaire shall deliver the Safety Plans provided by the Maintenance Contractors responsible for the Routine Maintenance Services (Concessionaire) to the Operator within 28 days of the execution of the 2008 Agreement in respect of the maintenance of the Infrastructure. The Operator shall agree the Safety Plans so delivered with the Concessionaire. The Concessionaire shall have a continuing duty to maintain and deliver such Safety Plans. Safety Plans for major works are produced by the Principal Contractor under the Construction Design and Management (CDM) Regulations. Those which are likely to affect operations will be subject of pre-construction liaison between the Concessionaire (as client), the Principal Contractor and the Operator.

12.3.2 The Concessionaire shall deliver a Safety Plan in respect of the Trams to the Operator before the Actual Opening Date. The Operator shall agree the Safety Plan so delivered with the Concessionaire and the Operator shall, following such agreement, approve the Safety Plan.

12.3.3 The Operator shall deliver the Operator's Safety Plan to the Concessionaire within 28 days of the execution of the 2008 Agreement in respect of the operation of Trams on the Tramlink System. The Concessionaire shall agree the Safety Plan so delivered with the Operator. The Operator shall have a continuing duty to maintain and deliver the Operator's Safety Plan (as may be amended from time to time including to take account of the Operator ceasing to have responsibility for maintenance of the Trams).

12.3.4 All Safety Plans referred to in this sub-Clause 12.3 shall comply with all Applicable Requirements and with the other requirements of the Specification in respect thereof. The Operator and Concessionaire will consult each other in the preparation of these Safety Plans, which shall make specific references to the interfaces between the Operator and the Concessionaire.

12.3.5 Should the Parties be unable to reach agreement on either Safety Plan the procedure set out in Sub-clause 12.2.4 shall be followed.

12.4 Audit of safety procedures

12.4.1 The Operator shall allow the Concessionaire and the Corporation from time to time after the Actual Opening Date on reasonable notice (unless either the Concessionaire or the Corporation have good cause to require an immediate inspection) to enter upon, audit and inspect

the Tramlink System, without disrupting the operation of the Tramlink System, to ensure the Concessionaire's and the Operator's obligations in respect of the operation and maintenance of the Tramlink System are being discharged in accordance with the safety requirements of this Agreement.

12.4.2 In the event that any such audit of the safety aspects of the Tramlink System or any inspection reveals:-

- (a) any remedial work; or
- (b) any change in operating practices, management or other safety critical aspects of operations,

necessary in either case for the safe operation of the Tramlink System, then the Concessionaire shall, after consultation with the Operator, require the Operator to carry out such remedial work, or implement the necessary change in operating practices, management, or other safety critical aspects of operations for which the Operator is responsible under this Agreement, in each case as soon as reasonably practicable having regard to the nature of the matter and the risks to safety of persons. To the extent that such a change in the Services, or how they are provided, is necessary because the Operator has breached this Agreement, or there has been a change in Good Industry Practice in relation to the safety aspects of the Services, then the cost of implementing the necessary change in the Services or how they are provided shall be borne by the Operator, otherwise, save as provided in Clause 12.4.3, such costs shall be met by the Concessionaire, save to the extent that the Operator is required to bear them under Clause 31. If the Operator disputes the results of any such safety audit in circumstances where the Operator bears the costs of implementing the necessary changes in the Service or how they are provided, the Concessionaire shall, subject to Clause 12.4.3, be entitled to require the Operator to carry out such remedial work or implement such change in operating practices, subject to the Concessionaire being obliged to reimburse the Operator for all costs and expenses incurred in connection with such work or change in operating practices in accordance with Clause 6.7.1 if the Expert subsequently determines that the results of the safety audit were incorrect, or the conclusions resulting from it were incorrect, or in excess of what was reasonably required.

12.4.3.1 Where any remedial work to the Infrastructure is required by HMRI as a result of any such audit of the safety aspects of the Tramlink System and such remedial work is required as a result of a breach by the Operator of this Agreement which can only be remedied by such remedial work, then to the extent attributable to such breach the costs of implementing such remedial work shall be borne by the Operator up to a maximum amount of £200,000. In the event the costs of such remedial work exceed £200,000 then after meeting such costs up to the amount of £200,000, the Operator at its discretion may terminate this Agreement without prejudice to the Concessionaire's other

accrued rights hereunder. Each Party shall meet its own costs and expenses resulting from such termination.

- 12.4.3.2 If the Operator decides to terminate this Agreement in accordance with Clause 12.4.3.1, it shall give the Concessionaire written notice of its intention to terminate. Within 28 Business Days of receipt by the Concessionaire of such notice, the Concessionaire shall send a written response to the Operator either:
- (a) acknowledging the Operator's intention to terminate this Agreement; or
 - (b) confirming that the Concessionaire will bear the costs of implementing such remedial work required in accordance with Clause 12.4.3.1 in excess of £200,000.
- 12.4.3.3 If the Concessionaire responds to the Operator in accordance with Clause 12.4.3.2(a) then this Agreement shall terminate after the expiry of 6 months from the date of the written response provided to the Operator pursuant to Clause 12.4.3.2(a), save always that during such six month period the Operator should not be obliged to incur additional costs in providing Services due to any failure on the part of the Concessionaire in implementing remedial work pursuant to Clause 12.4.3.1 in excess of £200,000.
- 12.4.3.4 If the Concessionaire responds to the Operator in accordance with Clause 12.4.3.2(b) then the Operator shall not be entitled to terminate this Agreement and the Parties shall continue to perform their respective obligations hereunder on the terms of the Concessionaire's confirmation given under Clause 12.4.3.2(b).
- 12.4.4 In the event that the Operator fails to perform such remedial work within the period referred to in Clause 12.4.2, having been requested to do so by the Concessionaire, the Concessionaire may after having given the Operator twenty-one (21) days' notice of its intention to do so (or forthwith if the Concessionaire believes there is a risk to the safety of any person) and without prejudice to any other right or remedy which it may have, arrange for such remedial work to be carried out and shall be entitled to recover the reasonable costs of such action from the Operator where the Operator would have been responsible therefor.
- 12.4.5 Failure by the Operator to implement a necessary change in operating practices, management or safety critical aspects of operations having been requested by the Concessionaire to do so within the period referred to in Clause 12.4.2 (which may be forthwith if the Concessionaire believes there is a risk to safety of any person) will, unless the Expert has determined that such change was not necessary, constitute a material and serious default by the Operator of this Agreement where such failure constitutes a material and serious default under the Concession Agreement, but without prejudice to the Concessionaire's other rights hereunder.

12.4.6 The Concessionaire shall provide to the Operator the programme of planned audits which cover the Concessionaire's responsibilities for infrastructure and tram maintenance and will provide an amended programme if the planned programme changes. The Concessionaire shall provide to the Operator on request copies of any such audits.

12.5 Applicable Requirements

Subject to Clause 31, the Operator shall, after prior consultation with the Concessionaire, implement all alterations and changes to the Services which are required by an Applicable Requirement in force or which come into force after the date of this Agreement relating to safety.

12.6 Approvals and Certificates

12.6.1 The Concessionaire shall obtain and maintain (and, when obtained or renewed, shall supply the Operator with copies of) all approvals licences or certificates required to operate the Tramlink System save for those which the Operator is required to obtain pursuant to Clause 6.4.3.

12.6.2 Each party shall provide to the other such assistance as the other may reasonably require in order to obtain and maintain during the Term such approvals, licences and certificates. This support shall include assistance in 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.

12.7 Environmental Liabilities

12.7.1 Obligations on both Parties

12.7.1.1 Each Party shall as soon as reasonably practicable notify the other Party (and where such notification is given orally promptly confirm such notification in writing) of any written complaint made to or order or notice served on that Party by a competent authority or by a third party threatening legal proceedings related to Concessionaire's Environmental Damage or Operator's Environmental Damage.

12.7.1.2 Each Party shall take all reasonable care in carrying out any environmental investigation and take such steps as a prudent licensee or tenant of land would take to limit Concessionaire's Environmental Damage or Operator's Environmental Damage (as appropriate) or any other injury arising from such investigation, and shall reinstate any damage as is reasonable caused to the Site by such investigation once it has carried out that investigation.

12.7.1.3 Each Party shall copy to the other and notify the other in writing of the results of any tests to assess the presence and nature of any Concessionaire's Environmental Damage or Operator's

Environmental Damage within 14 days of receipt of the same, and both the Concessionaire and the Operator shall maintain as confidential the results of those tests in accordance with Clause 33.

12.7.2 Concessionaire's Environmental Damage

12.7.2.1 In the event that the Operator is not able to provide the Services because the Concessionaire has not remedied Concessionaire's Environmental Damage and such failure to remedy has resulted in a specific health and safety or other environmental damage issue which is recognised by competent authority as requiring action the non-provision of the Services shall be treated as constituting Force Majeure and Clause 23 of the Agreement shall apply save that the indemnity in Clause 12.7.2.3 shall apply in place of the cost sharing arrangements in Clause 23.7.

12.7.2.2 The Concessionaire shall be responsible for and keep the Operator indemnified for and against all actions, proceedings, demands, claims, costs, actions, damages expenses, losses and liabilities (including costs reasonably and properly incurred in investigating or defending any claim, proceeding, demand or other costs or expenses properly and reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) resulting from any actions, claims, proceedings or demands brought by third parties (which term shall include employees, agents and contractors of any tier and any competent authority including the Corporation, the Council and Network Rail) in respect of the Concessionaire's Environmental Damage;

12.7.2.3 The Concessionaire shall pay to the Operator any costs or expenses incurred by the Operator in performing the Services to the extent such costs are additional to the normal costs of performing the Services and are incurred directly as a result of the Concessionaire's Environmental Damage in accordance with Clause 6.7 save that this sub-clause 12.7.2.3 shall not apply in cases where the Concessionaire's Environmental Damage is attributable to an identified third party in which case the Operator shall be expected to pursue any remedies in law against the third party.

12.7.2.4 In the event that the Operator considers that Concessionaire's Environmental Damage is being caused or is reasonably foreseeable, the Operator shall notify the Concessionaire who shall carry out such tests sampling or other investigations which the Concessionaire considers necessary to enable it to determine whether Concessionaire's Environmental Damage has occurred or is reasonably foreseeable.

12.7.2.5 The Concessionaire shall ensure that at the Actual Opening Date there are no hazardous or dangerous substances or waste at, on, in, under or arising from the Site which could cause any person acting under environmental laws in force during the term of this Agreement to require the carrying out of any remedial or preventative action by the

Operator in relation to the Site or any neighbouring property and indemnify the Operator from and against all operations, claims, proceedings, losses, damage, expenses, costs, demands and liabilities (including costs properly incurred in preventing, avoiding or mitigating loss) liability or damage suffered or incurred by the Operator as a result of failure on the part of the Concessionaire to ensure the compliance with this Clause 12.7.2.5.

12.7.3 Operator's Environmental Damage

12.7.3.1 The Operator shall take whatever action is required by a competent authority or as a result of agreement between the Parties to prevent, mitigate or (in the case only of premises or property damage or pollution of the environment) remedy any Operator's Environmental Damage and reinstate the Tramlink System to a standard required by Clause 9.1 to the extent that Operator's Environmental Damage has caused it to fall below that standard provided that the Concessionaire shall be notified in writing in advance (except in case of emergency in which case the Concessionaire shall be notified as soon as reasonably practicable after the action) of any action proposed under this clause and shall be entitled to require that any such action be monitored by the Concessionaire or any environmental consultant appointed by the Concessionaire (at the cost of the Operator), and where the Operator fails to take, carry out properly or complete such action within a reasonable period of time then the Concessionaire shall be entitled to take or complete such action as is reasonable and to recover from the Operator the cost (including all appropriate professional fees) properly and reasonably incurred or payable in respect of taking or completing such action.

12.7.3.2 The Operator shall be responsible for and keep the Concessionaire indemnified from and against:-

(a) all costs, actions, proceedings, demands, claims, damages, expenses, losses and liabilities (including costs reasonably and properly incurred in investigating or defending any claim, proceeding, demand or other costs or expenses properly and reasonably incurred in preventing, avoiding or mitigating loss, liability or damage (save those arising from preventing, avoiding or mitigating Operator's Environmental Damage)) resulting from any actions, claims, proceedings or demands brought by third parties (which term shall include a competent authority including the Corporation, the Council and Network Rail) in respect of the Operator's Environmental Damage.

12.7.3.3 The Concessionaire shall be entitled, at all times in case of emergency, and otherwise after notifying the Operator and subject to the Operator's safety requirements and site regulations to carry out any tests sampling or other investigations which the Concessionaire considers necessary to enable it to determine whether Operator's Environmental Damage has occurred or could be caused by the activities of the Operator and the Concessionaire may require the

Operator to take any steps to rectify any condition of the Site which has either resulted in, or which it is reasonably foreseeable could result in Operator's Environmental Damage. The Concessionaire shall be notified in writing in advance of the action proposed in response to the Concessionaire's requirement under this Clause and shall be entitled to require that any such action be monitored by the Concessionaire or any environmental consultant appointed by the Concessionaire (at the cost of the Operator), and where the Operator fails to take, carry out properly or complete such action within a reasonable period of time then the Concessionaire shall be entitled to take or complete such action as is reasonable and to recover from the Operator the cost (including all appropriate professional fees) properly and reasonably incurred or payable in respect of taking or completing such action;

12.7.4 The Operator shall not deposit on the Site any controlled waste as defined in Section 75 of the Environmental Protection Act 1990 other than controlled waste which is lawfully deposited and in accordance with Good Industry Practice nor deposit on the Site any radioactive waste as defined in Section 2 of the Radioactive Substances Act or other hazardous or dangerous materials except where necessary in the course of providing the Services, and the deposit is in accordance with law and Good Industry Practice.

13. PERSONNEL

13.1 Operator's responsibility

The Operator shall ensure that its personnel and the personnel employed by the Operator's contractors and their sub-contractors of any tier are competent to perform the work assigned to them.

13.2 Qualified persons

If so requested by the Concessionaire, the Operator shall provide to the Concessionaire evidence of the assessment of competence of the personnel in Key Staff Positions, including details of previous experience and qualifications. The Concessionaire after consultation with the Operator may require the Operator to remove and replace any of such personnel at the expense of the Operator having demonstrated good cause for requiring such removal. The Operator shall replace any personnel so removed from Key Staff Positions with other competent personnel as soon as practicable.

13.3 Safety critical work

Where the Operator's personnel (including those of contractors and sub-contractors of any tier) are engaged in any form of safety critical work, the Operator shall ensure that such personnel comply with the requirements of Part 4 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006. The Operator shall provide to the Concessionaire evidence that persons have been properly assessed as competent to perform their safety critical duties whenever requested by the Concessionaire.

13.4 Key Staff Positions

The Operator shall not reduce the number of the Key Staff Positions or change the identity of the persons performing such functions without the prior written consent of the Concessionaire. The Operator shall notify and consult with the Concessionaire in advance regarding any proposed replacement. The Concessionaire's consent shall not be unreasonably withheld or delayed where the Operator is replacing such persons with competent personnel.

13.5 Concessionaire's Personnel

The Concessionaire shall ensure that its personnel and the personnel employed by the Concessionaire's contractors and their sub-contractors of any tier are 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 such personnel comply with the requirements of Part 4 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006. The Concessionaire shall provide to the Operator evidence that persons have been properly assessed as competent to perform their safety critical duties whenever requested by the Operator. The Concessionaire shall ensure that all of its employees comply with the safety plans for the Tramlink System prepared by the Operator and approved by the Concessionaire.

13.6 Removal of Personnel

The Operator shall have power to remove any individual other than the Concessionaire's Health and Safety Manager from the Site performing safety critical work if the Operator has good cause to believe such person is not competent or is not complying with the requirements of Part 4 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

14. POLICING, EMERGENCY EXERCISES AND ENQUIRIES

14.1 Policing the Tramlink System

From the Actual Operating Date the Operator shall make all necessary arrangements, for the policing of the public areas of the Tramlink System to meet with all Applicable Requirements. The Operator shall cooperate with the Concessionaire in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of special events. If special events are held the arranging of additional policing and the cost of additional policing shall be an Additional Service.

14.2 Emergencies and emergency exercises

The Parties undertake to cooperate with each other 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 Tramlink System. Each Party will use reasonable endeavours to ensure that the other is

party to all discussions and communications with the statutory authorities in respect of any emergency exercises.

14.3 Cooperation with special enquiries

Each Party shall to the extent reasonable cooperate with any special enquires or investigations carried out by the Concessionaire or regulatory authorities as a result of accidents, incidents or proposed changes in legislation and shall promptly provide all information, resources and facilities within its control which are reasonably required for such enquiries or investigations. Without limiting the previous sentence, within 5 working days of a major accident or incident, the Parties will meet to agree appropriate information, resource and facility sharing arrangements under this Clause 14.3.

15. DETERMINATION OF FARES

The Operator shall charge fares and make available and accept tickets in accordance with the level and structure notified by the Concessionaire from time to time to the Operator after consultation with the Operator and on providing reasonable notice by the Concessionaire. The Concessionaire shall, where practicable, consult with the Operator as to the appropriate level and structure of fares. The provisions of Schedule 11 shall apply in relation to ticketing and revenue collection.

16. TRAM SERVICE LEVELS/TIMETABLE

16.1 Service Levels

16.1.1 The Operator shall operate the Tramlink System so as to comply with the Tram Service Levels, the Timetable and the other requirements of the Operator Specification without prejudice to the other terms and conditions of this Agreement.

16.1.2 Without prejudice to Clause 24 sums deducted from the Fees in accordance with clause 21.2.1.2 and Schedule 4 will be the Operator's only financial liability to the Concessionaire for failure to operate Scheduled Kilometrage or to operate a replacement bus service. Where and to the extent that the cause of the Operator failing to operate the Scheduled Kilometrage or operate a replacement bus service is a failure of the Tram Maintenance Contractor to comply with its maintenance responsibilities, the Operator shall not be liable in respect of such failure.

16.2 Corporation Service Changes

If the Concessionaire receives any proposals for a Corporation Service Change, or a Corporation Service Parameters Change, the Concessionaire shall provide to the Operator as soon as practicable all information obtained from the Corporation in respect thereof and shall consult with the Operator concerning such Corporation Service Change or Corporation Service Parameters Change. The Concessionaire shall if required by the Operator (and the Concessionaire is able to do so) arrange for the Operator and the Tram Maintenance Contractor to attend any meetings to discuss the same with the Corporation. The Operator shall comply with such Corporation Service Change or Corporation Service Parameters Change (and any

consequential obligations to produce Timetables) within the time specified in the notice received by the Concessionaire, and provided promptly to the Operator, of the Corporation Service Change or Corporation Service Parameters Change.

16.3 Consultation

The Operator shall provide such information as the Concessionaire may reasonably require and assist the Concessionaire in preparation of representations concerning the effect of the proposed Corporation Service Change or Corporation Service Parameters Change for the purpose of the consultation process set out in Clauses 25.4 and 25.5 of the Concession Agreement. The Concessionaire shall, in preparing its representations to be made to the Corporation take into account any reasonable representations of the Operator.

16.4 Costs implications

16.4.1 The Operator shall assist the Concessionaire in negotiating with the Corporation pursuant to Clause 25 of the Concession Agreement (including any reference to any Expert pursuant thereto) to determine the cost implications of a Corporation Service Change.

16.4.2 Where the Corporation or the Concessionaire has issued a Service Parameter Change or the Concessionaire has issued a Service Change the Parties shall assess the financial effect of the same on the Operator of performing this Agreement (the "Change in Cost") and in the case of a Service Parameter Change issued by the Corporation shall agree the amount of Change in Cost as shall form part of the Concessionaire's claim under Clause 25.5 of the Concession Agreement (if any). Where the Parties cannot agree the amount of the Change in Cost to be included as part of the Concessionaire's claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement. In the case of a reduction in cost the provisions of this Clause 16.4 shall apply mutatis mutandis.

16.4.3 Where in any negotiation with the Corporation as to the appropriate amount of the Change in Cost to be taken into account in determining the Concessionaire's entitlement to compensation under Clause 25.5 of the Concession Agreement the Corporation rejects the level of the Change in Cost so proposed solely on the grounds that such costs are not properly substantiated then either:

16.4.3.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Change in Cost with the Corporation;
or

16.4.3.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

16.4.4 The Operator shall be entitled to recover from the Concessionaire the Change in Cost determined in accordance with Clause 16.4.2 in respect of any Service Parameters Change requested by the Corporation or Corporation Service Change save where such Change in Cost is rejected by the

Corporation in accordance with Clause 16.4.3 in which event the Operator shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 16.4.3 or determined by the Expert.

16.4.5 In respect of any Service Parameters Change or Service Change required by the Concessionaire the Operator shall be entitled to recover in accordance with Clause 6.7.1 any Change in Cost determined in accordance with Clause 16.4.2.

16.5 Other Tram Service Level Changes

If either the Concessionaire or the Operator proposes a change in the Tram Service Levels or the Timetable, the Concessionaire and the Operator shall negotiate on a good faith basis to reach agreement between themselves as to the basis and terms of any such change. If the Concessionaire and the Operator reach such agreement, the Concessionaire shall propose such change to the Tram Service Levels or the Timetable under Clause 25.2 of the Concession Agreement and each Party shall provide all such assistance as the other shall reasonably require in order to obtain approval of the Corporation in accordance with Clause 25.2 of the Concession Agreement. No change to the Tram Service Levels or the Timetable shall be implemented until all necessary approvals are obtained including those required under the Concession Agreement and from HMRI.

16.6 Persistent Minor Breach

16.6.1 Without prejudice to any other right or remedy which it may have, if the Concessionaire is in breach of any of the provisions listed in Parts 1 and 2 of Schedule 12 to the Concession Agreement and the Concessionaire has received a notice in respect of such breach under Clause 26 of the Concession Agreement and such breach has been caused by a breach by the Operator, the Concessionaire may give the Operator a written notice specifying the nature of the default and, a request that it is remedied within the period specified in the notice which period shall be reasonable in all the circumstances.

16.6.2 Where the Concessionaire is required to pay liquidated damages to the Corporation under Clause 26 of the Concession Agreement the Concessionaire shall to the extent the liquidated damages are attributable to a breach by the Operator notify the Operator of the amount of such liquidated damages and the Operator shall pay the same to the Concessionaire within 27 days of such notice provided that where the alleged failure has been referred to the Expert for determination the obligation to pay will be suspended pending the outcome of such determination.

16.6.3 If the Concessionaire gives to the Operator more than 8 notices under Clause 16.6.1, in each of two consecutive periods of 6 months during the Term, the Concessionaire may refer the list of alleged failures to comply with this Agreement to the Expert and if the Expert determines that each such notice has been properly served following breach of this Agreement by the Operator such that there has been a persistent failure by the Operator to comply with this Agreement he shall issue a Warning Notice to the Operator.

17. ADVERTISING AND OTHER REVENUE

17.1 Advertising on Trams and stations

In the event that the Concessionaire determines to undertake any advertising activities or procure such activities are undertaken on its behalf on the Trams and the stations within the Tramlink System the Operator shall co-operate with the Concessionaire's reasonable requirements in respect of the arrangement of such activities.

17.2 Concessionaire corporate image

The Concessionaire is to be referred to in all promotional literature to be published by the Operator in relation to the Tramlink System in a format to be agreed between the Parties.

18. INTELLECTUAL PROPERTY

18.1 Proprietary software

Whilst the Operator uses software (other than software which can be purchased commercially off the shelf or is provided as part of the Tramlink System and other than software provided by the Tram Maintenance Contractor) for the purpose of storing or utilizing records or in respect of the Services and any systems relating thereto or otherwise in accordance with its obligations under this Agreement, the Operator shall ensure, at the Concessionaire's expense, that on revocation, termination or expiry of this Agreement, subject to assumption of the burden thereof by the Concessionaire or the Corporation, the right to use such software is capable of being assigned or licensed to the Concessionaire and/or the Corporation and thereafter used by the Concessionaire and/or the Corporation. The assignment or licence shall be at fair market value, if any.

18.2 Intellectual Property Owned by the Operator

Where the Operator owns any other intellectual property rights which are necessary for the operation of the Tramlink System the Operator shall on termination or expiry of this Agreement transfer to the Concessionaire at the Concessionaire's cost an interest in such intellectual property rights sufficient to enable the Concessionaire to operate the Tramlink System at fair market value, if any, and shall grant to the Concessionaire a non-exclusive and royalty-free licence in respect of such software for such period as the Concessionaire may reasonably require.

18.3 Indemnity

18.3.1 The Operator shall hold harmless, defend and indemnify the Concessionaire from and against any and all claims, demands or proceedings brought by any person for or on account of infringement by the Concessionaire in using any intellectual property provided to the Concessionaire pursuant to this Clause 18.

18.3.2 The Concessionaire shall hold harmless, defend and indemnify the Operator from and against any and all claims, demands or proceedings brought by any

person for or on account of infringement by the Operator in using any rights in intellectual property provided to the Operator as part of the Tramlink System pursuant to this Agreement.

19. QUALITY ASSURANCE

19.1 Management of Quality Assurance

19.1.1 The Operator shall procure that all aspects of the Services are the subject of appropriate quality management systems which comply with:-

19.1.1.1 the requirements of ISO 9001/2000, or an equivalent British or European quality system; and

19.1.1.2 the relevant parts of the Operator Specification where obligations are imposed therein on the Operator.

19.1.2 The Concessionaire shall procure that the maintenance of those elements of the Infrastructure for which it is responsible will be the subject of appropriate quality management systems which comply with the requirements of ISO 9001/2000, or an equivalent British or European quality system.

19.2 Quality Plans

19.2.1 The Operator shall prepare the Quality Plans prior to the Actual Opening Date in respect of the performance of the Services which shall comply with the requirements of Clause 19.1 and which shall be subject to the prior approval of the Concessionaire such approval not to be unreasonably withheld or delayed.

19.2.2 Without limitation to the generality of Clause 19.1, in performing the Services the Operator shall comply with the Quality Plans. The Operator shall notify the Concessionaire of any proposed changes to the Quality Plans. Any such changes shall require the written consent of the Concessionaire provided that the Concessionaire 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 19.1. Any consent will be deemed given if no reasonable objection is received by the Operator within 20 Business Days.

19.2.3 The Concessionaire, either itself or by its Maintenance Contractors, shall maintain quality plans in respect of the maintenance of the Infrastructure and Trams, for which it is responsible. These quality plans shall comply with the requirements of Clause 19.1.

19.2.4 Without limitation to the generality of Clause 19.1, in maintaining those elements of the Infrastructure and Trams for which it is responsible the Concessionaire shall comply with the Quality Plans. The Concessionaire shall notify the Operator of any proposed changes to the quality plans for which it is responsible and which affect the Services provided by the Operator. Any such changes shall require the written consent of the Operator, provided that the Operator 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 19.1. Any consent will be deemed to be given if no reasonable objection is received by the Concessionaire within 20 Business Days.

19.3 Effectiveness of contractors' quality systems

The Concessionaire and the Operator shall monitor their respective contractors' quality systems and ensure that they operate appropriate quality systems based on the relevant requirements of ISO 9002 series standard or other equivalent British or European standard appropriate to their scope of supply. The Concessionaire and the Operator shall be responsible for monitoring the performance of such persons with the requirements of their respective quality systems.

19.4 Quality assurance audit

The Concessionaire shall be entitled to audit compliance with the Quality Plans on a random basis at reasonable times and on reasonable notice to the Operator . Any such audit may involve the examination or inspection of works or activities on or off the Tramlink System. The Operator shall use reasonable endeavours to procure that third parties shall provide to the representatives of the Concessionaire conducting such an audit 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 Operator shall comply with any recommendations regarding its Quality Plans arising from any such audit subject to any dispute which shall be referred to the Expert. Any additional costs and expenses in implementing such recommendations, unless such recommendations result from a breach by the Operator of its obligations hereunder, shall be dealt with in accordance with Clause 6.7.1.

20. SERVICE DELIVERY PLAN

20.1 Production and Maintenance of Service Delivery Plan

20.1.1 The Concessionaire shall produce and maintain a Service Delivery Plan provided always that the Operator shall cooperate fully with and provide the Concessionaire with all assistance and information the Concessionaire reasonably requests in this regard.

20.1.2 Without prejudice to each their respective obligations under clause 20.1.1 the:

20.1.2.1 Concessionaire shall provide a draft of any update to the Service Delivery Plan and to the Operator for review no less than 40 Business Days before the beginning of each Financial Year;

20.1.2.2 Operator shall within 21 Business Days of receipt of any draft updated Service Delivery Plan confirm in writing that it has no comments (in which case the updated Service Delivery Plan shall be deemed agreed) or provide constructive written

comments on and/or suggested amendments to the draft updated Service Delivery Plan; and.

20.1.2.3 if the draft updated Service Delivery Plan is returned by the Operator with written comments and/or suggested amendments the Concessionaire shall (if it considers appropriate) discuss the same with the Operator; the Parties shall work together to reach agreement on any revised content and a copy of any revised draft updated Service Delivery Plan which shall be submitted to the Operator for further review; the Operator shall within 21 Business Days (or such shorter period as is required and is reasonable in order to enable agreement of the draft updated Service Delivery Plan before the commencement of the relevant Financial Year) provide the Concessionaire with constructive written comments on the same or confirm in writing that it has no comments (in which case the updated Service Delivery Plan shall be deemed agreed) provided always that in the event of any disagreement as to the content of the draft updated Service Delivery Plan the view of the Concessionaire shall take precedence;

20.1.2.4 once finalised in accordance with Clause 20.1.2.3 the draft updated Service Delivery Plan shall become the final Service Delivery Plan which shall apply in respect of the following Financial Year subject to any amendments agreed in accordance with the provisions of this Agreement;

20.1.2.5 the Service Delivery Plan shall so far as can be reasonably anticipated enable the Operator and the Concessionaire to comply in full with their respective obligations to operate and maintain the Tramlink System in the case of the Operator under this Agreement and in the case of the Concessionaire under this Agreement and/or the Project Agreements.

20.1.3 The Service Delivery Plan shall contain:

20.1.3.1 the Concessionaire's vision and mission statement for the Services and Tramlink System;

20.1.3.2 the Concessionaire's strategic objectives for the Services and Tramlink System for the following two (2) Financial Years;

20.1.3.3 a Service improvement plan setting out details for improvements in the delivery of the Services and which shall contain (without limitation) details of improvements to be achieved in respect of:

- (a) safety;
- (b) health and welfare;
- (c) customer satisfaction;
- (d) environmental impact;

- (e) procurement;
 - (f) sustainability;
 - (g) financial performance; and
 - (h) human resources matters;
- 20.1.3.4 an investment plan setting out details of specific initiatives to be delivered and by whom they are to be delivered during the following two (2) Financial Years;
- 20.1.3.5 a maintenance plan setting out details of:
- (a) the Concessionaire's principal planned Infrastructure and Tram Maintenance activity for the forthcoming Financial Year; and
 - (b) the Concessionaire's principal planned service disruptions for the forthcoming Financial Year;
- 20.1.3.6 details of the performance levels applicable to apply to the forthcoming Financial Year including (without limitation) key performance and service indicators to be used by the Concessionaire in the measurement of the achievement of such performance levels;
- 20.1.3.7 details of risks and opportunities relating to or arising out of proposals for delivery of the Service for the forthcoming Financial Year;
- 20.1.3.8 details of the budget for the forthcoming Financial Year; and
- 20.1.3.9 details of the Parties' respective duties and cooperative working arrangements for the delivery of the Service in accordance with the Service Delivery Plan.
- 20.2 The Service Delivery Plan shall describe in summary detail the achieved and planned change in the overall condition of the Infrastructure and Trams for the period of the Service Delivery Plan. The principal planned asset interventions shall be described as determined from use of the inspection and maintenance plans contained in the Concessionaire's Management System and Asset Management Information System to evaluate the risk to the safety and performance of the Services, the Tramlink System and its operation.
- 20.3 The Service Delivery Plan shall also describe the actions the Concessionaire and the Operator are to take to achieve compliance with policies and other requirements of the Corporation from time to time.
- 20.4 Where the Operator's actions required for compliance with the Service Delivery Plan, policies and other requirements of the Corporation would result in the variation of the Operating Services such actions shall be treated as Additional Services in accordance with Clause 6.7 of this Agreement.
- 20.5 The Operator shall support the Concessionaire in developing the Service Delivery Plan and shall proactively contribute to and comment upon the draft Service Delivery Plan. The

Operator and the Concessionaire shall use all reasonable endeavours to achieve compliance with the plan and to assist one another in achieving their respective targets.

- 20.6 Where the Service Delivery Plan identifies activities, policies and targets that impact upon the Operator, the Operator shall provide written details of such impacts and the steps it shall take to support the Concessionaire in the Parties' respective delivery of the Service Delivery Plan.
- 20.7 The Concessionaire and Operator shall review and agree progress toward and actions to be taken to achieve compliance with the Service Delivery Plan at each Operations Review Meeting.
- 20.8 If the Concessionaire or the Operator wish to make changes to the Service Delivery Plans for the current Financial Year it shall give written notice to the other of the proposed changes and the proposed date of implementation providing reasonable notice in all cases. The Parties shall then consult in respect of such proposed change and consider the implications for both Parties. Where agreement is reached in respect of the proposed change to any Service Delivery Plan it shall be implemented on that basis. The Operator shall in any event be required to implement any changes to the Service Delivery Plan required by the Concessionaire but without prejudice to the provisions of Clause 9 and unless the circumstances requiring the change are covered by any other express Clause of this Agreement (in which case such Clause shall prevail), the Operator shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7.
- 20.9 For the avoidance of doubt, the content of the Service Delivery Plan shall not prejudice the provisions contained within Clause 9.

21. FEES

21.1 Fees

Subject to the provisions of this Agreement, in consideration for the provision of the following Services, the Concessionaire shall pay to the Operator the following fees:-

- 21.1.1 the fee calculated and payable in accordance with Part 1 of Schedule 2 for the Preliminary Services;
- 21.1.2 the fee calculated and payable in accordance with Part 2 of Schedule 2 for the Mobilisation Services;
- 21.1.3 the fee calculated and payable in accordance with Part 3 of Schedule 2 of the Operating Services;
- 21.1.4 clause not used;
- 21.1.5 clause not used;
- 21.1.6 clause not used.

21.2 Indexation, damages and rebasing

- 21.2.1.1.1 The fees calculated in accordance with Clause 21.1 above shall be adjusted by Indexation in accordance with paragraphs (a) and (b) of Schedule 2.
- 21.2.1.2 The fees calculated in accordance with Clause 21.1.3 above shall be adjusted in respect of each Financial Period in accordance with Schedule 4.
- 21.2.1.3 The fees calculated in accordance with Clause 21.1 above shall be further adjusted in respect of each Financial Period by the addition of any amounts in respect of Additional Services or otherwise expressed to be recoverable by the Operator hereunder which have become due.

21.2.2 The basis upon which the fees for the Services are calculated shall be adjusted in every fifth Operating Year in accordance with paragraph (c) and (d) of Schedule 2 and the fees subsequently payable shall be amended accordingly.

21.3 Reconciliation

The Operator shall, on a daily basis, apportion responsibility for any failure to achieve Scheduled Kilometrage by assigning reasons against the categorisations in Part 2 of Schedule 4 and shall submit to the Concessionaire on the Financial Period Payment Date (or more frequently if reasonably required by the Concessionaire) a report showing all such daily reconciliations in respect of the previous Financial Period. If the Concessionaire and Operator are unable to agree any daily reconciliation or the categorisation of failures, the dispute shall be referred to the Fee Panel.

21.4 Invoice

21.4.1 The Operator shall on or prior to the tenth Business Day of each Financial Period deliver to the Concessionaire an invoice in respect of the Fees due in respect of Operating Services and related Additional Services for that Financial Period or any earlier Financial Period which has not been invoiced and shall supply with such invoice full details of the calculations used to ascertain such sums.

21.4.2 The Operator shall within one week after the end of each Financial Period or month (as appropriate) to which payment relates deliver to the Concessionaire an invoice in respect of Fees due in respect of all Services, other than Operating Services and related Additional Services, for that Financial Period or any earlier Financial Period which has not been invoiced and shall supply with such invoice full details of the calculations used to ascertain such sums.

21.4.3 The Concessionaire shall pay to the Operator the Preliminary Fee and the Mobilisation Fee within 20 Business Days of receipt of the invoice relating thereto provided always that the Operator shall submit an invoice in respect of Preliminary and Mobilisation Fees no more than once in any one month.

21.5 Approval and Payment of Invoice

21.5.1 On each Financial Period Payment Date the Concessionaire shall, subject always to Clause 21.6:-

21.5.1.1 pay to the Operator (a) 75 per cent of the sum shown as due in the invoice delivered pursuant to Clause 21.4.1 in respect of the Operating Fee and related Additional Services in the current Financial Period; and

21.5.1.2 pay to the Operator 25 per cent of the sum shown as due in the invoice delivered pursuant to Clause 21.4.1 in the previous Financial Period in respect of the Operating Fee and the related Additional Services less any amounts which are still in dispute.

21.6 Approval of Calculations

21.6.1 The Concessionaire shall notify the Operator of anything contained in the invoice delivered pursuant to Clause 21.4 with which it disagrees, giving reasons for such disagreement and stating what it considers to be the correct amount due to the Operator, by the date on which payment of that invoice is due under Clause 21.5.1.1.

21.6.2 If the notice required under Clause 21.6.1 is not received by the Operator by the date on which payment is required under Clause 21.5.1.1, and that payment is not made, then the invoice concerned shall be deemed to be in dispute. In this event the Concessionaire shall serve the notice required by Clause 21.6.1 on the Operator within 5 Business Days of the date on which payment was due under Clause 21.5.1.1.

21.6.3 Within 5 Business Days of service of such a notice (whether served under Clause 21.6.1 or 21.6.2) the Financial Controller of the Concessionaire and the Finance Director of the Operator (or such other representatives as either Party may nominate from time to time) shall meet to try to resolve the disputed items/disputed sums.

21.6.4 If the meeting required by Clause 21.6.3 cannot resolve any items still in dispute, then within 10 Business Days of that meeting (or within such other time as may be agreed by the Parties) the Managing Director of the Concessionaire and the Managing Director of the Operator (or such other representative as either Party may nominate) shall meet to try to resolve any items still in dispute.

21.6.5 If the Concessionaire does not pay an invoice by the due date under Clause 21.5.1.1, but does not then serve the notice required under Clause 21.6.2, then the Operator may refer the sum unpaid to the Expert under Clause 21.9.

21.6.6 Once an invoice has been paid, then the Concessionaire shall no longer be able to claim that it should not have been paid for any reason of principle. Paid invoices can only be challenged on the grounds of substantive error.

21.7 Withholding

The Concessionaire shall during the Term be entitled to withhold an amount in excess of the 25 per cent of the Operating Fee shown as due in an invoice delivered pursuant to Clause 21.4.1 which it is entitled to adjust pursuant to Clause 21.2.1.2 up to the full amount of such sum shown in that invoice to the extent in respect of any previous Financial Period there is a dispute outstanding which is referred to the meeting of Managing Directors required by Clause 21.6.4 in respect of the amounts calculated pursuant to Schedule 4.

21.8 Disputed Sums

Any remaining dispute concerning the amounts properly payable to either Party by the other if not resolved by the meeting of Managing Directors required by Clause 21.6.4 shall be referred to the Expert for decision. If it is subsequently agreed or determined by the Expert 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 invoice the other Party for such sums (together with accrued interest) in accordance with Clause 21.10 and payment shall then be made by the relevant Party.

21.9 Supplementary Invoices

21.9.1 The Parties may from time to time render an invoice to the other in respect of any additional sums which shall become due in accordance with this Agreement and the procedures set out in Clauses 21.4 to 21.8 inclusive shall apply thereto. Where additional sums have been agreed by the Parties neither party shall be entitled to dispute such amounts pursuant to Clause 21.8.

21.9.2 For the period of two years after the Actual Opening Date the Concessionaire shall pay on the relevant Financial Period Payment Date amounts set out in supplementary invoices submitted in accordance with Clause 21.9.1 if received by the Concessionaire at least 10 Business Days prior to the relevant Financial Period Payment Date and to the extent such amounts are agreed.

21.10 Time for payment and interest

21.10.1 For the period after the second anniversary of the Actual Opening Date, unless otherwise stated all amounts properly due in respect of an invoice submitted pursuant to Clause 21.9 shall be paid within 20 Business Days of receipt by the paying Party of the relevant invoice to the extent such amounts are agreed.

21.10.2 Subject as provided in Clause 21.10.3, any amount properly due from one Party to the other pursuant to this Agreement and which shall remain unpaid after the date when payment becomes due shall bear interest at the Prescribed 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.

21.10.3 Interest shall accrue in respect of amounts determined to be payable following a decision of the meeting of Managing Directors or the Expert in accordance with Clauses 21.6.4 or 21.8 from the due date of the original underpayment or overpayment as the case may be.

21.11 Taxes, Customs Duties

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.

21.12 Revenue Sharing

The Parties intend to include a revenue sharing scheme which shall be implemented at the end of the fifth Operating Year.

21.13 Scope of obligations excluded from the Fees

Save for additional fees, costs or expenses or other amounts which the Operator is expressly entitled to recover under the terms of this Agreement, or by Law, the Fees shall be the total amount which the Operator is entitled to recover from the Concessionaire hereunder.

21.14 No set-off

Save as is otherwise expressly provided in Clause 21, or where an amount has been determined by the Expert to be payable to the payer, or is otherwise agreed, all payments to be made under this Agreement shall be made in full, free and clear of any right of set-off or counter-claim and free from any deduction or withholding whatsoever.

22 INSURANCE

22.1 Operator Insurance

The Operator shall take out and maintain or shall cause to be taken out and maintained throughout the Term appropriate insurance with respect to employer's liability having regard to the parameters of such insurance required to be effected during operation of the Tramlink System under the Concession Agreement of which the Concessionaire shall be obliged to inform the Operator and having regard to relevant circumstances during such period of operation.

22.2 Concessionaire Insurances

The Concessionaire shall take out and maintain or shall cause to be taken out and maintained during the Term the insurances set out in Schedule 6.

22.3 Terms of insurances to be approved

All insurances required by Clause 22.2 shall be taken out with such insurance companies, in such amounts and upon such terms (including terms as to the level of deductibles) as shall have been previously approved by the Operator such approval in each case not to be unreasonably withheld or delayed.

22.4 Insurances to be in joint names

Each insurance maintained or procured by the Concessionaire in accordance with Clause 22.2 shall be, inter alia, a composite policy in the names of the Operator and the Concessionaire, for their respective rights and interests 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 the Concessionaire to maintain the policies in force after termination of this Agreement. The Concessionaire shall, for such period that it is the Concessionaire under the Concession Agreement, maintain such policies in the manner required by Clause 22.2 until all potential limitation periods have expired under this Agreement in relation to the Operator's liabilities as Operator of the Tramlink System. All insurances taken out by the Concessionaire shall waive all rights of subrogation against the Operator, and with the agreement of the Concessionaire all contractors of any tier.

22.5 Change of Concessionaire's Insurances

22.5.1 If the Concessionaire proposes during the Term to vary in any way which affects or may affect the Operator the insurances it is required to effect in accordance with this Clause 22, the Concessionaire shall obtain the approval of the Operator regarding the proposed changes such approval not to be unreasonably withheld or delayed.

22.5.2 It shall be a term of the insurances required by Clause 22.2 that underwriters will waive any rights of recovery against any director, employee or former employee of an insured or, at an insured's election any other person indemnified under the terms of the policy.

22.6 Concessionaire to supply insurance policies

Upon being required to do so by the Operator the Concessionaire shall produce for inspection by the Operator a copy of the certificates and policies of insurance required to be maintained in compliance with the provisions of this Clause 22 together with sufficient evidence to show that all premiums payable in respect of the insurance have in fact been paid up to date. Where the Concessionaire has failed to pay any such premium by the due date, the Operator shall be entitled by giving no less than ten Business Days' notice in writing to the Concessionaire to pay such premium on behalf of the Concessionaire and to include an amount equivalent to such premium from the next subsequent payment(s) of the Fees.

22.7 Compliance with requirements of the insurers

The Operator and the Concessionaire shall comply with all terms, whether express or implied of the insurers in relation to insurances effected pursuant to this Clause 22 and shall not do anything which might render void or voidable any such policy

of insurance or as a result of which payment of insurance moneys might be withheld in whole or in part under the terms of the relevant insurance policy.

22.8 Operator'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 it under this Clause 22 or fails upon being requested to do so to provide the Operator with the evidence required by Clause 22.5 and the Operator has reasonable grounds for believing such insurances are not in effect or being maintained, the Operator shall (without prejudice to any other rights under or pursuant to this Agreement) have the right upon giving the Concessionaire no less than 10 Business Days' notice in writing to arrange equivalent insurances. The Concessionaire shall reimburse the Operator all premiums and other costs payable or incurred by the Operator in exercising its rights under this Clause 22.8 together 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 the Operator.

22.9 Proceeds

Claims under the insurance polic[ies] shall be handled in the manner to be agreed between the Operator and the Concessionaire . The Concessionaire may decide in its discretion whether to apply the proceeds of any claim including the amount of any deductible (save where the deductible is to be met by the Operator under this Agreement) in relation to loss or damage to the Tramlink System in reinstating the Tramlink System to the standard required hereunder save that where the Concessionaire decides not to so apply such proceeds in such manner the Concessionaire shall consult with the Operator and the Parties shall determine how their respective obligations hereunder shall be altered as a result thereof and in the absence of agreement to be determined in accordance with Clause 38 and Schedule 9.

22.10 Notification of Claims

Each Party shall give to the other prompt notification of any claim in excess of £50,000 under any of the insurance policies referred to in this Clause 22 accompanied by full details of the incident giving rise to such claim and shall afford each other all assistance as may be required for the preparation and negotiation of insurance claims.

23. FORCE MAJEURE

23.1 Definition of Force Majeure

23.1.1 Force Majeure means:-

- (a) an act of war (whether war is declared or not), hostilities, invasion, act of foreign enemies, rebellion, terrorism, revolution, military insurrection, civil disorder or civil disobedience; or
- (b) tempest, earthquake (due exclusively to natural causes) or other natural disaster of overwhelming proportions; or

- (c) ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
- (e) save for circumstances or events for which responsibility for the existence occurrence or consequences of which are expressly allocated to either Party pursuant to this Agreement not being a circumstance or event described in paragraphs (a) to (d) of Clause 23.1.1, any circumstances which are beyond the reasonable control of the Affected Party (as defined in Clause 23.3) and which could not have been foreseen and avoided by, in the case of the Operator, an experienced tram system operator and in the case of the Concessionaire Good Industry Practice having regard to the Concessionaire's and the Operator's state of knowledge; or
- (f) an event of force majeure under the Tram Maintenance Contract.

23.1.2 The following events and circumstances shall not constitute Force Majeure:-

- (a) strikes, lock-out or other industrial or trade dispute by the workforce of a Party; or
- (b) lack of availability of labour or materials unless caused by an event specified in Clause 23.1.1; or
- (c) disputes or legal actions affecting either Party; or
- (d) lack of funds or increased cost to either Party of performing its obligations under the Project Agreements; or
- (e) adverse weather conditions except as referred to in Clause 23.1.1(b); or
- (f) an event of force majeure under the Tram Maintenance Contract unless such event falls within the same definition of force majeure as is contained in Clause 23.1.1 (a) to (e) mutatis mutandis.

23.2 Exclusion of liability/extension of time

For the purpose of this Agreement:-

23.2.1 no Party shall be considered to be in default or in breach of its obligations under this Agreement or be liable to the other Party for any losses or damages or any nature whatsoever incurred or suffered as a result of any failures and delays in performance due to an event or circumstance constituting Force Majeure provided that the Concessionaire shall continue to pay all amounts

it would otherwise have paid but for such event of Force Majeure subject to the provisions of Clause 23.7; and

23.2.2 the periods of time referred to in any provision of this Agreement for the purpose of performance of an obligation shall be extended by a period of time equal to the period of delay caused by or which arises out of or is attributable to an event or circumstance constituting Force Majeure; and

23.2.3 the provisions of Clause 23.7 shall apply in relation to any period of suspension of a Tram Service on the Tramlink System during or following an event of Force Majeure.

23.3 Notification

Forthwith following a Party (the “Affected Party”) becoming aware of an event of Force Majeure causing that Party to be unable to fulfil its contractual obligations under this Agreement the Affected Party shall notify to the other Party (the “Notified Party”) details of the Force Majeure including:-

23.3.1 the nature of the event or circumstance constituting Force Majeure;

23.3.2 the date from which the Affected Party has been prevented or hindered from performing its obligations;

23.3.3 the precise obligations affected; and

23.3.4 its best estimate of the date or dates on which it will be able to resume the performance of its obligations so affected.

23.4 Notification of Developments

The Affected Party shall keep the Notified Party fully informed of all developments relating to the Force Majeure of which it is aware and the steps being taken by the Affected Party to minimise the effects of the Force Majeure pursuant to Clause 23.5. If any of the details relating to the Force Majeure notified by the Affected Party to the Notified Party shall change the Affected Party shall reissue the notice amended as necessary.

23.5 Mitigation

The Parties shall use all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any event of Force Majeure. Following the occurrence of Force Majeure the Party who would otherwise be required to do so hereunder shall make safe any Trams and manage the making safe of any Infrastructure affected thereby, so as to prevent the Tramlink System causing physical damage to any person or property.

23.6 Failure to mitigate

The exclusion of liability and/or the extension of time under this Clause resulting from an event of Force Majeure shall not operate if and to the extent that:-

23.6.1 the Affected Party could, by the exercise of reasonable foresight and diligence, have prevented or reduced the effect of the event of Force Majeure; and

23.6.2 the Affected Party could, whether before or after the occurrence of the event of Force Majeure, have reduced or eliminated the resulting failure to discharge its obligations under this Agreement by taking reasonable steps and “reasonable steps” means steps that it would be reasonable for the Affected Party to take at the time when they would have had to be taken to reduce or eliminate such failure having regard to the circumstances at such time.

23.7 Operator’s obligations during Force Majeure

23.7.1 Notwithstanding the Parties’ obligations to mitigate pursuant to Clause 23.5, during any period of suspension of the operation of the Tramlink System during or following an Event of Force Majeure the Concessionaire shall, after consultation with the Operator be entitled to require the Operator to take any action it considers appropriate but in accordance with the following:-

23.7.1.1 if the Concessionaire requires a reduction in the workforce required to operate the Tramlink System the Concessionaire shall pay to the Operator those costs which it incurs in maintaining its remaining capability (if any) to operate the Tramlink System at the end of the period of suspension;

23.7.1.2 where this Agreement has not been terminated but the Concessionaire requires the Operator to terminate the employment of the whole or part of the workforce required to operate the Tramlink System the Concessionaire shall bear the reasonable and properly authenticated costs and expenses incurred terminating the employment of such workforce and in recruiting and training sufficient personnel to reinstate the Operator’s capability of performing the Services when required to do so by the Concessionaire; and

23.7.1.3 where any other course of action has been agreed between the Concessionaire and the Operator, the Concessionaire and the Operator shall also agree the appropriate cost incurred by the Operator (if any) as a result, which shall be paid to the Operator by the Concessionaire .

23.7.2 Where as a result of an event of Force Majeure which affects the Operator, but not the Concessionaire, the operation of the entire Tramlink System is suspended, then during the period of such suspension the Concessionaire shall pay to the Operator only that part of the relevant Fee or Fees which relates to the Operator’s costs in performing its obligations under this Agreement as if the operation of the Tramlink system had not been so suspended, such costs to be mitigated in accordance with Clause 23.7.1 but not any part of such relevant Fee or Fees as relates to the profit of the Operator.

23.7.3 Where as a result of an event of Force Majeure which affects the Concessionaire, but not the Operator, the operation of the entire Tramlink System is suspended, then during the period of such suspension the Concessionaire shall pay to the Operator whatever it would otherwise have been paid as if the operation of the Tramlink System had not been so suspended, such costs to be mitigated in accordance with Clause 23.7.1

23.7.4 Where as a result of an event of Force Majeure which affects the Operator, but not the Concessionaire any part of the Tramlink System is suspended then the Concessionaire shall pay during the period of such suspension to the Operator:-

(i) in relation to that part of the Tramlink System which is not suspended (the “Operating Part”) that part of the relevant Fee or Fees attributable to the Operating Part (calculated on a pro rata basis by reference to the kilometrage of the Operating Part); and

(ii) in relation to that part of the Tramlink System which is suspended (the Non-Operating Part”) that part of the relevant Fee or Fees attributable to the Non-Operating Part (calculated on a pro rata basis by reference to the kilometrage of the Non-Operating Part) mitigated in accordance with Clause 23.7.1 but not any part of such Fee or Fees as relates to the profit of the Operator.

23.7.5 Where as a result of an event of Force Majeure which affects the Concessionaire, but not the Operator, part of the Tramlink System is suspended, then during the period of such suspension, the Concessionaire shall pay to the Operator that part of the relevant Fee or Fees which relates to the Operator’s costs in performing its obligations under this Agreement as if that part of the Tramlink System were not suspended, less the proportion of profit in such relevant Fee or Fees attributable to the Non-Operating part as calculated in accordance with Clause 23.7.4 but such proportion is only to be deducted for the first seven days of such suspension.

23.7.6 Where as a result of an event of Force Majeure which affects the Concessionaire and the Operator, the operation of the entire Tramlink System is suspended, then during the period of such suspension the provisions of Clause 23.7.2 shall apply.

23.7.7 Where as a result of an event of Force Majeure which affects the Concessionaire and the Operator, part or parts of the Tramlink System are suspended, then during the period of such suspension the provisions of Clause 23.7.4 shall apply.

24. EARLY TERMINATION

24.1 Termination of Services

24.1.1 The Concessionaire will be entitled to terminate this Agreement on no less than 3 months' written notice to the Operator expiring on the tenth or twentieth anniversary of the Actual Opening Date (a "Relevant Anniversary") in the following circumstances:-

- (a) without prejudice to Clause 24.2 at least 15 months prior to a forthcoming Relevant Anniversary the Concessionaire shall have notified the Operator in writing that, in the performance of the Services, it has failed to comply with the provisions of this Agreement in material and (if appropriate) persistent ways giving examples of such failures, and the Operator shall have failed to remedy such failures, to the reasonable satisfaction of the Concessionaire within the following 12 month period; or
- (b) at least 6 months prior to a forthcoming Relevant Anniversary the Concessionaire shall have notified the Operator that it considers the total remuneration to which the Operator is entitled for the performance of his obligations under this Agreement to be materially greater than the prevailing market rate for the performance of such obligations giving reasons for such consideration and evidence of the prevailing market rate and the Operator shall not have reduced the Fees to a level not materially greater than the prevailing market rate and for the purposes of this Clause 24.1.1(b) "materially" shall mean in excess of ■%.

24.1.2 clause not used.

24.1.3 The Concessionaire will be entitled to terminate this Agreement forthwith in the event that the Concessionaire is required to replace the Operator in accordance with Clause 20 of the Concession Agreement.

24.2 Early termination by the Concessionaire

24.2.1 The following shall constitute Operator Defaults:-

- (a) any Insolvency Event in relation to the Operator;
- (b) the Operator is in material and serious default in relation to its obligations under this Agreement whether by one or more breaches of the obligations of the Operator under this Agreement;
- (c) the Operator is issued with 1 Warning Notice and 4 notices under Clause 16.6.1 in any period of 3 years;
- (d) where Operator Controlled Lost Kilometrage exceeds 8% of Scheduled Kilometrage for 3 consecutive Financial Periods or Operator Controlled Lost Kilometrage exceeds 13% of Scheduled Kilometrage for 3 Financial Periods in any period of 13 Financial Periods.

24.2.2 The Operator will notify the Concessionaire forthwith upon becoming aware of the occurrence of an Operator Default and will provide the Concessionaire

with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of the Operator Default or otherwise in connection with it.

24.2.3 If an Operator Default within Clause 24.2.1(a)(c) or (d) has occurred, the Concessionaire may within 6 months of the relevant Operator Default by notice to the Operator terminate this Agreement forthwith. If an Operator Default within sub-clause 24.2.1(b) has occurred, the Concessionaire may, within 28 days of such Default coming to its notice, serve notice of such Default on the Operator in which case this Agreement will terminate on the date specified in such notice (being not less than 28 days after the date of service) unless such Default has been remedied or other steps taken in relation thereto agreed by the Concessionaire prior thereto to the reasonable satisfaction of the Concessionaire.

24.2.4 The Concessionaire may by notice in writing, subject to Clause 25, terminate this Agreement upon termination of the Concession Agreement for whatever reason.

24.2.5 clause not used.

24.3 Early termination by the Operator

24.3.1 The following shall constitute Concessionaire Defaults:-

- (a) any Insolvency Event in relation to the Concessionaire;
- (b) the Concessionaire fails to pay any amount due to the Operator pursuant to this Agreement within 28 days of the due date for such payment (except where the amount of any such payment is the subject of a bona fide dispute between the Parties);
- (c) the Concessionaire is in material and serious default in relation to its obligations under this Agreement whether by one or more breaches of the obligations of the Concessionaire under this Agreement.

24.3.2 The Concessionaire will notify the Operator forthwith upon becoming aware of the occurrence of a Concessionaire Default and will provide the Operator 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.

24.3.3 If a Concessionaire Default within Clause 24.3.1(a) has occurred, the Operator may within 28 days of such default coming to its attention by notice to the Concessionaire terminate this Agreement forthwith. If a Concessionaire Default within Clause 24.3.1(b) or (c) has occurred, the Operator may, within 28 days of such Default coming to its attention, serve notice of such Default on the Concessionaire in which case this Agreement will terminate on the date specified in such notice (being not less than 28 days after the date of service) unless such Default has been remedied or other steps taken in relation thereto agreed by the Operator prior thereto to the reasonable satisfaction of the Operator.

25. OBLIGATIONS OF THE PARTIES FOLLOWING TERMINATION

25.1 Payment on termination

25.1.1 Where this Agreement is terminated by the Concessionaire as a result of the Operator Default, or where the Concession Agreement has been terminated (and as a consequence this Agreement has been terminated) as a result of Operator Default or in accordance with Clauses 24.1.1(a) or 24.1.3:-

- (a) the Concessionaire shall be entitled to appoint a new operator to operate the Tramlink System on its behalf, and shall subject to Clause 27 be entitled to recover from the Operator damages suffered by the Concessionaire as a result of such termination less any sums owed to the Operator by the Concessionaire under this Agreement; and
- (b) the Concessionaire shall not be required to make any further payment to the Operator after the date of termination of this Agreement until any sum due to the Concessionaire under Clause 25.1.1(a) has been agreed or established in accordance with Clause 38. Thereafter the Operator shall be entitled to recover any sum due to it in excess of any sums owed to the Concessionaire in accordance with Clause 25.1.1(a), (if any).

25.1.2 Where this Agreement is terminated as a result of a Concessionaire Default or as a result of the termination of the Concession Agreement for a reason other than Operator Default or the default of the Corporation:-

- (a) the Operator shall be entitled to recover from the Concessionaire damages suffered by the Operator as a result of such termination less any sums owed to the Concessionaire by the Operator under this Agreement; and
- (b) the Operator shall not be required to make any further payment to the Concessionaire after the date of termination of this Agreement until any sum due to the Operator under Clause 25.1.2(a) has been agreed or established in accordance with Clause 38. Thereafter the Concessionaire shall be entitled to recover any sum due to it in excess of any sums owed to the Operator in accordance with Clause 25.1.2(a), (if any).

25.1.3 Where this Agreement is terminated in accordance with Clause 24.1.1(b) or as a result of a Corporation Default terminating the Concession Agreement, the Concessionaire shall reimburse to the Operator its mitigated termination costs.

25.2 Provision of documents

Save as otherwise provided in this Agreement, upon termination of any of the Services or of this Agreement (howsoever caused), the Operator shall forthwith comply with its obligations which arise on termination under Clause 24 and further provide to the Concessionaire free of charge one copy of all documents, databases,

records and other information necessary for the operation of the Tramlink System (to the extent that such documents have not been previously supplied to the Concessionaire) including a complete record of the activities relating to safety matters and the Safety Management System undertaken by the Operator throughout the Term and all other information in the Operator's possession or to which it has access and which is required to enable the Concessionaire to continue to operate and maintain the Infrastructure and the Trams. Such documentation can be, in the form of computer databases, microfilm or CAD data compatible with the software for which licences are provided to the Concessionaire in accordance with Clause 18. Without prejudice to any obligation of the Operator pursuant to Clause 30 or otherwise, if requested to do so by the Concessionaire to enable the Concessionaire to comply with any legal or regulatory requirement, the Operator shall use all reasonable endeavours to locate and supply any residual records (or copies thereof) retained by or on behalf of the Operator in respect of maintenance of the Tramlink System for which the Operator has been responsible at any point since the commencement of the 1996 Agreement.

25.3 Condition of records and systems

The Operator shall ensure that all such records, documentation, drawings and manuals are complete, up-to-date, properly catalogued and in a tidy condition for hand-back to the Concessionaire. 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.

25.4 Continuance of activities

The Operator and the Concessionaire shall continue to perform their respective activities under this Agreement until the date of expiry or termination of this Agreement unless other phased handover procedures are agreed between the Parties. The Operator shall also give all reasonable cooperation to the Concessionaire to ensure a smooth and trouble free transition of such activities with no degradation of the standard thereof.

25.5 TUPE Regulations

25.5.1 In this Clause 25.5 and Schedule 19 the following definitions shall apply:-

“Operator Employees” any employee of the Operator or any Affiliate of the Operator;

“TUPE Employees” any person whose contract of employment may be transferred to a successor operator of the Tramlink System by virtue of the operation of Law (including the Regulations as amended, replaced or substituted from time to time) or in respect of whom liabilities arising from the contract of employment or employment relationship may be transferred;

“TUPE Information”	the information in relation to the TUPE Employees specified in Schedule 19;
“the Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

25.5.2 Where reference is made in this Clause 25.5 to the last twelve months of the Term, such period shall be deemed to commence on the following dates (except and until the actual date of expiry of the Term is known):-

- (a) the date which is twelve months, as the case may be, prior to the date of expiry of the Term assuming that the parties do not agree to extend the Term in accordance with Clause 4;
- (b) the date on which notice is given to the Operator under Clause 24.1.1(a);
- (c) the date on which the Concessionaire becomes aware of an Operator Default and notifies the Operator that such period of twelve months shall be deemed to commence.

Any such period (which may be longer or shorter than twelve months, as the case may be) shall expire on the date of termination of this Agreement or, if earlier, in the case of periods commencing under sub-clause (c) of this Clause 25.5.2, the date falling twelve months after the date of any notice under sub-clause (c) of this Clause 25.5.2 or, in each case, such earlier date as the Concessionaire may determine.

25.5.3 The Operator shall not, without the prior consent of the Concessionaire (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions (as amended from time to time) of employment of any Operator Employee (including any promise to make any additional payment or provide any additional benefit) where such variation or addition:-

- (a) takes effect in the last twelve months of the Term unless it is in the ordinary course of business; or
- (b) results in any such employment not being terminable by the employer within six months of the expiry of the Term; or
- (c) relates to a payment or the provision of a benefit triggered by termination of employment; or
- (d) relates to the provision of a benefit (but excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Term save insofar as such provision is in the ordinary course of business; or

- (e) prevents, restricts or hinders any such employee from working for a successor operator or from performing the duties such employee performed for the Operator.

25.5.4 The Operator shall not, without the prior consent of the Concessionaire (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Operator Employee where such employment may commence during the last twelve months of the Term if and to the extent that:-

- (a) such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent Operator Employees at the date of commencement of employment of such new Operator Employee; and
- (b) if such terms or conditions were granted to such equivalent Operator Employees already employed by the Operator by way of variation to their terms or conditions of employment, the Operator would be in breach of Clause 25.5.3.

25.5.5 Subject to Clause 25.5.6 the Operator shall at the request of the Concessionaire in the last twelve months of the Term provide the TUPE Information within 28 days of such request and thereafter until termination of this Agreement update such information in accordance with the reasonable requests of the Operator subject to the Operator's common law duties to its employees or under the Data Protection Act 1998.

25.5.6 The Operator shall use its reasonable endeavours to ensure that it will be in a position to provide TUPE Information pursuant to Clause 25.5.5 in respect of the TUPE Employees who are not also Operator Employees but, subject to the Operator having used such reasonable endeavours, the Operator's obligation to provide TUPE Information pursuant to Clause 25.5.5 in respect of such TUPE Employees shall be limited to the TUPE Information covering such TUPE Employees actually in the possession of or reasonably obtainable by the Operator.

25.6 Establishment of hand-over procedure

On termination or expiry of this Agreement the Operator and the Concessionaire shall establish appropriate handover procedures.

25.7 Training and technical support

Commencing 6 months prior to termination of any of the Services or of this Agreement the Operator shall conduct an appropriate training programme for various categories of the Concessionaire staff and third party staff nominated by the Concessionaire who will be responsible for the relevant Services following the termination to ensure the successful continuation of operational activities. The content and style of and programme for the training shall be submitted to the Concessionaire by the Operator for review 9 months prior to termination and the Operator shall comply with the Concessionaire'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. The provision of such training shall for the purposes of this Agreement be an Additional Service.

25.8 Saving provisions

25.8.1 Termination 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 rights and remedies arising out of Clauses 24 and 25.

25.8.2 Clauses 22.2, 22.3, 22.4, 22.5, 26 and 33 and of this Agreement shall remain in full force and effect notwithstanding the termination of this Agreement.

25.8.3 Save as aforesaid this Agreement shall be of no further force and effect following termination of this Agreement.

26. INDEMNITIES

26.1 Indemnity by Operator

26.1.1 The Operator shall be responsible for and shall release and indemnify the Concessionaire from and against all liability, loss, damage, claims, costs and expenses whatsoever:-

- (a) incurred by the Concessionaire as a result of death or personal injury to persons or loss of or damage to property (including property belonging to the Concessionaire or for which it is responsible); or
- (b) incurred by the Concessionaire as a result of the indemnity given by the Concessionaire under Clause 48.1(b) of the Concession Agreement (as originally entered into); or
- (c) incurred by the Concessionaire as a result of a breach by the Operator of the undertakings set out in Part 2 of Schedule 16,

but only to the extent such liability, loss, damage, claim, cost or expense arises out of or in consequence of the negligence to third parties of the Operator or a breach by the Operator of its obligations under this Agreement or, in the case of paragraph (c) above only, a breach by the Operator of its obligations under Part 2 of Schedule 16 provided always that the Operator shall not be responsible for or be obliged to indemnify the Concessionaire for any liability, loss, damage claims, costs and expenses to the extent caused by the negligence of the Concessionaire, or a breach by the Concessionaire of its obligations hereunder or in respect of any matter for which the Operator is not responsible or liable pursuant to Clause 6.4.1 or the design and construction of the Tramlink System.

26.2 Indemnity by Concessionaire

26.2.1 The Concessionaire shall be responsible for and shall release and indemnify the Operator from and against all liability, loss, damage, claims, costs and expenses whatsoever incurred by the Operator as a result of death or personal

injury to persons or loss of or damage to property (including property belonging to the Operator or for which it is responsible) but only to the extent such liability, loss, damage, claim, cost or expense arises out of or in consequence of the breach by the Concessionaire of its obligations under this Agreement or the negligence to third parties of the Concessionaire, provided always that the Concessionaire shall not be responsible for or be obliged to indemnify the Operator for any liability, loss, damage, liability cost or expense to the extent caused by the negligence of the Operator or a breach by the Operator of its obligations hereunder.

26.3.1 If either Party (“the Recipient”) becomes aware of any third party claim against the Recipient which may result in a claim 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:

- (i) the Recipient shall be kept fully informed of all matters pertaining to the claim;
- (ii) 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
- (iii) 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.

26.3.2 The Recipient shall give the Covenantor all reasonable cooperation, access and assistance, technical or otherwise, for the purpose of resisting such a claim subject as provided in sub-clause 26.3.1(c).

26.3.3 If the Covenantor does not request the Recipient to take any action to resist such third party claim in accordance with this Clause 26 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 21 day period the Recipient shall make no admission prejudicial to the resistance of such claim.

27. LIMITATIONS ON LIABILITY

27.1 Liability of the Parties

27.1.1 The rights, powers and remedies provided in this Agreement are not cumulative and exclude all substantive (but not procedural) rights, powers and remedies express or implied provided by common law, statute or custom or howsoever otherwise including (without limitation) any rights, powers or remedies any Party may possess in tort which shall include actions brought

in negligence and/or nuisance. Accordingly each of the Parties hereby waives to the fullest extent possible all such rights, powers and remedies provided by common law, statute or custom or howsoever otherwise and releases the other its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law, statute or custom or howsoever otherwise in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein and in respect of death or personal injury caused by negligence.

27.1.2 Save for the Deed of Undertaking between the Corporation, the Concessionaire and the Operator of even date (to which this Agreement is subject) and save as otherwise provided for within this Agreement, this Agreement constitutes the whole and only agreement between the Parties and between the Concessionaire and CentreWest Limited relating to (and supersedes and extinguishes any prior drafts, previous agreements, undertakings representations, warranties and arrangements of any nature whatsoever, whether or not in writing between the Parties, in connection with) the subject matter hereof. The Operator shall hold the benefit of this Clause on trust for CentreWest Limited.

27.1.3 Each of the Parties acknowledges that in entering into this Agreement on the terms set out in this Agreement it has not relied on or been induced to enter into this Agreement by any representation, warranty, undertaking, promise or assurance made or given or action taken in respect of the subject matter hereof by any other Party or any other person, whether or not in writing, at any time prior to the execution of this Agreement other than those expressly set out in this Agreement and neither party nor CentreWest Limited owes to the other any obligation or duty in respect of representation, warranty, undertaking, promise, assurance or advice made or given or action taken in respect of the subject matter hereof prior to the date hereof which is not expressly set out herein. The Operator shall hold the benefit of this clause on trust for CentreWest Limited.

27.2 Criminal Liability

27.2.1 Where the act or default of a Party or of its agents or contractors causes the other Party or the Corporation to commit an offence the first Party shall immediately take all reasonable steps necessary to ensure that act or default no longer causes the other Party or the Corporation to commit that offence.

27.2.2 Where a Party reasonably suspects that such an act or default is about to take place and it reasonably believes that this will result in the other Party or the Corporation committing an offence the first Party may issue an instruction to the other Party to remedy the act or default forthwith and the other Party shall take all reasonable steps to comply with the said instruction.

27.3 Consequential Losses

Save as otherwise expressly set out in this Agreement, neither Party shall be responsible to the other Party for consequential loss or damage resulting from the performance of obligations or the exercise of rights under or pursuant to this

Agreement and for the purposes of this Clause “consequential loss or damage” shall mean loss of profit, loss of use, loss of contract or any other economic loss or any indirect and/or consequential damage or loss

27.4 Generally

27.4.1.1.1 Subject to Clauses 27.4.1.1.2 and 27.4.1.1.3 below, the amount payable by the Concessionaire in respect of any liability under this Agreement shall be reduced to the extent that all or part of any such liability is recovered pursuant to the insurances required to be effected in accordance with the terms of this Agreement.

27.4.1.1.2 Should any act or omission of the Operator entitle the insurers to avoid the policy, or otherwise to reduce the amount that would have been recoverable under these insurance policies, then the liability of the Concessionaire to the Operator shall be reduced by the amount of insurance recovery foregone because of the Operator's act or omission. For the purposes of this Clause 27.4.1, knowledge of the terms of the insurances referred to in Schedule 6 shall be imputed where the Operator is named as insured.

27.4.1.1.3 In the event of the Concessionaire seeking to rely on Clause 27.4.1.1.2 above, it shall be assumed that the total excess or deductible in respect of any of the insurance policies involved shall be limited to £■■■■, regardless of the actual amount of that excess or deductible. Should the excess or deductible exceed £■■■■, then the Operator's liability for that excess or deductible shall be limited to the sum of £■■■■

27.4.1.2.1 Subject to Clauses 27.4.1.2.2 and 27.4.1.2.3 below, the amount payable by the Operator in respect of any liability under this Agreement shall be reduced to the extent that all or part of any such liability is recovered pursuant to the insurances required to be effected in accordance with the terms of this Agreement.

27.4.1.2.2 Should any act or omission of the Concessionaire entitle the insurers to avoid the policy, or otherwise to reduce the amount that would have been recoverable under these insurance policies, then the liability of the Operator to the Concessionaire shall be reduced by the amount of insurance recovery foregone because of the Concessionaire's act or omission. For the purposes of this Clause 27.4.1, knowledge of the terms of the insurances referred to in Schedule 6 shall be imputed where the Concessionaire is named as insured.

27.4.1.2.3 In the event of the Operator seeking to rely on Clause 27.4.1.2.2 above, it shall be assumed that the total excess or deductible in respect of any of the insurance policies involved shall be limited to £■■■■, regardless of the actual amount of that excess or deductible. Should the excess or deductible exceed £■■■■, then the Concessionaire's liability for that excess or deductible shall be limited to the sum of £■■■■

27.4.2 Subject to Clause 27.4.3 the liability of the Operator in respect of any claim under this Agreement shall not (when aggregated with the amount of all other claims in any one Operating Year) exceed £■■■ including the Operator's liability referred to in Clause 16.1.2 in that Operating Year. To the extent that any liability of the Operator under this agreement is reduced pursuant to Clause 27.4.1 such amount shall not be included for the purpose of calculating the limit of the Operator's liability under this Clause.

27.4.3 The limits on the Operator's liability as set out in Clause 27.4.2 shall apply in respect of termination of this Agreement save that where the Operator constructively abandons the performance of this Agreement and the Agreement is terminated by the Concessionaire, the Operator's maximum liability shall be the amount of the total remuneration paid to the Operator in the previous Operating Year in respect of Part 3 of Schedule 2. For the purpose of this Clause 27.4.3, "constructive abandonment" shall mean the Operator acting through the Operator's Representative or a director of the Operator:-

- (a) clearly and absolutely refusing to perform its obligations under this Agreement; or
- (b) deliberately engaging in a course of conduct which is designed to, or the Operator's Representative or such director is reckless as to whether it will disable the Operator from performing its obligations under this Agreement.

27.4.4 clause not used.

28. ASSIGNMENT AND SECURITY

28.1 Assignment by Concessionaire

The Concessionaire shall be entitled to assign or charge the benefit of any of this Agreement (or any part thereof) to any person assuming responsibility for the operation and/or maintenance of any part of the Tramlink System or to any Lender subject to such person assuming responsibility for the performance of the obligations of the Concessionaire hereunder save in the case of Lenders.

28.2 Assignment

Neither Party shall be entitled to assign without the written consent of the other Party any right or interest under this Agreement save as provided under Clause 28.1. The liabilities of either Party under this Agreement shall not be increased by the assignment or charging by the other Party of any right or interest under this Agreement pursuant to this Clause 28.2.

29. SUB-CONTRACTS

29.1 Sub-contracting

29.1.1 The Operator may sub-contract any part of its obligations under this Agreement (but not the whole) with the consent of the Concessionaire such consent not to be unreasonably withheld or delayed. Such consent will not be required for sub-contracts where:-

- (i) the contract is not material in the context of this Agreement; or
- (ii) the contract is not for a total consideration in excess of £250,000 (Indexed).

save always, and notwithstanding the provisions of this Clause 29.1 the consent of the Concessionaire (not to be unreasonably withheld) shall be required in the event that the Operator proposes to subcontract any or all of its obligations in respect of the collection of revenue on the Tramlink System.

29.2 Operator to remain responsible

29.2.1 The Operator shall retain full responsibility and liability for the work of its employees contractors and sub-contractors and any breach of this Agreement caused by such employee, contractor or subcontractor in the course of performing obligations under this Agreement on behalf of the Operator shall be a breach by the Operator.

29.2.2 The Concessionaire shall retain full responsibility and liability for the work of its employees contractors and sub-contractors (save for the Operator) and any breach of this Agreement caused by such employee, contractor or subcontractor in the course of performing obligations under this Agreement on behalf of the Concessionaire shall be a breach by the Concessionaire.

29.3 Sub-contracting requirements

29.3.1 The Operator shall ensure with respect to each contract or sub-contract for the procurement of goods and services hereunder which has a value in excess of £250,000 or is material in the context of this Agreement:-

- (a) the benefit of the contract or sub-contract can be freely assigned to the Concessionaire or any successor operator save for an obligation on the part of the assignee to assume the obligation on the part of the Operator under such contract or sub-contract;
- (b) the contract or sub-contract is entered into by the Operator as principal and the Concessionaire has no obligations pursuant thereto;

unless the Operator has previously notified the Concessionaire that any particular contract or sub-contract which falls within this Clause 29.3.1 does not satisfy the requirements of paragraph (a) above and the Concessionaire has not objected within 10 Business Days.

29.3.2 If the Operator enters into a contract or sub-contract to which Clause 29.3 would otherwise apply with any person for the supply of goods or services to or for the Tramlink System and such person is an Affiliate of the Operator,

the terms of any such contract or sub-contract shall be in accordance with normal commercial practice and at arm's length and on such terms as would be appropriate if the contract or sub-contract had been entered into by a person other than an Affiliate of the Operator.

30. REPORTS, MEETINGS AND RECORDS

30.1 Reports

With effect from the Actual Opening Date, the Operator shall provide the Concessionaire within 21 days following the end of each quarter a report on the activities of the Operator and the impact of the activities of the Concessionaire and or its contractors during that quarter. The report shall include:-

30.1.1 Clause not used

30.1.2 details of any matter of which the Operator is aware which is likely to affect the Operating Services during such following quarter including (without limitation) the impact any activity by the Concessionaire or its contractors during such following quarter may have on the Operating Services during that quarter and proposals for actions and arrangements to mitigate any adverse impact for the Concessionaire's consideration (provided always that any decision regarding such proposals shall be made in the sole discretion of the Concessionaire). In preparing its report, the Operator shall consider the areas of which, as a reasonably diligent operator, it should be aware and take account;

30.1.3 copies of any notices received by the Operator during the quarter to which the report relates pursuant to any Applicable Requirement or from any competent authority and a statement of the action taken by the Operator in respect of such notices;

30.1.4 details of any special investigations carried out in relation to the state and condition of any element of the Tramlink System together with copies of all associated reports where the Concessionaire requires the same;

30.1.5 such other information as the Concessionaire shall have reasonably requested the Operator to provide during such quarter.

30.2 Meetings

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

30.2.1 quarterly progress and performance review meetings (Operations Review Meetings) at which the parties shall review the Operator's quarterly reports; and

30.2.2 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).

30.3 Records and Reports

The Operator shall maintain, regularly update and make available to the Concessionaire records and reports of all Tram Services provided on the Tramlink System in accordance with a procedure to be agreed between the Parties taking account of the Concessionaire's obligations under Clause 69.4 of the Concession Agreement.

30.4 Provision of documents

The Operator shall make available to the Concessionaire one copy without charge of all documents and data of any nature acquired or brought into existence in any manner whatsoever by or on behalf of the Operator (but not documents containing information of a confidential or proprietary nature) and which might reasonably be required by the Concessionaire for the purposes of exercising its rights or carrying out its duties and obligations under the Project Agreements.

31. COMPENSATION EVENTS

31.1 Change in Law

31.1.1 Where either Party becomes aware of any Compensation Event it shall notify the other Party as soon as practicable. The Parties shall assess the actual and potential financial effect of such Compensation Event on the Operator of performing this Agreement (the "Increased Costs") and shall agree the amount of Increased Costs as shall form part of the Concessionaire's claim under Clause 41 of the Concession Agreement (if any) and the Operator shall assist the Concessionaire to comply with its obligations with regard to mitigation under Clause 40 of the Concession Agreement. Where the Parties cannot agree the amount of the Increased Costs to be included as part of the Concessionaire's claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement.

31.1.2 Where in any negotiation with the Corporation as to the appropriate amount of Increased Costs to be taken into account in determining the Concessionaire's entitlement to compensation under Clause 41 of the Concession Agreement the Corporation rejects the level of Increased Costs so proposed solely on the grounds such changes are not properly substantiated then either:

31.1.2.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Increased Costs with the Corporation; or

31.1.2.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

31.1.3 The Operator shall be entitled to recover from the Concessionaire the Increased Costs determined in accordance with Clause 31.1.1 in respect of any Compensation Event save where such amount is rejected by the

Corporation in accordance with Clause 31.1.2 in which event it shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 31.1.2 or determined by the Expert less (where a deductible applies under the Concession Agreement) the lesser of such deductible or the amount deductible in accordance with Clause 31.1.6.

31.1.4.1 In the event that as a result of the requirements of HMRI the costs and expenses of the Operator in performing its obligations under this Agreement are increased then the Operator shall bear and pay such increased costs and expenses up to the amount of £200,000 in any one Operating Year. If such costs and expenses of the Operator are increased in excess of £200,000 in any Operating Year, after meeting such costs up to the amount of £200,000, the Operator at its discretion may terminate this Agreement without prejudice to the Concessionaire's other accrued rights hereunder. Each Party shall meet its own costs and expenses resulting from such termination.

31.1.4.2 If the Operator decides to terminate this Agreement in accordance with Clause 31.1.4.1, it shall give the Concessionaire written notice of its intention to terminate. Within 28 Business days of receipt by the Concessionaire of such notice, the Concessionaire shall send a written response to the Operator either:

- (a) acknowledging the Operator's intention to terminate this Agreement; or
- (b) confirming that the Concessionaire will bear the increased costs of the Operator as a result of the requirements of HMRI in excess of £200,000 in any one Operating Year.

31.1.4.3 If the Concessionaire responds to the Operator in accordance with Clause 31.2.4.2(a) then the Operator shall be entitled to terminate this Agreement after the expiry of 6 months from the date of the written response provided to the Operator pursuant to Clause 31.1.4.2(a) save always that during such six month period the Operator should not be obliged to incur additional costs in providing Services due to any failure on the part of the Concessionaire in implementing the requirements of HMRI pursuant to Clause 31.1.4.1 in excess of £200,000.

31.1.4.4 If the Concessionaire responds to the Operator in accordance with Clause 31.1.4.2(b) then the Operator shall not be entitled to terminate this Agreement and the Parties shall continue to perform their respective obligations hereunder on the terms of the Concessionaire's confirmation given under Clause 31.1.4.2(b).

31.1.5 The Concessionaire shall consult with the Operator in the event that it is proposed by either Party that any Bye-Law be amended or altered but only to the extent that such amendment or alteration would affect the Operator in the provision of the Operating Services pursuant to this Agreement. If the Concessionaire, without legal requirement, amends or alters any Bye-Law and as a direct result of such amendment or alteration the costs of the Operator in performing its obligations under this Agreement are increased and such increase is substantiated to the Concessionaire, then the Concessionaire shall reimburse to the Operator such amount being the equivalent of such increase in costs.

31.1.6 If at any time after commencement of the 1996 Agreement any Change of Safety Law or General Discriminatory Legislation occurs and the Concessionaire is unable to reclaim the Operator's Increased Costs in respect thereof then the Operator shall bear without recourse to the Concessionaire and without prejudice to the provisions of paragraph (c) of Schedule 2 the lowest of the first £■■■■ of any Increased Costs arising out of the same or the deductible applicable in the circumstances under the Concession Agreement or the amount it is unable to recover in respect of the same.

31.1.7 The Operator shall continue to be entitled to compensation for a Compensation Event in accordance with this Clause 31.1 notwithstanding the end of the "First and Second Protection Periods" (each as defined in the Concession Agreement) as if the compensation were still available to the Concessionaire under Clause 41 of the Concession Agreement save that the Concessionaire and the Operator shall agree the level of Increased Costs and in the event that no agreement can be reached shall refer the dispute to the Expert.

31.1.8.1 Clause not used

31.1.8.2 The Operator shall not be nor be deemed to be in breach of its obligations under this Agreement to comply with all Applicable Requirements or other Law to the extent that it is not required to carry out the Additional Services referred to above in accordance with the terms of this Agreement.

31.2 Construction Change

31.2.1 Where the Corporation or the Concessionaire issues a Concessionaire Change Order the Concessionaire shall notify the Operator as soon as practical. Where required by the Operator the Concessionaire shall make a claim under Clause 27 of the Concession Agreement. The Parties shall assess the potential effects of such Concessionaire Change Order to the Operator of performing this Agreement (the "Increased Costs") and shall agree the amount of Increased Costs as shall form part of the Concessionaire's claim under Clause 27 of the Concession Agreement (if any) and the Operator shall assist the Concessionaire to comply with its obligations under Clause 27 of the Concession Agreement. Where the Parties cannot agree the amount of the Increased Costs to be included as part of the Concessionaire's claim, there shall be included a sum which the

Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement.

31.1.2 Where in any negotiation with the Corporation as to the appropriate amount of Increased Costs to be taken into account in determining the value of the Corporation Change Order in accordance with Clause 29.3 of the Concession Agreement the Corporation rejects the level of Increased Costs so proposed solely on the grounds such changes are not properly substantiated then either:

31.2.2.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Increased Costs with the Corporation; or

31.2.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

31.2.3 The Operator shall be entitled to recover from the Concessionaire the Increased Costs determined in accordance with Clause 31.2.2 in respect of any Concessionaire Change Order save where such amount is rejected by the Corporation in accordance with Clause 31.2.2 in which event it shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 31.2.2 or determined by the Expert.

31.3 Where a Compensation Event or a Construction Change occurs the Parties shall assess the actual and potential financial effect of the same on the Operator and shall agree an appropriate reduction to the Fees or other sums due to the Operator under the Agreement as appropriate.

31.4 In respect of any Concessionaire Change Order required by the Concessionaire the Operator shall be entitled to recover in accordance with Clause 6.7.1 any Increased Costs.

32. DEREGULATION

If at any time Deregulation occurs:

32.1 the Fees shall be rebased in accordance with paragraph (c) of Schedule 2, and subsequently at five yearly intervals from that date and Clause 21.2.2 shall be adjusted accordingly; and

32.2 the Parties shall agree any further amendments that they wish to make to this Agreement as a result of Deregulation and if the Parties are unable to reach agreement as to any such amendments then the Operator shall be entitled to recover its "Change in Costs" or "Increased Costs" (as appropriate) under Clauses 16, 31.1 and 31.2 from the Concessionaire as it would have been entitled to if compensation were still payable to the Concessionaire under the Concession Agreement.

33. CONFIDENTIAL INFORMATION

33.1 Obligations as to Confidentiality

Subject to clause 33.4, the Parties to this Agreement shall keep confidential all matters relating to this Agreement and the Concession Agreement and will not make any disclosure, and will use best endeavours to prevent their employees, agents and servants from making any disclosure, to any person of any information, data, documents, secrets, dealings, transactions or affairs of or relating to this Agreement or the Concession Agreement.

33.2 Permitted disclosure

The confidentiality obligation of the Parties shall not apply to the following:-

- 33.2.1 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 33;
- 33.2.2 any disclosure which may reasonably be required for the performance of that Party's obligations under this Agreement;
- 33.2.3 disclosure of information which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto). This shall be deemed to include any disclosure to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail and Road, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors;
- 33.2.4 disclosure of any information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
- 33.2.5 the provision of information to suppliers or subcontractors provided similar obligations of confidentiality to those contained in this Agreement are imposed upon them before information is disclosed;
- 33.2.6 the provision of information to members of their respective Groups provided (i) similar obligations of confidentiality to those contained in this Agreement are imposed upon those Group members and (ii) (without limiting any rights of a Party against any member of the other Party's Group) the Party to whom the information was disclosed shall remain liable for any disclosure by a Group member other than as permitted by this Agreement. For the purpose of this Clause, "Group" means in the case of the Concessionaire, the "Concessionaire's Group" (as defined in Clause 33.4.1(a) below
- 33.2.7 provision of information to any Party to any of the Financing Documents or their professional advisers or insurance advisers;
- 33.2.8 compliance by the Operator with its obligations set out in Clause 30;

33.2.9 provision of information by the Concessionaire pursuant to the terms of the Concession Agreement or any of the Project Agreements;

33.2.10 provision of information to its professional advisers and financiers.

33.3 Continuing obligations

The provisions and obligations set out in this Clause shall survive and remain in force upon and following the termination of this Agreement.

33.4 Freedom of Information and Transparency

33.4.1 For the purposes of this Clause 33.4:

- (a) “Concessionaire Group” means the Corporation, and all of its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any “member of the Concessionaire Group” shall refer to the Corporation or any such subsidiary;
- (b) “Contract Information” means (i) the Agreement in its entirety (including from time to time agreed changes to the Agreement) and (ii) data extracted from the invoices submitted pursuant to the Agreement which shall consist of the Operator’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
- (c) “FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- (d) “Information” means information recorded in any form held by the Concessionaire or by the Operator on behalf of the Concessionaire;
- (e) “Information Access Request” means a request for any Information under the FOI Legislation ;
- (f) “Transparency Commitment” means the Concessionaire’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Concessionaire’s (or Concessionaire’s Group’s) published transparency commitments;.

33.4.2 The Operator acknowledges that the Concessionaire:

- (a) is subject to the FOI Legislation and agrees to assist and co-operate with the Concessionaire to enable the Concessionaire to comply with its obligations under the FOI Legislation; and
 - (b) may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Operator.
- 33.4.3 Without prejudice to the generality of Clause 33.4.2, the Operator shall and shall procure that its sub-contractors (if any) shall:
- (a) transfer to the Concessionaire each Information Access Request relevant to the Agreement, the Operating Services or any member of the Concessionaire Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Access Request; and
 - (b) in relation to Information held by the Operator on behalf of the Concessionaire, provide the Concessionaire with details about and copies of all such Information that the Concessionaire requests and such details and copies shall be provided within five (5) Business Days of a request from the Concessionaire (or such other period as the Concessionaire may reasonably specify), and in such forms as the Concessionaire may reasonably specify.
- 33.4.4 The Concessionaire shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 33.4.5 The Operator shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Concessionaire.
- 33.4.6 The Operator acknowledges that the Concessionaire is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 33.1 and Clause 33.4, the Operator hereby gives its consent for the Concessionaire to publish the Contract Information to the general public in an agreed redacted form.
- 33.4.7 Subject to Clause 33.4.6, the Concessionaire may otherwise in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Concessionaire may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 33.4.8 The Concessionaire may in its absolute discretion consult with the Operator regarding any redactions to the Contract Information to be published pursuant to Clause 33.4.7. The Concessionaire shall make the final decision regarding both publication and redaction of the Contract Information.

33A. DATA PROTECTION

33A.1 For the purposes of this Clause 33A:

33A.1.1 “**Privacy and Data Protection Requirements**” means:

- (a) any legislation in force from time to time in the United Kingdom which implements the European Community’s Directive 9546/EC and Directive 2002/58/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communications (EC) Regulations 2003;
- (b) from 25 May 2018 only, the Regulation (EU) 2016679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “General Data Protection Regulation”);
- (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the processing of Personal Data; and
- (d) any statutory code of practice issued by the Information Commissioner in relation to such legislation;

33A.1.2 “**Security Incident**” means any actual, probable or threatened incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the Agreement Personal Data or other Personal Data Breach or breach of this Clause 33A.

33A.2 For the purpose of this Clause 33A the terms “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**” and “**Processing**” shall have the meaning given to those terms in the Privacy and Data Protection Requirements, and “**Process**” and “**Processed**” shall be construed accordingly.

33A.3 The Parties acknowledge and agree that each Party shall Process certain Personal Data in connection with its obligations under this Agreement (the “**Agreement Personal Data**”). The Parties anticipate that each Party shall act as a separate Data Controller in common in respect of the Processing of the Agreement Personal Data and comply accordingly with their obligations under the Privacy and Data Protection Requirements.

33A.4 Where a Party (the “**Recipient Party**”) receives a request by any Data Subject to exercise any of their rights under the Privacy and Data Protection Requirements:

33A.4.1 the other Party shall provide any information and/or assistance as reasonably requested by the Recipient Party to help it respond to the request or correspondence, at the Recipient Party’s cost; or

33A.4.2 where the request or correspondence is directed to the other Party and/or relates to the other Party’s Processing of the Agreement Personal Data, the Recipient Party will:

- (a) promptly, and in any event within five (5) Business Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- (b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence.

33A.5 When a Party Processes the Agreement Personal Data as a Data Controller including in common with the other Party, that Party shall:

33A.5.1 notify the other Party of any disclosure of Agreement Personal Data to a third party, such notification to be made prior to the relevant disclosure or as soon as practicable thereafter unless prohibited by Law;

33A.5.2 promptly, and in any event within such time as required by the Privacy and Data Protection Requirements, notify the other Party upon awareness of any Security Incident and shall:

- (a) do all such things as reasonably necessary to assist the other party in mitigating the effects of the Security Incident;
- (b) implement any measures necessary to restore the security of any compromised Agreement Personal Data;
- (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Privacy and Data Protection Requirements; and
- (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

33A.6 Without limiting any other provision of this Clause 33A, each of the Parties shall, on request, provide such information and assistance as is reasonably requested by the other Party to assist the other Party in complying with the Privacy and Data Protection Requirements in respect of the Agreement Personal Data.

33A.7 Each Party shall indemnify and keep indemnified the other against all costs, expenses, damages or losses suffered by them or payable by them as a result of a breach of the Privacy and Data Protection Requirements or this Clause 33A by the indemnifying party.

34. DOCUMENTS, DUTIES AND FEES

34.1 Supply of documents

The following provisions shall apply where one Party is obliged under this Agreement to supply documents and drawings to the other Party:-

- 34.1.1 all paper based documents and drawings shall be of a suitable quality for reproduction, microfilming or scanning into electronic databases;
- 34.1.2 documents and drawings may be supplied on suitable electronic media provided such media is in a format which is compatible with the relevant Party's systems; and
- 34.1.3 each Party shall ensure that secure back-ups or archive copies of originals and revisions are maintained in respect of data supplied on electronic media.

35. PAYMENTS

35.1 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 provisions or written agreement to the contrary:-

- 35.1.1 the person entitled to payment ("the payee") shall deliver an invoice setting out adequate details for 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;
- 35.1.2 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;
- 35.1.3 without prejudice to the payee's right to receive payment on the due date, 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 35.1.1 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
- 35.1.4 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.

36. NOTICES

36.1 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 to the party to be served at or to that Party's address given below or to such other address in England as the Party to be served may from time to time select by prior notice to the other Party:-

Concessionaire

In relation to notice pursuant to Clause 24.3 (Early Termination by the Operator) or to Schedule 9 (Expert Determination or Dispute Resolution):

Address Windsor House
50 Victoria Street
London
SW1H 0TL

Attention: General Counsel

In relation to any other notice:

Address London Trams
Floor 11, 17 Addiscombe Road
Knollys House
East Croydon
CR0 6SR

Attention: Director of Trams

Operator

In relation to notice pursuant to Clause 24.1 (Termination of Services) or 24.2 (Early Termination by the Concessionaire) or to Schedule 9 (Expert Determination or Dispute Resolution):

Address 50 Eastbourne Terrace
London
W2 6LG

Attention: General Counsel

In relation to any other notice:

Address Tramlink Depot
Coomber Way
Croydon
CR0 4TQ

Attention: Company Secretary

36.2 Time of service

A notice shall be deemed to have been received:-

36.2.1 if delivered by hand, at the time when the notice is left at the address of the Party to be served;

36.2.2 if sent by post on the working day next following the day of posting or, if the day of posting was not a working day, the working day next following the first working day after the day of posting;

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.

37. GENERAL PROVISIONS

37.1 Waivers

None of the terms, provisions or conditions of this Agreement shall be considered waived by any Party to this Agreement unless a waiver is given in writing by that Party. No such waiver shall be a waiver of any past or future default or breach nor shall it create any amendment or addition to or deletion from any of the terms, provisions or conditions of this Agreement unless (and then only to the extent) expressly stipulated in the waiver.

37.2 Partial invalidity

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining part of provisions of this Agreement.

37.3 No liability for review or approval by the Concessionaire

Save where this Agreement provides for the Operator to respond to a direction or instruction given by or on behalf of the Concessionaire or for the Operator to seek the consent or approval of the Concessionaire and the Operator responds in the manner directed or instructed or acts in the manner for which consent or approval was sought or save as is agreed otherwise by the Operator and the Concessionaire, the obligations of the Operator hereunder shall not be affected by any instruction, direction, consent, approval, comment, acknowledgement or advice made or given by or on behalf of the Concessionaire and the Operator shall not be entitled to make any claim against the Concessionaire or to seek any relief or remedy of any nature by reason of any such action by or on behalf of the Concessionaire.

37.4 No liability for review or approval by the Operator

Save where this Agreement provides for the Concessionaire to respond to a direction or instruction given by or on behalf of the Operator or for the Concessionaire to seek the consent or approval of the Operator and the Concessionaire responds in the manner directed or instructed or acts in the manner for which consent or approval was sought or save as is agreed otherwise by the Concessionaire and the Operator, the obligations of the Concessionaire hereunder shall not be affected by any instruction, direction, consent, approval, comment, acknowledgement or advice made or given by or on behalf of the Operator and the Concessionaire shall not be entitled to make any claim against the Operator or to seek any relief or remedy of any nature by reason of any such action by or on behalf of the Operator.

37.5 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. Save as expressly authorised in this Agreement, neither Party shall be deemed to be the agent of the other and shall not hold itself out as having authority or power to bind the other in any way.

37.6 Further assurance

Each Party agrees, upon the request of the other, to execute any documents and take any further steps as may be reasonably necessary in order to implement and give full effect to this Agreement.

37.7 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 or arrangement of which this Agreement forms part and which is registrable or by virtue of which this Agreement is registrable.

37.7A Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

37.8 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.

37.9 Language of Agreement

The language of this Agreement is the English language.

37.10 Announcements

Save as required by law or regulation the Parties shall not make any announcements in connection with this Agreement without the prior written consent of the other Party such consent not to be unreasonably withheld.

37.11 Costs

Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement.

38. DISPUTE RESOLUTION

Any dispute arising between the Parties hereunder shall be resolved in accordance with the provisions of Schedule 9.

39. PROPER LAW

This Agreement is subject to the Law of England and Wales and 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

Executed as a Deed by)
affixing the Common Seal of)
Tramtrack Croydon Limited)
in the presence of:)

.....
Authorised signatory

AND

Executed as a Deed)
for and on behalf of)
Tram Operations Limited)
acting by: Director

Director

OR

Executed as a Deed)
for and on behalf of)
Tram Operations Limited)
acting by: Director

Witnessed by

DATED 25 NOVEMBER 1996

AMENDED AND RE-STATED ON 1 SEPTEMBER 2008

FURTHER AMENDED AND RE-STATED ON _____ 2017

(1) TRAMTRACK CROYDON LIMITED

- and -

(2) TRAM OPERATIONS LIMITED

SCHEDULES AND ANNEXURE
relating to the
Croydon Tramlink System Operating Agreement

Amended and Re-Stated
Burgess Salmon LLP
One Glass Wharf
Bristol BS2 0ZX
Tel: 0117 939 2000
Ref: AM01/BW01/20225.15

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SCHEDULE 1

THE SERVICES

PART 1: PRELIMINARY SERVICES

From the date of this Agreement until the start of the Mobilisation Period, the Operator shall:-

- liaise with the Contractor during the detail design process;
- review and, where applicable, comment on construction designs, timescales and proposals;
- review and, where applicable, comment on proposed and actual changes to the Specification, the Performance Specification and the Operator Specification;
- review and, where applicable, comment on proposed and actual Construction Changes, Change Orders, Service Changes, Service Parameter Changes, Indicative Change Orders (as defined in Clause 29.1 of the Concession Agreement);
- review and, where applicable, comment on any Change of Law, anticipated Change of Law or Compensation Event which may impact future operations of the Tramlink System;
- review any change in the Tramlink System and the Project Agreements and, where applicable, comment;
- attend meetings with HMRI and have input into Safety Case discussions;
- commence preparation of the safety cases relating to operation of the Tramlink System and to the stations;
- assist with discussions with the Corporation and with the Council, where an Operator input is applicable; and
- develop recruitment and training plans.

But not with respect to the Trams.

PART 2: MOBILISATION SERVICES

From the start of the Mobilisation Period until the Actual Opening Date the Operator shall:-

- review, and where applicable, comment on construction designs, timescales and proposals;
- review, and where applicable, comment proposed and actual changes to the Specification, the Performance Specification and the Operator Specification;
- review, and where applicable, comment proposed and actual Construction Changes, Change Orders, Service Changes, Service Parameter Changes and Indicative Change Orders (as defined in Clause 29.1 of the Concession Agreement);

- review, and where applicable, comment any Change of Law, anticipated Change of Law or Compensation Event which may impact future operations of the Tramlink System;
- review any change in the Tramlink System and the Project Agreements and, where applicable, comment;
- prepare the safety cases relating to operation of the Tramlink System and to the stations;
- assist with discussions with the Corporation and with the Council, where an Operator input is applicable;
- liaise with the Contractor in respect of arranging the training of Operator staff required for commissioning and listing and operating of the Tramlink System;
- develop recruitment and training plans;
- recruit and employ staff;
- train staff to the required standard (except in relation to training given by external suppliers referred to below);
- receive training in the operation of the Tramlink System both at the Site and at other sites (to be determined). Most of this training will be in respect of equipment suppliers;
- attend at meetings with HMRI regarding the Safety Case;
- develop a safety plan;
- develop Quality Plans;
- develop administration and management procedures and systems;
- arrange for the opening in Croydon town centre of a small office to handle marketing, lost property and ticket sales;
- tender and arrange contracts with sub-contractors;
- assist with obtaining the required Bye-laws;
- assist with the development of the Customer Charter;
- assist the Concessionaire and the Contractor with the required testing of the Tramlink System and comment to the Concessionaire and the Contractor (as relevant) on the findings of those tests.

But not with respect to the Trams.

PART 3: OPERATIONAL SERVICES

1. Assumptions

The Parties acknowledge that the provision of the Services by the Operator assumes and is dependent on:-

- the supply of electricity free of charge save for that expressly assumed by the Operator hereunder;
- the payment by the Concessionaire of all rates and property related charges except those related to the Operator's offices in Croydon and gas, water and telephone at the Depot consumed by the Operator or its sub-contractors;
- the Trams can be operated using one man as is current Good Industry Practice;
- that tram operating speed, tram acceleration and tram braking are permitted at the levels contained in the Specification;
- the cleaning of graffiti and rectification of vandalism and other handling of crime remain at levels which can reasonably be expected with a tram system in that area;
- marketing to a level to be reasonably expected with a controlled fare regime operating in a regulated environment;
- that any change in livery is at the Concessionaire's cost;
- that the Tramlink System will be provided in accordance with Clause 9.1;
- the Off-tram Revenue Agreement does not impose survey requirements on the Operator in addition to standard revenue protection personnel;
- the level of training and visits required by the Concessionaire are reasonable;
- no additional policing or other staff requirements for special events;

and in the event of any change in such assumptions except where expressly addressed in this Agreement, such change will be treated as Additional Services and dealt with in accordance with Clause 6.7.

2. General

During the Operating Period, the Operator shall provide to the Concessionaire:-

- (a) tram drivers to meet the requirement of the Timetable;
- (b) tram drivers to provide, as required, shunting service within the Depot;
- (c) controllers on a 24 hour shift basis. The controllers' role is to man the Control Room, ensure the smooth operation of the Tramlink system and deal with all emergencies and incidents (with back-up support where necessary);

- (d) management of the drivers and controllers, including an on-call system outside of normal office hours;
- (e) a travel information service. During office hours, this would be provided by staff based at the Croydon office. Outside office hours, the telephone inquiry number would be linked to the control room at Therapia Lane. The Operator will provide information to LT for it to update its 24 hour London Travel Information service;
- (f) a marketing service. This will provide a range of publicity timetables, fare charts and general marketing information referred to above;
- (g) a lost property service in line with LT's current standard of lost property. It will be located in the Croydon office and be open during most normal office hours;
- (h) personnel and training resources suitable for the size of the operation;
- (i) contract management resource to cover the Operator's sub-contractors;
- (j) control of stores and inventory management for the Operator;
- (k) liaison with the Concessionaire on interface between infrastructure maintenance requirements on the Tramlink System and operational requirements;
- (l) organising, where applicable replacement bus services;
- (m) not used;
- (n) updating of Health and Safety Procedures and safety plans relating to the Services;
- (o) updating of Quality Plans relating to the Services;
- (p) evaluation of technical innovations and new products in the tram industry, save those such evaluations relating to Infrastructure items maintained by the Concessionaire shall be carried out jointly with and led by the Concessionaire;
- (q) evaluation of technical problems impacting the operations, save that such evaluations arising from technical problems relating to Infrastructure items maintained by the Concessionaire shall be carried out jointly with and led by the Concessionaire;
- (r) monitoring of auditing and reporting on all aspects of safety relating to the Tramlink System for which the Operator is responsible. Working with the Concessionaire's Health and Safety Manager to provide a safe system for the Operator's undertaking working within the Operator's Safety Management System;
- (s) revenue related services as more particularly detailed in Schedule 11;
- (t) provision of cleaning services as more particularly detailed in section 11 of the Operator Specification.

- (u) mobile van to attend breakdowns or emergencies;
- (v) liaison with emergency services and planning for response to emergencies;
- (w) liaison and, where applicable, use of an appropriate Police force to carry out both its statutory duties and to provide a level of surveillance. The use of a contractor to carry out some security work is envisaged;
- (x) liaison with the Tram Maintenance Contractor, and identification of interface issues between the Tram Maintenance Contractor and the Operator of which the Operator becomes aware;
- (y) not used;
- (z) management of breakdown and/or emergency response;
- (aa) assist the Concessionaire and the Contractor with the required commissioning and testing of the Tramlink System from SAT 2 up to and including SAT 3 and comment to the Concessionaire and the Contractor (as relevant) on the finding of those texts;
- (bb) not used.

In the event of any conflict between the provisions of this Part of the Schedule and the other provisions of this Agreement (including the Operator Specification) the other provisions of this Agreement shall prevail.

PART 4: INFRASTRUCTURE MAINTENANCE SERVICES

1. The Operator shall in relation to Infrastructure items (if any) for which it is responsible (and in respect of maintenance being undertaken by or on behalf of the Concessionaire in respect of items for which the Concessionaire is responsible):-
 - (a) Not used
 - (b) Not used
 - (c) Not used
 - (d) Not used
 - (e) Not used
 - (f) Not used
 - (g) take reasonable steps such that impacts on the passenger service are minimised and adequate notice to passengers is given and, where requested by the Concessionaire, organise substitute bus services;
 - (h) assess the effect of the Service Delivery Plan on the Operator Specification;
 - (i) ensure that, on completion of any maintenance work, clearance has been given for passenger services to commence prior to their commencement.

2. Not used
3. In relation to Infrastructure items for which it is responsible the Concessionaire shall:-
 - (a) Consult the Operator in managing the relationship between the maintenance contractors, other contractors and the Operator;
 - (b) Consult the Operator to ensure that safety aspects of maintenance work are reviewed and that any resultant risk to the operations and users of the System are minimised, complying with the Operator's reasonable requests in relation to these safety aspects;
 - (c) Ensure that impacts on the passenger service are minimised, adequate notice is given to passengers and that substitute bus services are requested;
 - (d) Assess the effect of the Service Delivery Plan on the Operator's Specification;
 - (e) Ensure that, on completion of any maintenance work, clearance is given for passenger services to commence.

PART 5: TRAM MAINTENANCE SERVICES

A. GENERAL

1. Repair of the Trams and Routine Maintenance

Tram Maintenance

- 1.1 Not used
- 1.2 Not used
- 1.3 The Operator may not remove a part from any Tram without the prior consent of the Concessionaire (such consent not to be unreasonably withheld or delayed) save for routine removal of recording equipment for the purposes of retrieval and further storage of data.
 - 1.4.1 If the Operator wishes to amend or modify the Trams in a way which is outside the provisions of the Tram Specification (as defined in the Tram Maintenance Contract) then the Operator shall consult with the Concessionaire as to the acceptability of such amendment or modification, the potential cost savings, the effect on Tram Service Levels, the Timetable and other requirements of the Specification and its implementation. If the Concessionaire consents to any such amendment or modification then the Concessionaire will procure such amendment or modification on behalf of and at the Operator's cost, such cost equating to the costs reasonably and properly incurred by the Concessionaire in this regard. All costs and expenses reasonably and properly incurred by the Operator in connection with such amendment or modification (including the costs of amending the Driver Manuals) shall be met by the Operator unless otherwise agreed.

1.4.2 If the Concessionaire wishes to amend or modify the Tramlink System then the Concessionaire shall consult with the Operator as to such amendment or modification, the potential cost savings, the effect on Tram Service Levels, the Timetable and other requirements of the Operator Specification and the implementation of such amendment or modification. Following such consultation, the Operator shall provide to the Concessionaire its assessment of the financial effects to it, if any, of such amendment or modification which shall be reviewed by the Concessionaire and a cost agreed between the Concessionaire and Operator. The Operator shall provide all reasonable assistance in implementing such modification or amendment if required by the Concessionaire. Any modification or amendment carried out pursuant to this paragraph 1.4.2 shall be treated as an Additional Service.

1.5 Not used

1.6 Not used

2. Other Requirements

2.1 Notification of Events

The Operator shall:-

- (a) inform the Concessionaire immediately upon becoming aware thereof, of the loss, damage or destruction of any of the Trams;
- (b) inform the Concessionaire immediately upon becoming aware thereof but in any event within ten (10) Business Days of becoming aware thereof, of any injury or damage to any person or any property caused by, or in connection with, any of the Trams; and
- (c) inform the Concessionaire as soon as reasonably practicable, but in any event within ten (10) Business Days of becoming aware thereof, of any other event in respect of any of the Trams which might reasonably be expected to involve the Concessionaire in a loss, liability or claim;

3. Not used

4. Not used

5. Funding of Repair Pending Insurance Recovery

- (a) If damage is caused to any Tram not as a result of the default of the Operator hereunder, then the Concessionaire shall bear the necessary costs of repairing such damage until amounts are recovered under the relevant policies of insurance required to be taken out by the Concessionaire pursuant to Clause 22. Upon such recovery the Concessionaire shall be entitled to be reimbursed from the proceeds of the relevant insurance such costs it has expended in effecting such repairs.
- (b) If damage is caused to any Tram as a result of the default of the Operator hereunder, then the Operator shall subject to the other terms and conditions of this Agreement bear the necessary costs of repairing such damages until amounts are recovered under the relevant policies of insurance required to be taken out

by the Concessionaire pursuant to Clause 22. Upon such recovery the Operator shall be entitled to be re-imbursed from the proceeds of the relevant insurance such costs it has expended in effecting such repairs.

PART 6: SITE AVAILABILITY

[NOT USED]

SCHEDULE 2

FEES

Generally:

- (a) Where reference is made in this Agreement to a sum of money “Indexed” that sum shall be deemed to be altered with effect from each anniversary of this Agreement in accordance with the Retail Price Index for the month in which such anniversary falls but if for any reason the Retail Price Index shall be otherwise altered or shall be abolished or replaced, there shall be substituted for the purposes of the Retail Price Index such index of retail price costs as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty’s Government
- (b) The Concessionaire shall not be responsible for paying the salaries, pension entitlements or other benefits of staff of the Operator required for the purposes of the Operating Services save indirectly through the payment of fees and other amounts under this Agreement.
- (c) (i) The Concessionaire and the Operator each acknowledge that changes in the Operator’s costs may occur during the Term which changes will not be reflected in the indexation arrangements provided for in this Agreement and are not otherwise recoverable in whole or in part by the Operator pursuant to the other provisions of this Agreement.
- (ii) The Concessionaire and the Operator accordingly agree that prior to every fifth anniversary of the date of Actual Opening Date (a “Quinquennium”) they shall jointly review the Operator’s entire costs in providing the Services at that time in each of the categories of costs set out below which have been used by the Operator in estimating its costs for the purpose of arriving at its fees at the commencement of this Agreement:-
- Staff costs (by major category of staff)
 - Maintenance costs, if applicable
 - Electricity costs
 - Station departure charges
 - Contractors costs
 - Utilities (other than electricity)
 - Vandalism and other Uninsured Losses
 - Insurance
 - Policing
 - Training
 - Rates, if applicable
 - Croydon office costs
 - Hire of buses (but not in respect of operational problems caused by the Operator defaulting under its obligations hereunder)
 - Marketing
 - Posters, publicity, timetables
 - Projects, e.g. where the costs of replacing capital assets including managerial systems increase disproportionately
 - Other overheads, e.g. uniforms, postage, entertainment expenses
 - Profit

The review shall be carried out in accordance with the subsequent provisions of this paragraph (c).

- (iii) The joint review referred to above shall not change the level of the profit margin percentage at the date of this Agreement. It shall however seek to identify factors external to the Operator which have increased and/or decreased costs and the extent to which such costs are not otherwise recoverable in full hereunder.
- (iv) At least six months prior to each Quinquennium the Operator shall prepare and send to the Concessionaire a review of costs in the categories identified above comprising each original cost used at the date of this Agreement or when last rebased (Indexed to the relevant Quinquennium) with the actual cost for such category at the date of such Quinquennium. The review shall also address those external factors which in the opinion of the Operator are relevant to any increase and/or decrease in costs shown by the review.
- (v) Within one month of receipt of such review the Concessionaire shall submit to the Operator its proposal for meeting any cost changes addressed in the review which are not otherwise recoverable in full under the Agreement. The Operator shall within two weeks of receipt of such proposals, submit its own proposals (if different) in relation to such increases in costs.
- (vi) Within two weeks of receipt of the Operator's proposals by the Concessionaire, both Parties shall meet to resolve any outstanding issues between them in relation to funding the changes in the Operator's costs which are not otherwise recoverable pursuant to the terms of this Agreement.
- (vii) In the event that the Parties are unable to agree as to how changes in the Operator's costs which are not otherwise recoverable under this Agreement are to be funded such dispute shall be referred to the Expert for a decision. The Expert shall be required to decide as between the two sets of proposals how the Operator can best be compensated for increases in the categories of costs referred to above which are not recoverable in full already under this Agreement. Such sum shall bear interest at the Prescribed Rate from the date of the relevant Quinquennium.
- (viii) In the event that the Parties agree that the aggregate annual value of increases in costs which are not otherwise recoverable under this Agreement is less than £ [REDACTED] (Indexed) then the Operator shall not be entitled to recover such costs.
- (ix) In the event that increases in costs arise during the negotiation period referred to above then the Operator shall be permitted to include such costs in its review by a supplemental review which should be dealt within the same way as the original review subject to necessary changes in the time periods.

PART 1: PRELIMINARY PERIOD

The fees from the date of signing of the Agreement to the commencement of the Mobilisation Period will be:-

£

First Month

21,000

Second Month	21,000
Subsequent Months	14,750

Part of a month will be charged at a daily Business Day rate of one twentieth of the monthly charge.

PART 2: MOBILISATION PERIOD

The fees from commencement of the Mobilisation Period to Actual Opening Date will be:-

<u>Month</u>	<u>£,000</u>
1	18
2	18
3	28
4	37
5	38
6	59
7	65
8	76
9	78
10	80
11	83
12	87
13	109
14	163
15	173
16	173
17	173
18	173
19	173

Further periods shall be charged at the same rate as for period 19. Part of a month will be charged proportionately.

Drivers and controllers

The minimum Mobilisation Period shall be 18 months.

The minimum fees payable during the Mobilisation Period shall be £1,804,000.

PART 3: OPERATING PERIOD

The fees from Actual Operating Date until the first Quinquennium rebasing will be:-

<u>Financial Period</u>	<u>£</u>
1	497,000
2 and subsequent periods	456,154

(as adjusted by Additional Services)

Any period which is less than 4 weeks at the commencement of the Operating Period shall be charged at a daily rate based upon the charges for Financial Period 2.

PART 4 : NOT USED

PART 5: NOT USED

PART 6: NOT USED

PART 7: ADDITIONAL MOBILISATION COSTS FROM DELAY

In the event that the Mobilisation Period continues for longer than 19 months the Operator shall be entitled to all costs and expenses incurred by the Operator during that extended period in accordance with Clause 6.2.3 but subject to the following:-

- (a) subject to (b) and (c) such costs and expenses shall not exceed £173,000 per month save only that where there is a period of time between “Completion” (as defined in the Construction Contract) and Actual Opening Date such costs and expenses shall not exceed £293,000 per month; and
- (b) where and to the extent that the Mobilisation Period continues for longer than 19 months which continuation is caused by a “Delay Event” as defined in the Construction Contract, such costs and expenses shall not exceed £293,000 per month, subject to the provisions relating to Force Majeure in Clause 6.2.3; and
- (c) the Concessionaire is not required in any circumstances to pay the Operator more than £1.56m in respect of any extension of the Mobilisation Period; and
- (d) the Operator shall provide to the Concessionaire such information as it may reasonably request to substantiate such expenses.

SCHEDULE 3

AGREEMENTS

PART 1 : CONTRACTS

Maintenance Contract
Infrastructure Maintenance Contract

PART 2: PROJECT AGREEMENTS

Concession Agreement
Construction Contract
Tramlink General Agreement
Off-Tram Revenue Agreement

PART 3: FINANCING AGREEMENTS

1. Senior Facility Agreement entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited, Bayerische Landesbank and Royal Bank of Scotland.
2. Intercreditor Agreement entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited and Others.
3. Senior Debenture entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited and Dai-Ichi Kangyo Bank Limited.
4. Subordinated Facility Agreement entered into on or about the date hereof between Concessionaire, Tramtrack Leasing Limited and 3i Group plc.
5. Subordinated Debenture entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited and 3i Group plc.
6. Insurance Agreement entered into or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited, the Lessor and Others.
7. Shareholders Funding Agreement entered into on or about the date hereof between the Concessionaire, the Shareholders (Amey Tramlink Limited, Bombardier Prorail Limited, CentreWest, Sir Robert McAlpine (Holdings) Limited, Royal Bank Project Investments Limited and 3i Group plc and Bombardier Eurorail SA).

SCHEDULE 4

PERFORMANCE REQUIREMENTS

Part 1

1. The Operator shall maintain a record of:-

Actual Kilometrage – showing separately replacement bus kilometrage;

Lost Kilometrage;

Scheduled Kilometrage.

The Operator shall by the fourth Business Day of each Financial Period report in writing to the Concessionaire on such matters for each day in the immediately preceding Financial Period.

2. For the purposes of this Schedule 4 reference to 2% of Scheduled Kilometrage shall be treated as 5% of Scheduled Kilometrage during the period between the commencement of the Operating Period and the successful achievement of the Final Acceptance Tests.
3. Where Actual Kilometrage falls below 98% of Scheduled Kilometrage such report shall give the Operator's opinion of the reasons for Actual Kilometrage falling below 98% of Scheduled Kilometrage during such period apportioned in accordance with the categorisation in Part 2 of Schedule 4 and indicating in each case whether it is Operator Controlled Lost Kilometrage or other Lost Kilometrage.
4. Where Operator Controlled Lost Kilometrage in any Financial Period is greater than 2% of Scheduled Kilometrage for such Financial Period then the Operator shall pay to the Concessionaire £█ per kilometre in respect of Operator Controlled Lost Kilometrage which is greater than 2% of Scheduled Kilometrage in such Financial Period provided that no amount shall be payable under this provision:-
- (i) not used;
 - (ii) due to a failure to provide Operating Services, if Operator Controlled Lost Kilometrage attributable to such failure does not exceed 1% of Lost Kilometrage
 - (iii) not used
5. The Operator and the Concessionaire shall use all reasonable endeavours to mitigate the effect of factors leading to Lost Kilometrage.
6. For the avoidance of doubt no payment is required to be made by the Operator if Actual Kilometrage does not fall below 98% of Scheduled Kilometrage or to the extent that Actual Kilometrage does fall below 98% of Scheduled Kilometrage where there is no Operator Controlled Lost Kilometrage.
7. Any payments required to be made pursuant to this Clause shall be shown in the next invoice issued pursuant to Clause 21.4 and in the event of a dispute in relation to any such report the amount in dispute shall be withheld pending the outcome of such dispute and the balance shall be settled forthwith.

8. The maximum amount payable by the Operator pursuant to this Part of this Schedule in any one Operating Year shall not exceed £■■■ taking into account all other amounts paid or payable by the Operator to the Concessionaire under this Agreement in such Operating Year.
9. Not used
10. The Concessionaire shall have the right to audit any reports made by the Operator to the Concessionaire pursuant to paragraph 1 by reviewing the underlying reports and logs maintained by drivers and controllers.

Part 2

Categories of Lost Kilometrage

The provisions of this Part 2 are illustrative only and are without prejudice to the definitions of the various categories of Lost Kilometrage.

1. Operator Controlled
 - Driver shortage
 - Control Centre staff shortage
 - Tram non availability or failure caused by the Operator
2. Infrastructure Maintenance Controlled
 - Signal failure
 - Tram System maintenance failure
 - Infrastructure routine maintenance
 - Control room maintenance failure
 - Infrastructure non-routine maintenance
 - Failure to carry out Routine Maintenance, Services or Defective Routine Maintenance Services
3. Other supplier controlled
 - Power failure
 - Power supply adequacy
 - Utilities failure
4. Major infrastructure maintenance
 - Planned system closure to undertake planned infrastructure maintenance
 - Emergency infrastructure maintenance due to defect in system
5. TCL action
 - Agreed temporary changes to service pattern
6. External factors
 - Bomb scares
 - Special events
 - Accident
 - Adverse weather
 - Passenger fraud
 - Passenger sickness
 - Policy or emergency service instructions
 - Road closure

- Vandalism whilst in service
- Assault on staff or passenger
- Traffic congestion
- Traffic signal failure
- Utility service work

7. Tram maintenance

- Tram not available other than where caused by the Operator
- Tram failure due to Tram Maintenance Contractor

SCHEDULE 5

MAINTENANCE RESPONSIBILITIES AND ROUTINE MAINTENANCE SPECIFICATIONS

Part 1

Maintenance Management Responsibilities Allocated to the Concessionaire

The Concessionaire is responsible for maintenance of any Infrastructure. This includes (without limitation) the following items:

-) Supply of all utilities to the Depot Building.
-) Maintenance of the Depot landscape. The Depot main building structural fabric, interior and exterior lighting and all approach paths, roadways, track and ballast. but: the Operator shall remain responsible for those matters which are its responsibility under the Sub-Lease (and during the Licence Period, its obligations in Part 2 of Schedule 16).

Part 2

Routine Maintenance Specifications

- (a) The Parties have agreed that Routine Maintenance Services shall be performed by the Concessionaire in accordance with Clause 6.5.2 and this Schedule taking into account the Service Delivery Plan.
- (b) NOT USED
- (c) NOT USED

SCHEDULE 6

INSURANCE

A. CONSTRUCTION PHASE

The Concessionaire shall take out and maintain the following insurances:-

1. **Type:** **EMPLOYERS LIABILITY INSURANCE**

Insured: 1. The Concessionaire
Tramtrack Croydon Limited and/or Tramtrack Leasing Limited

2. (a) The Construction Joint Venture

Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies

(b) The Operator

Tram Operations Ltd

Interest: To indemnify the Insured in respect of its legal liabilities consequent upon death of or bodily injury, illness or disease to direct employees of the Insured arising out of or in the course of their employment in the design, manufacture, supply, delivery, construction, erection, setting to work, testing and commissioning of the Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley, England.

Period of Insurance: Estimated 36 months with effect from 20 November 1996 plus 24 months Defects Rectification period thereafter.

Limit of Indemnity: £■■ for any one occurrence and unlimited for all occurrences in the Period of Insurance.

Territorial Limits: Great Britain, Northern Ireland, the Channel Islands, the Isle of Man (and temporary visits overseas).

Excess: Nil Excess

Extensions:

- Health and Safety at Work Act extension
- contractual liability
- court attendance costs
- unsatisfied court judgements clause
- indemnity to parent/subsidiary/associated companies including Tram Drivers
- contingent and retroactive indemnity

- cross liabilities clause

2. CONTRACTORS ALL RISKS, EXISTING STRUCTURES INSURANCE

- Insured:**
1. The Concessionaire
Tramtrack Croydon Limited and/or Tramtrack Leasing Limited
 - 2.(a) The Principals
London Regional Transport and/or The Secretary of State for Transport and/or their servants and agents
 - (b) The Financiers
The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents
 - 3.(a) The Construction Joint Venture
Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies
 - (b) The Tram Suppliers and Maintainers
Bombardier Eurorail S.A.
 - (c) The Operator
Tram Operations Limited
 - (d) General Subcontractors
Subcontractors of any tier together with all other supplies and/or others engaged to provide goods or services at any Insured Location in connection with the Project.
 - (e) Consultants
Consultants (including *inter alia* Sir Alexander Gibb and Partners and/or Merz and McLellan and/or Parsons Brinckerhoff and/or Booz Allen and Hamilton and/or London Borough of Croydon) in respect of their site activities only

Project: All work in connection with the design, construction, maintenance and operation of the Croydon Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley including performance testing, commissioning and tram trial running and all ancillary and associated works in connection therewith.

**Insured
Property:**

To indemnify the Insured against “all risks” of loss, destruction or damage to the Insured Property arising from any cause whatsoever whilst on or about the site of the Project and elsewhere in the British Isles including whilst in transit (other than by sea) or during any transshipment, storage, or deviations en route and including loading and unloading.

Item (a) The permanent and/or temporary works, materials and supplies, plant, equipment, trams and supplies (including free issue materials) and any other property, for which the Insured is responsible, intended for use or incorporation in the Contract undertaken by the Insured

Item (b) Contract’s plant, tools and equipment including spare parts, temporary buildings and their contents owned or hired in by the Insured (1) and (3) (a) or for which they are responsible

Item (c) Personal effects, clothing, tools and other belongings of the Insured’s (1) or (3)(a) Employees

Item (d) The Existing Structures for which the Insured’s (1) and (3)(a) are responsible or is required or has agreed to insure

Item (e) Property on or adjacent to the Contract temporarily occupied for the purpose of the Contract

**Period of
Insurance:**

36 months with effect from 20 November 1996 comprising 6 months site establishment works and 30 months full construction works (including testing and commissioning as per schedule supplied) plus 24 months Defects Rectification Period thereafter

**Sums
Insured:**

Item (a) Estimated at £■■■ (inclusive of £■■■ tram cost)

Item (b) £■■■

Item (c) £■■■ any one employee any one occurrence

Item (d) Estimated at £■■■

Item (e) £■■■ in all in the Period of Insurance

Situation:

Anywhere in the Great Britain, Northern Ireland, Channel Islands and Isle of Man in connection with the Contract as more fully defined in the Policy Wording.

Excess:

Item (a) (i) £■■■ each and every loss in respect of loss or damage to the permanent works caused by fault, error or omission in design, plan, specification or workmanship of the permanent works. This excess will apply only to

reinstatement, making good and the like of that part which is itself defective

(ii) £■■■ each and every loss in respect of testing, commissioning, trial runs and maintenance

(iii) £■■■ each and every loss in respect of storm, tempest, flood, water damage, subsidence, collapse

(iv) £■■■ each and every other loss

Item (b) 15% each and every loss subject to a minimum of £■■■ each and every loss and a maximum of £■■■ each and every loss

Item (c) £■■■ each and every loss

Item (d) £■■■ each and every loss

Item (e) £■■■ each and every loss

In the event of a loss whereby more than one Excess applies, the aggregate amount to be deducted shall not exceed the highest applicable Excess.

Extensions: Professional Fees – as per scale

Plans & Documents

Debris Removal - £■■■ any one occurrence

Expediting Expenses - £■■■ any one occurrence

Property Hired in/out

Loss Minimization

Local Authorities Reinstatement

Additional Costs Clause – Limit £■■■ any one occurrence

Increased Costs of Constructing Incomplete and Unbuilt Works – Limits £■■■ any one occurrence

Temporary Repairs Clause

Plant Recovery

Price Increase Clause – 125%

72 Hour Clause

Payments on Account

Munitions of War

Composite Insured Clause

Buildings due for demolition Clause (if applicable)

Automatic Reinstatement Clause. Additional Premium to be agreed for any one loss exceeding £■■■

Ongoing maintenance works within the Construction period are included hereon

Joint Fire Code of Practice to apply to Depot/Trams whilst on site in UK in storage only

Full Terrorism Cover

Exclusions: Penalties and consequential loss

Motor, Craft etc

DE5 (1995) Design Materials and Workmanship Clause (permanent works only)

Wear and Tear and Corrosion

Inventory losses

Excluding inherent/pre existing defects in existing structures

3. **Type:** **THIRD PARTY LIABILITY INSURANCE**

Insured:

1. The Concessionaire

Tramtrack Croydon Limited and/or Tramtrack Leasing Limited

2.(a) The Principals

London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents

(b) The Financiers

The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents

3.(a) The Construction Joint Venture

Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies

(b) The Tram Suppliers and Maintainers

Bombardier Eurorail S.A.

(c) The Operator

Tram Operations Limited

(d) General Subcontractors

Subcontractors of any tier together with all other suppliers and/or others engaged to provide goods or services at any Insured Location in connection with the Project.

(e) Consultants

Consultants (including *inter alia* Sir Alexander Gibb and Partners and/or Merz and McLellan and/or Parsons Brinkerhoff and/or Booz Allen and Hamilton and/or London Borough of Croydon and/or Finance Parties Technical Consultant).

Project: The contract for the Croydon Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley. Works to include design, procurement, construction, operation, maintenance, performance testing, commissioning and tram trial running and all ancillary and associated works in connection therewith

Period of Insurance: 36 months with effect from 20 November 1996 comprising 6 site establishment works and 30 months full construction works (including testing and commissioning as per schedule supplied) plus 24 months Defects Rectification Period thereafter.

Indemnity: All sums which the Insured shall become legally liable to pay (whether contractual or otherwise) in respect of or consequent upon

- (a) death or injury suffered by any person
- (b) loss of or damage to Material Property
- (c) obstruction, loss of amenities, trespass, nuisance, interference, denial of access or any like cause

arising in connection with the Project.

Limit of Indemnity: £■■ any one occurrence or series of occurrences arising out of one event and unlimited as to the number of occurrences during the Period of Insurance (other than in relation to pollution and contamination where the Limit of Indemnity will be £■■ for all claim in aggregate during the Period of Insurance.)

Territorial

Limits: Worldwide

Excess: £■ each and every occurrence in respect of property damage only

Extensions: sudden and intended pollution wording
disclosure of information
Data Protection legislation
infringement of privacy
social functions/activities
Consumer Protection Act 1987
Health and Safety at Work legislation
Defective Premises Act 1972 Clause
claims brought in USA/Canada subject to

- (a) punitive and exemplary damages exclusion
- (b) costs inclusive
- (c) NMA 1668

contingent motor liability
leased or rented property not excluded and property owned by London
Regional Transport and London Borough of Croydon to be treated as
Third Party Property
financial loss
cover for Officers/Members of Clubs & Organisations and of fire and
first aid
teams
munitions of war clause
including Maintenance activities
public relations clause
cross liabilities clause
composite Insured

Exclusions: Employers Liability
Motor
Aircraft/Waterborne Craft
Own property, custody or control
Contract Works
Liquidated Damages
War
Radioactivity
Deliberate Acts
Gradual Pollution
Fines

B. OPERATIONAL PHASE

1. **Type:** **EMPLOYERS LIABILITY INSURANCE**

Insured: 1. The Concessionaire

Tramtrack Croydon Limited and/or Tramlink Leasing Limited

Period of Insurance: 12 months from a date to be advised – renewable annually thereafter

Interest: To indemnify the Insured in respect of its legal liabilities consequent upon death of or bodily injury, illness or disease to employees arising out of or in the course of operating and maintaining the Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley, England.

Limit of Indemnity: £■■ any one occurrence or series of occurrences arising out of any one event and unlimited in the Period of Insurance

Excess: Nil Excess

Extensions: The policy wording will include (but not be limited to):

- liabilities assumed under contract
- the waiver of subrogation rights where required by contract
- a note of the financiers interests

2. Type: THIRD PARTY LIABILITY INSURANCE

Insured:

1. The Concessionaire
Tramtrack Croydon Limited and/or Tramlink Leasing Limited
- 2.(a) The Principals
London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents
- (b) The Financiers
The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents
3. The Operator
Tram Operations Limited

Period of Insurance: 12 months from date to be advised – renewable annually thereafter.

Interest: To indemnify the Insured against all sums which the Insured shall become legally liable to pay (whether contractual or otherwise) (including claimants costs and expenses) as damages in respect of:

- death or bodily injury, illness or disease contracted by any person
- loss of or damage to property

- interference to property or the enjoyment of use thereof by obstruction, trespass, nuisance, loss of amenities or any like cause

arising out of or in the course of operating and maintaining the Tramlink System.

Limit of Indemnity:

Third Party Liability

£■■ any one occurrence or series of occurrences arising out of one event and unlimited as to the number of occurrences during the Period of Insurance other than in relation to pollution and contamination where the Limit of Indemnity will be £■■ for all claims in aggregate during the Period of Insurance.

Deductibles:

£■■ each and every occurrence in respect of property damage only

Extensions:

The policy wording will include (but not limited to):

- Waiver of subrogation rights where required by contract
- Cross Liability Clause
- Legal Defence Costs in respect of Health and Safety at Work Act
- Vehicle risk arising out of the use of trams
- World-wide Jurisdiction (ex USA/Canada)

2. **Type:**

MATERIAL DAMAGE INSURANCE

Insurance:

1. The Concessionaire

Tramtrack Croydon Limited and/or Tramlink Leasing Ltd

2.(a) The Principals

London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents

(b) The Financiers

The Banks, Financial Institutions, Lessors and The Security Trustee and their respective permitted successors, assigns, directors, employees, servants and agents

3. The Operator

Tram Operations Limited

Period of Insurance:

12 months from a date to be advised – renewable annually thereafter

Interest:

To reinstate the Insured's property following physical loss destruction or damage to buildings, machinery, plant, trams, stock and

miscellaneous items all forming part of the Croydon Tramlink System including spares.

Limit of Indemnity: To be the maximum likely value of the assets at risk during the Period of Insurance after inflation

Deductible: £■

Extensions: The policy wording to include (but not limited to):

- Full Theft, Subsidence, Money and Computer Breakdown
- Public Authorities Clause
- Costs of Professional Fees and Debris Removal
- Terrorism cover – first loss limit £■ (subject to availability of such coverage on commercially acceptable terms)

SCHEDULE 7

OBLIGATIONS IN OTHER PROJECT AGREEMENTS

To extent that the Concessionaire requires relevant information relating to the operation and maintenance of the Tramlink System:-

1. the obligation of the Concessionaire to provide information to the Corporation contained in Clause 4.3 of the Off-Tram Revenue Agreement being the obligation to provide the following information:-
 - (a) On-Tram Revenue Data;
 - (b) amount of Stored Value Revenue (if any) collected by the Concessionaire;
 - (c) Kilometre Data; and
 - (d) details of any temporary unscheduled change in the service on the Tramlink System (including without limitation Service Interruptions) (all terms as defined in the Off-Tram Revenue Agreement).
2. the obligation of the Concessionaire to provide the Corporation with such other information as the Corporation shall reasonably require for the purpose of determining the Off-Tram Revenue in respect of a particular Payment Period and the obligation to provide to the Corporation such On-Tram Revenue Data and other information as may be required by the Corporation to assist in the performance of the Corporation's obligations under the Off-Tram Revenue Agreement (all terms as defined in the Off-Tram Revenue Agreement).
3. the obligation of the Concessionaire to co-operate with the consultants appointed from time to time by the Concessionaire and the Corporation to carry out the Tramlink Survey.
4. the obligation in respect of all data and other information which the Concessionaire is required to notify to the Corporation under the Off-Tram Revenue Agreement that such data and other information is complete and accurate in all respects.
5. the obligation that the Concessionaire shall allow the Corporation on it giving reasonable notice during normal business hours to inspect all records relating to any of the information provided to the Corporation by the Concessionaire pursuant to the Off-Tram Revenue Agreement; and
6. the obligation of the Concessionaire to permit the Auditor for the proper performance of his functions the same rights of access to the property as are afforded to the Corporation under Clause 4.7 of the Off-Tram Revenue Agreement.

SCHEDULE 8
OPERATOR SPECIFICATION

SECTION 1

GENERAL

The obligations of the Operator under this Operator Specification shall be those which specifically allocate obligations to it.

STATUS

1.1 This document is the Operator Specification for the purposes of the Operating Agreement of which it forms part. Pursuant to the Concession Agreement the Contractor is obliged to design, construct and commission the Tramlink System as required by the Performance Specification. The Operator is obliged to operate the Tramlink System as required by the Operating Agreement.

The provisions of this Operator Specification shall apply as amended or varied by the Appendices to the Operator Specification attached hereto.

1.2 References herein to the Operator Specification includes references to all relevant Parts and Sections of the Operator Specification and any of them.

1.3 The Corporation's Performance Specification from which this document evolved comprises:

- (a) Part 1 which describes preliminary matters in relation to the Concession, certain cardinal requirements, design principles and requirements in respect of safety management;
- (b) Part II which describes pre-operational obligations;
- (c) Part III which describes the Performance Requirements in relation to undertaking the Project Works and generally in relation to the Construction Phase;
- (d) Part IV which describes operational and maintenance obligations;
- (e) Part V which contains a glossary of terms and abbreviations and rules for interpretation for use in conjunction with the Performance Specification;
- (f) the documents, plans, drawings and appendices which are referred to in the Performance Specification (one set of which is held by the Concessionaire (identified as such and initialled on behalf of the Concessionaire and the Contractor) and one set (similarly identified and initialled) is held by the Contractor); and
- (g) the Construction Practice Specification.

CARDINAL REQUIREMENTS

- 2.1 The Contractor and the Operator (subject to the terms and conditions of the Operating Agreement) will each undertake the Project so as to comply with the relevant detailed requirements of the Operator Specification that apply to each of them and comply with and satisfy the cardinal requirements set out below:
- (a) the Tramlink System shall be constructed (Contractor) and operated (Operator) so that it is safe, reliable, efficient and environmentally friendly and accessible to all irrespective of mobility impairments, as far is reasonably practicable;
 - (b) the Contractor shall take account of the need to react safely and quickly to emergencies in all aspects of its design and construction of the Tramlink System;
 - (c) the operation of the Tramlink System shall reflect a high standard of presentation and public image. The Tramlink System shall be operated efficiently with minimum disturbance to the public and minimum delay to passengers.
- 2.2 The Tramlink System will operate as an integral part of the public transport network in Greater London. The Corporation is subject to a statutory duty to co-ordinate public transport services and their operations which includes the Tramlink System. The Operator shall co-operate with Concessionaire in this respect and shall comply with the Concessionaire's reasonable requirements in relation to ensuring co-ordination of public transport services in those areas affected by the Tramlink System.
- 2.3 The Operator shall take all necessary measures to prevent its employees, agents and sub-contractors from consuming or being under the influence of alcohol or drugs whilst carrying out any duties in connection with the Operation and maintenance of the Tramlink System. For the purposes of this Alcohol and Drugs clause, 'drug' means any intoxicant other than alcohol.

The Operator shall submit its alcohol and drugs policy to the Concessionaire for its approval within two and a half months from the date of the Operating Agreement. The policy statement shall, as a minimum provide:

- (a) procedures to detect and prevent any person from reporting to or being at work in connection with the Project who is under the influence of alcohol or drugs;
- (b) at least in the case of staff covered by the Transport and Works Act 1992, procedures to subject persons at work in connection with the Project, randomly, periodically, before starting work or after an incident (as necessary) to alcohol and drug tests;
- (c) initiatives for making persons aware of its policy on alcohol and drugs; and
- (d) procedures and monitoring to demonstrate compliance with its policy.

The Operator shall ensure that all its contracts with sub-contractors which might ultimately affect operational safety, require the sub-contractors to comply with the first paragraph of this clause and co-operate with the Operator in implementing its alcohol and drugs policy. The Operator shall ensure that it has the right under those contracts

to remove any person or sub-contractor from work on the Tramlink System who is suspected of being under the influence of drink or drugs whilst at work and to submit any person to the alcohol and drugs testing under the policy.

The Operator shall provide an annual written update on compliance with the above alcohol and drugs policy to the Concessionaire. The Concessionaire may make recommendations to the Operator in respect of the policy at any time. The Operator shall take those recommendations into account in implementing its policy.

2.4 **Quality Assurance**

The Contractor shall develop, implement and monitor an effective quality system which shall ensure that the requirements of the Performance Specification are satisfied. The quality system shall:

-) ensure that quality requirements are determined and satisfied for all process throughout the Construction Phase for the Tramlink System including design, development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, storage, site works, installation, training, commissioning, operations and maintenance;
-) provide for early and prompt detection of actual or potential deficiencies, trends or conditions which shall result in unsatisfactory quality, and for timely and effective corrective actions;
-) include the establishment and implementation of procedures, work instructions and method statements, which clearly identify organisational structure, roles and responsibilities (named personnel), and processes to ensure the satisfactory integration and interfacing of all elements comprising the Tramlink System;
-) include a quality plan which is in accordance with the Quality System Model for Quality Assurance and Design Development Production Installation and Servicing (1994) ISO 9001.

The Contractor shall allow the Employer access to documentation and other management systems developed for implementing and audit of the Contractor's quality system.

- 2.5 The Contractor and the Operator shall each send an appropriate delegate to represent its interests at regular co-ordination and liaison meetings to be held with the Concessionaire. Such meetings, at which other parties may also be invited to attend as appropriate, shall be convened to discuss the following issues:-

- (a) Project Review (monthly)
- (b) Milestones (monthly)
- (c) Technical Reviews (monthly)
- (d) Additional meetings identified from time to time

The Concessionaire shall also instigate regular review meetings with HMRI to which the Operator shall be invited to attend.

Route

- 2.6 The Tramlink System shall be built along the route identified by, and in accordance with, the Context Study Drawings (the **Route**). The Drawings identifying the Route will together comprise the **Route Plan**. (Contractor)
- 2.7 The Tramlink System will replace existing conventional rail services from Wimbledon to West Croydon and between Blackhorse Lane and Elmers End. The Tramlink System will utilise former railway alignment between Blackhorse Lane and Fairfield Path. New tramway will be constructed to New Addington and across South Norwood Country Park as far as Beckenham to Crystal Palace railway alignment from where the remainder of the route to Beckenham Junction shall consist of a tramway running adjacent to an existing Railtrack line. The three routes are to be linked by new sections of tramway built in or adjacent to the highway from Sandilands in the east to Waddon New Road in the west. Stops shall be provided at frequent intervals at the locations shown by the Route Plan.

COMPLIANCE WITH LAW AND APPROVALS

- 3.1 The Contractor shall obtain and comply with the terms of all approvals, consents and licences required by law and the Performance Specification.

Various approvals shall be obtained by the Contractor from the Council or other appropriate authority in its capacity as local planning authority (including works requiring planning permission, advertisement consent, listed building consent, and conservation area consent), and as Highway Authority and under other statutory functions.

- 3.2 The Contractor shall obtain planning permission for the works detailed below:

-) stops, their layout, access arrangements and equipment
-) other buildings including the Depot and sub-stations
-) new and altered vehicular access points to public highways
-) bridges
-) car parking areas
-) stream diversion works

- 3.3 Further approvals shall be obtained from the relevant local authorities under the following provisions: (Contractor)

(a) sections 20, 40 (the Council only), 42 and 57 of the Act;

(b) an extension of the powers in section 40 of the Act set out in the Tramlink General Agreement, for Project Works which do not require planning consent for the following parts of the route:

-) that part of Work No. 1 lying between Waddon New Road (chainage 9200 as defined in the Parliamentary Plans) and its junction with Work No. 3

- J Work No. 7 – between Work No. 3 and the junction with work No. 9 and at South Norwood Country Park and Love Lane (between chainage 2800 and 4150 as defined on the Parliamentary Plans)
 - J Works No. 9 – from Fairfield Path (approximate chainage 1050 as defined on the Parliamentary Plans) to its junction with Work No. 10
 - J Works No. 10, 11, 12 – all; and
- (c) approvals as set out in the Tramlink General Agreement.
- 3.4 Without prejudice to the Contractor general obligation under paragraph 3.1 of this Section 1 the Contractor shall obtain and comply with:
- (a) all necessary approvals from RT and the Train Operating Companies required by the Law (including the Act); and
 - (b) the terms of the planning consent given in favour of the Corporation by the London Borough of Bromley in respect of Project Works located at Beckenham Junction, which fall outside the limits of deviation, so far as the detailed design of the Project Works supports such consent and if not the Contractor shall be responsible for seeking amendments to such consent notifying the Corporation in accordance with the Construction Change provision.
- 3.5 The Contractor agrees that, at Wimbledon Station, where Project Works fall outside the limits of deviation, the provisions of part 17 of Schedule 2 to the GPDO shall apply. Plans are shown on drawing Ref. No. 95401/300/020 (Rev. A).

GENERAL REQUIREMENTS – CONSTRUCTION

4. In connection with the provision of the Tramlink System the Contractor shall comply with the following general requirements:
- (a) the details of hard and soft landscaping, and grassed track set out in Document Ref. Nos. AG0022 and the relevant provisions of the Tramlink General Agreement unless otherwise agreed in writing by the Council;
 - (b) prior to commencing the Project Works the Contractor shall appoint a professional archaeological body of recognised standing to carry out the archaeological tasks identified in the Construction Practice Specification.
 - (c) ensure that electric power is supplied to the Trams at a DC voltage of nominally 750v with a maximum acceptable deviation of plus 20% or minus 30%, and that the requirements of Section 6 of the Performance Specification are satisfied;
 - (d) ensure that adequate standards of lighting which comply with BS5489 are provided for Stops, footpaths between each Stop and public highways, pedestrian crossings at Stops and for the Depot, as further described in Section 8 of the Performance Specification. Lighting at Stops shall be to a minimum level of 30 lux at floor level including the area within shelters. Lighting shall be provided for the alignment in tunnels and underpasses in order to maintain

visibility to levels acceptable to HMRI. Street lighting which has to be removed as a result of the Project Works must be replaced in a manner to maintain at least the existing standard of street lighting, in accordance with details to be agreed with the relevant authority; and

- (e) reinstate, move or replace as necessary (subject to any necessary approvals) equipment in the highway which is affected by Project Works: this will include, but may not be limited to, traffic signals, monitoring equipment for signals, equipment boxes, telephone boxes, post boxes, sign-posts, and surface water drainage system.

DESIGN

5.1 The Contractor shall design the Tramlink System so that once built it satisfies all of the Performance Requirements and shall also comply with the following principles:

- (a) to ensure that unless otherwise required by relevant standards, the design of the Tramlink system accommodates the reasonably predictable extremes of the local climatic conditions;
- (b) the design and construction of the Tramlink System shall ensure that the appearance of both equipment and infrastructure is attractive and reduces visual intrusiveness as far as is reasonably practicable. The Tramlink System shall be landscaped in order to maintain the character of the areas through which it passes and to mitigate any adverse visual impact, (some of which landscaping is to be done by the Council in accordance with the provision of the Tramlink General Agreement);
- (c) the vehicles operated on the Tramlink System are to be designed to a high modern standard in terms of passenger comfort and ride quality. In addition, the vehicles shall be configured using modular construction allowing components to be used which are well proven and reliable. The Contractor shall provide a safe, reliable, attractive, energy efficient and environmentally friendly vehicle;
- (d) the Tramlink System is to be designed as an integrated system to provide the level of safety and reliability required by the Performance Specification;
- (e) The Tramlink System shall be capable, without the need to make ***Significant Changes*** to the fixed infrastructure, including the power supply and signalling system, of providing for a further 33% increase in passenger carrying capacity above that initially required (as at the date of the 1996 Agreement) by paragraph 1.2 of Section 9 of the Operator Specification and paragraph 3.11 of Section 5 of the Performance Specification. The increase in passenger carrying capacity shall be calculated by applying 33% to the product of:
 - (i) the passenger carrying capacity (at 5pax/m²) of the largest type of Tram initially introduced to operate on the Tramlink System; and
 - (ii) the number of journeys that are scheduled to pass East Croydon Station in both directions during the busiest hour of the week as set out (as at the

date of the 1996 Agreement) in the table in paragraph 1.2 of Section 9 of the Operator Specification.

This increase in passenger carrying capacity may be achieved either by operating more services (subject to the limits set out (as at the date of the 1996 Agreement”) in paragraph 1.4 of Section 9 of the Operator Specification) and/or by employing longer Trams (subject to the limits set out in Section 5 of the Performance Specification).

- 5.2 The Tramlink System shall be designed, built (Contractor) and maintained (Concessionaire), including the renewal of subsystems and components as necessary, to a standard that will ensure that it will be capable of continued operation for a period of at least forty years without the need for a Significant Change more frequently than once every five years.
- 5.3 The Contractor agrees to comply with the minimum design lives specified below for the various component parts.

<i>Element</i>	<i>Design Life (in years)</i>
New Structures	120
New Track	15
Track Bed	50
Switches and Crossings	10
Overhead line equipment	30
Power distribution cables	30

The Contractor shall refurbish existing structures and track so as to ensure safe and reliable operation of the Tramlink System.

- 5.4 The Concessionaire shall amend the Specification so as to reflect material and relevant changes which are made to the Tramlink System in accordance with Good Industry Practice.

ELECTROMAGNETIC COMPATIBILITY

- 6.1 The Contractor shall be responsible for (and shall demonstrate to the Corporation when required to do so) ensuring that all aspects of electromagnetic compatibility of the Tramlink System are dealt with as far as is reasonably practicable in the detailed design and implementation. The Contractor shall comply with the provisions of this paragraph 6 relating to electromagnetic compatibility.

The level of electro-magnetic emissions and their effects shall be compliant with the requirements of the law, European pre-standard ENV 50121, CCI II, CCIR, UIC and BSI.

- 6.2 The Contractor shall produce a detailed EMC Plan, as part of its detailed design, which shall:

- (a) incorporate Appendix 5.1 to Section 5 of this Performance Specification which sets out the vehicle's compliance with the European standard EN 50121:-
- (b) demonstrate that the EMI which may be produced by equipment proposed to comprise the Tramlink System is calculated to be within the limits specified by the Performance Specification and also that such equipment is not susceptible to interference produced by other equipment (not comprising the Tramlink System) of which the Contractor knew or should reasonably have been aware at the Actual Opening Date.
- (c) Incorporate the preventative measures agreed with RT in accordance with the provisions of the RT General Works Agreement or any other third party; and
- (d) Incorporate a full EMC analysis on all equipment being procured for the Tramlink System for immunity to EMT and emission of EMI. Where areas of particular concern are identified within the analysis, simulation studies shall be instigated and reports made available.

6.3 The Contractor's EMC Plan shall set out measures to be taken during implementation processes for the Tramlink System so as to prevent:

- (a) electromagnetic interference to RT equipment with particular attention to signalling safety and control systems, telecommunications and track circuits;
- (b) EMI affecting the public telecommunications, public broadcast and private radio communications networks and other third parties/communications equipment;
- (c) interference which corrupts or distorts signals and processes within information technology, data handling, data processing systems and other computer equipment;
- (d) interference with radio and television reception;
- (e) electromagnetic induction from traction power supply current into electronic equipment on the Trains, along the track, at Stops and in the Control Centre; and
- (f) outside interference with electronic equipment of the Tramlink System from high voltage power lines and cables paralleling or crossing the track;
- (g) emissions generated within systems in the control of, or associated with the infrastructure and assets of Railtrack, its client operating companies and interfering with control, communications and data handling and processing systems applicable to the Tramlink System.

6.4 The Contractor undertakes that in the event of EMI being caused by or to the equipment comprising the Tramlink System, the Contractor shall effect such changes to the Tramlink System (and the EMC Plan) as are necessary to ensure that EMI is reduced to acceptable limits as soon as is reasonably practical and/or that such EMI has been eliminated pursuant to the provision of the RT General Works Agreement.

6.5 The Contractor undertakes to comply with the EMC Plan.

STRAY CURRENT

7.1 The Contractor shall agree with the Corporation through the Employer and subsequently comply with the Code of Practice for Stray Current Corrosion Protection and the new draft EN standard on this matter, prEN 50122-2: 1995. The Contractor shall ensure that once built the Tramlink System possesses the following characteristics:

- (a) track to earth resistance shall be as high as reasonably practicable, with no deliberate earthing. (Figures are given in the prEN);
- (b) along track resistance shall be as low as reasonably practicable, through high quality bonding and frequent cross bonding between rails and tracks;
- (c) Depot workshop tracks shall be isolated from the main line tracks and fed from a separate rectifier with its negative pole earthed;
- (d) recognised track voltage limits (CCITT recommendations) shall be 60V continuous and 430V instantaneous;
- (e) wherever earthed metalwork is closer than 2m to “negative” metalwork, (including a vehicle body) a self-restoring spark gap shall be installed to limit the touch/step potential to about 120V; and
- (f) under-track reinforcing shall be made electrically continuous within sections, each section being brought out to a test point.

7.2 The monitoring and control of, and the analysis of the effects of stray traction current shall be the subject of separate dedicated studies, the results of which shall be made available to RT.

ENVIRONMENTAL IMPACT AND CONSTRUCTION PRACTICE

8.1 The Contractor shall undertake the Project Works in a manner which, insofar as is reasonably practicable, minimises disturbances to the public and road users as well as to affected third parties such as statutory undertakers, local retailers and householders.

8.2 The Contractor shall:

- (a) undertake the Project Works in accordance with the requirements of the Construction Practice Specification;
- (b) comply with all safety laws and regulations (including the HSWA) for the benefit of employees and all other affected parties;
- (c) conform to the Corporation’s environmental policy the current version of which is at Annex 1 to this Section 1. (The Corporation will send a copy of any revised version of Annex 1 to the Contractor through the Employer);

- (d) build and design the Tramlink System in a manner which minimises its impact on the built and natural environment, and which protects, as far as is reasonably practicable, the existing flora and fauna and minimises energy consumption and ecological damage and, in particular, complies with BS 5837 in relation to trees;
- (e) reinstate and landscape the area affected by the Project Works following construction and maintenance of the Permanent Way in accordance with the Council's landscaping requirements as set out in paragraph 4 of this Section 1;
- (f) incorporate the mitigation measures identified in the Environmental Statement submitted with the Act (Document Ref. No. AG0026) and additional studies required therein to assess further likely impacts on the Tramlink System. Relevant mitigation measures shall be incorporated by the Contractor into the detailed design and construction work;
- (g) prior to commencing the relevant design process produce an environmental action plan to ensure that all the identified mitigation measures and additional surveys are incorporated into the detailed design and the programming of the works; and
- (h) design all new structures having regard to operational noise and visual intrusion requirements each as specified in this paragraph 8 and Section 6.

Visual Intrusion

- 8.3 The overall visual intrusion of the Tramlink System shall be minimised by the Contractor (or the Council where the Council is under an obligation to provide landscaping under the provisions of the Tramlink General Agreement) using appropriate landscaping, the design of the Stops, power supply system and major structures. Visual assessments of the structural designs shall be undertaken by a specialist in this field and reasonably recommended mitigation measures incorporated.
- 8.4 In designing the OHLE the Contractor shall adopt the design criteria stated in Section 6 of the Performance Specification.

Operational Noise

- 8.5 Without prejudice to the specific requirements set out herein, the Contractor shall take all steps which are reasonably practicable so as to reduce the operating noise of the Tramlink System. The Contractor shall, whenever possible, reduce noise at source. All structures shall be designed and constructed (in particular the viaducts at Waddon New Road and Mitcham Junction) to mitigate operational noise and vibration propagation where appropriate and as far as is practicable by:
- (a) containment of the track in a concrete well;
 - (b) use of sound barriers; and
 - (c) use of resilient bearing materials.
- 8.6 The Contractor's specific obligations shall be to:

- (a) design the Tramlink System such that at existing noise sensitive properties, upon commencement of Tramlink Operations:
 - 1) for areas with Existing Noise levels less than or equal to 59 dB(A), the System Noise shall not exceed 59 dB(A).
 - 2) for areas where the Existing Noise levels are greater than 59 dB(A), the increase in noise due to Tramlink operations shall not be greater than 3 dB(A).
- (b) demonstrate to the satisfaction of the Corporation, as part of its detailed design, its ability to comply with the requirements in paragraph 8.6 (a) of this Section 1.
- (c) agree with the Employer, within 3 months of the date of the Concession Award and as part of its detailed design, a method (including locations), and programme of noise measurements at existing properties, to establish Existing Noise levels and subsequent changes to noise levels, throughout the Concession Period, as a result of the Tramlink Operations;
- (d) operate and maintain the Tramlink System throughout the Concession Period, such that System Noise levels at existing properties are increased by no more than 4 dB(A) ($24 L_{a(eq \text{ façade})}$), above the predicted design value, as a result of the Tramlink Operations;
- (e) comply with the Operational Noise and Vibration Requirements contained in Annex 2 of Schedule 1, throughout the Concession Period;
- (f) comply with the requirements for airborne noise from the Depot which shall be demonstrated by the use of predicted noise levels and the measurement of existing noise levels at affected dwellings. This estimated shall be undertaken during the design stage. Predicted levels shall be based on assumed activities and their duration and shall be undertaken during the design stage. The Contractor shall ensure that any mitigation measures necessary are incorporated at the design stage; and
- (g) arrange for measurements to be undertaken at residential properties in the vicinity of the Depot to establish ambient (L_{Aeq}) and background (L_{A90}) noise levels. The Contractor shall design the Depot so far as practicable to minimise the likely generation of airborne noise from the Depot and will take all reasonable steps to reduce noise at source, thus ensuring that the difference between the rating of level of Depot noise as it affects dwellings or other buildings lawfully used or residential buildings, occupied prior to the date on which the Depot is first brought into operation, and the background L_{A90} noise levels does not exceed 5dB. The rating level shall be determined or assessed and the existing background noise level measured, in accordance with BS4142:1990, the difference between them will be as defined in Section 8.2 of BS4142:1990.

8.7 The Contractor shall use suitable qualified staff to undertake the calculation of noise levels attributable to the operation of the Tramlink System to determine eligibility for noise insulation of dwellings, as indicated in Operational Noise and Vibration Requirements (Document Ref. No. AG0020).

Ease of Access at Stops

8.8 The Contractor shall ensure that:

- (a) platforms and all passenger operated equipment are accessible by wheelchair users without the need for assistance;
- (b) at Tram doors designated for access by passengers the horizontal gap between the Tram and the edge of the trackside platforms never exceeds 100mm (for doors designated for passengers with disabilities, see Section 5);
- (c) passengers board the Tram at a maximum level of 350mm above the top of the rail;
- (d) the Trams shall be level with the platform whilst boarding (plus or minus a maximum 50mm at all conditions of Tram loading unless otherwise required by HMRI). (For doors designated for passengers with disabilities see Section 5);
- (e) the needs of passengers who are disabled or partially sighted shall be taken into account when providing passenger information facilities;
- (f) all emergency alarm buttons, intercom facilities and ticket machines shall have at least a simplified set of operating instructions in Braille mounted on or near the equipment;
- (g) the use of bridge plates between the platform and the Tram is avoided; and
- (h) during the design stage and the Construction Phase, the Contractor shall consult with the Corporation's Unit for Disabled Passengers (or its equivalent from time to time).

Protection of Badgers

8.9 The Contractor is aware that parts of the Project Works may affect or cause disturbance to badgers. Badgers are a protected species under the Protection of Badgers Act 1992 and the Contractor is obliged to comply with the requirements of that legislation.

The Contractor shall appoint an appropriately qualified specialist to advise it in connection with badgers and to assist in complying with its obligations under the Protection of Badgers Act 1992 and the other requirements of this paragraph 8. In particular the Contractor shall obtain a licence from English Nature in accordance with Section 10 of the Protection of Badgers Act 1992 before carrying out any of the Project Works affecting setts or likely to cause disturbance to badgers occupying them.¹

8.10 In addition to the requirements imposed by English Nature as a condition of issue of the licence, the Corporation has agreed in principle to provide a licence to a local badger protection society – the Joseph Firkbank Society – to occupy the cutting sides for the

¹ The Concessionaire should note that English Nature advise that any operations within 20 metres of a sett have the potential to disturb badgers, whilst, certain operations (e.g. pile driving) can be potentially disturbing over a greater distance.

purposes of protection and management of the badger population. The Contractor shall grant such licence to the Joseph Firbank Society.

- 8.11 Before commencing any Project Works in the Bingham Road to Coombe Road area, the Contractor shall consult with the Joseph Firbank Society on the works required and shall take account of their comments acting reasonably.
- 8.12 The Contractor shall agree the precise details of protective works required with English Nature. These are likely to include:
- (a) provision of badger-proof fencing adjacent to the alignment on either side;
 - (b) provision of under-track crossings;
 - (c) repair where necessary of perimeter fencing, allowing where required for the retention of badger paths; and
 - (d) provision of gated access points to the cutting sides at the locations specified in the draft licence which forms part of the Parliamentary Undertaking given to the Joseph Firbank Society.

COMPLIANCE WITH STANDARDS

- 9.1 A performance requirement specifying that a system, structure, material or article comply with a particular standard or procedure whether a BS or other named standard or procedure or otherwise, shall be satisfied by compliance with any relevant national or governmental standard of any member state of the EU, or any relevant international standard or procedure recognised in a member state of the EU, provided that in any case the standard or procedure in question establishes levels of safety, suitability and fitness for purpose equivalent to those established by the standard specified in the Performance Specification.
- 9.2 A performance requirement requiring the use of any system, structure, material or article which is defined by reference to a named supplier or manufacturer or a specified quality assurance system or Agrément Board Certificate, or which is registered with or has otherwise received the approval of an appropriate supervisory authority shall be satisfied by using systems, structures, materials and articles which have received equivalent approval in another member state of the EU, provided that the system, structure, material or article in question is as safe, suitable and fit for the relevant purpose as the system, structure, material or article specified by the Performance Requirements.
- 9.3 Applicable standards or procedures required by this Operator Specification shall be determined by reference to the current edition of the relevant standards or other publications as amended or at the Concession Award Date. An Agrément Board Certificate will be deemed to demonstrate acceptable quality where no suitable standard exists.
- 9.4 Although all standards and applicable requirements, whether under the Operator Specification or required by law shall be met or satisfied, if a conflict arises as between the requirements of this Operator Specification, the following order of priority shall apply:

1. Operator Specification requirements.
2. BS or equivalent EU member state or equivalent ISO standards.
3. Design guidance and other non-mandatory information referenced herein.

ANNEX 1

Corporation's Environmental Policy

[to be supplied by LT]

SECTION 2

TRAMLINK SYSTEM SAFETY

Introduction

- 1.1 The Contractor has primary responsibility for the safety of the Tramlink System during the Construction Phase. Each of the Concessionaire (as Infrastructure Manager) and the Operator (as Transport Undertaking) has responsibility for operational safety aspects of the Tramlink System during the Operating Period as set out in Clause 12 of the Operating Agreement. The Mayor of London is required under the Greater London Authority Act 1999 to develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London and to set those out in a transport strategy. It is the Corporation's statutory responsibility to secure or facilitate the implementation of that transport strategy.

General

2. Without prejudice to the Contractor's obligation under paragraph 1.1 and the other provisions of this Section 2 and without prejudice to the Concessionaire's and Operator's general obligations under paragraph 1.1, the Contractor, Concessionaire and Operator (where noted) shall:
- (a) comply with Safety Acts and all other applicable Laws (Contractor, Concessionaire and Operator);
 - (b) comply with the requirements of HSE, ORR/ and RAIB in relation to the Services (Operator), Tram Maintenance Services (Concessionaire) and Infrastructure Maintenance Services (Concessionaire), including the general and specific requirements of ORR;
 - (c) comply with the Corporation's general policy on health and safety as amended from time to time (Contractor, Concessionaire and Operator);
 - (d) provide all appropriate measures in relation to the Services (Operator), Tram Maintenance Services (Concessionaire) and Infrastructure Maintenance Services (Concessionaire) to ensure, so far as reasonably practicable, the safety of all passengers (including the mobility impaired), contractors, staff and the general public;
 - (e) consult with and adopt all requirements of the emergency services throughout the Construction Phase (Contractor) and the Operating Period in relation to the Services (Operator) and Infrastructure Maintenance Services which is the responsibility of the Concessionaire (Concessionaire);
 - (f) as part of the design of Stops, Trams and equipment relating to the Tramlink System, take particular care to ensure safety at accesses and exits, while waiting, boarding or alighting and when moving along the Trams (Contractor); and

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TRAMLINK SYSTEM SAFETY

- (g) have due regard for the safety of third parties, in particular pedestrians and other road users, in the design and construction (Contractor), operation (Operator) and maintenance (Concessionaire) of the Tramlink System.

SECTION 2

TRAMLINK SYSTEM SAFETY

Construction Phase

- 3.1 The Contractor shall bear full responsibility for all safety requirements and shall observe all regulations regarding safety applicable during the Construction Phase.
- 3.2 Prior to commencement of the Project Works, the Contractor shall prepare and issue, with a copy to the Corporation through the Employer, a statement of its safety policy and method of implementation for the Construction Phase (called the **Construction Safety Plan**). The Construction Safety Plan shall comply with the requirements of the Construction (Design and Management) Regulations 1994 (the **CDM Regulations**), and all applicable Laws and Safety Acts.

Operation and Maintenance Phase

- 4.1 No later than 3 months prior to the Actual Opening Date, the Contractor shall issue to the Employer its contribution to the proposed Safety Case. The Employer shall respond with its comments no later than 30 days after receipt of the proposed Safety Case.
- 4.2 With effect from the date on which the 2008 Agreement takes effect (and without limiting Clause 4.3.3(d) of the Agreement or paragraph 4.3 below) the Concessionaire's Safety Management System and the Operator's Safety Management System shall be maintained in accordance with Clause 12 of this Agreement.
- 4.3 As part of their respective Safety Management Systems (with effect from 2005) the Contractor and/or Concessionaire and/or Operator (as noted) shall:
- (a) provide appropriate facilities and proper training of staff to ensure safe and efficient evacuation from the Trams in case of emergency (Contractor and Operator);
 - (b) provide suitable warning signs for the public and differentiate where required by HMRI or the Highway Authority between the Swept Path and other areas of the highway along street Tramway sections (Contractor);
 - (c) provide warning signs and appropriate means of demarcation as required by the Act and by HMRI along segregated sections of Tramway. Where physical barriers are used to segregate the Tramway, adequate clearances shall be provided to minimise hazards to staff working on the track, trespassers, or straying animals (Contractor); and
 - (d) formulate in respect of the Construction Phase, the Construction Safety Plan (Contractor) and in respect of the Operating Period Safety Management Systems (Concessionaire and Operator in respect of infrastructure and operations respectively) addressing the following aspects (without limitation) (for both the Concessionaire and Operator as noted in relation to their respective obligations):

) safety monitoring

SECTION 2

TRAMLINK SYSTEM SAFETY

-) passenger safety and security;
-) staff safety and security;
-) third party safety (Concessionaire and Operator);
-) site safety (Contractor);
-) emergency conditions, including lines of communication to RT, BR and its successors, emergency services, the relevant local authorities and Highway Authorities (Contractor and Operator);
-) technical/design safety procedures (Contractor); and
-) maintenance (Concessionaire).

The Safety Management Systems shall each incorporate:

- (i) a statement that it is to be observed by Tramlink System (and sub-contractors') personnel in the following situations:
 -) accidents and emergencies;
 -) normal operation;
 -) predetermined failure conditions including staff shortages, power supply shortages and equipment failures (Contractor, Concessionaire and Operator);
- (ii) a description of the method of recovery of a failed Tram or Train and the lifting of a Tram involved in an accident (an associated activities) (Contractor, Concessionaire and Operator).

4.4 Copies of the Safety Management System (or those extracts of it which relate to operations on the highway) shall be supplied for information to each relevant Highway Authority by the Concessionaire.

Safety Demonstrations, Tests and Monitoring

5.1 As part of safety management the Contractor shall in the Construction Phase identify all equipment and other devices critical to safety. For such devices it will use, where practicable, items which are certified by official standards or those which have been proved by safe and successful operation on a comparable public transport system.

5.2 The Contractor shall in the Construction Phase prepare plans, procedures and requirements for certification, contracts and testing, including design reviews, review of sub-contractor submittals, change requests and audits.

SECTION 2

TRAMLINK SYSTEM SAFETY

- 5.3 The Contractor and the Operator shall, in consultation with HMRI, through the Concessionaire, the Corporation and the Highways Authority, identify the activities they propose to monitor to measure its safety performance, including the procedures necessary for the notification of accidents where reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2007.

Safety Training

6. The Contractor, Concessionaire and the Operator (where relevant under their respective obligations in Clause 12 of the Operating Agreement) shall:
- (a) provide safety criteria and information on approved methods and procedures for inclusion in the instructions and associated publications for the training of Tramlink System operating and maintenance personnel. Protective devices and emergency equipment shall be identified and included in the training programme; and
 - (b) be responsible for producing safety training material and publicity for the general public. The Contractor and the Operator shall participate in training programmes with road safety officers of the London Boroughs traversed by the Tramlink System, and the Concessionaire and the Operator shall do so where so requested.

Network Rail Requirements

7. The Contractor shall comply with all the requirements of Network Rail as set out in the RT General Works Agreement.

Safety Audit

8. Not used

**TfL Health, Safety and Environment Policy
December 2016**

See overleaf

TfL Health, Safety and Environment Policy

December 2016

My commitment

Our customers, users, employees and suppliers have an expectation that when using or delivering our services or assets they will remain harm free. Our vision is "Everyone home safe and healthy every day". My Directors and I are committed to meeting our vision and these expectations.

We want to ensure that:

- every journey is a safe journey for our customers and users
- the security of our customers and employees is assured
- our employees, agency staff and contractors go home safe and healthy every day
- we maintain our assets and deliver projects safely
- we fulfil our commitments to prevent pollution and nuisance; protect biodiversity; improve air quality; and reduce waste and carbon emissions
- we are inclusive and accessible to all customers and users, including those with disabilities.

How we go about this

We have put in place health, safety and environment rules and procedures, including emergency procedures that are regularly updated. These are for you to use. If you do not know where to find them ask your line manager or your Health, Safety and Environment (HSE) manager.

We assess risks and introduce HSE measures to ensure risks remain as low as reasonably practicable. We tell you the risks and the measures we have taken to control risks. We will comply with legislation. There is regular review of safety, health and environment statistics to identify positive and adverse trends and their root causes, so necessary action can be taken. We also assure ourselves that our suppliers maintain a good health, safety and environment record.

Each year we develop detailed HSE improvement plans to enhance what we do. These plans are regularly reviewed by the Directors in your part of the business.

When working for TfL or one of its companies you will receive the necessary training and equipment to ensure that you can undertake your job safely, ensure the safety of customers and protection of the environment.

As an employee, your physical and mental health and wellbeing is also important and we provide occupational health services to help you stay healthy and in work and provide suitable welfare facilities at your work place.

We want to maintain a fair culture and employees or their representatives are consulted on health and safety matters as they arise, in a meaningful way through scheduled health and safety meetings or more regularly where needed.

What we can all do

We all need to look out for each other and speak up if anything is unsafe or damaging to health or the environment.

We all have a duty to follow our HSE rules and procedures. Do not take shortcuts. If you think rules or procedures are unhelpful let your manager know. Where necessary rules and procedures can be changed.

We can learn from the past, so always report accidents, incidents and near misses/close calls.

Demonstrate the TfL behaviours in everything we do.

In this way we can work together so that our vision for a safe and healthy environment is achieved.

Mike Brown MVO
Commissioner



Leon Daniels
Managing Director
Surface Transport



Mark Wild
Managing Director
London Underground
and TfL Rail



EVERY JOURNEY MATTERS

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

DEPOT FACILITIES

1. The Contractor shall design and construct a Depot for the servicing and maintenance of Trams at Therapia Lane, in the London Borough of Sutton as detailed in the Act and the undertaking given to London Boroughs of Sutton, designed to meet the Performance Requirements in Section 9 and 11 of this Performance Specification and incorporating the requirements of this Section 8.

The layout of the Depot shall be designed to cater for an initial fleet of no less than 24 Trams, each 30.2m in length, together with such additional rail, road/rail and road vehicles as are required for operation and maintenance of the Tramlink System. The layout shall be capable of expansion, without material disruption to the facilities provided at the Depot and to operation of the Tramlink System, to cater for a fleet of Trams, each 43.3m in length, together with such additional rail, road/rail and road vehicles as are required for operation and maintenance of the expanded fleet on the Tramlink System.

The general layout of the facility, including tracks and buildings, shall be in accordance with the following drawings supplied by the Contractor:

-) overall layout drawing 95401/300/003 Rev B
-) building plan drawing No. 95401/A/101B and 95401/A/102A
-) building elevation drawings No. 95401/A/103A and 95401/A/104A

The detailed layout will be developed during detailed design to suit operational and construction requirements within the constraints imposed by site boundaries.

2. DEPOT ACTIVITIES

The following activities shall be undertaken within and from the Depot:

2.1 Tram Stabling

All Trams shall be securely stabled at the Depot overnight, between peaks and at any other times when not required for service. However, outstabling, on a temporary basis only, will be permitted in order to accommodate pre-planned engineering works, special traffic requirements of an exceptional nature or an emergency requiring outstabling.

2.2 Breakdown and Maintenance Vehicle Stabling

The Operator shall permit the stabling at the Depot of any road/rail breakdown and maintenance vehicle(s), and such other rail, road/rail and road vehicles as are provided by the Concessionaire and required for maintenance of the Tramlink System from time to time.

2.3 Not used.

2.4 Stores

The Contractor shall provide stores within the depot building.

2.5 System Monitoring and Control

The Operator shall ensure that the Control Centre is continually staffed 24 hours per day in order to:-

-) monitor and control the Tramlink System,
-) control Tram driver availability,
-) respond to operational staff issues,
-) contact with emergency services and other third parties when necessary and
-) control access to the Tramlink system (other than the trams) for the purpose of maintenance provision

The Contractor shall ensure that the Control Centre shall be at the Depot and shall incorporate the requirements of Section 7 of the Performance Specification.

2.6 Driver Management

Drivers will sign on duty at the Depot, in the presence of an authorised supervisor.

3. PROTECTION OF RESIDENTIAL AMENITIES

3.1 Noise

The Contractor shall design the Depot so far as practicable to minimise the likely generation of noise or vibration from the Depot. The Contractor shall liaise with any relevant Authority through the Employer in respect of any mitigation measures which may be required to be incorporated in the design.

The Operator shall take all reasonably practicable steps by management of its activities undertaken at the Depot and in accordance with the Environmental Protection Act 1990 (as amended) to minimise noise and vibration as required by Clause A2.6 and A2.8 of the Operational Noise and Vibration Requirements.

3.2 Depot Lighting

The Contractor shall secure adequate disposition and intensity of the Depot lighting to enable essential maintenance and operations to be conducted safely. Lighting of the Depot shall be provided to a level of between 10 and 30 lux external to the Depot buildings and between 100 and 500 lux within the Depot buildings.

Spillage of light from the Depot towards adjoining residential properties shall be minimised through careful design and siting by the Contractor.

SECTION 9

OPERATION OF TRAMLINK SYSTEM

SERVICE PARAMETERS

- 1.1 At least four months before the Actual Opening Date the Operator shall submit to the Concessionaire for its approval the detailed level, frequency, and pattern of service and the Timetable (as described in paragraph 1.7 of this Section 9) it proposes to operate within the parameters set out in this Section 9 and providing that these services parameters are met the Concessionaire shall not unreasonably withhold its approval of the same and shall submit it to the Corporation. The Concessionaire agrees to notify the Operator of its approval or otherwise within fourteen (14) days of receipt of the Timetable. The Operator shall operate the Tramlink Service in accordance with the Timetable approved by the Concessionaire.

The Operator shall ensure that the service provided continues to comply with the accommodation limits and standards defined in Clause 5.1(e) of Section 1 in accordance with the provisions of Clause 16 of the Operating Agreement.

Frequency of Services

- 1.2 With effect from 3 April 2016, the minimum frequency agreed pursuant to paragraph 1.1 is as set out below:-

Route	From	To	Mon-Sat 07:00-19:00	Mon-Fri 19:00-21:00	Sun 10:00-17:00	All Other Times
1	Elmers End	West Croydon	4 tph	4 tph	4 tph	4 tph
2	Beckenham Junction	West Croydon	6 tph	4 tph	4 tph	4 tph
3	Wimbledon	New Addington	8 tph	8 tph	8 tph	4 tph
4	Elmers End	Wimbledon	4 tph	No service	No service	No service

All trams to call at all stops when open for passengers.

- 1.3 Not used

- 1.4 Not used

Journey times

- 1.5 Except where otherwise required or agreed by the Concessionaire (in the context of other Changes to the Tram Service Levels or otherwise), the Operator shall ensure that the journey times scheduled in the Public Timetable in either direction between East Croydon and the Terminus Stops listed below are not more than the following maxima, even if the Trams are required to serve each Stop:-

East Croydon to/from Wimbledon	30 minutes
East Croydon to/from Beckenham Junction	22 minutes

East Croydon to/from New Addington	21 minutes
East Croydon to/from Elmers End	15 minutes
East Croydon to East Croydon (via West Croydon)	12 minutes

provided that it is acknowledged that the actual journey time may be dependent on operational matters outside of the control of the Operator (such as traffic or weather conditions).

Service Stops

1.6 See 1.2

Service Timetable

1.7 The Operator shall make available a Working Timetable which is consistent with the Timetable approved in accordance with paragraph 1.1 of this Section 9 to the Concessionaire, the Council and the London Regional Passengers' Committee through the Concessionaire at least three calendar months before commencement of each such timetabled service, and thereafter not less than three months prior to any Timetable revision. This shall fully detail all scheduled public journeys on each type of operating day stating departure times from all Compulsory Stops. For Terminus Stops arrival times shall be quoted.

The Operator shall make a derivative abbreviated Public Timetable available to the public not less than six weeks before commencement of each service, or six weeks before any change to an existing Timetable, and otherwise at intervals of not more than one year. The Public Timetable shall be in a form and style to be agreed by the Corporation through the Concessionaire. The Operator shall display the Public Timetable appropriate to the service and direction of travel on all platforms.

The Working Timetable and Public Timetable together shall constitute the *Timetable*.

SERVICE PERFORMANCE

2.1 The Operator shall operate the Tramlink System in accordance with the Timetable currently approved by the Concessionaire as varied from time to time in accordance with the Operating Agreement. The Operator shall correctly display appropriate service number designations as agreed with the Concessionaire and correct destination displays on all Trams operating in service.

Service disruptions

2.2 The Operator shall give, subject to paragraph 2.5 below, wherever practicable a minimum of five (5) days notice to the public if Stop closures or service disruptions (whether of part or all of the Tramlink System) are necessary for any reason including exceptional maintenance or repair activities directed by the Concessionaire.

2.3 The Operator shall, in the case of Stop closures, or in the case of pre-planned disruptions for engineering works affecting track, Trams, power supply, or otherwise, which impair the Operator's ability to provide Tramlink Services or in the case of Stop closures, post

notices on all Stops and in all passenger carrying units of the Trams at least five (5) days in advance of such works detailing these events and giving details of alternative means of transport.

- 2.4 On the days on which a closure occurs announcement shall be made on Trams which continue to operate, and special messages shall be provided on Stop real-time displays.
- 2.5 Where it is not possible to operate all or part of the Tramlink System in accordance with the Operator Specification because of a temporary emergency, the Operator shall use its reasonable endeavours to minimise disruption and delay to the public caused by the emergency and to restore the service specified in the Public Timetable as soon as possible. The Operator shall liaise with the Concessionaire and inform the public as soon as practicable as to the nature of the emergency, its likely duration and the proposals for arrangements to deal with the same.

SERVICE RELIABILITY AND MONITORING

3. The Concessionaire shall from time to time agree with the Operator targets for service performance and for system presentation with which the Operator will comply. The Concessionaire will monitor quality and quantity of service provided, particularly in respect of the adherence to the Timetable and excess waiting time for passengers.

The Corporation intends to undertake surveys to monitor performance by the Operator of its obligations under the Operating Agreement at a frequency not exceeding two occasions during any Financial Period unless otherwise agreed in advance with the Operator and in a manner which does not prejudice the Operator's performance of its obligations in accordance with the Operating Agreement. The Concessionaire will provide the Operator with a schedule of items to be monitored and a description of the method of monitoring. The results of this monitoring will be issued to the Operator, which will have the opportunity to comment. The Concessionaire will consider the Operator's written comments and pass them to the Corporation for consideration before determining whether written notice specifying the nature of any default is issued in accordance with the relevant provisions of applicable clauses of the Operating Agreement.

The Concessionaire and the Operator agree that the initial service performance standards with which the Operator shall comply shall be as follows:

Quality of Operated Service

-) % of in-service scheduled timetabled kilometrage operated – 98%
-) outside the section between Reeves Corner and Sandilands less than 4.5% occurrence of a gap in service of twice the timetabled interval.

For the purpose of this clause 3, the Concessionaire will not issue a warning notice under clause 16.6 of the Operating Agreement solely in relation to a failure to achieve the 98% in-service requirement during the 9 months immediately following the successful completion of SAT3.

The Concessionaire will not ordinarily consider any de-minimis failure to achieve the 98% in-service requirement as constituting grounds for the issue of a warning notice under clause 16.6 of the Operating Agreement.

In respect of the following three annual special events, the Concessionaire shall take into account the impact of such events on the ability of the Operator to achieve Scheduled Kilometrage in calculating the overall service quality statistics for the relevant Financial Period:

- (i) Croydon Carnival
- (ii) Remembrance Day Parade
- (iii) London to Brighton Vintage Vehicle Rally

Performance of Passenger Infrastructure

-) 100% of Stops to be cleaned daily;

Presentation of Vehicles

-) 100% of Trams operated to be cleaned daily externally and internally before use the following day.
-) 100% of Trams operated to be cleared of litter every 3 hours between 0930 hours and 1830 hours on Mondays to Saturdays.

The Operator shall meet the above targets, and the requirements of Section 11 of this Operator Specification. The Operator shall ensure that adequate systems are in place to record the above information, and shall provide such information to the Concessionaire at the Operator's expense as reasonably requested by the Concessionaire.

FEEDER BUSES

4. The Concessionaire shall secure the provision of Bus Feeder Services in accordance with the terms of clause 24 of the Concession Agreement, and as detailed in Schedule 8 of the Concession Agreement.

CUSTOMER CHARTER AND PUBLIC ENQUIRIES

5. On or before the Actual Opening Date, the Operator shall publish a customer charter, which shall be subject to the approval of the Concessionaire, such approval not to be unreasonably withheld. The customer charter shall substantially be in the form of Annex 1 to this Section 9. Any valid claims under the Customer Charter shall be paid by the Operator and shall be agreed with the Concessionaire as to the liabilities between the Concessionaire and the Operator as detailed in Schedule 11 of the Operating Agreement. The Operator acknowledges that the Corporation will be concerned to ensure consistency in the customer charters applicable across its network. The Operator shall use its reasonable endeavours to ensure that its employees, servants and agents comply with the provisions of the charter relating to their conduct.

REPORTING OF INCIDENTS

6. The Operator shall comply with all of its statutory obligations relating to the reporting of accidents, injuries, diseases and dangerous occurrences. The Operator shall record details of all reportable occurrences on a register which shall normally be kept at a location to be agreed with the Concessionaire, and shall be available for inspection by the Concessionaire and the relevant Highway Authority at any time during normal office hours. For those incidents cited in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, and for all accidents involving fatalities or serious injuries details shall be sent to the Concessionaire within 24 hours of their occurrence. For those accidents which occur on the highway, a second copy of the information sent to the Concessionaire shall be supplied direct to the relevant Highway Authority. In addition, the Operator shall supply the Concessionaire with information concerning all accidents and assaults in accordance with the Concessionaire's procedure as notified to the Operator and amended from time to time. If required by the Concessionaire the Operator shall liaise with the Concessionaire about the occurrence of any incident and the future measures to be taken to prevent the recurrence thereof.

LOST PROPERTY

8. The Operator shall by the Actual Opening Date appoint a day on which any lost property regulations made under Section 60 of the Public Passenger Vehicles Act 1981 will apply to Tramlink. The Operator shall by notice inform the Concessionaire of the date appointed. From that date the Operator shall administer a system for dealing with lost property found in the Tramlink System in accordance with such regulations.

SMOKING

9. The Concessionaire shall maintain all Trams in use on the Tramlink System such that notices therein stating that smoking is prohibited are conspicuous and the Operator shall use reasonable endeavours to ensure that the Trams are no smoking zones.

BYELAWS

10. Byelaws shall be as defined in Clause 31.1.5 of the Operating Agreement.

CONDITIONS OF CARRIAGE

11. The Operator shall consult with the Concessionaire about the terms and conditions on which the Operator issues tickets to passengers in order to ensure that, so far as is reasonably practicable, there is consistency between the terms and conditions on which tickets are issued on different modes of transport. The Operator shall ensure that any tickets are issued and fares are collected on behalf of the Concessionaire and that the terms and conditions on which tickets are issued are in the name of the Concessionaire.

DISPLAY OF NOTICES

12. The Concessionaire shall ensure that route maps, safety notices, bylaws (if any) and any other notices which the Concessionaire may reasonably require are displayed in the interior of each of the main seating areas of the Tram.

Draft Customer Charter

A Charter for Tramlink Passengers

Welcome to your charter.

At Tramlink we aim to give you the best possible service.

This booklet sets out exactly what you can expect from us and explains how to make the most of the Tramlink service.

Trams on time

We know that reliability is what passengers want most from our service. Our target is to keep your waiting time as short as possible by keeping to the timetables we display.

-) We display regular reports about our tram service at our stations.
-) Where we have to change the service because of engineering works, we advertise the fact well in advance and make alternative arrangements if necessary.
-) If we are unable to run the timetabled last tram for any reason we will do our best to get you to your destination station. The times of the last trams each day are displayed at stations and in our free Service Guides.
-) If, because of our failure, your journey is seriously delayed, we will refund your fare with a voucher.

Helpful Staff

Our aim is to do all we can to make your journey as smooth and comfortable as possible and for every member of staff the needs of our customers come first.

-) If you need help with your journey you can talk to us at any time. We have an Information Office conveniently situated in Croydon at (what is the address) and you can telephone us day or night on (what is the telephone number).
-) All our trams have public address systems and next stop information is announced and displayed. If for any reason your journey is delayed the driver will tell you what the problem is and keep you updated.
-) All our front line staff wear our Tramlink uniform and have name badges. If you telephone us we will give our names.
-) We want you to enjoy travelling by Tramlink. Our service exists to serve your needs and we aim to make every journey a pleasant experience.

Safe, Clean Trams, Safe Clean Stations

Our trams and stations are brand new and designed with your safety as a priority. We aim to keep them sparkling clean.

-)] All our trams are thoroughly cleaned inside and out every day. After every return trip the tram is checked and any litter removed. The driver will ensure that lost property is safely collected.
-)] Our Trams incorporate features designed to make travel safer and more comfortable for everyone. These include a flat entrance from the platform, brightly coloured grab-poles and easy to use and reachable bell pushes. Safe positions are marked for passengers in wheelchairs.
-)] All tram-cars have alarms so that if you need to contact the driver in an emergency you can. Drivers have two-way radios to call for help if necessary.
-)] We provide shelter, light and seating at our stations wherever there is space to do so. At all stations there are screens showing the time of the next tram. We clean our stations at least once a day and we will normally repair any damage within 24 hours.

Clear Information about our Service

We want to make sure that you never have a problem finding out when Tramlink runs, where it stops or what it costs.

-)] We deliver Tramlink Service Guides to everyone living within easy range of a Tramlink stop.
-)] At all our stations there are real-time dot-matrix screens showing when the next tram will leave. There are also posters with full details of the service and fares. We will ensure that these are kept up to date and in good condition.
-)] On board the trams there are route diagrams showing where Tramlink goes with its links to buses and trains. Station names are announced automatically on arrival.
-)] If you prefer to ring us for information we have a recorded message available giving service details. If you would like to speak to someone about your journey you can telephone Travel Information number 24 hours a day.

Fares and Tickets

We want to make paying your fare on Tramlink as quick and easy as possible.

-)] At every station we have machines which sell a full range of tickets and can give change.
-)] You can buy Tramlink tickets in advance from [] outlets all over London, including rail stations, underground stations, bus garages and newsagents. You can also use your credit card to buy weekly, monthly or annual tickets.

-) Our stations have no entrance barriers but if you board one of our trams you must always be in possession of a valid ticket. Anyone on the system without a valid ticket will be liable to pay £xx on the spot. Purchasing a ticket before travelling will ensure that we can identify the real fare dodgers and make sure that they are not subsidised by honest customers.

Making it Better for Everyone

Travelling together makes it important to think of others.

Please

-) Don't smoke
-) Don't leave litter behind
-) Don't bring sticky or smelly food on board
-) Don't play your personal stereo at a volume which will disturb others
-) Don't put your feet on the seats

When travelling on Tramlink please remember that because trams are very quiet you may not hear them approach. Please be vigilant and, except in pedestrian areas, **NEVER STEP ON THE TRACKS**. If you need to cross over always use the marked crossing or footbridge.

Getting in Touch with us

We want to hear from you and we treat all suggestions, comments and complaints very seriously. Please write to us at the address below or telephone us on XXX. Alternatively you can call in and speak to us at our office in XXX.

We will try to reply to you within seven working days. If we cannot give a full answer within this time we will send you an acknowledgement within two days and reply to you in full within three weeks.

If you are not happy with our reply you can contact the independent passengers watchdog:

London Regional Passengers Committee
Clements House
14-18 Gresham Street
London
EC2V 7PR

SECTION 10

FARES AND FARE COLLECTION

FARES AND TICKETS

- 1.1 The Concessionaire shall conform with London-wide zonal ticketing systems, Travelcard (or its equivalent) and concessionary fares (as described in the Concession Agreement). The Operator shall co-operate with the Concessionaire in this regard. The Corporation, through the Concessionaire shall determine the level and structure of fares to be charged on the Tramlink System, in accordance with Clause 23 of the Concession Agreement. The Operator shall accept Travelcards, LT Cards, Concessionary Permits (acceptance on Mondays to Fridays shall be only after 0900 hours), LT Staff Passes and Police Passes and any other multi modal tickets whose format and nature are determined by the Corporation through the Concessionaire . In addition, the Operator shall accept for travel, between Wimbledon and East Croydon only, those passes held by railway employees which allowed free travel between West Croydon and Wimbledon prior to the withdrawal of the conventional railway service over that section.
- 1.2 The Contractor shall design its ticketing equipment, as far as is reasonably practicable, to permit future implementation of smartcards or stored value ticketing systems on the same basis as other London area public transport operators. The Operator shall agree to the installation by the Concessionaire, at the cost of the Concessionaire, of any equipment required on Trams or on platforms for the purpose of electronic pass recognition or for other purposes related to the future allocation of Off-Tram Revenue or Stored Value Revenue provided that the Concessionaire, gives the Operator reasonable written notice of when such equipment is to be installed and after consultation with the Operator, installs the same at such times as (as far as is reasonably practicable) do not prejudice the ability of the Operator to provide the Services. The Operator shall bear its costs of making the Trams available at the Depot to the Concessionaire for the purposes of installing such equipment.

The Operator shall determine the size and material characteristics of other tickets provided by them, other than multi-modal tickets, but their design shall be subject to the approval of the Concessionaire, which shall not be unreasonably withheld or delayed.

- 1.3 The Operator shall adopt and charge fares as required by the provisions of the Concession Agreement. The first Fares Table shall be as set out in Schedule 6 of the Concession Agreement. The fare levels to be charged on the Tramlink System may be varied from time to time in accordance with the provision of the Concession Agreement.

Ticket Vending

- 2.1 The Contractor shall ensure that whatever system of automatic fare collection is employed minimises dwell times of Trams at Stops. The Contractor shall ensure that any ticket vending facilities shall as far as is reasonably practicable be easy to use by all passengers, including unassisted wheelchair users.

The Contractor agrees to install multi-fare ticket vending machines at all Stops, at least one per platform. In addition, tickets may also be sold from the Operator's Central Croydon office and from other agencies.

Tickets shall not be sold nor validated by drivers and shall not normally be sold on Trams. However, portable ticket issuing machines may be used by roving Revenue Inspectors for the purpose of checking passengers' tickets and passes; issuing penalty fares and issuing tickets to passengers who have boarded at a Tramstop without a working ticket vending machine.

Tickets issued by the Operator or its agents shall be stated to be on the Concessionaire's terms and conditions of carriage and the Concessionaire's name shall appear on them.

Automatic Ticket Vending Machines

2.2 Automatic ticket vending machines, where installed by the Contractor, shall:

- give correct change either through the ticket vending machine or via a separate facility;
- be weatherproof and vandal resistant;
- be capable of operating effectively under weather conditions as specified in paragraph 4 of Section 4;
- register the operations and transactions for statistical purposes (and the machine shall be able to produce data to meet the obligations under the Off-Tram Revenue Agreement);
- have sufficient ticket, money box and change capacity to carry out all normal transactions between routine servicing.

The Contractor shall supply and install multi-fare ticket vending machines which accept a reasonable range of UK coins and notes and will issue correct change. The machines shall also be capable of upgrade or modification to accept contactless smartcards and/or common stored value tickets at a later date.

Ticket Machine Failure

2.3 The Contractor shall provide a system for reporting ticket machines requiring attention to the Control Centre which shall monitor the operational status of the remote ticket vending machines.

Revenue Protection

3.1 The Operator shall ensure that a system, in accordance with Schedule 11 of the Operating Agreement, is in place to check that passengers are in possession of a valid ticket or tickets for journeys that are taken, and that ticketless and other travel without a valid ticket is deterred. The Operator shall secure that the system complies with Good Industry Practice and shall only utilise suitably trained staff.

Penalty Fares

3.2 The Operator shall, at his own expense, activate and operate a penalty fare scheme by means of the necessary secondary legislation. The Operator shall ensure that the scheme

employed ensures that Penalty Fares are not imposed on passengers unable to purchase the correct ticket because the normal ticket selling facilities were not available at their point of joining the Tramlink System.

SECTION 11

MAINTENANCE OF TRAMLINK SYSTEM

1. GENERAL

1.1. Preventative Maintenance Schedule

Ten months after the signing of the Concession Agreement, the Concessionaire shall issue to the Operator the Draft PMS (Infrastructure). At most, three months after the commencement of the Mobilisation Period, the Operator shall prepare and submit to the Concessionaire an operations related Draft Preventative Maintenance Schedule (PMS) (Operations) which will reflect the needs of the users of the Tramlink System and of the general public (including all third parties, e.g. pedestrians, road users, bus operators, owners of adjoining properties, shop lease holders etc.) in a safe, secure, comfortable and efficient way. The Draft PMS (Operations) shall take into account the Draft PMS (Infrastructure) that shall be prepared by the Contractor and issued to the Operator. The Draft PMS (Operations) shall take into account the Draft PMS (Infrastructure) that shall be prepared by the Contractor and issued to the Operator. The Draft PMS (Operations) shall be subject to the approval of the Concessionaire. The Operator shall ensure that subsequent revisions are submitted to the Concessionaire and such revisions shall be subject to the approval of the Concessionaire.

At least six months before the Actual Opening Date, the Operator shall prepare and submit to the Concessionaire, the final PMS (Operator). The Concessionaire shall forward to the Operator the Final PMS (Infrastructure) 8 months before the Actual Opening Date.

1.2 Responsibility

The Operator shall liaise with the Contractor during the Commissioning Period, System Acceptance Testing Period and Defects Rectification Period for the purpose of enabling the Contractor to review his PMS by reference to operational characteristics of actual in-service experience of operational and maintenance staff during the periods stated.

1.3 Stored Value Ticketing Equipment

The Operator shall allow reasonable access to the Concessionaire or the Corporation of any contractor for the purpose of maintaining any equipment relating to Stored Value Ticketing.

2. TRAM CLEANING AND MAINTENANCE REQUIREMENTS

2.1 Tram Cleaning

2.1.1 General

The Operator shall ensure that the Tram cleaning arrangements provide for a high specification of Tram presentation for service and include effective methods of cleaning and graffiti removal.

Any change in the cleaning sub-contractor shall be approved by the Concessionaire having due regard to Clause 29.1 of the Operating Agreement.

2.1.2 Exterior Cleaning of Trams

The Operator shall utilise the vehicle exterior washing facility at the Depot and ensure a thorough wash of the Tram exterior.

Under normal circumstances, all Trams in service shall pass through the vehicle exterior washing facility each day in service.

Each Tram shall be given a deep clean at intervals which shall include no more than 36 days in service and as specified in the PMS.

2.1.3 Interior Cleaning of Trams

The Operator shall ensure that each Tram, when it has been in service, has the interior cleaned daily. The Operator shall ensure the Tram is thoroughly swept and mopped and that the windows are cleaned.

Additionally, the Operator shall litter pick each Tram in service at least every 3 hours between the hours of 0930 and 1830 on Mondays to Saturdays.

Each Tram shall be given a deep clean internally at intervals which shall include no more than 30 days in service, and as specified in the PMS.

2.1.4 Graffiti

The Operator shall use all reasonable endeavours to ensure that Trams do not enter service with significant and/or offensive graffiti in place. The Operator shall ensure that significant and/or offensive graffiti is removed within 24 hours of first being reported. All other graffiti is to be removed by no later than the next scheduled deep clean.

2.2. Tram Maintenance

2.2.1 Not used

2.2.2 Maintenance Scheduling

The Concessionaire shall ensure that all normal servicing, light scheduled and unscheduled maintenance and routine repairs is undertaken wherever possible at the Depot at Therapia Lane but any damage which seriously affects the structure of a Tram may need to be repaired off-site, and the Operator acknowledges and agrees that it shall co-operate fully and comply with the reasonable requirements of the Concessionaire to ensure that Concessionaire may procure such maintenance and repairs while minimising the period during which the Tram is removed from service on the Tramlink System.

2.2.3 Not used

3. CIVIL WORKS, BUILDINGS AND TRACKWORK

3.1 Cleaning

The Operator shall manage cleaning arrangements for the infrastructure in accordance with the PMS.

3.2 Stop Cleaning

The Operator shall ensure that Stops are maintained in a clean condition. The Operator shall draw up, submit to the Concessionaire and implement a detailed specification in accordance with the PMS for cleaning of each Stop, depending on the level of usage and any particular locational and environmental circumstances pertaining, against which the level of expected cleaning work required will be declared.

A Stop exhibiting relatively low usage and not subject to particular soiling shall be cleaned daily, including seat cleaning, thorough litter picking of the Stop, emptying of waste bins and checking of the general state of cleanliness. Typically, all surrounding areas, including car parking, and notices, advertising, ticketing equipment and other surfaces shall be cleaned three times per week and, all lighting shall be cleaned and any grassed areas generally tidied on a weekly basis.

At busier Stops, the cleaning shall be more extensive as is required, achieved by both increased cleaning time and shorter intervals between cleaning visits. Where litter levels are high, the daily clean may require at least two visits per day.

3.3 Railway Corridor

The Operator shall ensure that where forming part of the Tramlink System, platforms and walkways linking to public rights of way or the highway shall be cleaned in accordance with Category 1 zones as defined by the Environmental Protection Act Code of Practice on Litter and Refuse, January 1991 (EPA 1991)

Where the alignment crosses park and open spaces, litter shall be cleared in accordance with Category 3 zones as required by EPA 1991. Where the alignment runs on the verges of the highways, or adjacent to highways, litter shall be cleared in accordance with Category 7 zone (local roads), elsewhere the alignment shall be cleared of litter in accordance with Category 9 zone (railway embankments in urban areas) except within 100 metres of the Stops where Category 8 zone shall be applicable.

3.4 Graffiti

The Operator shall ensure that graffiti on Stops is removed promptly, with significant and/or offensive graffiti removed within 24 hours of first being reported.

4. DOCUMENT CONTROL AND MANAGEMENT

4.1 Technical Documentation

The Concessionaire shall obtain, retain, maintain and safeguard all technical documentation relating to the Tramlink System. If requested to do so by the Concessionaire to enable the

Concessionaire to comply with any legal or regulatory requirements, the Operator shall use all reasonable endeavours to locate and supply any residual technical records relating to the Tramlink System (or copies thereof) retained by or on behalf of the Operator.

The Concessionaire shall record the results of all relevant inspections and details of all repairs or maintenance work carried out to satisfy Quality System Model for Quality Assurance in Design Development Production Installation and Servicing (1994), ISO 9001, and the Safety Case Regulations.

4.2 Operating equipment manuals

The Operator and Concessionaire shall comply with the following obligations in respect of the maintenance and provision of operating and maintenance manuals:

- (a) The Concessionaire shall provide to the Operator (and keep up to date) manuals and materials in respect of infrastructure, trams and their upgrades and maintenance insofar as they are relevant to the operations to be undertaken by the Operator. Examples include the user manuals for (both the Bombardier and Stadler fleets of) Trams and drawings in relation to update to the overhead line electrical arrangements; and
- (b) The Operator shall prepare (and keep up to date) operating procedures and training materials for its own staff (including drivers and control room operatives) and for others to whom it provides training (including Concessionaire staff and visitors to the Depot), including operating procedures and training materials based on the user manuals and materials supplied by the Concessionaire. The operating procedures must also include procedures for operating the Depot, particularly outside the operating hours of the Concessionaire's staff. Copies of all operating procedures and training materials required by this Clause shall be provided by the Operator to the Concessionaire.

Without limiting the other obligations of the Parties, all manuals shall be updated regularly when equipment and procedures are changed.

4.3 Training and training manuals and operational publications

The Operator shall also produce Operating procedures in accordance with clause 8.2.2, clause 8.2.3 and clause 8.2.4 of the Operating Agreement. These shall describe the obligations placed on all staff and specific instructions for the proper performance of their duties. The manuals of instruction and the rule book shall be approved by the HMRI before the trial running commences.

The rule book and training manuals shall be available for inspection by the Concessionaire at any time. A clean set of current rule books and training manuals shall be maintained and shall be transferred, including the intellectual property rights in these documents, to the Concessionaire upon termination of the Concession.

The Operator shall also transfer to the Corporation through the Concessionaire, upon termination of the Concession Agreement, a copy of the staff records of any persons employed on the Tramlink System whose contracts of employment are to be transferred to the Corporation or the Concessionaire, together with access to the staff records of any employee who has a claim against the Corporation or the Concessionaire by reason of the liabilities being transferred.

TCL SPECIFICATION REQUIREMENTS

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 1

GENERAL

Paragraph numbers in this section have been established from previous Appendix documentation. Consequently it may appear that some paragraphs are missing, but this is based on the previous document.

The Operator shall develop recruitment and training plans and shall issue a copy of such plans to the Concessionaire. Any subsequent revision shall be issued to the Concessionaire.

The Operator shall assist the Concessionaire in relevant discussions with the Corporation and the Council, where an Operator input is applicable.

2.4 **Quality Assurance**

The Operator shall develop, implement and monitor an effective quality system which shall ensure that the requirements of the Operator Specification are satisfied. The Quality system shall:

-) ensure that quality requirements are determined and satisfied for all processes throughout the Operating Period for the Tramlink System.
-) provide for early and prompt detection of actual or potential deficiencies, trends or conditions which shall result in unsatisfactory quality, and or timely and effective corrective actions.
-) include the establishment and implementation of administration and management procedures and systems, work instructions and method statements, which clearly identify organisation structure, roles and responsibilities (named personnel) and processes to ensure the satisfactory operation of all elements comprising the Tramlink System.
-) include a quality plan which is in accordance with the Quality System Model for Quality Assurance (1994) ISO 9001. The Operator shall update the Quality plan throughout the life of the Concession.

The Operator shall allow the Concessionaire access to documentation and other management systems developed for implementing and audit of the Operator's quality system.

5.0 Provision for Future Growth

The Operator shall note the limitation upon maximum frequency of services as specified in Section 9 of the Operator Specification but in light of experience gained in operating the Tramlink System and upon the Concessionaire having obtained all the necessary approvals and in the event that it may prove both feasible and beneficial to operate Trams at a greater frequency the Operator shall revise these limits in accordance with the detailed provisions of the Operating Agreement.

5.1 Design

The Contractor shall provide the Operator with a programme indicating its information requirement from the Operator to facilitate design work. The Operator shall comply with this programme and shall provide such information in the format reasonably requested by the Contractor.

The Operator shall liaise with the Contractor by means of fortnightly (or other intervals as agreed with the Concessionaire) meetings to ensure that operational requirements of the Tramlink System are taken into account during the detail design process.

The Operator shall review, and where applicable comment on construction designs, timescales and proposals.

The Contractor shall provide the Operator with a programme to be agreed, such agreement not to be unreasonably withheld, indicating its proposed Operator staff equipment training regime to facilitate revenue generation by Actual Opening Date. The Operator shall comply with this programme and provide the necessary staff to be trained and liaise with the Contractor to organise relevant training of Operator staff required for Commissioning, Testing and Operation of the Tramlink System.

8.6(d) Operational Noise

Subject to the Operator's obligations to meet Tram Service Levels, the Operator shall operate those aspects of the Tramlink System for which it is responsible throughout the Operating Period such that noise levels at existing properties as a result of Tramlink operation are reasonably minimised.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 2

SAFETY

INTRODUCTION

- 5.1 As part of safety management, the Operator shall ensure that all equipment and other devices within its control which are critical to safety are identified.

The Operator shall ensure that the Health and Safety policy as well as the safety plan is updated throughout the life of the Concession.

8. **Safety Audit**

The Operator agrees that it will inform the Concessionaire promptly of any remedial work or any change in operating practices, management or other safety critical aspects of operations, which may be necessary for the safe operation of the Tramlink System, of which the Operator becomes aware, as a result of a safety audit or otherwise.

7. **Tramlink Operations on Network Rail Land**

The Operator shall comply with all relevant Safety Acts as it affects the operations on or adjacent to Network Rail land.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 3

PRE-OPERATIONAL REQUIREMENTS

GENERAL

The Operator shall co-operate with and assist the Concessionaire and the Contractor with the required testing of the Tramlink System. Such testing shall include those necessary for the successful achievement of SAT 1, SAT 2 and SAT 3 tests.

The Operator shall comment to the Concessionaire and the Contractor (as relevant) on the findings of such tests.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 6

POWER SUPPLIES

Electrical Safety

The Operator shall be made aware by the Contractor, of the mechanism for achieving emergency de-energisation. The Operator shall inform the emergency services of any changes to this mechanism.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

1. Depot Facilities

The Operator shall liaise with the Contractor to agree the internal layout of the Depot building.

The Operator shall give its approval to the final Depot internal layout 28 days after submission by the Contractor. Failure to respond within 28 days will be deemed as approval of the final Depot layout.

2.2 Maintenance Vehicle Stabling

The Operator shall permit the stabling at the Depot of any road/rail maintenance vehicle, and other rail, road/rail and road vehicles as are provided by the Concessionaire and required for the operation and maintenance of the Tramlink System. The Operator shall provide an incident response vehicle to attend breakdowns or emergencies.

2.5 System Monitoring and Control

The Operator shall ensure that his Operating Procedures detail procedures for management of drivers and Control Room controllers, including an on-call system outside of normal office hours.

The Operator shall ensure that the controller's role includes, but not limited to manning the Control Room, ensure the smooth operation of the Tramlink System and deal with all emergencies and incidents (with back-up support where necessary).

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 9

OPERATION OF THE TRAMLINK SYSTEM

- 1.2 The Operator shall operate the pattern of services and frequencies directed by and/or agreed with the Concessionaire from time to time in accordance with the terms of the Operating Agreement.

The Operator shall comply with the line speed requirements specified by the Concessionaire as determined by the Contractor's design. Such line speeds shall not adversely affect the Operator's ability to operate a reliable service.

5.0 **Customer Charter and Public Enquiries**

The Operator shall develop the Customer Charter of the Tramlink System which shall be subject to the approvals of the Concessionaire, such approval not to be unreasonably withheld.

The Operator shall provide a travel information service for the general public. During office hours, this shall be provided by Operator's staff based at the Central Croydon shop and outside office hours, telephone enquiries shall be directed to the Control Room at Therapia Lane. The Operator shall provide information to the Corporation for it to update the Corporation's 24-hour London Travel Information Service.

The Operator shall provide a marketing service which shall provide a wide range of publicity timetables, fare charts and general marketing information relating to the above.

8.0 **Lost Property**

The Operator shall ensure that the lost property service is located in the Central Croydon office and shall be open during business days.

10.0 **Byelaws**

The Operator shall assist the Concessionaire in obtaining required bye-laws.

SECTION 12

GLOSSARY

1. Defined Terms

Agrément Board Certificate means Certificate issued by the British Board of Agrément;

Bus Feeder Services means the bus service routes edged in black, blue and green on the Tramlink Feeder Bus Services Plan in Schedule 7 of the Commission Agreement;

Compulsory Stop means a Stop at which it is compulsory for a service Tram to halt;

Concession means the rights and obligations in relation to the Tramlink System acquired and assumed by the Concessionaire under the Concession Agreement.

Concessionaire means Tramtrack Croydon Limited

Concessionary Permits means travel permits issued by the London Boroughs, to those persons specified in section 50(7) (a)-(c) of the London Regional Transport Act 1984;

Concession Period means the period specified in clause 7.1 of the Concession Agreement;

Construction Phase means the period of time commencing on the Concession Award Date and ending on the Actual Opening Date;

Context Study Drawings means the set of drawing “Context Studies November 1995 issue, as amended on 5th November 1996” with the cover signed and the contents initialled by London Transport, London Borough of Croydon and Tramtrack Croydon Limited;

Contractor means the joint venture of Amey Construction Limited and Sir Robert McAlpine Limited which has been appointed by the Concessionaire with the approval of the Corporation to carry out the Project Works pursuant to the SPC or any replacement approved by the Corporation pursuant to clause 15.1 of the Concession Agreement.

Control Centre means the central control room and associated facilities as described in Section 7 of the Performance Specification;

Depot means the site at which Trams can be stabled, cleaned and maintained as described in Section 8 of this Operator Specification;

Developed Kinematic Envelope (DKE) means the Kinematic Envelope (KE) enlarged to allow for all of the effects resulting from horizontal and vertical curvature of track including end-throw and centre-throw of Trams and super elevation.

Certain Tram displacements, other than those due to end-throw and centre-throw, are greater on curved track than on straight track. These must be taken into account when deriving the

DKE for the determination of clearances on curved track;

Electrical Safety Rules means those rules to be prepared by the Contractor in accordance with Section 6 of the Performance Specification to cover the Construction and Operation and Maintenance Phases of the Tramlink System;

Existing Noise means the level of noise, at a particular location, measured as 24 hour $L_{A(eq)}$ at relevant façade, existing before commencing of Tramlink Operations and also before the removal of train services existing on the Concession Award Date;

Existing Noise Sensitive Resource means:

- (a) residential resources, existing at the Concession Award Date, where annoyance and disturbance will result from noise impacts from Tramlink System operations. This includes dwellings and other residential properties including sites of residential development with planning permission; and
- (b) non-residential resources, existing at the Concession Award Date, where the utility of the resource is dependent on the quality of the acoustic environment, and where the primary effect of noise impact would be a deterioration in that quality;

Fares Table means the fares table as described in Section 10;

Highway Authority means as defined in the Highways Act 1980;

Identified Utilities means the Undertakers' apparatus designed by the Corporation in the utilities Diversions Programme as requiring diversion so as to accommodate the construction and/or operations of the Tramlink System;

Immovable Property means the Project Works (including, without limitation, the Track) other than Moveable Property;

Kinematic Envelope (KE) means the static load gauge enlarges to allow for the maximum possible displacement of the Trams, when at rest or in motion, with respect to the nominal position of the rails, taking account of their suspension characteristics, including arrangements for body tilting if provided, making allowance for maximum permitted tolerances in the manufacture and maintenance of the Trams, including wear and of the maximum permitted tolerances in the gauge, alignment, top and cross-level of the track including the effects of wear;

LT Card means a card identified as such and sold by, or with the agreement of, the Corporation with validity of travel on inter alia services to be operated by the Operator;

LT Staff Passes means the passes issued to Eligible Employees, their spouses, dependents and children, evidencing their eligibility for discretionary facilities primarily on rail and / or bus services operated or procured by the Corporation and, for these purposes **Eligible Employees** means eligible current and former staff of the Corporation and any of its current or former subsidiaries;

Operational Noise and Vibration Requirements means Document Ref No. AG 0020 previously issued to the Operator;

Parliamentary Undertakings means any undertaking given to a Parliamentary committee during the passage through Parliament of the Bill for the Croydon Tramlink Act 1994 and any undertaking or agreement given to a person in consideration of his/her refraining from opposition of that Bill;

Passengers Committee means the London Regional Passengers Committee;

Permanent Way means the track formation, bed and tracks comprised in the Tramlink System;

Police Passes means the passes, identification card or warrant card issued to any constable of any of Her Majesty's Police Forces;

Project means the overall activity of developing, financing, designing, constructing, installing, commissioning, operating and maintaining the Tramlink System;

Public Holidays means all bank holidays in any year (currently Easter Monday, first Monday in May, last Monday in May, Last Monday in August and 27th December in any year where 25th or 26th December is a Sunday) but excluding Boxing Day or any bank holiday in replacement for Boxing Day should it or Christmas Day fall on a Sunday, together with the common lay holidays of Christmas Day, Good Friday and New Year's Day (or the replacement bank holiday Monday where New Year's Day fall on a Saturday or a Sunday);

Public Timetable means the information provided to the public which summarises all individual scheduled journeys for Trams on the Tramlink System as set out in Section 9 of this Operator Specification;

Rail Regulator means the Office of Rail and Road or the person for the time being holding the office of Rail Regulator appointed by the Secretary of State pursuant to section 1 of the Railways Act 1993;

Rail Vehicle means any rail-bound vehicle running on the Tramlink System, including, but not limited to, Trams;

Request Stops means all Stops on the Tramlink System which are not Compulsory Stops;

Roundel means the Corporation's registered trademark being a bar and circle device;

Route means the route determined in accordance with the requirements of the Act and by the Context Study Drawings November 1995;

RT General Works Agreement means the agreement entered on or about the date hereof between the Corporation and Railtrack Plc and to be vested in the Concessionaire relating to the construction and supply of parts of the Tramlink System;

Safety Acts means, inter alia, any legislation relating to safety including, without limitation, the Health & Safety at Work etc. Act 1974; Fire Precautions Act 1971; Control of Pollution Act 1974; Office, Shops and Railways Premises Act 1963; Level Crossing Act 1983; Road and Railway Traffic Act 1933; Transport Act 1968; Transport and Works Act 1992; Regulation of Railways Act 1840 to 1989, less sections excluded by the Act; Railway Employment (Prevention of Accidents) Act 1900; and any amendment, alteration or modification to or repeal of any existing safety legislation which takes effect after 25 November 2006, thereof or any subordinate legislation enacted thereunder, and any new safety legislation which comes into effect after 25 November 2006, and any requirement of any regulatory body for safety (including without limitation HSE, ORR/HMRI, RAIB and the Highway Authority);

Safety Management Systems means the Safety Management Systems prepared in respect of the Tramlink System in accordance with all applicable Safety Acts and/or the terms of this Agreement;

Scheduled Opening Date means the date on which the Actual Opening Date is scheduled to occur as shown in the Outline Construction Programme;

Secretary of State means the Secretary of State for Transport (or other government department responsible for public transport in London for the time being);

Significant Change means a change which would require the interruption of the Services for longer than one operating day;

SPC means the System Procurement Contract between the Concessionaire and the Contractor;

Statutory Undertaker means each of the following:

- (a) a licence holder under Part I of the Electricity Act 1989;
- (b) a public gas supplier within the meaning of Part I of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991;
- (d) Thames Water Utilities Limited;
- (e) a telecommunications operator within the meaning of the Telecommunications Act 1984; and
- (f) the National Rivers Authority;

Stop means a point on the Tramlink System at which passengers may enter or leave the Tram;

Stored Value Tickets means a ticket or pass which enables passengers to buy, subject to conditions, a right to travel on the Tramlink System and/or other modes of transport up to the value stored on such ticket or pass (as the case may be), in respect of which the usage by the passenger is measured electronically such that the value stored on such ticket or pass decreases with passenger usage and expires when the value stored is exhausted unless the value of cash stored on such ticket or pass is recharged;

Swept Path means the projection on the plan of the Developed Kinematic Envelope plus the clearances, which are specified in the DoT provisional guidance note on the highway and vehicle engineering aspects of street running light rail systems.

System Noise means that level of noise, at a particular location, expressed as 24 hour $L_{A(eq)}$ at relevant façade, due to the operation of the Tramlink System. This shall be calculated using SELs measured for individual Trams at the particular location. All Trams that are scheduled to pass the particular location, shall be included in the calculation;

Terminus Stop means a stop at the end of a section of route at which the Train completes its journey or terminates its service;

Timetable means the Working Timetable and Public Timetable;

Train means one or more coupled Trams operating under the control of a single driver;

Train Operating Company means any person appointed by the Franchising Director pursuant to section 23 of the Railways Act 1993 to operate passenger services and Franchising Director

means the Director of Passenger Rail Franchising appointed under section 1 of the Railways Act 1993;

Tramlink Agreement means;

- (a) the Project Agreements;
- (b) the Tramlink General Agreement;
- (c) the Incentive Sharing Agreement; and
- (d) the Direct Agreements.

Tram Supplier means Bombardier Eurorail Limited;

Tramway means any railway, or any part of a railway, authorised by the Act and thereby designated as a Tramway;

Undertaker's apparatus means apparatus (as defined in Part III of the New Roads and Street Works Act 1991) belonging to any of the Statutory Undertakers;

Unidentified Utilities means any Undertakers' apparatus not constituting an Identified Utility but which is required to be diverted so as to accommodate the construction and/or operations of the Tramlink System;

Utilities Diversions means moving the Identified Utilities and the Unidentified Utilities from their current location to a new location as required to accommodate the construction and/or operations of the Tramlink System;

Working Timetable means a document including details of all scheduled in service journeys made on the Tramlink System, together with all positioning journeys, showing timing of all scheduled in service journeys, and all associated vehicle workings;

Works means the authorised works as described in Schedule 1 of the Act.

2. Abbreviations

The abbreviations used in this Performance Specification shall bear the meanings set out below:-

AC	Alternating current
AVIAM	Automatic Vehicle Identification and Monitoring System
BD	Department of Transport technical memorandum
BR	British Rail
BRB	British Railways Board
BS	British Standard
BSI	British Standards Institute
CAD	Computer Aided Design/Drafting
CCICS	Central Control Integrated Computer System
CCIR	International Radio Consultative Committee
CCITT	International Telegraph and Telephone Consultative
CCTV	Closed Circuit Television
CIBS	Chartered Institute of Building Surveyors
DC	Direct current
DKE	Developed Kinematic Envelope
DIN	Deutsche Industrie-Norm
DoT	Department of Transport
DTI	Department of Trade and Industry
EMC	Electromagnetic compatibility
EMI	Electromagnetic interference
EU	European Union
FOC	Fire Officers Committee
FRP	Fire Resistance Period
FTI	Flammability Temperature Index
GPDO	Town and Country Planning (General Permitted Development) Order 1995
HA	Highway loading formula representing normal traffic (as defined within BS5400 Part 2: 1978)
HB	Highway loading formula representing abnormal vehicle unit loading (as defined within BS 5400 Part 2: 1978)
HMSO	Her Majesty's Stationery Office
HMRI	Her Majesty's Railway Inspectorate
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc., Act 1974
HV	High Voltage
IP	Index of Protection
IEC	International Electrotechnical Commission
IEE	Institution of Electrical Engineers
ISO	International Standard Organisation
KEL	Knife Edge Loads Highway design loads, as defined in BS5400
KE	International Standard Organisation ?

LAN	Local Area Network
LBC	London Borough of Croydon
LFH	Limited Fire Hazard
LFCDA	London Fire and Civil Defence Authority
LRT	London Regional Transport
LUL	London Underground Limited
LV	Low Voltage
M1, M2 etc	Vehicle loading (See Section 5)
MRM	Modified Rational Method
MTB(S) F	Mean Time Between (Service) Failure
MTTR	Mean Time to Restore
MV	Medium voltage
N	Newton
NF	Norme Francaise
NRSA	New Road and Street Works Act 1991
OHLE	Overhead Line Equipment
ORR	Office of Rail and Road
PA	Depot Public Announcements System
PABX	Private Automated Branch Exchange
pax	Passengers
pax/H	Passengers/hour
PCAS	Passenger Communication and Assistance System
pH	a measure of acidity/alkalinity
REC	Regional Electricity Company
PIDS	Passenger Information and Display System
PMS	Preventative Maintenance Schedule
RAIB	Rail Accident Investigatory Branch
REC	Regional Electricity Company
RL	Reduced Loading Railway loading – as defined within BS5400 Part 2: 1978
RMU	Ring Main Unit
RT	Railtrack PLC
SCADA	Supervision, Control and Data Acquisition
TCC	Traffic Control and Communications Diversion of the DoT
TCSU	Traffic Control Systems Unit
TIS	Train Identification System
UIC	Union Internationale Chemin de Fer
UDL	Uniformly distributed load
UTC	Urban Traffic Controller
VCR	Video Cassette Recorder
VDU	Visual Display Unit
VDV	Verband Deutscher Verkehrsunternehmen

SCHEDULE 9

EXPERT DETERMINATION AND DISPUTES RESOLUTION

Associated Contract Dispute

Means

- (1) any dispute between the Concessionaire or the Operator and:
 - (a) the Corporation; or
 - (b) the Tram Maintenance Contractor; or
 - (c) the Contractor; or
 - (d) the Council; or
- (2) any dispute between the Operator and any sub-contractor of the Operator

which arises out of substantially the same circumstances as or is in any way connected with any Dispute or which raises issues which are substantially the same as or connected with issues raised in any Dispute and in respect of which:-

- (i) a notice is given requiring reference of the dispute to the Expert or to arbitration in accordance with this Schedule 9 no later than 14 days after the giving of the Notice of Dispute or in the case of a notice requiring reference to arbitration the Notice of Arbitration in relation to the Dispute with which it is to be determined, and
- (ii) any Third Party who is a party to the Associated Contract Dispute has signed a confidentiality and handback undertaking in the form attached at Annex 3.

Dispute

means any dispute between the Concessionaire and the Operator in connection with or arising out of this Agreement whether before or after repudiation or termination of this Agreement.

Expert

means any expert in Annex 2 or otherwise appointed in accordance with this Schedule 9.

List

means the list attached at Annex 2 and such other experts as are subsequently agreed by the Parties.

Nominating Authority	means the London Court of International Arbitration or any other Nominating Authority agreed by the Parties from time to time.
Notice of Arbitration	means a notice given by either the Concessionaire or the Operator to the other party requiring arbitration by an Official Referee (or other arbitrator) in accordance with this Schedule 9.
Notice or notice	means notice in writing.
Notice of Dispute	means a notice given by either the Concessionaire or the Operator to the other party requiring reference of a Dispute to the Expert in accordance with this Schedule 9.
Notice of Dissatisfaction	means a notice given by either the Concessionaire or the Operator to the other party that it is dissatisfied with a decision of the Expert in accordance with this Schedule 9.
Third Party	means any party or prospective party to an Associated Contract Dispute other than the Concessionaire and the Operator.

1. Where a Dispute arises the Operator and the Concessionaire shall endeavour in good faith and with due expedition to agree the identity of a person willing and suitable to act as Expert; and if they fail to agree the Expert will be appointed in accordance with paragraph 2 below.
2. In the event that the Concessionaire and the Operator are unable to agree, the identity of a person willing and suitable to act as the Expert within 14 days after Notice of Dispute is given, either party may apply to the Nominating Authority to appoint an Expert. The application to the Nominating Authority shall attach a copy of the Notice of Dispute together with a list of those persons who have been considered by the parties under paragraph 1 above and who have been thought by either party not to be suitable. In the absence of agreement by both parties, the Nominating Authority shall not appoint any person who:
 - (a) is not:
 - (i) professionally qualified in the field in which the Dispute arises; and
 - (ii) a practitioner with at least ten years experience in the field in which the Dispute arises and who continues to practice professionally in that field; and
 - (b) has been included on the list of persons thought by either party not to be suitable.
3. Either the Concessionaire or the Operator may at any time give the other Party a Notice of Dispute and immediately thereafter the Concessionaire and the Operator shall appoint

an Expert in accordance with paragraph 1 and 2 above. Clause 36 of this Agreement shall apply to all notices and communications given or made under this Schedule 9.

4. The appointment of the Expert shall be deemed to take place when having been agreed between the parties or appointed by the Nominating Authority he signifies in writing his willingness to act whether or not his terms of remuneration shall then have been agreed.
5. The terms of the remuneration of the Expert including the remuneration of any specialist from whom the Expert may require to seek advice shall be mutually agreed upon by the Concessionaire the Operator and the Expert or in the absence of agreement between the Concessionaire and the Operator, shall be mutually agreed between the Nominating Authority and the Expert. The Concessionaire and the Operator shall each pay one half of the Expert's remuneration in accordance with such terms.
6. The Concessionaire and the Operator may terminate the Expert's appointment at any time by mutual agreement. In such a case or if at any time the Expert declines to act or is unable to act as a result of his death, disability, resignation or otherwise a suitably qualified person shall be appointed to replace the Expert in accordance with the provisions of paragraphs 1 to 4 of this Schedule 9.
7. Forthwith upon the appointment of the Expert the party who gave Notice of Dispute shall send a copy thereof to the Expert. The Expert shall conduct the reference in accordance with Annex 1 to this Schedule 9 and no later than the 49th day (or if later agreed between the Concessionaire and the Operator) after his appointment, the Expert, acting as Expert and not as arbitrator shall give notice of his decision to the parties. Such notice shall include his reasons and shall state that it is given under this paragraph 7 of this Schedule 9.
8. Unless this Agreement has already been repudiated or terminated, the Concessionaire and the Operator shall continue to observe and perform all the obligations contained in this Agreement, notwithstanding any reference to the Expert and shall give effect forthwith to every decision of the Expert, unless and until the same shall be revised, as hereinafter provided, by an amicable settlement, an arbitral award or by an order of the Court.
9. If either party is dissatisfied with the Expert's decision, then either party, on or before the 28th day after the day on which it is received notice of such decision, may give Notice of Dissatisfaction to the other party. If the Expert fails to give notice of his decision on or before 49th day after his appointment, then either party, on or before the 28th day after the day on which the said period of 49 days has expired may give the other party Notice of Dissatisfaction. In either event, the Notice of Dissatisfaction shall state that it is given under this paragraph 9 of this Schedule 9 and shall set out the matters in dispute and the reason(s) for dissatisfaction.

10. If the Expert has given notice of his decision to the Concessionaire and the Operator and no Notice of Dissatisfaction has been given on or before the 28th day after the day on which the parties received the Expert's decision shall become final and binding upon the Concessionaire and the Operator.
11. Where Notice of Dissatisfaction has been given, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the parties agree otherwise, arbitration may be commenced by Notice of Arbitration on or after the 49th day after the day on which Notice of Dissatisfaction was given, even if no attempt at amicable settlement has been made.
12. Any dispute in which:
 - (a) Notice of Dissatisfaction has been given within the time limited by paragraph 9 of this Schedule 9; and
 - (b) amicable settlement has not been reached,may be referred to the arbitration of an Official Referee pursuant to Section 11 of the Arbitration Act 1950.
13. Any such arbitration shall be commenced by Notice of Arbitration given by either the Concessionaire and the Operator to the other party. The arbitration shall be held in London and the award of the Official Referee shall be final and binding upon the Concessionaire and the Operator. In relation to any such reference:
 - (a) the Official Referee sitting as an arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction or valuation of the Expert;
 - (b) neither party shall be limited in the proceedings before the Official Referee to the evidence or arguments put before the Expert;
 - (c) the Expert shall not be called as a witness nor required to give evidence before the Official Referee on any matter whatsoever.
14. If for any reason no Official Referee is willing to accept the appointment as arbitrator, either party may refer the dispute to a judge sitting in London dealing with Official Referees' Business. Either party may commence proceedings in the High Court by writ or originating summons (as the case may be) issued out of the Official Referees' Registry of the Queen's Bench Division of the High Court.

In relation to any such proceedings:

- (a) the Official Referee shall have and the parties hereby agree pursuant to Section 43A of the Supreme Court Act 1981 that he shall be vested with the same full power given to the arbitrator under this Agreement including (without limitation) the powers to open up, review and revise any decision, opinion, instruction, direction or valuation of the Expert;
- (b) neither party shall be limited in the proceedings before the Official Referee to the evidence or arguments put before the Expert;

- (c) the Expert shall not be called as a witness nor required to give evidence before the Official Referee on any matter whatsoever.
15. If for any reason the Official Referee shall not accept or not have all of the powers referred to in paragraph 13(a) of this Schedule 9 the Dispute shall be deemed to have been referred by the Notice of Arbitration and shall be referred to the arbitration of a person to be agreed between the parties or failing agreement within 14 days to be appointed on the application of either party by the Nominating Authority. Any such arbitrator shall be governed by the rules of the Nominating Authority.
 16. An Associated Contract Dispute may be determined in the same proceedings as the Dispute and the provisions of this Schedule 9 shall be modified accordingly and the Expert or arbitrator appointed in accordance with this Schedule 9 shall have the same powers in relation to the Associated Contract Dispute as he has in relation to the Dispute under this Schedule 9 and as if the procedure of the High Court in relation to co-defendants and third parties was available to the parties and to the Expert or the arbitrator.
 17. Where a Dispute and an Associated Contract Dispute have been determined in the same proceedings before the Expert, a notice of arbitration given in the Associated Contract Dispute shall be of no effect in relation to the Dispute and the Concessionaire and the Operator shall not be bound by the outcome of the arbitration of the Associated Contract Dispute unless the Dispute is also the subject of a Notice of Arbitration and is determined in the same proceedings.
 18. The Operator and the Concessionaire agree that, for the purposes of Section 5 of the Limitation Act 1980 time shall cease to run in respect of any Dispute on the date of service of the relevant Notice of Dispute for the purpose of the reference to the Expert of that Dispute and for any other subsequent arbitration or proceedings in respect of that Dispute.

ANNEX 1

1. Forthwith upon his appointment the Expert shall notify the parties of the address and the facsimile and telex numbers, if any, at which notices or other communications should be addressed to him and the provisions of Clause 36 of this Agreement shall apply to notices or other communications between the parties and the Expert.
2. Each Party shall make one written submission to the Expert, copied to the other party, within fourteen days of the Expert's appointment. The Expert shall consider such written submissions.
3. Where a Third Party becomes a party to the reference in accordance with paragraph 16 of Schedule 9 at any time after appointment of the Experts:-
 - (a) the Concessionaire , the Operator and the Third Party may within fourteen days make one written submission to the Expert in relation to the Associated Contract Dispute:
 - (b) all parties to the reference shall be deemed to have agreed that the time limit for issue of the Expert's decision shall be extended to expire 35 days after the making of the last of submissions referred to in paragraph 3(a) of this Annex 1.
 - (c) each of the parties to the reference shall pay an equal share of the Expert's remuneration and paragraph 5 of Schedule 9 shall be deemed to be amended accordingly.

The Expert may, in his discretion, but shall not be obliged to:

- (a) convene meetings at which all parties to the reference shall be entitled to be present upon reasonable notice to the parties;
- (b) submit lists of questions to the parties to be answered in such meetings or in writing within such reasonable time as he may require;
- (c) require the parties to provide him with such information, access to the site and other facilities as he may reasonably require for the determination of the Dispute or any Associated Contract Dispute;
- (d) seek such technical or legal advice as he may reasonably require for the determination of the Dispute or any Associated Contract Dispute;
- (e) otherwise take such action and adopt such procedures as shall be reasonable and proper for the just, expeditious and economical determination of the Dispute or any Associated Contract Dispute (including, for the avoidance of doubt extending the period allowed for written submissions in paragraphs 2 and 3(a) of this Annex 1) and, otherwise than in the event of an Associated Contract Dispute, the Expert shall have the power to extend the 49 day period referred to in paragraph 7 of this Schedule 9 subject to a maximum further period of 30 days;

Provided that:

- (i) the Expert shall adopt any procedures which may be agreed between the parties for determination of the Dispute or any Associated Contract Dispute;
- (ii) all information of whatever nature provided to the Expert by any party shall be copied to all other parties or (where copying is not practicable) the other parties shall be entitled to inspect it;
- (iii) all meetings shall be private and save as expressly provided in this Schedule 9 or as required by law the Expert shall keep confidential the Dispute, any Associated Contract Disputes, all information of whatever nature provided to him by or on behalf of either party and his determination of the Dispute or any Associated Contract Dispute.

ANNEX 2

List of Experts

LAWYERS

[REDACTED]
1 Atkin Building
Grays Inn
London WC1R 5BQ

[REDACTED]
2 Crown Office Row
Temple
London EC4Y 7HJ

[REDACTED]
Keating Chambers
Essex Street
Outer Temple
London WC2R 3AA

[REDACTED]
1 Paper Buildings
Temple
London EC4

[REDACTED]
2 Temple Gardens
Temple
London EC4Y 9AY

[REDACTED]
Keating Chambers
10 Essex Street
Outer Temple
London WC2R 3AA

CHARTERED ENGINEERS

[REDACTED]
Brunel House
Muriel Road
Norwich NR2 3NZ

[REDACTED]
Somersby House
Stokesheath Road
Oxshott
Surrey KT22 OPS

[REDACTED]
White Young Consulting Engineers
Arndale Court
Headingley
Leeds LS6 2UJ

[REDACTED]
JMP Consultants Ltd
Stewart House
123 Elderslie Street
Glasgow
Scotland G3 7AR

[REDACTED]
North Yorkshire County Council
Environmental Services
North Yorkshire Consultancy

[REDACTED]
Thornburn Colouhoun Holdings plc
243 West George Street
Glasgow G24 QE

QUANTITY SURVEYORS

[REDACTED]
Beard Dove Ltd
Linton House
7-12 Tavistock Square
London WC1H 9LT

[REDACTED]
Frankling and Andrews
Sea Containers House
20 Upper Ground
London SE1 9LZ

[REDACTED]
W T Partnership
Laion House
233 High Street
Croydon
Surrey CR9 1YY

[REDACTED]
Widnell
Davis House
129 Wilson Road
London



Fairway Construction Consultants
Dragon Court
27-29 Macklin Street
London WC2B 5LZ

- (ii) shall treat any Expert's determination of the Proceedings and any arbitrator's award (including the reasons) and any other decision of the arbitrator during the Proceedings as confidential and shall not disclose any of them to any other person at any time unless:-
- (a) you have given your prior written consent;
 - (b) disclosure is required in order to enforce or challenge an Expert's determination, an arbitrator's award or a decision of a court made in the Proceedings; or
 - (c) disclosure is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto); or
 - (d) such disclosure is to our professional advisers or auditors provided that any such person either enters into a confidentiality undertaking on the same terms mutatis mutandis as those of this letter or is already bound by reason of their professional rules to keep such matters confidential; or
 - (e) the information disclosed has come into public domain through no fault of ours.
- (iii) shall on written request by you at any time after the conclusion of the Proceedings or of any proceedings for the challenge or the enforcement of any arbitrator's award or judgment given in the Proceedings (whichever shall be the later) deliver to you the originals and all copies (in whatsoever form or medium) of any written statements, documents and other evidence produced in the Proceedings by you and shall in good faith identify and destroy (and confirm to you in writing that we have so destroyed) all notes, documents or other records made by ourselves recording, summarising or referring to the Proceedings) and shall thereafter have no right to keep or use the same for any purpose whatsoever. This paragraph (iii) shall not apply to:
- (a) documents which were in existence and in our possession prior to the commencement of the Proceedings and were not prepared for use in the Proceedings; or
 - (b) (without prejudice to the undertakings given at paragraph (i) and (ii) above) notes, documents or other records to which litigation privilege or legal professional privilege attach.

Yours faithfully

[to be signed by the prospective Third Party]

SCHEDULE 10

[NOT USED]

SCHEDULE 11

TICKETING SYSTEM AND REVENUE COLLECTION

1. Management of Ticket Machines

1.1 Management

The Operator shall manage the Ticket Machines in accordance with the terms of this Agreement. The Operator shall be required to:-

- (a) perform on a daily basis visual inspections, and carry out daily automatic readings, of the Ticket Machines;
- (b) NOT USED
- (c) refill and clean the Ticket Machines daily.

The Concessionaire shall manage on a day to day basis the contractor duly appointed to repair, maintain and programme the Ticket Machines pursuant to a contract entered into by or on behalf of the Concessionaire, the performance of which shall remain the sole responsibilities of the Concessionaire and such contractor.

1.2 Electricity

The cost of supplying electricity to the Ticket Machines shall be borne by the Concessionaire in accordance with the general provisions relating to utilities.

1.3 Insurance

It shall be the responsibility of the Concessionaire to insure or otherwise be responsible for the Ticket Machines and their contents in respect of loss, damage or theft. The Concessionaire shall take out and maintain adequate insurance cover in respect of the cost of repairing or replacing the Ticket Machines and their contents in respect of loss, damage or theft (including loss resulting from fraud or theft by the security contractor appointed pursuant to paragraph 3.2) and to claim under such policies with all speed to ensure that damaged Ticket Machines are repaired or replaced as soon as possible or that the cost of so doing is reimbursed to the Operator as soon as possible.

1.4 Changes

Any proposed alteration by the Concessionaire to the number and/or the Specification in respect of the Ticket Machines shall be agreed in advance with the Operator who shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7.

2. Ticket Fares

2.1 Fares

The Operator shall charge passengers fares in accordance with Clause 16.

2.2 Cards and passes

The Operator shall accept Travelcards, LT Cards, Concessionary Permits (acceptance of which shall be only after 9 a.m. on any Business Day), LT Staff Passes, Police Passes, Railway Staff Passes and any other multi-modal tickets whose format and nature are reasonably required by the Concessionaire . The Operator shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7 arising from any alteration in the type of tickets required to be accepted from the date of this Agreement.

2.3 Installation of new equipment

The Operator shall agree to the installation by the Concessionaire, at the cost of the Concessionaire, of any equipment required on Trams or on platforms for the purpose of electronic pass recognition or for other purposes related to the future allocation of Off-Tram Revenue or Stored Value Revenue provided that the Concessionaire gives the Operator reasonable written notice of when such equipment is to be installed and, after consultation with the Operator, installs the same at such times as (as far as is reasonably practicable) do not prejudice the ability of the Operator to provide the Services. The Operator shall bear all its costs in making the Trams available at the Depot to the Concessionaire for the purposes of installing such equipment.

2.4 Issue

Tickets shall be sold in accordance with the Bye-laws.

3. Revenue Collection

3.1 Management

The Operator shall manage revenue collection in accordance with this Agreement.

3.2 Security contractor

The Operator shall appoint a security contractor subject to the approval of the Concessionaire, such approval not to be unreasonably withheld or delayed, to organise collections from each of the Ticket Machines. Such collections will take place on each Business Day between 9 a.m. and 5 p.m. Any additional collections required by the Concessionaire shall be performed by the security contractor at the expense of the Concessionaire. Any collections from the Central Croydon Ticket Office in respect of revenue due to the Concessionaire shall take place on a basis to be agreed between the Concessionaire and the Operator.

3.3 Deposit of revenue

The Operator shall arrange for the security contractor to deliver all revenue collected from each Ticket Machine on each Business Day to the Croydon branch of a bank nominated by the Concessionaire. The Concessionaire shall be responsible for all bank charges arising from the deposit of the revenue with such banks. The deposit of revenue from the Central Croydon Ticket Office in respect of revenue due to the Concessionaire shall take place on a basis to be agreed between the Concessionaire and the Operator.

3.4 Reconciliation

The Operator shall prepare and submit to the Concessionaire a daily reconciliation breakdown in respect of each revenue collection and analysis thereon setting out details of any discrepancies between the data produced by the Ticket Machines and the actual amount collected and delivered to the bank by the security contractor. With the exception of any discrepancies resulting from fraud or theft on the part of the security contractor and in the event of which the Operator's sole responsibility under this Agreement shall be to use its reasonable endeavours to recover any losses from the security contractor, the Concessionaire shall be responsible at its risk for all other discrepancies including without limitation those caused by the malfunction of any of the Ticket Machines, the use of illegal tender, any unaccepted credit card sales, any illegal tampering, theft, other cash losses and other discrepancies caused by the nominated bank of the Concessionaire.

3.5 Revenue information

The Operator shall on a regular basis prepare and submit to the Concessionaire management information summarising receipts, in particular details of the types of tickets sold by the Operator and such other general revenue statistics as the Concessionaire may reasonably require.

4. Revenue inspectors

4.1 Number

The Operator shall employ, at its own expense, a sufficient number of revenue inspectors so as to have the capability to check approximately 5% of the actual passenger journeys on the Tramlink System.

4.2 Responsibilities

The revenue inspectors shall be required to:

- (a) NOT USED
- (b) check the validity of tickets to a level of 5% of passenger journeys and passes in accordance with guidance notes drawn up by the Operator with the co-operation and approval of the Concessionaire (such approval not to be unreasonably withheld or delayed) and deter ticketless travel on the Tramlink System throughout each operating day;

- (c) where relevant, issue penalty fares to passengers in accordance with the Bye-Laws;
- (d) perform visual inspections, and obtain readings, of the Ticket Machines and report any failure or damage to the Control Centre;
- (e) carry out appropriate investigations where there is reasonable suspicion of fraud in the use of any ticket or pass;
- (f) NOT USED
- (g) provide all reasonable assistance to passengers;
- (h) administer the Customer Charter and any legitimate refund claims under the Customer Charter. Where due to the Operator's default hereunder, the refund claim shall be met by the Operator. In all other circumstances such refund shall be reimbursed to the Operator by the Concessionaire. Where a refund is due for a passenger journey not taken the Concessionaire shall reimburse the Operator for such refund.
- (i) operate, as far as is practicable, a ticket checking presence on the Tramlink System on each operating day;
- (j) back-up ticket checking operations with activities including Penalty Fares and assist and participate as reasonably required with prosecutions, official cautions, Police liaison, anti-fraud publicity and close liaison with LT Buses and Train Operating Companies revenue protection operations.

5. Penalty Fares

5.1 Operation

The Operator shall operate a penalty fares system on behalf of the Concessionaire in accordance with the Bye-Laws. Any receipts recovered under this system will be retained by the Operator to the extent necessary to cover the cost of administering and enforcing the system and the balance, if any, shall be paid to the Concessionaire by the Operator.

5.2 Legal action

Each decision as to whether to prosecute a defaulter shall be at the sole discretion of the Operator and will be based on a realistic assessment of the chance of success in enforcing and recovering the penalty fare in such case.

6. Off- Tram Revenue Agreement

6.1 Assistance

The Operator shall provide reasonable assistance to the Concessionaire in the negotiation of the Off- tram Revenue Agreement with the Corporation. For the avoidance of doubt any analysis by the Operator of survey information pursuant

to the Off- tram Revenue Agreement shall be carried out at the expense of the Concessionaire.

7. Central Croydon ticket office

7.1 Tickets

The Operator shall be entitled to sell Travelcards and other tickets from the Croydon Central ticket office and is entitled to receive commission on such sales for its own account. For the purposes of this paragraph 7.1 the Central Croydon ticket office shall be regarded as a PASS outlet of the Corporation.

7.2 Other items

The Operator shall be entitled to sell miscellaneous items approved by the Concessionaire such approval not to be unreasonably withheld from the Central Croydon ticket office and any profit made from such sales shall be for the Operator's account save in respect of Tramlink merchandise which shall be sold on behalf of the Concessionaire in accordance with paragraphs 8.2 to 8.4 below.

8. Responsibilities of the Concessionaire

8.1 Areas of responsibility

For the avoidance of doubt and without limitation the Concessionaire shall have responsibility for paying the following costs:

- (a) commission generated by ticket sales by other ticket agencies and any commission payable to the Corporation under the Off-tram Revenue Agreement;
- (b) commission generated by credit card sales;
- (c) any costs arising from the negotiation of, and subsequent amendment to, the Off-tram Revenue Agreement with the Corporation;
- (d) all bank charges (including sorting charges) incurred at the bank nominated by the Concessionaire pursuant to Clause 3.3 of this Schedule 11.

9. Increase in costs

9.1 Change

Any increase in the costs of the Operator resulting from amendment, alteration or modification by the Concessionaire to the ticketing and revenue collection systems referred to in this Agreement shall be recoverable in accordance with Clause 6.7.

SCHEDULE 12

[NOT USED]

SCHEDULE 13

[NOT USED]

SCHEDULE 14

OPERATOR'S EQUIPMENT

The Operator will be responsible for providing the following equipment and works:

- fitting out of Central Croydon ticket office;
- the Operator's systems for payroll, allocation, scheduling, finance, inventory control, purchasing and administration;
- locker room equipment for the Operator's staff; and
- furniture and ancillary items within the Operator's offices.

SCHEDULE 15

[NOT USED]

SCHEDULE 16

PART 1

HEADS OF TERMS

SUB-LEASE OF DEPOT FORMING PART OF THE CROYDON TRAMLINK

1. PARTIES

The Concessionaire as Landlord and the Operator as Tenant.

2. PROPERTY

The tram depot at Therapia Lane shown edged red on the attached drawing.

3. TERM

Subject to paragraph 11.1 30 years commencing on the Actual Opening Date.

4. EXCLUSION ORDER

The Sub-Lease will be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.

5. RENT

£10 per annum payable annually on the anniversary of the date of completion of the Sub-Lease.

6. RIGHTS GRANTED

As set out in the Land Lease to the extent they are appurtenant to the Property, but excluding those encompassed within the Superior Lease and Deed of Grant, Running Rights Agreement and BR Property Agreement which are not relevant to the Property. Note: The Concessionaire shall grant in addition such further rights as it is able to grant and which are required for the provision of the Services and/or the occupation of the Property in accordance with the Sub-Lease.

7. RIGHTS RESERVED

As set out in the Land Lease (but excluding those referred to in paragraph 7 of the Third Schedule to the Land Lease and in the BR Property Agreement) together with the right at all times in case of emergency and otherwise at all reasonable times on reasonable prior written notice to enter onto the Property with or without vehicles in order to perform obligations on the part of the Concessionaire in the Operating Agreement Concession Agreement and Project Agreements (but subject to the same provisions as set out in the final paragraph of paragraph 4 of the Third Schedule to the Land Lease).

8. PROPERTY SUBJECT TO

The Property will be demised subject to the documents referred to in paragraph 2, 6 and 7 of the Fourth Schedule to the Land Lease.

9. TENANT'S COVENANTS

These will be consistent with those in the Land Lease save as mentioned below. The covenants are (save for paragraph 9.5 and 9.6) referred to by the same headings which appear in the Land Lease.

9.1 Outgoings

The Operator will be responsible for the service charges in respect of the following services:-

- low voltage electricity;
- gas;
- telecommunications;
- water and sewerage

The Concessionaire will be responsible for all other outgoings in respect of the Property.

9.2 Common Expenses

The Concessionaire will be responsible for all common expenses relating to the Property.

9.3 Yield Up

The Operator will be obliged to yield up the Property so far as applicable, in accordance with the covenants and conditions contained in the Sub-Lease, but together with all fixtures and fittings on or forming part of the Property at the relevant time that are required for the performance of the Services in accordance with the Operating Agreement save for the Operator's Equipment (as defined in the Operating Agreement).

9.4 Notices

The covenant will be qualified so as not to override the provisions of the Operating Agreement.

9.5 Maintenance

The Operator will be responsible for:-

- cleaning the office premises at the Property internally and externally (including the windows thereof);
- cleaning the remainder of the Property (including the service roads and car park);

- de-icing and snow clearance at the Property

9.6 **Alterations**

The Operator will not be permitted to carry out any alterations to the Property (structural or otherwise) without the Concessionaire's approval (such approval not to be unreasonably withheld or delayed). The Operator will be responsible for obtaining any planning permission or other consents required in respect of such alterations.

9.7 **Statutory Requirements**

To the extent only that the Operator is not obliged to comply with such requirements under the Operating Agreement or otherwise, under the terms of the Sub-Lease the Concessionaire will ensure that all statutory requirements affecting the Property and the provisions of paragraphs 7.1 to 7.3 of the Fifth Schedule to the Land Lease are complied with.

9.8 **Planning**

The Operator will comply with all planning requirements so far only as they relate to the provision of the Services in accordance with the Operating Agreement (and save that any such requirements which involve expenditure or work on or to the Property will be for the Concessionaire to comply with at its own cost). The Concessionaire will ensure that all other such requirements which relate to the Property are complied with and will be responsible for complying with paragraph 8(b) of the Fifth Schedule to the Land Lease in respect of the Property (save as provided for in paragraph 9.6 above).

9.9 **User**

The Property shall not be used other than for the operation of a depot for the garaging, servicing, cleaning and maintenance of Trams and other vehicles together with offices, workshops, control rooms, storage, staff facilities and all other facilities and uses required for or in connection with the provision of the Services in accordance with the Operating Agreement, insofar as permitted by the Land Lease.

9.10 **Prevent encroachment**

Any action to be taken will be at the cost of the Concessionaire.

9.11 **Alienation**

- (a) not to assign or charge part of the Property;
- (b) not to underlet the whole of the Property other than to a company forming part of the same Group and subject to obtaining the Concessionaire's and the Corporation's prior consent (such consent not to be unreasonably withheld);
- (c) not to assign or charge the whole of the Property other than to a person to whom the Operating Agreement has simultaneously been assigned or charged;
- (d) not to underlet the whole or part of the Property without ensuring that the underlease is contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954; and

- (e) save as provided in paragraphs 9.11.2 and 9.11.4 not to part with possession or share occupation of the whole or part of the Property in a manner which creates a relationship of landlord or tenant or any right of security

9.12 Indemnify Landlord

This covenant to reflect the indemnity provisions in the Operating Agreement (so that the Operator will only indemnify the Concessionaire in respect of losses etc. incurred by the Concessionaire as a result of breach by the Operator of the covenants on its part contained in the Sub-Lease).

9.13 Comply with title matters and other obligations

The Operator shall be required to covenant to comply with the documents/matters referred to in paragraph 8 above (save for the Railtrack Property Agreement), but the cost of compliance shall be treated as Additional Services pursuant to the provisions of the Operating Agreement save for the first £■■■ of the Operator's costs for complying with any documents referred to in paragraph 2 of the Fourth Schedule to the Land Lease (excepting the Railtrack Property Agreement).

9.14 Costs

The Operator will only be required to pay Value Added Tax on or included in any amounts re-imbursable by the Operator to the Concessionaire subject to receiving a valid Value Added Tax invoice from the Concessionaire.

10. LANDLORD'S COVENANTS

10.1 Quiet enjoyment

10.2 To pay the rent reserved by the Land Lease and to comply with the covenants on its part contained in the Land Lease save to the extent that these are to be observed by the Operator in relation to the Property by virtue of the terms of the Sub-Lease.

10.3 To use all reasonable endeavours to procure that the Corporation (and its successors) comply with the covenants on the part of the Superior Landlord contained in the Land Lease.

10.4 To the extent that the consent of the Corporation (or its successors as Superior Landlord) is required by virtue of the provisions of the Sub-Lease, to use all reasonable endeavours to obtain such consent when requested by the Operator.

10.5 The Concessionaire shall decorate, repair, maintain and renew the Property in accordance with its obligations in that regard contained or referred to in the Operating Agreement.

10.6 To comply with the obligations on the part of the Concessionaire identified in paragraph 9 above.

11. PROVISOS AGREEMENTS AND DECLARATIONS

These shall follow the form of those set out in the Seventh Schedule to the Land Lease save that (adopting the same headings as in that Schedule):-

11.1 Termination

The term shall determine upon the earlier of the termination of the Concessionaire Agreement or the Operating Agreement. Paragraph I(b) of the Seventh Schedule to the Land Lease shall not apply.

11.2 Exclusion of Liability

Paragraph 5 of the Seventh Schedule to the Land Lease shall not be included in the Sub-Lease.

11.3 Expert Determination and Dispute

The provisions of Schedule 9 to the Operating Agreement shall apply.

Note: Words and expressions used in these Heads of Terms shall where appropriate have the same meanings as are ascribed to them in the Operating Agreement or the Concessionaire Agreement (as the case may be).

SCHEDULE 16

PART 2: OPERATOR SITE UNDERTAKINGS

The Operator agrees and undertakes to the Concessionaire in accordance with its obligations pursuant to Clause 8.3.1 and Clause 8.4.1 that during the Licence Period it will:-

- (a) carry out the Services with minimum disruption to neighbouring properties in accordance with this Agreement;
- (b) use the Site only for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement;
- (c) keep the Site as clean and tidy as is practicable;
- (d) not display any signs or notices at the Site without the prior written consent of the Concessionaire (such consent not to be unreasonably withheld or delayed);
- (e) observe such reasonable rules and regulations as the Concessionaire may make and of which the Concessionaire shall notify the Operator from time to time governing the use of the Site (being rules and regulations which are intended to be and are applied to all parties using the Site save during the Mobilisation Period when such rules and regulations may be specific);
- (f) not impede in any way the Corporation or the Concessionaire or its officers servants or agents in the exercise of any supervision rights the Corporation or the Concessionaire may have over the Site and will not prevent the Concessionaire the Contractor or any other person authorised by the Concessionaire from having access to the Tramlink System at all times in case of emergency and otherwise at all reasonable times on reasonable prior written notice in order to comply with the obligations and/or to exercise the rights on its part and/or in its favour contained in this Agreement or the Concession Agreement or the Project Agreements subject to the Concessionaire the Contractor and/or the other relevant person complying with all relevant safety requirements and the Operator's reasonable rules and regulations relating to the operation of the Tramlink System and provided that the operation of the Tramlink System shall not be prevented or materially interrupted or otherwise affected by such access by the Concessionaire the Contractor or any other person authorised by the Concessionaire;
- (g) subject to the provisions of Clause 8.3.3(c) and Clause 8.4.3(c) not assign, charge or otherwise transfer the benefit of its licence to use the Site (excluding the Depot) and occupy the Depot

Provided that (as regards the Depot) if there shall be any conflict between provisions of this Part of Schedule 16 and the Sub-Lease terms which apply during the Licence Period by virtue of Clause 8.4 then the Sub-Lease terms shall prevail

SCHEDULE 17

[NOT USED]

SCHEDULE 18

[NOT USED]

SCHEDULE 19

TUPE INFORMATION

1. The number of staff who are TUPE Employees
2. In relation to each employee who falls within the scope of paragraph 1 above:-
 - (a) the employee's age and gender (so that pension entitlements can be calculated and provided for); and
 - (b) the employee's salary, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the Operator and any redundancy entitlement;
3. Information relating to or connected with the other terms and conditions of the contracts of employment with employees falling within the scope of paragraph 1 above including details of:-
 - (a) terms incorporated from any collective agreement;
 - (b) so far as the Operator should reasonably be aware any outstanding liability for past breaches of such contracts;
 - (c) so far as the Operator should reasonably be aware any outstanding statutory liability (for example, any claim under non-discrimination legislation); and
 - (d) so far as the Operator should reasonably be aware any other outstanding liability required to be met by the successor Operator if its tender is accepted; and
4. Such other information as the Concessionaire may reasonably require in relation to TUPE Employees.

SCHEDULE 20

PART 1

THE 1996 AGREEMENT

The 1996 Agreement is contained on the CD signed by the Parties for identification.

DATED 25 November 1996

(1) **TRAMTRACK CROYDON LIMITED**

- and -

(2) **TRAM OPERATIONS LIMITED**

OPERATING AGREEMENT

relating to

the Croydon Tramlink System

ASHURST MORRIS CRISP

Broadwalk House
5 Appold Street
London EC2A 2HA

Tel: 0171-638-1111
Fax: 0171-972-7990

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THIS AGREEMENT is made as a Deed this 2ⁿ day of November 1996

BETWEEN

- (1) **TRAMTRACK CROYDON LIMITED** (Company number: 3092613) with its registered office at Macmillan House, Paddington Station, London W2 1TY ("the Concessionaire"); and
- (2) **TRAM OPERATIONS LIMITED** (Company number: 3097532) with its registered office at Macmillan House, Paddington Station, London W2 1TY ("the Operator").

WHEREAS

- (A) On 2nd October 1995 the Corporation issued an invitation to tender for the construction and operation of the Tramlink System and that tender has been awarded to the Concessionaire.
- (B) The parties have agreed that the Operator will provide to the Concessionaire operating and maintenance services in respect of the Tramlink System upon and subject to the terms set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITIONS

1.1 Definitions

In this Agreement the following words and expressions shall have the meanings given to them below:-

"Act"	the Croydon Tramlink Act 1994;
"Actual Kilometrage"	the aggregate kilometrage travelled by the Trams on the Tramlink System in the course of carrying fare-paying passengers during any Financial Period in complying with the Timetable during such Financial Period including kilometrage that would have been travelled by the Trams where a replacement bus service has been provided during such Financial Period in accordance with this Agreement;
"Actual Opening Date"	the date on which the whole of the Tramlink System opens for fare-paying passenger service;

"Additional Services"	additional services or recovery of additional costs or expenses referred to in Clause 6.7;
"Affiliate of the Operator"	<p>(a) a company which owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in the Operator; or</p> <p>(b) a company of which the Operator owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in such company; or</p> <p>(c) a third company of which company within paragraph (a) above owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in such third company;</p>
"Agreement"	this agreement including the Recitals, Schedules and Appendices;
"Applicable Requirements"	any Law relating to the Services or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Services including the Railways and Other Transport Systems (Approval of Works, Plant and Equipment Regulations 1994, Railways (Safety Critical Work) Regulations 1994, the Management of Health Safety at Work Regulations 1992 and the Railways (Safety Case) Regulations 1994 and the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996;
"Business Day"	a day other than a Saturday or Sunday on which banks are generally open in London for normal business;

"Bye-Laws"	the bye-laws required by the Act and annexed hereto as the Annexure in the agreed form;
"Change of Law"	<p>(i) any amendment, alteration or modification to or repeal of existing Law which takes effect after the date hereof; or</p> <p>(ii) the introduction of any new Law which comes into effect after the date hereof</p> <p>but excluding any change in the interpretation of any existing Law and any Change of Law which has been published prior to 26th June 1996 and subsequently comes into force substantially in the form so published;</p>
"Change of Safety Law"	<p>Change of Law which relates to or is connected with safety and requires:-</p> <p>(a) physical alterations or modifications to the Tramlink System (or to its method of operation); or</p> <p>(b) works to be carried out in addition to the Project Works;</p>
"Commission or Commissioning"	commission or commissioning in accordance with the Construction Programme and the procedures set out in Schedule 11 of the Construction Contract;
"Compensation Event"	<p>each of the following events:-</p> <p>(a) Change of Safety Law;</p> <p>(b) Discriminatory Legislation;</p>
"Concession Agreement"	the agreement entered or to be entered into between the Concessionaire and the Corporation pursuant to award of the tender referred to in Recital A in the agreed form;

"Concession Award Date"	the date when all the conditions precedent referred to in Clause 2 of the Concession Agreement have been satisfied;
"Concessionaire Change Order"	has the meaning given in Clause 28.1(a) of the Concession Agreement to Construction Change Order and Specification Change Order and the meaning given in Clause 1.1 of the Concession Agreement to Change Order;
"Concessionaire Default"	any of the events specified in Clause 24.3.1;
"Concessionaire Delay Period"	such extensions of the relevant period or periods identified in the Construction Programme as may be agreed between the Corporation and the Concessionaire pursuant to Clause 18.7 of the Concession Agreement;
"Concessionaire's Environmental Damage"	any injury or damage to persons (including offence to their senses) premises or other property or any pollution of the environment resulting from the discharge emission escape or migration of any substance energy noise or vibration and which is not Operator's Environmental Damage;
"Concessionaire Good Industry Practice"	the exercise of that degree of skill diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced concessionaire of a light rail system over a period of 99 years engaged in the same undertaking as the Concessionaire;
"Concessionaire's Parliamentary Undertakings"	those undertakings given to a Parliamentary Committee during the passage through Parliament of the Bill for the Croydon Tramlink Act 1994 as set out in Schedule 3 of the Concession Agreement and any undertakings or agreements given to

	a person in consideration of his refraining from opposition to that Bill as set out in Schedule 3 of the Concession Agreement;
"Concessionaire's Representative"	the representative of the Concessionaire or any replacement or alternate to be appointed pursuant to Clause 5.1;
"Concessionaire Tram Spares"	the spare parts for the Trams to be agreed in accordance with paragraph 4(a) of Part 5 of Schedule 1 and all replacements thereof;
"Construction Change"	(a) an addition, deletion or other change to the Project Works from that required by the Specification or envisaged by the Milestone Schedule or (b) an alteration to the sequence of Work anticipated by the Construction Programme;
"Construction Contract"	the contract entered into or to be entered into between the Concessionaire and the Contractor for the construction and procurement of the Project Works;
"Construction Programme"	the construction programme, including the Outline Construction Programme, delivered by the Concessionaire to the Corporation pursuant to Clause 70.5(a) of the Concession Agreement as updated from time to time pursuant to Clause 70.5(b) of the Concession Agreement;
"Contractor"	the McAlpine-Amey joint venture or any other entity or entities appointed by the Concessionaire with the approval of the Corporation to carry out the Project Works pursuant to the Construction Contract;
"Control Centre"	the twenty-four hour control centre of the Tramlink System;
"Corporation"	London Regional Transport;

"Corporation Service Change"	has the meaning given in Clause 25.2(a) of the Concession Agreement to the term "Service Change";
"Corporation Service Parameters Change"	has the meaning given in Clause 25.2(b) of the Concession Agreement to the term "Service Parameters Change";
"Council"	London Borough of Croydon;
"Customer Charter"	the customer charter of the Tramlink System drawn up by the Operator with the co-operation and approval of the Concessionaire, such approval not to be unreasonably withheld or delayed
"Delay Events"	has the meaning given in Clause 18.2 of the Concession Agreement;
"Depot"	the tram depot at Therapia Lane shown edged red on Drawing No. 95401/300/022 attached to the Heads of Terms set out in Part 1 of Schedule 16
"Deregulation"	bus service deregulation being extended to London either by virtue of Section 46 of the Transport Act 1985 and/or the enactment of other legislation whereby bus operators are granted substantial freedoms to operate bus services in London and to determine for themselves, routes, service levels and frequencies and fares;
"Discriminatory Legislation"	Specific Discriminatory or General Discriminatory Legislation;
"Dispute"	as defined in Schedule 9;
"Excluded Equipment"	the radio communication equipment and cabling thereto and other equipment attached to Trams referred to as "Free Issue Equipment" in the Construction Contract;

"Expert"	a person appointed pursuant to Schedule 9 to determine a Dispute or other difference between the parties arising under this Agreement;
"Fees"	the fees payable to the Operator under Clause 21;
"Final Acceptance Tests"	the final Tramlink System acceptance test to be performed in accordance with Schedule 11 to the Construction Contract;
"Financial Impact Sums"	has the meaning given in Clause 1.1 of the Concession Agreement;
"Financial Period"	each consecutive period as defined in the Off-Tram Revenue Agreement as Payment Periods but the first Financial Period shall be the period between the Actual Opening Date and the commencing date of the first Payment Period under the Off-Tram Revenue Agreement and where the Off-Tram Revenue Agreement is terminated, each consecutive period of 4 weeks following the last Payment Period under the Off-Tram Revenue Agreement;
"Financial Period Payment Date"	in respect of any Financial Period, the third Wednesday of such Financial Period and if such date is not a Business Day, the preceding Business Day;
"Financing Agreements"	the agreements listed in Part 3 of Schedule 3;
"Force Majeure"	shall have the meaning specified in Clause 23.1.1;
"General Discriminatory Legislation"	Change of Law (other than Deregulation) which discriminates against Light Rail Concessionaires in relation to other companies operating a transport service in the Tramlink Bus Area and which results in any actual or prospective

	change in costs or revenue of the Operator;
"Good Industry Practice"	the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced light rail operator responsible for those aspects of tram maintenance and operation of a light rail system over a period of 30 years engaged in the same undertaking as the Operator;
"HMRI"	Her Majesty's Railway Inspectorate and any successor body or bodies;
"HSE"	the Health and Safety Executive and any successor body or bodies;
"Infrastructure"	all of the Tramlink System other than the Trams;
"Infrastructure Controller"	the Infrastructure Controller of the Tramlink System for the purposes of the Railway (Safety Case) Regulations 1994;
"Infrastructure Maintenance Management Fees"	the fees payable to the Operator under Clause 21.1.4;
"Infrastructure Maintenance Management Services"	the services referred to in Clause 6.5;
"Infrastructure Maintenance Plan"	the maintenance plan relating to Infrastructure to be prepared initially by the Contractor and subsequently updated by the Operator in accordance with Clause 20;
"Insolvency Event"	each of the following events:- <ul style="list-style-type: none"> (a) the issue of a petition for winding-up which petition is not dismissed within 28 days of its issue; or (b) the making of an order or an effective resolution being passed for winding up except

for the purpose of a solvent reconstruction or amalgamation on a basis previously approved by the Concessionaire or the Operator (as appropriate) in writing (such approval not to be unreasonably withheld); or

- (c) the making of an order for the appointment of an administrative receiver, administrator, trustee or similar officer; or
- (d) an encumbrancer, receiver (including an administrative receiver) or other similar officer taking possession of the whole or any part (which is material in the context of the performance of the affected person's obligations under the Operating Agreement) of such person's undertaking, property or assets; or
- (e) the making of a composition with creditors generally; or
- (f) being unable to pay debts as they fall due;

"Intellectual Property"

all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unregistered designs, know-how, inventions, confidential information and other intellectual property rights;

"Key Staff Positions"

key staff positions within the Operator's organisation being the general manager, the operations manager, the engineering manager and the contracts manager and, in the event that the Operator's Representative is not one of the

	<p>aforementioned, the Operator's Representative;</p>
"Land Lease"	<p>the form of lease attached as Appendix 5 to Schedule 3 to the Concession Agreement</p>
"Law"	<p>any Act of Parliament or subordinate legislation within the meaning of section 21(1), Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of section 2, European Communities Act 1972;</p>
"Lender[s]"	<p>the banks party to the facility agreement of approximate £93,000,000 with the Concessionaire in its capacity as borrower thereunder on or about the same date as this Agreement;</p>
"Lessor"	<p>Lombard Venture Leasing Limited;</p>
"Libor"	<p>(a) with respect to any period:-</p> <ul style="list-style-type: none"> (i) the rate per annum of the offered quotation for deposits in sterling for a period comparable to the relevant period which appears on Telerate Page 3750 at or about 11.00 am on the first day of the relevant period; or (ii) if no such offered quotation appears on the Telerate Page 3750 at or about 11.00 am on the applicable date, the arithmetic mean (rounded upward to the nearest 1/16th of 1%) of the rates per annum, as notified to the Facility Agent at which each of the Reference Banks was offering to leading banks in the London Interbank

Market deposits in sterling at or about 11.00 am on the first day of the relevant period for a period comparable to the relevant period;

(b) for the purposes of this definition of LIBOR, "Telerate Page 3750" means the display designated as "Page 3750" on the Telerate Service (or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement rates for deposits in sterling;

(c) for the purposes of this definition of LIBOR, definitions used herein shall have the same meaning as set out in the Facility Agreement.

"Licence Period"

the date on which the Mobilisation Period shall commence until whichever shall be the earlier of:-

(a) the date of the determination of the Concession Agreement; or

(b) (in respect only of that part of the Site which comprises the Depot) the date of grant of the Sub-Lease;

"Light Rail Concessionaires"

companies undertaking the design, construction, financing and maintenance of light railways or train systems in the UK pursuant to a single contract similar to the Concession Agreement;

"Lost Kilometrage"

the difference between Scheduled Kilometrage and Actual Kilometrage;

"Maintenance Contracts"	the agreements entered into, or to be entered into, by or on behalf of the Concessionaire or by the Operator and any of the Maintenance Contractors (including the Construction Contract);
"Maintenance Contractors"	such person or persons as may be appointed by the Concessionaire or the Operator from time to time in accordance with this Agreement to carry out certain repairs to and maintenance of the Infrastructure;
"Major Maintenance"	means all aspects of maintenance of the Infrastructure which are not Routine Maintenance;
"Milestone"	an event which is the completion in whole of one or more specified activities, such activities being as set out in the Milestone Schedule in the column headed Milestone Description;
"Milestone Schedule"	the schedule of Milestones set out in Schedule 1 to the Concession Agreement;
"Mobilisation Fee"	the fee payable to the Operator under Clause 21.1.2;
"Mobilisation Period"	the period of time of at least 18 months commencing on the date specified in the Construction Programme or such other date as is notified to the Operator in accordance with Clause 8.1 and ending on the Actual Opening Date;
"Mobilisation Services"	the services to be provided by the Operator during the Mobilisation Period as referred to in Clause 6.2;
"Off-Tram Revenue Agreement"	has the meaning given in the Concession Agreement;
"Operating Fee"	the fee payable to the Operator under Clause 21.1.3;

"Operating Period"	the period of time commencing on the Actual Opening Date and ending at the end of the Term;
"Operating Plan"	means the operating plan to be prepared by the Operator in accordance with Clause 20;
"Operating Services"	the services to be provided by the Operator during the Operating Period as referred to in Clause 6.4;
"Operating Year"	a year ending on an anniversary of the Actual Opening Date;
"O&M Manuals"	the operation and maintenance manuals in respect of the Tramlink System prepared by the Contractor pursuant to the Construction Contract or prepared by or on behalf of the Concessionaire pursuant to this Agreement;
"O&M Procedures"	the procedures prepared by the Operator in accordance with Clause 8.2.2;
"Operational Land Lease"	the form of agreement attached as Schedule 14 to the Concession Agreement;
"Operator Controlled Lost Kilometrage"	Lost Kilometrage to the extent attributable to a default on the part of the Operator hereunder or to the extent attributable to a default on the part of the Tram Maintenance Contractor under the Tram Maintenance Contract save to the extent such default was attributable to matters beyond the Operator's or the Tram Maintenance Contractor's reasonable control and could not have been avoided by use of Good Industry Practice;
"Operator Default"	any of the events specified in Clause 24.2.1;
"Operator's Environmental Damage"	means any injury or damage to persons (including offence to their senses) premises or other property

	or any pollution of the environment resulting from the discharge emission escape or migration of any substance energy noise or vibration caused by a breach by the Operator of the terms of this Agreement;
"Operator's Representative"	the representative of the Operator or any replacement or alternate to be appointed pursuant to Clause 5.2;
"Operator Specification"	the specification for the operation of the Tramlink System attached as Schedule 8 as amended from time to time;
"Outline Construction Programme"	the outline construction programme referred to in Clause 70.5(a) of Concession Agreement;
"Party"	a party to this Agreement;
"Performance Specification"	the performance specification for the Tramlink System in the agreed form as between the Corporation and the Concessionaire as referred to in the Concession Agreement;
"Plans"	the Operating Plan and the Infrastructure Maintenance Plan;
"Possession"	possession of any part of the Infrastructure for maintenance and/or repair purposes which prevents, impairs or otherwise affects the ability of the Operator to operate to the Tram Service Levels on all or part of the Tramlink System;
"Preliminary Fee"	the fee payable to the Operator under Clause 21.1.1;
"Preliminary Services"	the services to be provided by the Operator as referred to in Clause 6.1;
"Prescribed Rate"	Libor plus 2 per cent;
"Project Agreements"	the agreements listed in Part 2 of Schedule 3;

"Project Works"

all of the works and equipment required for the supply and completion of the Tramlink System in accordance with the Tramlink Agreements (as defined in Clause 1.1 of the Concession Agreement) (without limitation):

- (a) all work concerning the detailed design, construction and completion of the Tramlink System;
- (b) the Depot and ancillary buildings;
- (c) bridges, structures and other permanent works;
- (d) track work;
- (e) overhead wires and cables;
- (f) other jigs, tools, fixtures and fittings; and
- (g) the Moveable Property (as defined in Clause 1.1 of the Concession Agreement);

"Quality Plans"

the quality plans to be prepared by the Operator in accordance with Clause 19.2.1;

"Railtrack Maintenance Agreement"

the agreement entered into on or about the date hereof between the Corporation and Railtrack plc and to be vested in the Concessionaire relating to the future maintenance of parts of the Tramlink System;

"Routine Maintenance Fee"

the fee payable to the Operator under Clause 21.1.6;

"Routine Maintenance Services"

the carrying out of all maintenance services to the Infrastructure of a routine nature which an operator would be required to undertake in

	order to maintain a tram system such as the Tramlink System in accordance with Good Industry Practice and to the extent specified in the Routine Maintenance Specification;
"Routine Maintenance Specification"	the Routine Maintenance Services specified in or otherwise to be agreed in accordance with Schedule 5;
"Routine Maintenance Sub-Contract"	any sub-contract entered into by the Operator in accordance with Clause 6.5.2 and Schedule 5 in respect of any part of the Routine Maintenance Services;
"Safety Case"	the safety case for the Tramlink System approved by HMRI in accordance with the requirements of the Railway (Safety Case) Regulations 1994 and prepared by the Concessionaire in accordance with Regulation 3 thereof;
"SAT 2"	the second Tramlink System acceptance test to be performed in accordance with Schedule 11 of the Construction Contract;
"Scheduled Kilometrage"	the aggregate kilometrage scheduled to be travelled by the Trams on the Tramlink System carrying fare paying passengers during any Financial Period assuming compliance with the Timetable during such Financial Period excluding for the avoidance of doubt positioning, shunting, testing, tram substitution, incident attendance, training and vehicle washing;
"Services"	all of the Preliminary Services, Mobilisation Services, Operating Services, Infrastructure Maintenance Management Services, Routine Maintenance Services and Tram Maintenance Services and any Additional Services;

"Service Change"	has the meaning set out in Clause 25.2(a) of the Concession Agreement;
"Service Parameter Change"	has the meaning set out in Clause 25.2(b) of the Concession Agreement;
"Site"	the area which is to be made available to the Concessionaire by the Corporation pursuant to the Concession Agreement for the purposes of constructing and operating the Tramlink System;
"Specific Discriminatory Legislation"	Change of Law (other than Deregulation) which discriminates against:- <ul style="list-style-type: none"> (a) the Tramlink System in relation to other light rail or tram networks in the UK; or (b) the Concessionaire or the Operator (but not other Light Rail Concessionaires) in relation to other companies operating a transport service in the Tramlink Bus Area; and which results in any actual or prospective change in costs or revenues of the Operator;
"Specification"	the specification for the Tramlink System attached as Schedules 2 and 3 to the Construction Contract as amended from time to time;
"Specification Change"	a variation to the Specification, Performance Specification or Operator Specification which requires a change in operating practices or procedures on the Tramlink System which is not a Construction Change, a Service Change or a Service Parameters Change;
"Step-in Undertakings"	the undertakings entered into, or to be entered into:-

(i) between, inter alia, the Operator and the Lenders (or an agent on their behalf) and

(ii) between, inter alia, the Tram Maintenance Contractor and the Lenders (or an agent on their behalf);

"Sub-Lease"

the sub-lease of the Depot to be entered into between the Concessionaire (1) and the Operator (2) in such form as may be agreed between the parties both acting reasonably but based on and incorporating the terms contained in the Heads of Terms set out in Part 1 of Schedule 16 and otherwise being consistent with the Land Lease;

"Supplemental Sub-Lease"

supplemental sub-lease(s) the purpose of which is to include within the demise in the Sub-Lease and on exactly the same terms as the Sub-Lease those parts (if any) of the Depot which may be comprised in the Supplemental Lease(s) granted pursuant to paragraphs 7.7 and/or 7.8 of Part 1 of Schedule 3 to the Concession Agreement in such form as may be agreed between the parties both acting reasonably;

"Taking-Over Certificate"

the Taking-Over Certificate issued in accordance with Clause 49 of the Construction Contract;

"Term"

the period of time commencing on the date of this Agreement and ending upon termination or expiry of this Agreement in accordance with its terms;

"Ticket Machines"

the 77 automatic ticket vending machines described in the Specification or such other type and/or number of automatic ticket vending machines as the Operator shall agree with the Concessionaire

	to manage in accordance with this Agreement.
"Timetable"	the timetable for the operation of Tram services on the Tramlink System referred to in or determined in accordance with Section 9 of the Operator Specification as amended from time to time in accordance with Clause 16;
"Tram Maintenance Step-In Agreement"	the agreement entered or to be entered into between (inter alia) the Concessionaire, the Operator, the Maintenance Contractor;
"Tramlink Applicable Requirements"	any Law relating to the Tramlink System or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Tramlink System;
"Tramlink Bus Area"	the area edged in red on the Tramlink Bus Area Plan;
"Tramlink Bus Area Plan"	the plan at Part 1 of Schedule 7 of the Concession Agreement;
"Tramlink General Agreement"	the agreement entered into on or about the date hereof between the Council and the Concessionaire, relating, inter alia, to the procedures for the Concessionaire to obtain approvals and consents requested from the Council and specific requirements of the Council in respect of the Tramlink System in the agreed form;
"Tramlink System"	the system of light rail transit to be constructed and operated in certain parts of the London Boroughs of Merton, Sutton, Croydon and Bromley, as more fully described in the Specification including the Excluded Equipment and the Trams;
"Tram Maintenance Contract"	the agreement entered into between the Operator and the Tram Maintenance Contractor in relation to maintenance of the Trams;

"Tram Maintenance Contractor"	Bombardier Prorail Limited or such other person appointed to maintain the Trams in accordance with Clause 6.6;
"Tram Maintenance Fee"	the fee payable to the Operator under Clause 21.1.5;
"Tram Maintenance Plan"	the tram maintenance plan to be prepared initially by the Contractor and subsequently updated by or on behalf of the Operator in accordance with Clause 20;
"Tram Maintenance Services"	the services referred to in Clause 6.1.1 of the Tram Maintenance Contract;
"Tram Service Levels"	the level (including passenger carrying capacity and journey times) pattern and frequency of service for the Tramlink System specified in Section 9 of the Operator Specification as the same may be amended from time to time in accordance with this Agreement;
"Trams"	the 24 Trams to be provided under the Construction Contract as part of the Project Works for operation on the Tramlink System or any substitutes therefore including, in the case of each of the Trams, the pantograph attached to its roof and any equipment or spare parts which are subsequently fitted to such Trams or any substitutes thereof, save for the Excluded Equipment;
"Travelcard"	shall have the meaning ascribed to it by the Off-Tram Revenue Agreement;
"Vesting Order"	the Croydon Tramlink (Transfer of Functions) Order 1996;
"Warning Notice"	a notice issued by the Expert to the Operator pursuant to Clause 16.6.3.

1.2 Interpretation

In this Agreement:-

- 1.2.1 where the context requires words importing the singular shall include the plural and vice versa;
- 1.2.2 where the context requires words importing persons shall include firms and corporations;
- 1.2.3 a reference in this Agreement to any clause, sub-clause, paragraph, schedule or appendix is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or appendix of this Agreement;
- 1.2.4 headings are for convenience of reference only;
- 1.2.5 each reference to this Agreement or to any other document, contract or agreement shall include a reference to each lawful variation of or supplement to this Agreement and of such document, contract or agreement as amended, varied or supplemented from time to time;
- 1.2.6 references to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under any such statute;
- 1.2.7 a person includes its successors and permitted assigns or transferees;
- 1.2.8 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 such thing to be done by any subcontractor, agent or employee of such Party;
- 1.2.9 the words 'include' and 'including' are to be construed without limitation;
- 1.2.10 references to any period of 14 days or less shall exclude any public holidays in England falling within any such period;
- 1.2.11 a reference in this Agreement to any document being in the agreed form is a reference to such document in the form agreed by the Concessionaire and the Operator at the date of signature and as may be subsequently amended.

1.3 Notices, Consents, Approvals, Certificates & Determinations

- 1.3.1 Wherever in this Agreement provision is made for the giving or issue of any notice, endorsement, consent, approval, certificate or determination by any person, unless otherwise specified such notice, endorsement, consent, approval, certificate or determination ("Consent") shall be in writing and the words "notify", "endorsed", "certify" or "determine" shall be construed accordingly.
- 1.3.2 Where this Agreement expressly states that any Consent is not to be unreasonably withheld or delayed it is agreed that the Consent shall

be treated as being reasonably withheld or delayed where a similar consent is required to be obtained by the Concessionaire under the terms of the Concession Agreement or by the Operator under the Tram Maintenance Contract and such consent has been withheld or delayed for any reason whatsoever not connected with unreasonable behaviour on the part of the Concessionaire (including default by the Concessionaire under any of the Project Agreements) or the Operator as the case may be.

1.3.3 Neither Party shall be obliged to investigate as to whether the other has obtained any consents or approvals which may be required to be given by any third parties prior to such other giving any notice, endorsement, consent, approval, certification or other determination.

1.4 Change in Project Agreements

1.4.1.1 Where the Operator incurs costs or expenses in relation to obligations under this Agreement which are not recoverable in full from the Concessionaire, the Concessionaire shall take all reasonable steps in consultation with the Operator to mitigate the extent of the costs or expenses so incurred.

1.4.1.2 Subject to any express provision of this Agreement, in the event that any of the following are proposed to be amended or altered in a way which materially affects the Operator in its provision of the Services in accordance with the terms of this Agreement, the Concessionaire shall notify the Operator and, where reasonably practicable, shall consult with the Operator in respect of such amendment or alteration prior to the making thereof but in the event that such prior consultation is not reasonably practicable shall consult after the making of such amendment or alteration. The following are:-

- (a) the Specification;
- (b) the Construction Contract;
- (c) Concession Agreement (including the Performance Specification);
- (d) Railtrack Maintenance Agreement;
- (e) Off-Tram Revenue Agreement;
- (f) Tramlink General Agreement;

or any other agreement or document relating to the Tramlink System. Such consultation shall be for the purposes of assessment by the Parties of the implications and effects on the Operator of such amendment or alteration. The Operator shall provide the Concessionaire with its estimate of the costs and an assessment of the impact arising from such amendment or alteration as soon as reasonably practicable.

1.4.1.3 Where the provision of the Services by the Operator under this Agreement is affected by any amendment or alteration to any of the documents referred to in Clause 1.4.1.2(a) to (f) above then Clause 6.7 shall apply.

1.4.1.4 If the Concessionaire fails to notify the Operator of such proposed amendment or alteration in accordance with Clause 1.4.1.2, then the Operator's only remedies shall be pursuant to the provisions of Clause 1.4.1.3 and 2.5.2.1.

1.4.2 Where under this Agreement the Parties are required to assess, consider, discuss, reimburse, claim for or mitigate the costs or expenses or profit of the Operator then the fees of any sub-contractors of the Operator including the Tram Maintenance Contractor shall also be taken into account.

1.5 Limitation

No claim may be made under this Agreement unless proceedings are commenced within six years of the date of the breach or other cause of action first arising unless the claiming Party did not know and could not reasonably have known of such breach or other cause of action within six years of the date of the breach or other cause of action. For the purpose of this Clause 1.5 "commence proceedings" means the first notice to be served by the claiming Party giving notice of a Dispute in relation to the breach of the Agreement in accordance with Clause 38 and Schedule 9.

2. APPOINTMENT

2.1 Appointment of Operator

The Concessionaire hereby appoints the Operator to provide to the Concessionaire on an exclusive basis the Services (save in respect of Additional Services which shall be treated in accordance with Clause 6.7) in accordance with and subject to the terms and conditions of this Agreement and the Operator hereby accepts such exclusive appointment in accordance with and subject to such terms and conditions.

2.2 Operator's general obligations

2.2.1 In performing the Services the Operator shall, at all times observe and comply with the following, in the order of priority listed:-

(a) all Applicable Requirements;

(b) the Safety Case;

(c) the relevant parts of the Operator Specification where obligations are imposed therein on the Operator;

(d) terms and conditions of this Agreement;

(e) Good Industry Practice.

If at any time either Party becomes aware of any conflict between any of the above or any divergence between any of the above and the activities of the Operator, it shall within two Business Days of becoming aware of such divergence give notice to the other Party specifying the conflict or divergence. Without prejudice to the obligations of the Operator under this Agreement the Parties shall discuss with the aim of agreeing how to provide for such divergence or conflict.

- 2.2.2 Where the standards imposed by Good Industry Practice at any time change, the Operator shall not be entitled to any additional payment in respect thereof unless expressly entitled under this Agreement save that it shall be entitled to recover amounts where relevant pursuant to the rebasing effected in accordance with Clause 21.2.2.

2.3 Information provided by the Corporation

- 2.3.1 The Operator shall not be relieved in any way from any obligation under this Agreement should any information produced by the Corporation whether obtained from the Concessionaire or otherwise in respect of the Tramlink System and the Operator's obligations under this Agreement be incorrect and/or insufficient (whether or not contained in the Performance Specification) and shall make its own enquiries as to the accuracy and adequacy of such information.

- 2.3.2 The Operator acknowledges and confirms that prior to the date of this Agreement it has reviewed the Performance Specification, the Specification and the Operator Specification and on successful completion of the Construction Contract (including the successful completion of SAT 2 and the issuing of the Taking-Over Certificate), the Operator, subject to Clause 6.2.4, will operate the Tramlink System in accordance with this Agreement and accordingly the Operator shall, without prejudice to any express rights in this Agreement, have no right to any increase in the fees payable in respect thereof.

2.4 Concessionaire's general obligations

- 2.4.1 The Concessionaire shall in performing its obligations under this Agreement, at all times observe and comply with the following in order of priority listed:-

- (a) all Laws or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Tramlink System;
- (b) the Safety Case;
- (c) Concessionaire's Parliamentary Undertakings;

- (d) the Performance Specification and the Specification;
- (e) terms and conditions of this Agreement;
- (f) Concessionaire Good Industry Practice;

save that it shall be under no such obligation where it is prevented from so observing and complying as a result of any breach or any act or omission by the Operator of any term or condition of this Agreement or as a result of a breach by the Corporation of any term or condition of the Concession Agreement or breach by the Council of any term or condition of the Tramlink General Agreement. If at any time either Party becomes aware of any conflict between any of the above or any divergence between any of the above and the activities of the Concessionaire, it shall within two Business Days of becoming aware of such divergence give notice to the other Party specifying the conflict or divergence. Without prejudice to the obligations of the Concessionaire under this Agreement, the Parties shall discuss with the aim of agreeing how to provide for such divergence or conflict.

2.5 Other Project Agreements

- 2.5.1 The Operator shall carry out its obligations under this Agreement and perform the Services so as not to put the Concessionaire in breach of obligations of the Concessionaire in other of the Project Agreements, such obligations specified at Schedule 7.
- 2.5.2.1 The Operator shall not be in breach of the terms and conditions of this Agreement or have failed to perform its obligations hereunder for so long and/or to the extent that such breach or failure has been caused as a result of any act or omission by the Concessionaire or the Concessionaire or any other party breaching any of the terms and conditions of this Agreement or any of the Project Agreements or failing to perform its obligations thereunder or enforce any right thereunder save to the extent that such breach is caused by the Operator breaching any of the terms and conditions of this Agreement. The Operator shall notify the Concessionaire forthwith upon becoming aware that the Operator is in breach of any of the terms and conditions of this Agreement and shall notify details of such breach to the Concessionaire. The Operator shall use all reasonable endeavours to mitigate the effect of such breach.
- 2.5.2.2 If the Concessionaire instructs the Operator to perform any specific obligation pursuant to this Agreement the Operator shall notify the Concessionaire if it considers that complying with such obligation would put it in breach of other provisions of this Agreement. If the Concessionaire thereafter confirms such instruction then the Operator shall not be liable to the Concessionaire to the extent that complying with such instruction puts it in breach of this Agreement save always that relief from such liability shall be in respect only of

those obligations of the Operator under this Agreement identified to the Concessionaire and the Operator shall use reasonable endeavours to mitigate the effect of such breach.

2.5.2.3 The Operator shall be entitled to a reimbursement of all additional costs and expenses in accordance with Clause 6.7 suffered by it as a result of a failure on the part of the Concessionaire to comply with its obligations or enforce its rights under any Project Agreement or in Law. The Operator shall mitigate such costs and expenses.

2.5.3 The Concessionaire may determine in its absolute discretion whether to enforce its rights under any of the Project Agreements or in Law save always that in the event that it does not so enforce then to the extent that the Operator is as a result unable to perform any of its obligations hereunder then the Concessionaire:-

- (a) shall continue to pay the relevant amounts due to the Operator pursuant to this Agreement as if the Operator had been able perform its obligations hereunder; and
- (b) shall not be entitled to make any deduction from amounts due and payable to the Operator pursuant to this Agreement as it would otherwise have been entitled under Clause 21.2.1.2 and Schedule 4.

2.6 Notification

The Concessionaire shall, as soon as reasonably practicable after becoming aware, notify and inform the Operator of the following, save always it shall only be under an obligation to do so:-

- (a) to the extent that the Operator is reasonably likely to be affected thereby; and
- (b) insofar as the Concessionaire is actually aware of such facts or circumstances; and
- (c) subject to the confidentiality provisions set out in any of the Project Agreements to which the Concessionaire is a party;

2.6.1 any breach or alleged breach of the Concession Agreement whether by the Corporation or the Concessionaire (including any persistent minor breach) and any "Warning Notice" (for the purpose of this Clause 2.6.1 such Warning Notice being that as may be issued to the Concessionaire under the Concession Agreement) and other notice to terminate or the occurrence of a Suspension Period (for the purpose of this Clause 2.6.1 as defined in Clause 63 of the Concession Agreement);

- 2.6.2 any Construction Change or Concessionaire Change Order and the effect and implications of the same;
- 2.6.3 any delays to the Actual Opening Date, any Delay Events and the length of any Concessionaire Delay Period;
- 2.6.4 the results of any audit or inspection of the Tramlink System carried out by the Corporation and any remedial work or change in operating procedures or management of safety critical aspects of operations required by the Corporation to be carried out to the Tramlink System;
- 2.6.5 the level and structure of fares to apply to the Tramlink System;
- 2.6.6 arrangements to introduce the Concessionaire's own tickets or passes;
- 2.6.7 any assignment of the Concession Agreement;
- 2.6.8 any Compensation Amounts and Financial Impact Sums and other relevant information in relation thereto provided by the Corporation;
- 2.6.9 any Compensation Event and any allegation of Discriminatory Legislation by the Concessionaire;
- 2.6.10 any breach of, notice served pursuant to or any other matter arising from the Tramlink General Agreement, the Off-Tram Revenue Agreement or the Financing Agreements;

and in each case shall consult with the Operator in respect thereof.

- 2.7 The Concessionaire shall notify the Operator as soon as practicable in respect of any matter arising from the Tramlink General Agreement to the extent that such matter affects the obligations of the Operator hereunder and shall consult with the Operator in respect thereof.
- 2.8 If either Party becomes aware that the other Party is in breach of any of the terms and conditions of this Agreement it shall as soon as practicable notify the other Party of such breach.

3. COMMENCEMENT OF AGREEMENT

3.1 Conditions precedent

The rights and obligations of the Parties under this Agreement shall be conditional upon, and accordingly shall have no force or effect until the satisfaction of all conditions precedent to the Concession Agreement being, for the avoidance of doubt, where such conditions precedent are satisfied by confirmations, only when such confirmations are given in accordance with the Concession Agreement in good faith or the Operator has agreed that the same may be amended or waived where such conditions precedent relate to the rights

and obligations of the Operator under this Agreement or to the Tramlink System, save in respect of the rights and obligations of the Parties under this Agreement which relate to the Preliminary Services which shall have immediate effect.

4. TERM OF AGREEMENT

4.1 The Term

Subject to Clause 4.2 this Agreement shall commence on the date hereof and shall terminate on the thirtieth anniversary of the Actual Opening Date unless this Agreement shall have been terminated earlier in accordance with the provisions of this Agreement.

4.2 Extension of the Term

4.2.1 No later than 2 years prior to the thirtieth anniversary of the Actual Opening Date the Parties shall make arrangements to meet and consider the terms (if any) upon which the Operator is willing to be engaged as operator of the Tramlink System after the thirtieth anniversary of the Actual Opening Date and the terms (if any) upon which the Concessionaire is willing to engage the Operator as operator of the Tramlink System after such date.

4.2.2 The Parties shall use all reasonable endeavours to meet to discuss such terms no later than two years prior to the thirtieth anniversary of the Actual Opening Date to ascertain whether there is a prospect of extending the term of this Agreement on its expiry.

5. REPRESENTATIVES

5.1 Concessionaire's Representative

The Concessionaire shall notify the Operator of the identity of the Concessionaire's Representative who is to act as the representative of the Concessionaire under and pursuant to this Agreement. The Concessionaire's Representative may by notice to the Operator appoint a temporary alternate in the event of his absence from the office for any reason. The Concessionaire may from time to time replace the Concessionaire's Representative and shall forthwith notify the Operator of the identity of any replacement Concessionaire's Representative.

5.2 Operator's Representative

The Operator shall notify the Concessionaire of the identity of the Operator's Representative who is to act as the representative of the Operator under and pursuant to this Agreement. The Operator's Representative may by notice to the Concessionaire appoint a temporary alternate in the event of his absence from the office for any reason.

5.3 Replacement of Operator's Representatives

The Operator may from time to time replace the Operator's Representative provided that the Operator shall only replace such person with a person who shall have been previously approved in writing by the Concessionaire (such approval not to be unreasonably withheld or delayed).

5.4 Authority

The Concessionaire's Representative and the Operator's Representative shall have full authority to act on behalf of his principal for all purposes in connection with this Agreement and (unless otherwise agreed) may represent the principal (accompanied by such other personnel as may be necessary) at any meeting in relation to the Services.

6. SERVICES

6.1 Preliminary Services

The Operator shall from the date of this Agreement until the commencement of the Mobilisation Period carry out the services set out in Part 1 of Schedule 1 and all other services which are necessarily ancillary to or are necessarily implied as part of those services.

6.2 Mobilisation Services

6.2.1.1 The Operator shall during the Mobilisation Period carry out all such preparation as may be necessary to enable it to provide the Services it is required to provide for the Actual Operating Date including the services set out in Part 2 of Schedule 1, and all other services which are necessarily ancillary to or are necessarily implied as part of those services.

6.2.1.2 The Concessionaire shall procure that the Operator is appointed as contractor to the Contractor for the purpose of providing drivers and operational staff required for commissioning and testing.

6.2.2 Where there is a delay to the programmed Actual Opening Date specified in the Construction Contract and providing the appropriate periods of notice required by Clause 7.1 of the Actual Opening Date have been given, then to the extent that such delay has been caused by the Operator in acting as Operator under this Agreement, but for the avoidance of doubt not in respect of any obligation in respect of Trams up to SAT 2, the Operator shall pay to the Concessionaire an amount equivalent to any loss suffered or incurred by the Concessionaire as a result of such delay which amount shall be determined by the Expert provided that in no event shall the liability of the Operator under this Clause exceed £1.25 million. The Concessionaire shall substantiate and mitigate its losses save that such obligation shall not require the Concessionaire to suffer any

adverse financial or other effect as a result of taking steps to so mitigate.

- 6.2.3 Where the Mobilisation Period continues for longer than 19 months then to the extent that such continuation has not been caused by the Operator in acting as Operator under this Agreement the Concessionaire shall pay to the Operator all costs or expenses incurred by the Operator as a result of such continuation in accordance with Part 7 of Schedule 2. The Operator shall cooperate with all reasonable requests of the Concessionaire to mitigate such costs and expenses and where such continuation is as a result of Force Majeure then Clause 23.7.1 shall apply in respect of such mitigation and costs in accordance with Clause 23.7.2 shall be paid.
- 6.2.4 If the Tramlink System is opened for the carrying of fare paying passengers after the SAT 2 have been commenced but before the Taking-Over Certificate is issued under the Construction Contract the Operating Period shall commence on the date that the Tramlink System is so opened and the Operator shall operate the Tramlink System in accordance with the terms of this Agreement. If such early opening, the non completion of any part of the Tramlink System or the failure of the Tramlink System to have achieved taking-over so that the Taking-Over Certificate is not issued and SAT 2 not completed has an impact on the cost to the Operator of operating the Tramlink System then such early opening, non completion or failure shall be treated as a change to the Tramlink System for the purposes of Clause 6.7.
- 6.2.5 The Concessionaire shall provide the Operator with all information it has which is necessary for the Operator to assess the effect of such early opening, non-completion, failure or change and shall procure that the Operator is permitted to attend, through the Concessionaire, in the procedures for issuing the Taking-Over Certificate, SAT 2 and Final Acceptance Tests.
- 6.2.6.1 The Concessionaire shall ensure that the Operator receives copies of all notices issued to it pursuant to the Construction Contract relating to the issue of the Taking Over Certificate including the Certificate itself and copies of any reasons for not issuing such Certificate and shall keep the Operator informed of all matters (whether minor or not) in respect of which the Project Works are not completed in accordance with the Specification.
- 6.2.6.2 The Concessionaire shall fully appraise the Operator in writing in the event that Project Works do not comply in all respects with the Specification and the Performance Specification including the consequences thereof and in the event that all of the commissioning, the Final Acceptance Tests including SAT 2, have not been completed and satisfied to the level required to meet the Specification and the Performance Specification including the

consequences thereof and will agree with the Operator in writing a method of dealing with such non-compliance including changes to the operating programme and operating procedures and or the Fees. In the absence of agreement the provisions of Schedule 9 shall apply.

- 6.2.6.3 The Concessionaire shall give to the Operator the information provided in accordance with Schedule 11 of the Construction Contract and shall in particular ensure that the Operator receives the monthly progress report together with all incorporated documents and the monthly notification of trial runs and performance tests and has the right granted to the Corporation and Lenders in respect of the matters referred to in paragraph 1(c) of Schedule 4 to the Construction Contract.

6.3 Achievement of Final Acceptance Tests

Where there is a delay to the date for the achievement of the Final Acceptance Tests as a result of a breach of the Operator's obligations under this Agreement, then without prejudice to the rights of the Concessionaire under Clauses 16 and 24 the Operator shall pay to the Concessionaire an amount of £1,340 for each day that the Final Acceptance Tests remain unpassed after the date such tests would otherwise have been passed save for such breach but only to the extent that the delay is caused by the Operator and to the extent that all or any part of the payment contingent upon completion of milestone SB12 in Schedule 1 of the Concession Agreement is not received under the Concession Agreement on the basis that such amounts is:-

- 6.3.1 a genuine pre-estimate of all or part of the loss suffered by the Concessionaire based upon interest or other amounts payable to the Contractor under the Construction Contract for failure to make such payment; and
- 6.3.2 the only amounts payable by the Operator for delay in achieving the Final Acceptance Tests due to a breach of the Operator's obligations under this Agreement.

6.4 Operating Services

- 6.4.1 The Operator shall during the Operating Period operate the Tramlink System and perform all operational obligations of the Concessionaire under the Concession Agreement as specified in the relevant parts of the Operator Specification where obligations are imposed therein on the Operator including the services set out in Part 3 of Schedule 1 but subject to the limitations and assumptions set out therein, and all other services which are necessarily ancillary to or are necessarily implied as part of those services and shall assume the risks arising from the economic conditions prevalent in the area in which the Tramlink System is to be located as such conditions relate to such Services provided that the obligation assumed by the Operator pursuant to this Clause 6.4 shall not

include the performance of or responsibility or liability for the following activities or the consequences of any of the following events save to the extent expressly set out in this Agreement and save to the extent that such liability arises from a breach of the terms and conditions of this Agreement by the Operator:-

- (a) defects in the design and construction of the Tramlink System;
- (b) failures of Existing Structures (as defined in the Construction Contract) on the Tramlink System;
- (c) the O&M Manuals save to the extent that such liability is caused by a breach of the Operator's obligation hereunder in contributing to or commenting on such O&M Manuals;
- (d) compliance with operating noise levels and electro-magnetic fields;
- (e) compliance with all planning requirements and other licences and consents to implement the Project Works and operate the Tramlink System;
- (f) any matter with respect to land including the right to occupy land;
- (g) insurance management;
- (h) traffic management in the London Borough of Croydon.

6.4.2 The Operator shall not be obliged to carry out its obligations under this Agreement to the extent there are not granted to it or made available to it all rights necessary to enable it to do so (including rights to access to all or any part of the Site or where the Site is subject to third party rights or obligations in favour of third parties or restrictions which affect performance of the Services) save to the extent that it is obliged to procure the granting of such rights pursuant to Clause 6.4.3. To the extent that such rights are not granted the costs and expenses of the Operator incurred as a result of the same shall be dealt with in accordance with Clause 6.7.1.

6.4.3 As between the Operator and the Concessionaire, the Concessionaire shall be responsible for obtaining all consents and licences which are necessary to enable the performance of this Agreement save for licences required by the Operator to enable it to provide Mobilisation Services up to SAT 2 and to enable it to provide the Services after SAT 2 have been passed which licences shall be obtained by the Operator. The Operator shall assist the Concessionaire in obtaining such consents and licences in accordance with Clause 12.6.

6.5 Infrastructure Maintenance Services

- 6.5.1 On receipt of the first Infrastructure Maintenance Plan from the Contractor in accordance with Clause 20.1.2 the Operator and the Concessionaire shall discuss the most efficient and economical basis for carrying out the Major Maintenance of the Infrastructure.
- 6.5.2 The Operator shall perform the Routine Maintenance Services in accordance with the terms and conditions of this Agreement and which shall be provided for in the following manner:-
- (a) the Operator and the Concessionaire shall within 12 months of the date hereof agree the Routine Maintenance Specification for the Tramlink System during the Operating Period in accordance with Schedule 5 and the Operator shall enter into sub-contracts for the performance of such Routine Maintenance in accordance with the procedure set out in Schedule 5;
 - (b) the Concessionaire agrees to pay to the Operator in respect of such Routine Maintenance the sum due under each Routine Maintenance sub-contract when due thereunder together with an annual sum equal to the higher of £30,000 or 4% of the aggregate of all amounts payable under such contracts (excluding any deductions or set-off) per annum. Such Routine Maintenance Fee shall be paid by equal monthly instalments during each year plus a balancing payment following the year end.
- 6.5.3 The Operator shall in any event during the Operating Period manage and monitor the performance by each of the Maintenance Contractors appointed by the Operator or the Concessionaire to carry out Routine or Major Maintenance of its obligations under the Maintenance Contracts and provide the infrastructure maintenance management services set out in Part 4 of Schedule 1 and all other services which are necessarily ancillary to or are necessarily implied as part of those Services.
- 6.5.4 Other than in respect of Routine Maintenance the Operator shall propose the identity of each Maintenance Contractor and the terms of each Maintenance Contract and the Concessionaire shall approve each such Maintenance Contractor (such approval not to be unreasonably withheld or delayed).

6.6 Train Maintenance Services

- 6.6.1 The provisions of Part 5 of Schedule 1 shall apply.
- 6.6.2 In the event that this Agreement is terminated other than by reason of the termination of the Concession Agreement or default of the Tram Maintenance Contractor then the Concessionaire shall, in its absolute discretion, either (a) assume the rights and obligations of

the Operator under the Tram Maintenance Contract pursuant to the terms of the Tram Maintenance Step-In Agreement upon assignment of the same to it by the Operator or (b) re-imburse the mitigated costs and expenses of the Operator incurred as a result of it terminating the Tram Maintenance Contract.

6.7 Additional Services

This Clause 6.7 shall apply where either this Agreement specifies that the Operator is entitled to additional costs or expenses or where the Concessionaire requests the Operator from time to time to carry out services additional to those specified in this Agreement or omit services specified in this Agreement or otherwise change the Services provided that this Clause shall not apply to changes in Tram Service Levels to which Clause 16 shall apply or where this Agreement provides otherwise. Where the Concessionaire requests the Operator to so provide or omit services all such requests shall be in writing and the Operator shall comply with any such request in accordance with this Clause.

6.7.1 Upon the issue of such a request or where there is an entitlement to additional costs or expenses the Operator and the Concessionaire shall negotiate in good faith and shall use all reasonable endeavours to reach agreement on the basis and terms of provision of Additional Services within a reasonable timescale. In the event that no agreement is reached or there is an entitlement to additional costs and expenses which have been incurred the Operator shall provide free of charge a quotation based on substantiated costs required to carry out such Additional Services in an economic and efficient way together with profit (including any group management charges) not to exceed ██████% as appropriate to the Additional Services required for carrying out of the proposed Additional Services which shall show, as requested by the Concessionaire:-

6.7.1.1 the proposed revision to the Fees specified in Clause 2¹ and/or

6.7.1.2 a lump sum;

in each case with an itemised breakdown and calculation of the revised Fees or lump sum. The Operator shall provide the above with all reasonable speed and in any event not less than 18 Business Days following the date it is clear no agreement can be reached.

6.7.2 The Operator and the Concessionaire shall negotiate in good faith and shall use all reasonable endeavours to reach agreement on the basis and terms of provision of any Additional Services within a reasonable timescale. The Operator shall if so required by the Concessionaire (and at the Concessionaire's expense) at the time of negotiation for such Additional Services, obtain competitive tenders on terms and from a list of tenderers previously approved by the Concessionaire (such approval not to be unreasonably withheld) in

respect thereof and shall provide the Concessionaire with copies of any bid documentation and evidence that competitive tenders have been requested.

6.7.3 The Concessionaire may either:-

6.7.3.1 accept the quotation provided by the Operator; or

6.7.3.2 require further clarification as to the proposed quotation, and the Parties shall use all reasonable endeavours to reach an agreement on the appropriate revision to the Fees or lump sum for the Additional Services; or

6.7.3.3 reject the proposed quotation and notify the Operator that it does not wish the Operator to carry out the proposed Additional Services.

6.7.4 Where the Concessionaire requires the Operator to omit any part of the Services the same procedure shall be applied as set out in Clause 6.7.1, 6.7.2 and 6.7.3 (*mutatis mutandis*) in order to determine the resulting reduction in the Fees (including a proportionate reduction in Operator's profit).

6.7.5 If the Concessionaire and the Operator are unable to agree on the terms on which the Operator is prepared to provide any Additional Services, the Concessionaire shall, having complied with Clauses 6.7.2 and 6.7.8, have the right to engage such other person or persons to perform the Additional Services on such terms as the Concessionaire and such person may agree. The Concessionaire shall obtain the approval of the Operator as to the identity of any such other person and the basis upon which they may be permitted access to the Tramlink System or provide their services to the Tramlink System but such approval may only be withheld where there are reasonable grounds for believing that such person is not acceptable to the Operator for safety reasons. The Concessionaire shall reimburse to the Operator all additional costs or expenses incurred by it as a result of the appointment of such other person and such Additional Services in accordance with Clause 6.7.1.

6.7.6 Where Sub-Clause 6.7.3.1 applies or the Concessionaire accepts a revised quotation under Sub-Clause 6.7.3.2 the Fees shall be amended accordingly and Clause 21.10 shall apply. The Fees agreed for such Additional Services shall be re-based in accordance with Clause 21.2.2 and shall be Indexed in accordance with Clause 21.2.1.1 where appropriate save where paid as a lump sum.

6.7.7 Where the Additional Services require amendments to the Infrastructure Maintenance Plan, the Tram Maintenance Plan or the Operating Plan such amendments shall be made in accordance with Clause 20.6.

6.7.8 Where negotiating such Additional Services, the Parties shall agree in writing upon the amendments (if any) required to be made to this Agreement and any other related agreement or arrangement to reflect such Additional Services. In the absence of any written agreement no such amendment shall be made pursuant to this Clause 6.7.8.

6.7.9 Where the procedures in this Clause 6.7 cannot be followed completely because costs have already been incurred then such costs shall be re-imbursed in accordance with the principles set out in Clause 6.7.1.

7. ACTUAL OPENING DATE

7.1 Notice of Actual Opening Date

The Concessionaire shall give the Operator no less than 6 weeks notice of the programmed Actual Opening Date and no less than 10 weeks notice in the event that the programmed Actual Opening Date is to be advanced.

7.2 Extent of available access to the Site

During the period between the Handover Date (as defined in the Concession Agreement) and the commencement of the Licence Period the Concessionaire shall make available to the Operator (and/or its contractors any sub-contractors of any tier and its and/or their work persons, servants and agents) the relevant part or parts of the Site to which the Operator requires access (subject to clause 7.3 below) provided that:-

7.2.1 the Operator shall consult with the Concessionaire regarding the relevant part or parts of the Site to which the Operator requires access prior to notifying the Contractor in accordance with clause 7.2.2 below and the Operator shall take due account of any comments the Concessionaire may have; and

7.2.2 the Operator shall then notify the Contractor that it (and/or its contractors any sub-contractors of any tier and its/or their work persons, servants and agents) wish(es) to access the relevant part or parts of the Site on a date which is not less than seven days hence and the Concessionaire shall procure that the Contractor shall give consent to such access.

7.3 Compliance with Construction Site Regulations Prior to the Mobilisation Period

Prior to the commencement of the Mobilisation Period the Operator shall procure that any of its personnel (or those of its contractors or sub-contractors of any tier or its (or their) work persons, servants and agents) present on the Tramlink System comply with any regulations and instructions made or given by the Contractor pursuant to the Construction Contract for the safe and efficient construction and Commissioning of the Tramlink System and in

addition the Operator shall procure that any such personnel work persons servants and agents shall comply with the conditions set out in Part 2 of Schedule 16.

8. MOBILISATION

8.1 Mobilisation Period

The Mobilisation Period shall commence on the date specified in the Construction Programme. The Concessionaire shall notify the Operator as soon as the Concessionaire becomes aware of any circumstances which, in the reasonable opinion of the Concessionaire may require the Mobilisation Period to commence on a date which is different from that set out in the Construction Programme. In any event it shall give the Operator no less than 6 weeks notice of the date on which the Mobilisation Period shall commence.

8.2 Operating and Maintenance Procedures

8.2.1 The Concessionaire shall in accordance with the Construction Programme provide to the Operator the O&M Manuals and the maintenance plan prepared by the Contractor pursuant to the Construction Contract. The Operator shall within eight weeks of receiving such O&M Manuals provide to the Concessionaire its written comments on the same having reviewed such in accordance with Good Industry Practice. The Operator and the Concessionaire shall consult with each other and agree, acting reasonably, any amendments which they require the Contractor to make to the O&M Manuals and which the Concessionaire is entitled to require under the terms of the Construction Contract.

8.2.2 Within 12 weeks of receipt of the finally approved O&M Manuals, the Operator shall prepare and submit to the Concessionaire draft O&M Procedures setting out details of the procedures which are necessary for the operation and maintenance of the Tramlink System in accordance with this Agreement. The Concessionaire shall be entitled to require the Operator to make such amendments to the draft as the Concessionaire may reasonably require in order that they shall comply with Clause 8.2.3 and the Operator shall issue the O&M Procedures as so amended.

8.2.3 The O&M Procedures shall be drawn up so as to:-

- (a) comply with the Safety Case;
- (b) provide the Services in accordance with this Agreement; and
- (c) be compatible with the O&M Manuals, the Maintenance Plan and the Operator Specification.

8.2.4 Following the adoption of the O&M Procedures pursuant to Clause 8.2.2 the Concessionaire shall be entitled to require the Operator to

make such reasonable amendments, modifications or supplements to the O&M Procedures, either generally or in any specific instance, as are required in order that the O&M Procedures shall comply with Clause 8.2.3. The Concessionaire shall consult with the Operator before making any such requirement.

8.2.5 Following the adoption of the O&M Procedures pursuant to Clause 8.2.2 the Operator shall also be entitled to make reasonable amendments, modifications or supplements to the O&M Procedures provided that the Operator requests the prior consent of the Concessionaire to such amendments, modifications or supplements and the Concessionaire is reasonably satisfied that such amendments will not prevent the O&M Procedures from complying with Clause 8.2.3. The Concessionaire's consent to any amendment, modifications or supplements proposed by the Operator shall not be unreasonably withheld or delayed.

8.2.6 The Operator shall, where required by the Concessionaire, prepare a report setting out the cost implications of any changes made pursuant to Clause 8.2.4 and 8.2.5. Any changes made pursuant to Clause 8.2.4 and 8.2.5 shall be treated as Additional Services unless such changes are required because of a failure by the Operator to comply with this Agreement.

8.2.7 If the Concessionaire introduces different Infrastructure or Trams to the Tramlink System after the Actual Opening Date which requires the introduction of new O&M Manuals and which thereby affects the existing and current O&M Procedures as drawn up or the manner in which the Operator performs its Services under this Agreement then Clause 6.7 shall apply. Where the effect of the introduction of new O&M Manuals reduces the costs or expenses of the Operator in performing its obligations under this Agreement then such reduction to be determined in accordance with Clause 6.7 shall be deducted from the Operating Fee.

8.3 Licence to use the Site

8.3.1 Subject to the Operator complying with its obligations in Part 2 of Schedule 16 the Operator shall have the right to use the Site (excluding the Depot) during the Licence Period for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement.

8.3.2 The licence to use the Site (excluding the Depot) contained in Clause 8.3.1 is granted subject to the provisions of the Act which the Operator hereby covenants to comply with insofar as it relates to the provision of the Services under this Agreement and are not required to be complied with by the Concessionaire by virtue of the other provisions of this Agreement.

8.3.3 The Concessionaire and the Operator agree that

- (a) the right to use granted pursuant to Clause 8.3.1 shall determine on termination of the Concession (as defined in the Concession Agreement) in accordance with Part 11 of the Concession Agreement;
- (b) the Operator's right to use the Site (excluding the Depot) will be as licensee only and nothing shall confer on the Operator any greater interest than that of licensee and in particular the licence granted by Clause 8.3.1 shall not create any relationship of landlord and tenant;
- (c) the benefit of the licence granted by Clause 8.3.1 is personal to the Operator, its contractors, any sub-contractors of any tier and its and/or their work persons, servants and agents and is not assignable and the rights given in Clause 8.3.1 may only be exercised by the Operator, its contractors and sub-contractors of any tier and its and/or their work persons servants and agents.

8.3.4 Notwithstanding the other terms of this Clause 8.3 (and Part 2 of Schedule 16) it is agreed that, prior to the Actual Opening Date, all costs and expenses incurred in maintaining and running the Site (excluding the Depot) including rates, police and vandalism and cleaning shall be the responsibility of the Concessionaire. Thereafter such cost and expenses shall remain the responsibility of the Concessionaire save and to the extent only that any of the same shall become the responsibility of the Operator by virtue of the other terms of this Agreement.

8.4 Occupation of the Depot

8.4.1 Subject to the Operator complying with its obligations in Part 2 of Schedule 16 the Operator shall have the right during the Licence Period to enter on to remain on and occupy those parts of the Depot over which the Concessionaire has been granted a licence by the Corporation in accordance with Schedule 3 to the Concession Agreement for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement.

8.4.2 The licence to occupy the Depot contained in Clause 8.4.1 is granted subject to the provisions of the following which the Operator hereby covenants to comply with:-

- (a) the Sub-Lease as if the same had been granted (so far as its provisions are applicable to a licence);

- (b) the Act insofar as it relates to the provision of the Services and is not required to be complied with by the Concessionaire by virtue of the other provisions of this Agreement;
- (c) Clauses 6(4) and 7(7) of the Agreement between London Regional Transport and the London Borough of Sutton dated 1st March 1993 (compliance with which shall be treated as part of Routine Maintenance Services).

8.4.3 The Concessionaire and the Operator agree that:-

- (a) the right to occupy granted pursuant to Clause 8.4.1 shall determine on termination of the Concession in accordance with Part 11 of the Concession Agreement;
- (b) the Operator's occupation of the Depot will be as licensee only and nothing pending the grant of the Sub-Lease, shall confer on the Operator any greater interest than that of licensee and particular the licence granted by Clause 8.4.1 shall not create any relationship of landlord and tenant;
- (c) the benefit of the licence granted by Clause 8.4.1 is personal to the Operator, its contractors and sub-contractors of any tier and its and/or their work persons, servants and agents and is not assignable and the rights given in Clause 8.4.1 may only be exercised by the Operator, its contractors and sub-contractors of any tier and its and/or their work persons servants and agents.

8.4.4 The Concessionaire agrees and undertakes with the Operator during the Licence Period, without prejudice to the other terms of this Clause 8.4 to perform the covenants in the Sub-Lease as if the Sub-Lease had already been granted.

8.4.5 Notwithstanding the other terms of this Clause 8.4 (and Part 2 of Schedule 16) it is agreed that, during the Licence Period, all costs and expenses incurred in maintaining and running the Depot including rates, police and vandalism and cleaning shall be the responsibility of the Concessionaire save that with effect from the Actual Opening Date:-

- (a) the Operator will be responsible for the service charges in respect of the following services:-
 - low voltage electricity;
 - gas.
 - telecommunications;

- water and sewerage; and
- (b) the Operator will be responsible for:-
- cleaning of the office premises at the Depot internally and externally (including the windows thereof);
 - cleaning the remainder of the Depot (including the service roads and car park);
 - de-icing and snow clearance at the Depot

8.5 Sub-Lease grant

8.5.1 The Concessionaire shall within 10 working days of the plans for the Land Lease having been approved or determined in accordance with paragraphs 7.1 - 7.4 of Part 1 of Schedule 3 to the Concession Agreement, submit to the Operator for approval proposed demise plans for the Sub-Lease. Such plans shall be appropriate for the Sub-Lease and shall be either in the same form as the relevant plans approved or determined as aforesaid or otherwise consistent in all respects with such plans.

8.5.2 The Operator's approval of such plans shall not be unreasonably withheld and if the Operator shall not have objected to them within 20 working days of receipt then such plans shall be deemed to be approved. The Concessionaire and the Operator shall each use all reasonable endeavours to agree the form of the Sub-Lease as soon as reasonably practicable following the submission of such plans by the Concessionaire pursuant to Clause 8.5.1. Any dispute between the parties as to the demise plans for the Sub-Lease or the form of the Sub-Lease shall be determined under the provisions of Schedule 9, save that for these purposes the Nominating Authority means, in respect of any dispute regarding such plans, The Royal Institution of Chartered Surveyors and, in respect of any dispute regarding the form of the Sub-Lease, The Law Society and, in respect of any dispute regarding such plans, the decision of the Expert shall be final and binding on the parties (save in the case of manifest error).

8.5.3 Within 20 working days of the later of:-

- (a) the demise plans for the Sub-Lease being approved or determined;
- (b) the form of the Sub-Lease being agreed or determined;
- (c) the Land Lease being completed in accordance with the Concession Agreement; and
- (d) the grant of a court order authorising the exclusion of the provisions of sections 24-28 (inclusive) of Part II of the

Landlord and Tenant Act 1954 (as amended) from the Sub-Lease

the Concessionaire shall grant and the Operator shall accept, the Sub-Lease of the Depot or such part thereof as shall be included in the land and premises demised to the Concessionaire by the Land Lease.

8.5.4 In the event (and if applicable on each occasion) that the Concessionaire shall complete a Supplemental Lease, pursuant to paragraphs 7.7 or 7.8 of Part 1 of Schedule 3 to the Concession Agreement, of any part or parts of the Depot not included in the Sub-Lease completed pursuant to Clause 8.5.3, then the Concessionaire shall:

(a) within 10 working days of completing each such Supplemental Lease, notify the Operator accordingly; and

(b) within 20 working days of service of such notice pursuant Clause 8.5.4(a), grant (and the Operator shall accept) a Supplemental Sub-Lease of the relevant part or parts of the Depot and the Operator shall contemporaneously execute and deliver to the Concessionaire a counterpart of that Supplemental Sub-Lease.

8.5.5 The Concessionaire confirms that it will, at the earliest practicable date, exercise its right to require the grant of a Supplemental Lease pursuant to the said paragraph 7.8 of the Concession Agreement in respect of any part or parts of the Depot not included in the Sub-Lease completed pursuant to Clause 8.5.3.

8.5.6 The Concessionaire shall not itself create any new rights relating to the Site and/or the Depot which would affect the grant of the Sub-Lease (or any Supplemental Sub-Lease) to the Operator or which would prejudice the licences granted pursuant to Clause 8.3.1 a Clause 8.4.1.

8.6 Title

8.6.1 The Concessionaire shall provide to the Operator:-

(a) certified copies of all documents of title, conveyances, transfers and other instruments provided to it which relate to the Depot pursuant to paragraph 9.1 of Part 1 of Schedule 3 to the Concession Agreement within fifteen working days of receipt thereof; and

(b) certified copies of the Land Lease and any documents referred to therein not provided pursuant to Clause 8.6.1(a) within fifteen working days of the completed Land Lease being stamped in accordance with Clause 8.6.2.

- 8.6.2 The Concessionaire shall procure that the Land Lease is stamped with any applicable ad valorem stamp duty and a PD stamp as soon as reasonably practicable after being completed and in accordance with the relevant statutory requirements.
- 8.6.3 The Concessionaire shall use all reasonable endeavours to register itself at H M Land Registry with absolute leasehold title in respect of the premises demised by the Land Lease and any Supplemental Lease, granted pursuant to the Concession Agreement as soon as reasonably practicable following completion of the Land Lease or any such Supplemental Lease so as to enable the Operator to similarly register itself with absolute leasehold title in respect of the premises demised by the Sub-Lease and any Supplemental Sub-Lease.
- 8.6.4 The Concessionaire agrees at the Operator's cost to use all reasonable endeavours to provide such assistance as the Operator may reasonably require to deal with any requisitions it may receive from H M Land Registry in respect of its application to register the Sub-Lease and any Supplemental Sub-Lease at H M Land Registry including (without limitation) providing to the Operator, on completion of the Sub-Lease and any Supplemental Sub-Lease, certified copies of all consents required from any chargee or chargees to such completion.
- 8.6.5 In so far as they may be relevant to the premises demised by the Sub-Lease and any Supplemental Sub-Lease the Concessionaire shall place its land certificate(s) or cause its charge certificate(s) to be placed on deposit at H M Land Registry as soon as reasonably practicable after completion of the registration of the Land Lease and any Supplemental Lease granted pursuant to the Concession Agreement, to meet the Operator's applications for registration of the Sub-Lease and any Supplemental Sub-Lease and shall on each occasion notify the Operator of the allocated deposit number.
- 8.6.6 The Operator shall not incur any liability hereunder to the extent that it is unable properly to carry out the Services and its other obligations hereunder due to:-
- (a) a failure on the part of the Concessionaire to make the Site (or any part thereof) available to the Operator at the times referred to in Clause 7.2 or at any time or times during the Licence Period; or
 - (b) the Site being subject to rights and/or obligations in favour of third parties or restrictions whether contained or referred to in the Land Lease or otherwise; or
 - (c) the Site or any part thereof not having the benefit of the rights necessary to provide the Services and/or to comply with such other obligations or any of them.

9. AVAILABILITY OF TRAMLINK SYSTEM

9.1 Concessionaire's obligation to make available

- 9.1.1 The Concessionaire shall ensure that at Actual Opening Date the Infrastructure and the Trams shall comply with the Specification and Performance Specification, and meet all Tramlink Applicable Requirements and the Safety Case provided that the Parties acknowledge that the issuing of the Taking-Over Certificate shall be conclusive thereto.
- 9.1.2 The Concessionaire shall ensure that throughout the Term the Infrastructure is made available to the Operator to a standard which allows the Operator to operate the Tramlink System to the Operator Specification.
- 9.1.3 The Concessionaire shall ensure that throughout the Term the Infrastructure meets all Tramlink Applicable Requirements and ' Safety Case.
- 9.1.4 With effect from the Actual Opening Date, the Concessionaire shall, in accordance with the terms of this Agreement, subject to the requirements of the Tramlink General Agreement and Possessions make the Tramlink System available to the Operator for the provision of all the Services other than the Preliminary and Mobilisation Services.
- 9.1.5 The Operator shall supply the equipment it requires to perform its obligations under this Agreement as specified in Schedule 14. The Operator shall use all equipment supplied by the Concessionaire in accordance with Good Industry Practice.

9.2 Possessions

The Operator shall make the Infrastructure available for such periods during non-operational or operational hours for Possessions:-

- (a) in the event that the Concessionaire is required to give Possessions pursuant to its obligations under any Project Agreement;
- (b) otherwise as may be reasonably required by prior written notice from the Concessionaire; or
- (c) as may be required for the purpose of Infrastructure Maintenance.

The Operator shall, in determining when Possessions are to take place pursuant to Clause 9.2(c), whenever possible schedule such for periods during which the Tramlink System is non-operational taking into account noise, nuisance and other relevant matters. Without prejudice to Clause 9.2(a), (b) or (c), the Parties shall agree the basis for Possessions.

9.3 Replacement Bus Service

- 9.3.1 Where any part or parts of the Infrastructure is required to be made available for scheduled Possessions, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate a replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage and operate such service and the Concessionaire shall bear the costs of the same.
- 9.3.2 If as a result of an unplanned event affecting the Tramlink System not caused as a result of a breach by the Operator of its obligations hereunder, a replacement bus service is required to be operated, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate such replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage and operate such service and the Concessionaire shall bear the costs of the same.
- 9.3.3 If as a result of an unplanned event affecting the Tramlink System caused as a result of a breach by the Operator of its obligations hereunder, a replacement bus service is required to be operated, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate such replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage, operate such service and bear the costs of the same.
- 9.3.4 Where, as a result of a default by the Tram Maintenance Contractor under the Tram Maintenance Contract, the Concessionaire decides that a replacement bus service is required to be operated by the Operator then the Operator shall organise, manage and operate such service and bear the costs of the same. Where the Operator's costs in operating such replacement bus service are less than the amounts it recovers from the Tram Maintenance Contractor by reason of such default pursuant to Clause 22.2.2 of and Schedule 4 to the Tram Maintenance Contract then the Operator shall pay such excess amount to the Concessionaire. Where the Operator's costs in so operating are more than the amounts it recovers from the Tram Maintenance Contractor as aforesaid then the Concessionaire shall re-imburse the Operator such shortfall amount save always that such costs shall not include any element of profit. Sums payable to the Operator under this Clause 9.3.4 shall be determined on the same basis as is set out in Clause 6.7.
- 9.3.5 All replacement bus services shall be sufficient to meet actual demand and shall be provided in accordance with Good Industry Practice.

9.4 Co-operation of the Concessionaire's Contractors

The Concessionaire shall use reasonable efforts to procure that the Contractor and the Maintenance Contractors co-operate with the Operator as the Operator may reasonably require in order to facilitate the performance by the Operator of the Services.

9.5 Extensions to the Tramlink System

For the avoidance of doubt, nothing in this Agreement shall prevent the Concessionaire from constructing or procuring the construction of extensions to the Tramlink System and the Operator shall, subject to agreement with the Concessionaire as to the basis and terms of any Additional Services, cooperate with regard to the planning, implementation and operation of any extensions.

9.6 Increased cost of maintaining Trams

If the Operator incurs additional costs in providing Tram Maintenance Service as a result of the Concessionaire failing to meet its obligation under Clause 9.1 other than due to default by the Operator hereunder then the Operator shall, for the purposes of determining the amount of such additional costs and expenses which shall be reimbursed in accordance with Clause 6.7, produce a report demonstrating that the cost of providing Tram Maintenance Services has increased as a result of such failure by the Concessionaire. The Operator shall take all reasonable measures to mitigate the effect of this Clause 9.6.

10. BREAKDOWNS/EMERGENCIES

10.1 Operator's obligation to perform

The Operator shall subject to the requirements of the emergency services and the legal requirements of other relevant authorities (if any) undertake all breakdown/emergency response on the Tramlink System. If the Concessionaire becomes aware of any incidents requiring breakdown/emergency response shall notify the Operator immediately.

10.2 Breakdown/Emergency Response

Breakdown/emergency response is the initial response to a failure of, damage to or other incident occurring on the Tramlink System which affects or, in the Operator's reasonable opinion, is likely to affect Tram Service Levels on the Tramlink System. Breakdown/emergency response comprises the following activities and all other activities which are necessarily ancillary to or necessarily implied as part of these activities:-

- 10.2.1 initial reporting of the occurrence of a failure, damage or other incident by the Operator to the Control Centre unless already reported;

- 10.2.2 where necessary attendance at the site of the occurrence by the Operator's staff to assess the cause of the problem;
- 10.2.3 determination by the Operator of the appropriate course of action;
- 10.2.4 where relevant possible and safe and within the capabilities immediately available to the Operator, rectification of the problem in situ or where not relevant possible and safe removal of the Tram to the Depot or to any other place which causes minimum disruption to the operation of Tram Service Levels on the Tramlink System;
- 10.2.5 implementation by the Operator of measures to overcome and/or mitigate the effect to Tram Service Levels;
- 10.2.6 where relevant possible and safe and within the Operator's immediately available capabilities, implementation by the Operator of temporary repairs;
- 10.2.7 notification of the emergency services in the event of an accident requiring their presence;
- 10.2.8 notification of the ambulance services in the event of illness on the Tram where ambulance services are necessary;
- 10.2.9 call out of the relevant Maintenance Contractors in the event of a pantograph, track, signal, power or other fault or incident requiring their attention.

Breakdown/emergency response does not require the performance by the Operator of repairs except where these are of a minor or trivial nature or otherwise part of the Operator's obligations under this Agreement.

10.3 Notification to Concessionaire

Except where the Concessionaire has notified the Operator in accordance with Clause 10.1, the Operator shall notify the Concessionaire's Representative 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 Breakdown/Emergency Response or in accordance with any other notification procedure the Parties may otherwise agree in writing.

10.4 Concessionaire Attendance

Representatives of the Concessionaire shall be entitled to attend the site of any incident in order to consult on the appropriate measures to be taken to restore normal Tram Service Levels and to observe any actions taken by the Operator. As soon as practicable following the incident, the Operator 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.

10.5 Costs of Breakdown Emergency Response

Save to the extent that the Concessionaire is in breach of its obligations pursuant to Clauses 9.1 and 11.1 the Operator shall not be entitled to recover from the Concessionaire its additional costs and expenses incurred in complying with its obligations under this Clause 10.

10.6 Tram Maintenance Contractor Breakdown Emergency Response

The Operator shall not be in breach of Schedule 4 to the extent that such breach is caused by the Tram Maintenance Contractor having to provide assistance pursuant to Clause 10.1.1 of the Tram Maintenance Contract unless the need to provide such assistance has arisen as a result of any breach by the Operator of its obligations under this Agreement and/or by the Tram Maintenance Contractor of its obligations under the Tram Maintenance Contract.

11. REPAIR OF FAILURES AND DAMAGES AND SPARE PARTS

11.1 Concessionaire's obligation to repair

The Concessionaire shall as soon as practicable effect the repair of defects in, failures of or damage to the Infrastructure other than such repairs required to be undertaken as part of the Routine Maintenance Services. The Concessionaire shall effect all such repairs at its own cost but without prejudice to its rights against the Operator hereunder. The Concessionaire shall liaise with the Operator in relation to any such repair.

11.2 Standard of repairs

All repairs to the Infrastructure shall be carried out by the Concessionaire to a standard that meets the obligations of the Concessionaire set out in Clause 9 where, in the reasonable opinion of either Party it is uneconomic, unsafe or impractical in which event the relevant items shall be replaced or alternative arrangements shall be agreed between the Parties.

11.3 Temporary repairs

Where necessary the Concessionaire shall be entitled to carry out temporary repairs to failures or damage to the Infrastructure subject, where necessary, to obtaining the prior approval of all appropriate regulatory authorities. All temporary repairs shall be fully repaired at the earliest opportunity.

12. SAFETY REGULATORY AND ENVIRONMENTAL

12.1 Safety Management

The Concessionaire shall be responsible for establishing the Safety Case and all matters relating to safety on the Tramlink System (including liaison with HMRI) save that the Operator shall be responsible for all safety matters related to the performance of the Services and shall manage on behalf of the Concessionaire all safety requirements related to the Tramlink System. The

Operator shall employ an appropriate safety management system which shall include one or more competent persons to be responsible for the management of such safety matters including the following aspects:-

- 12.1.1 where appropriate developing and promulgating safety procedures and providing all reasonable assistance to the Concessionaire for the purposes of agreeing these with the relevant regulatory authorities;
- 12.1.2 defining specific safety measures for particular activities, jobs, and sites and producing method statements on safety aspects;
- 12.1.3 producing safety documentation;
- 12.1.4 defining and reporting on tests and trials needed to demonstrate safety;
- 12.1.5 performing safety analyses and quantified risk assessments;
- 12.1.6 reporting on safety matters and accident statistics to the Concessionaire, the Corporation, the London Boroughs of Merton, Sutton, Croydon and Bromley, HSE, and HMRI as appropriate;
- 12.1.7 training the Operator's personnel and, to an appropriate level, the Concessionaire's directly employed personnel on all safety matters and ensuring relevant staff of sub-contractors of the Operator of any tier have adequate safety procedures and have received sufficient training to enable them to carry out their functions with respect to the Tramlink System safety;
- 12.1.8 performing safety inspections, audits and spot checks on its own and sub-contractors' personnel;
- 12.1.9 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 Operator's organisation and shall have sufficient authority to ensure that safety requirements are complied with by all of the Operator's and its sub-contractors' personnel.

12.2 Safety on the Tramlink System

- 12.2.1 The Operator shall deliver a safety plan in respect of the operation of the Tramlink System (other than in respect of the Trams) to the Concessionaire before the Actual Opening Date which shall comply with all Applicable Requirements and with the other requirements of the Specification in respect thereof. The Operator shall agree the safety plan so delivered with the Concessionaire, whose reasonable requirements shall be complied with and the Concessionaire shall, following such agreement, approve the safety plan.

12.2.2 The Concessionaire shall deliver a safety plan in respect of the Trams to the Operator before the Actual Opening Date. The Operator shall agree the safety plan so delivered with the Concessionaire and the Operator shall, following such agreement, approve the safety plan.

12.3 Audit of safety procedures

12.3.1 The Operator shall allow the Concessionaire and the Corporation from time to time after the Actual Opening Date on reasonable notice (unless either the Concessionaire or the Corporation have good cause to require an immediate inspection) to enter upon, audit and inspect the Tramlink System, without disrupting the operation of the Tramlink System, to ensure the Concessionaire's and the Operator's obligations in respect of the operation and maintenance of the Tramlink System are being discharged in accordance with the safety requirements of this Agreement.

12.3.2 In the event that any such audit of the safety aspects of the Tramlink System or any inspection reveals:-

(a) any remedial work; or

(b) any change in operating practices, management or other safety critical aspects of operations,

necessary in either case for the safe operation of the Tramlink System then the Concessionaire shall after consultation with the Operator require the Operator to carry out such remedial work or implement the necessary change in operating practices, management or other safety critical aspects of operations for which the Operator is responsible under this Agreement in each case as soon as reasonably practicable having regard to the nature of the matter and the risks to safety of persons. To the extent that such a change in the Services or how they are provided is necessary because the Operator has breached this Agreement or there has been a change in Good Industry Practice in relation to the safety aspects of the Services then the cost of implementing the necessary change in the Services or how they are provided shall be borne by the Operator otherwise save as provided in Clause 12.3.3 such costs shall be met by the Concessionaire save to the extent that the Operator is required to bear them under Clause 31. If the Operator disputes the results of any such safety audit in circumstances where the Operator bears the costs of implementing the necessary changes in the Services or how they are provided, the Concessionaire shall subject to Clause 12.3.3 be entitled to require the Operator to carry out such remedial work or implement such change in operating practices subject to the Concessionaire being obliged to reimburse the Operator for all costs and expenses incurred in connection with such work or change in operating practices in accordance with Clause 6.7.1 if the Expert subsequently determines that the results of the

safety audit were incorrect or the conclusions resulting from it were incorrect or in excess of what was reasonably required.

- 12.3.3.1** Where any remedial work to the Infrastructure is required by HMRI as a result of any such audit of the safety aspects of the Tramlink System and such remedial work is required as a result of a breach by the Operator of this Agreement which can only be remedied by such remedial work then to the extent attributable to such breach the costs of implementing such remedial work shall be borne by the Operator up to a maximum amount of £200,000. In the event the costs of such remedial work exceed £200,000 then after meeting such costs up to the amount of £200,000, the Operator at its discretion may terminate this Agreement without prejudice to the Concessionaire's other accrued rights hereunder. Subject to Clause 6.6.2 each Party shall meet its own costs and expenses resulting from such termination.
- 12.3.3.2** If the Operator decides to terminate this Agreement in accordance with Clause 12.3.3.1, it shall give the Concessionaire written notice of its intention to terminate. Within 28 Business Days of receipt by the Concessionaire of such notice, the Concessionaire shall send a written response to the Operator either:
- (a) acknowledging the Operator's intention to terminate this Agreement; or
 - (b) confirming that the Concessionaire will bear the costs of implementing such remedial work required in accordance with Clause 12.3.3.1 in excess of £200,000.
- 12.3.3.3** If the Concessionaire responds to the Operator in accordance with Clause 12.3.3.2 (a) then this Agreement shall terminate after the expiry of 6 months from the date of the written response provided to the Operator pursuant to Clause 12.3.3.2 (a) save always that during such six month period the Operator should not be obliged to incur additional costs in providing Services due to any failure on the part of the Concessionaire in implementing remedial work pursuant to Clause 12.3.3.1 in excess of £200,000.
- 12.3.3.4** If the Concessionaire responds to the Operator in accordance with Clause 12.3.3.2 (b) then the Operator shall not be entitled to terminate this Agreement and the Parties shall continue to perform their respective obligations hereunder on the terms of the Concessionaire's confirmation given under Clause 12.3.3.2(b).
- 12.3.4** In the event that the Operator fails to perform such remedial work within the period referred to in Clause 12.3.2 having been requested to do so by the Concessionaire the Concessionaire may after having given the Operator twenty-one (21) days' notice of its intention to do so (or forthwith if the Concessionaire believes there is a risk to the safety of any person) and without prejudice to any other right

or remedy which it may have, arrange for such remedial work to be carried out and shall be entitled to recover the reasonable costs of such action from the Operator where the Operator would have been responsible therefor.

12.3.5 Failure by the Operator to implement a necessary change in operating practices, management or safety critical aspects of operations having been requested by the Concessionaire to do so within the period referred to in Clause 12.3.2 (which may be forthwith if the Concessionaire believes there is a risk to safety of any person) will, unless the Expert has determined that such change was not necessary, constitute a material and serious default by the Operator of this Agreement where such failure constitutes a material and serious default under the Concession Agreement but without prejudice to the Concessionaire's other rights hereunder.

12.4 Applicable Requirements

Subject to Clause 31 the Operator shall after prior consultation with Concessionaire implement all alterations and changes to the Services which are required by any Applicable Requirement in force or which come into force after the date of this Agreement relating to safety.

12.5 Safety Case

12.5.1 The Operator shall in accordance with the Construction Programme prepare and submit proposals to the Concessionaire for those aspects of the Safety Case which relate to the Services save for those in respect of Tram Maintenance which the Concessionaire shall provide, which in either case shall comply in all respects with all Applicable Requirements, and any other requirements of the Specification in respect thereof.

12.5.2 The Operator shall agree and approve those aspects of the Safety Case referred to in Clause 12.5.1 with the Concessionaire and shall assist the Concessionaire and the Contractor to obtain approval of HMRI for the Safety Case. The Concessionaire shall and shall procure that the Contractor shall assist the Operator in carrying out its obligations under this Clause.

12.5.3 The Operator shall, as required by the Railways (Safety Case) Regulations 1994 prepare a safety case in respect of the Tram and station operation (but not in relation to Tram Maintenance Services) which shall be subject to the prior approval of the Concessionaire and keep such safety case updated in accordance with the requirements of such Regulations during the Term.

12.5.4 Subject to the Operator and Contractor having complied with their respective obligations to provide the relevant parts of the Safety Case in accordance with the Construction Programme, the Concessionaire shall submit the Safety Case to HMRI for approval

in accordance with the requirements of the Construction Programme and the Operator shall promptly prepare any additions or alterations to those parts of the Safety Case which relate to the Services save in relation to Tram Maintenance as shall be required in order to obtain HMRI approval in accordance with the Construction Programme.

- 12.5.5 The Concessionaire shall comply and shall procure that its sub-contractors of every tier shall comply with the Safety Case.
- 12.5.6 The Concessionaire undertakes to perform all of the obligations of the person in control of the Tramlink System for the purpose of the Railways (Safety Case) Regulations 1994. In the event that the Operator is construed or deemed to be the person in control of the Tramlink System for the purposes of the Railways (Safety Case) Regulations 1994 such that it is required to perform the obligations of the person in control of the Tramlink System in the place of the Concessionaire then the Concessionaire shall indemnify and keep indemnified the Operator in respect of all costs or expenses incurred by the Operator in performing such obligations and any liabilities which arise therefrom and on the same basis the Concessionaire shall be the responsible authority for the purposes of the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996.
- 12.5.7 The Operator hereby agrees to comply with any reasonable request that the Concessionaire may make as respects any aspect of the operation which affects or is likely to affect the performance of the health and safety duties it has undertaken as the person in control of the Tramlink System. Where such requirement imposes an obligation to provide Additional Services, Clause 6.7 shall apply.

12.6 Approvals and Certificates

- 12.6.1 The Concessionaire shall obtain and maintain (and, when obtained or renewed, shall supply the Operator with copies of) all approvals licences or certificates required to operate the Tramlink System save for those which the Operator is required to obtain pursuant to Clause 6.4.3.
- 12.6.2 Each Party shall provide to the other such assistance as the other may reasonably require in order to obtain and maintain during the Term such approvals, licences and certificates. This support shall include assistance in 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.

12.7 Applicable Requirements relating to safety

- 12.7.1 As Infrastructure Controller, the Concessionaire shall be responsible for interpreting all Applicable Requirements relating to the safety of the Tramlink System. In performing its obligations under this Agreement, the Operator shall comply with the Concessionaire's interpretation of the Applicable Requirements relating to safety save always that to the extent that the Operator incurs additional costs or expenses in performing such obligations as a result of the Concessionaire modifying or amending its interpretation of the Applicable Requirements from the interpretation originally given to the Operator then the Operator shall be entitled to recover such additional costs or expenses from the Concessionaire in accordance with Clause 6.7.1.
- 12.7.2 The person designated as the "Infrastructure Controller" under the Railways (Safety Case) Regulations 1994 shall have the right to require the Operator to suspend the operation of the Tramlink System. In such circumstances the normal fees payable to the Operator shall be paid together with any additional costs and expenses incurred by the Operator in accordance with Clause 6.7.1 save to the extent such suspension is justified by a breach by the Operator hereunder in which event no profit element shall be paid in respect of such fees and a replacement bus service may be provided at the discretion of the Concessionaire in accordance with Clause 9.3.3.

12.8 Environmental Liabilities

- 12.8.1 Obligations on both Parties
- 12.8.1.1 Each Party shall as soon as reasonably practicable notify the other Party (and where such notification is given orally promptly confirm such notification in writing) of any written complaint made to the order or notice served on that Party by a competent authority or a third party threatening legal proceedings related to Concessionaire's Environmental Damage or Operator's Environmental Damage.
- 12.8.1.2 Each Party shall take all reasonable care in carrying out any environmental investigation and take such steps as a prudent licensee or tenant of land would take to limit Concessionaire's Environmental Damage or Operator's Environmental Damage (as appropriate) or any other injury arising from such investigation, and shall reinstate any damage as is reasonable caused to the Site by such investigation once it has carried out that investigation.
- 12.8.1.3 Each Party shall copy to the other and notify the other in writing of the results of any tests to assess the presence and nature of any Concessionaire's Environmental Damage or Operator's Environmental Damage within 14 days of receipt of the same, and

both the Concessionaire and the Operator shall maintain as confidential the results of those tests in accordance with Clause 33.

12.8.2 Concessionaire's Environmental Damage

12.8.2.1 In the event that the Operator is not able to provide the Services because the Concessionaire has not remedied Concessionaire's Environmental Damage and such failure to remedy has resulted in a specific health and safety or other environmental damage issue which is recognised by competent authority as requiring action the non-provision of the Services shall be treated as constituting Force Majeure and Clause 23 of the Agreement shall apply save that the indemnity in Clause 12.8.2.3 shall apply in place of the cost sharing arrangements in Clause 23.7.

12.8.2.2 The Concessionaire shall be responsible for and keep the Operator indemnified from and against all actions, proceedings, demands, claims, costs, actions, damages expenses, losses and liabilities (including costs reasonably and properly incurred in investigating or defending any claim, proceeding, demand or other costs or expenses properly and reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) resulting from any actions, claims, proceedings or demands brought by third parties (which term shall include employees, agents and contractors of any tier and any competent authority including the Corporation, the Council and Railtrack plc) in respect of the Concessionaire's Environmental Damage;

12.8.2.3 The Concessionaire shall pay to the Operator any costs or expenses incurred by the Operator in performing the Services to the extent such costs are additional to the normal costs of performing the Services and are incurred directly as a result of the Concessionaire's Environmental Damage in accordance with Clause 6.7 save that this sub-clause 12.8.2.3 shall not apply in cases where the Concessionaire's Environmental Damage is attributable to an identified third party in which case the Operator shall be expected to pursue any remedies in law against the third party.

12.8.2.4 In the event that the Operator considers that Concessionaire's Environmental Damage is being caused or is reasonably foreseeable, the Operator shall notify the Concessionaire who shall carry out such tests sampling or other investigations which the Concessionaire considers necessary to enable it to determine whether Concessionaire's Environmental Damage has occurred or is reasonably foreseeable.

12.8.2.5 The Concessionaire shall ensure that at the Actual Opening Date there are no hazardous or dangerous substances or waste at, on, in, under or arising from the Site which could cause any person acting under environmental laws in force during the term of this Agreement to require the carrying out of any remedial or

preventative action by the Operator in relation to the Site or any neighbouring property and indemnify the Operator from and against all operations, claims, proceedings, losses, damage, expenses, costs, demands and liabilities (including costs properly incurred in preventing, avoiding or mitigating loss) liability or damage suffered or incurred by the Operator as a result of failure on the part of the Concessionaire to ensure the compliance with this Clause 12.8.2.5.

12.8.3 Operator's Environmental Damage

12.8.3.1 The Operator shall take whatever action is required by a competent authority or as a result of agreement between the Parties to prevent, mitigate or (in the case only of premises or property damage or pollution of the environment) remedy any Operator's Environmental Damage and reinstate the Tramlink System to a standard required by Clause 9.1 to the extent that Operator's Environmental Damage has caused it to fall below that standard provided that the Concessionaire shall be notified in writing in advance (except case of emergency in which case the Concessionaire shall notified as soon as reasonably practicable after the action) of any action proposed under this clause and shall be entitled to require that any such action be monitored by the Concessionaire or any environmental consultant appointed by the Concessionaire (at the cost of the Operator), and where the Operator fails to take, carry out properly or complete such action within a reasonable period of time then the Concessionaire shall be entitled to take or complete such action as is reasonable and to recover from the Operator the cost (including all appropriate professional fees) properly and reasonably incurred or payable in respect of taking or completing such action.

12.8.3.2 The Operator shall be responsible for and keep the Concessionaire indemnified from and against:-

- (a) all costs, actions, proceedings, demands, claim damages, expenses, losses and liabilities (including costs reasonably and properly incurred in investigating or defending any claim, proceeding, demand or other costs or expenses properly and reasonably incurred in preventing, avoiding or mitigating loss, liability or damage (save those arising from preventing, avoiding or mitigating Operator's Environmental Damage)) resulting from any actions, claims, proceedings or demands brought by third parties (which term shall include a competent authority including the Corporation, the Council and Railtrack plc) in respect of the Operator's Environmental Damage.

12.8.3.3 The Concessionaire shall be entitled, at all times in case of emergency, and otherwise after notifying the Operator and subject to the Operator's safety requirements and site regulations to carry

out any tests sampling or other investigations which the Concessionaire considers necessary to enable it to determine whether Operator's Environmental Damage has occurred or could be caused by the activities of the Operator and the Concessionaire may require the Operator to take any steps to rectify any condition of the Site which has either resulted in, or which it is reasonably foreseeable could result in Operator's Environmental Damage. The Concessionaire shall be notified in writing in advance of the action proposed in response to the Concessionaire's requirement under this Clause and shall be entitled to require that any such action be monitored by the Concessionaire or any environmental consultant appointed by the Concessionaire (at the cost of the Operator), and where the Operator fails to take, carry out properly or complete such action within a reasonable period of time then the Concessionaire shall be entitled to take or complete such action as is reasonable and to recover from the Operator the cost (including all appropriate professional fees) properly and reasonably incurred or payable in respect of taking or completing such action;

12.8.4 The Operator shall not deposit on the Site any controlled waste as defined in Section 75 of the Environmental Protection Act 1990 other than controlled waste which is lawfully deposited and in accordance with Good Industry Practice nor deposit on the Site any radioactive waste as defined in Section 2 of the Radioactive Substances Act or other hazardous or dangerous materials except where necessary in the course of providing the Services, and the deposit is in accordance with law and Good Industry Practice.

13. PERSONNEL

13.1 Operator's responsibility

The Operator shall ensure that its personnel and the personnel employed by the Operator's contractors and their sub-contractors of any tier are competent to perform the work assigned to them.

13.2 Qualified persons

If so requested by the Concessionaire, the Operator shall provide to the Concessionaire evidence of the assessment of competence of the personnel in Key Staff Positions, including details of previous experience and qualifications. The Concessionaire after consultation with the Operator may require the Operator to remove and replace any of such personnel at the expense of the Operator having demonstrated good cause for requiring such removal. The Operator shall replace any personnel so removed from Key Staff Positions with other competent personnel as soon as practicable.

13.3 Safety critical work

Where the Operator's personnel (including those of contractors and sub-contractors of any tier) are engaged in any form of safety critical work, the

Operator shall ensure that such personnel comply with the requirements of HSE's "Railways (Safety Critical Works) Regulations 1994". The Operator shall provide to the Concessionaire evidence that persons have been properly assessed as competent to perform their safety critical duties whensoever requested by the Concessionaire.

13.4 Key Staff Positions

The Operator shall not reduce the number of the Key Staff Positions or change the identity of the persons performing such functions without the prior written consent of the Concessionaire. The Operator shall notify and consult with the Concessionaire in advance regarding any proposed replacement. The Concessionaire's consent shall not be unreasonably withheld or delayed where the Operator is replacing such persons with competent personnel.

13.5 Concessionaire's Personnel

The Concessionaire shall ensure that its personnel and the personnel employed by the Concessionaire's contractors and their sub-contractors of any tier are 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 such personnel comply with the requirements of HSE's "Railways (Safety Critical Works) Regulations 1994". The Concessionaire shall provide to the Operator evidence that persons have been properly assessed as competent to perform their safety critical duties whensoever requested by the Operator. The Concessionaire shall ensure that all of its employees comply with the safety plans for the Tramlink System prepared by the Operator and approved by the Concessionaire.

13.6 Removal of Personnel

The Operator shall have power to remove any individual other than the Concessionaire's Health and Safety Manager from the Site performing safety critical work if the Operator has good cause to believe such person is not competent or is not complying with the requirements of HSE's "Railways (Safety Critical Works) Regulations 1994".

14. POLICING, EMERGENCY EXERCISES AND ENQUIRIES

14.1 Policing the Tramlink System

From the Actual Operating Date the Operator shall make all necessary arrangements, for the policing of the public areas of the Tramlink System to meet with all Applicable Requirements. The Operator shall cooperate with the Concessionaire in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of special events. If special events are held the arranging of additional policing and the cost of additional policing shall be an Additional Service.

14.2 Emergencies and emergency exercises

The Parties undertake to cooperate with each other 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 Tramlink System. Each Party will use reasonable endeavours to ensure that the other is party to all discussions and communications with the statutory authorities in respect of any emergency exercises.

14.3 Cooperation with special enquiries

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

15. DETERMINATION OF FARES

[The Operator shall charge fares and make available and accept tickets in accordance with the level and structure notified by the Concessionaire from time to time to the Operator after consultation with the Operator and on providing reasonable notice by the Concessionaire. The Concessionaire shall, where practicable, consult with the Operator as to the appropriate level and structure of fares. The provisions of Schedule 11 shall apply in relation to ticketing and revenue collection.]

16. TRAM SERVICE LEVELS/TIMETABLE

16.1 Service Levels

16.1.1 The Operator shall operate the Tramlink System so as to comply with the Tram Service Levels, the Timetable and the other requirements of the Operator Specification without prejudice to the other terms and conditions of this Agreement.

16.1.2 Without prejudice to Clause 24 sums deducted from the Fees in accordance with clause 21.2.1.2 and Schedule 4 will be the Operator's only financial liability to the Concessionaire for failure to operate Scheduled Kilometrage or operate a replacement bus service. Where and to the extent that the cause of the Operator failing to operate the Scheduled Kilometrage or operate a replacement bus service is a failure of the Tram Maintenance Contractor to comply with the Tram Maintenance Contract, the Operator's liability in respect of such failure shall be limited as stated in the Tram Maintenance Contract.

16.2 Corporation Service Changes

If the Concessionaire receives any proposals for a Corporation Service Change, or a Corporation Service Parameters Change, the Concessionaire shall provide to the Operator as soon as practicable all information obtained from the

Corporation in respect thereof and shall consult with the Operator concerning such Corporation Service Change or Corporation Service Parameters Change. The Concessionaire shall if required by the Operator (and the Concessionaire is able to do so) arrange for the Operator and the Tram Maintenance Contractor to attend any meetings to discuss the same with the Corporation. The Operator shall comply with such Corporation Service Change or Corporation Service Parameters Change (and any consequential obligations to produce Timetables) within the time specified in the notice received by the Concessionaire, and provided promptly to the Operator, of the Corporation Service Change or Corporation Service Parameters Change.

16.3 Consultation by Corporation

The Operator shall provide such information as the Concessionaire may reasonably require and assist the Concessionaire in preparation of representations concerning the effect of the proposed Corporation Service Change or Corporation Service Parameters Change for the purpose of the consultation process set out in Clauses 25.4 and 25.5 of the Concession Agreement. The Concessionaire shall, in preparing its representations to be made to the Corporation take into account any reasonable representations of the Operator.

16.4 Costs implications

16.4.1 The Operator shall assist the Concessionaire in negotiating with the Corporation pursuant to Clause 25 of the Concession Agreement (including any reference to any Expert pursuant thereto) to determine the cost implications of a Corporation Service Change.

16.4.2 Where the Corporation or the Concessionaire has issued a Service Parameter Change or the Concessionaire has issued a Service Change the Parties shall assess the financial effect of the same on the Operator of performing this Agreement (the "Change in Cost") and in the case of a Service Parameter Change issued by the Corporation shall agree the amount of Change in Cost as shall form part of the Concessionaire's claim under Clause 25.5 of the Concession Agreement (if any). Where the Parties cannot agree the amount of the Change in Cost to be included as part of the Concessionaire's claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement. In the case of a reduction in cost the provisions of this Clause 16.4 shall apply mutatis mutandis.

16.4.3 Where in any negotiation with the Corporation as to the appropriate amount of the Change in Cost to be taken into account in determining the Concessionaire's entitlement to compensation under Clause 25.5 of the Concession Agreement the Corporation rejects the level of the Change in Cost so proposed solely on the grounds that such costs are not properly substantiated then either:

16.4.3.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Change in Cost with the Corporation; or

16.4.3.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

16.4.4 The Operator shall be entitled to recover from the Concessionaire the Change in Cost determined in accordance with Clause 16.4.2 in respect of any Service Parameters Change requested by the Corporation or Corporation Service Change save where such Change in Cost is rejected by the Corporation in accordance with Clause 16.4.3 in which event the Operator shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 16.4.3 or determined by the Expert.

16.4.5 In respect of any Service Parameters Change or Service Change required by the Concessionaire the Operator shall be entitled to recover in accordance with Clause 6.7.1 any Change in Cost determined in accordance with Clause 16.4.2.

16.5 Other Tram Service Level changes

If either the Concessionaire or the Operator proposes a change in the Tram Service Levels or the Timetable, the Concessionaire and the Operator shall negotiate on a good faith basis to reach agreement between themselves as to the basis and terms of any such change. If the Concessionaire and the Operator reach such agreement, the Concessionaire shall propose such change to the Tram Service Levels or the Timetable under Clause 25.2 of the Concession Agreement and each Party shall provide all such assistance as the other shall reasonably require in order to obtain approval of the Corporation in accordance with Clause 25.2 of the Concession Agreement. No change to the Tram Service Levels or the Timetable shall be implemented until all necessary approvals are obtained including those required under the Concession Agreement and from HMRI.

16.6 Persistent Minor Breach

16.6.1 Without prejudice to any other right or remedy which it may have, if the Concessionaire is in breach of any of the provisions listed in Parts 1 and 2 of Schedule 12 to the Concession Agreement and the Concessionaire has received a notice in respect of such breach under Clause 26 of the Concession Agreement and such breach has been caused by a breach by the Operator, the Concessionaire may give the Operator a written notice specifying the nature of the default and, a request that it is remedied within the period specified in the notice which period shall be reasonable in all the circumstances.

16.6.2 Where the Concessionaire is required to pay liquidated damages to the Corporation under Clause 26 of the Concession Agreement the

Concessionaire shall to the extent the liquidated damages are attributable to a breach by the Operator notify the Operator of the amount of such liquidated damages and the Operator shall pay the same to the Concessionaire within 27 days of such notice provided that where the alleged failure has been referred to the Expert for determination the obligation to pay will be suspended pending the outcome of such determination.

16.6.3 If the Concessionaire gives to the Operator more than 8 notices under Clause 16.6.1, in each of two consecutive periods of 6 months during the Term, the Concessionaire may refer the list of alleged failures to comply with this Agreement to the Expert and if the Expert determines that each such notice has been properly served following breach of this Agreement by the Operator such that there has been a persistent failure by the Operator to comply with this Agreement he shall issue a Warning Notice to the Operator.

17. ADVERTISING AND OTHER REVENUE

17.1 Advertising on Trams and stations

In the event that the Concessionaire determines to undertake any advertising activities or procure such activities are undertaken on its behalf on the Trams and the stations within the Tramlink System the Operator shall co-operate with the Concessionaire's reasonable requirements in respect of the arrangement of such activities.

17.2 Concessionaire corporate image

The Concessionaire is to be referred to in all promotional literature to be published by the Operator in relation to the Tramlink System in a format to be agreed between the Parties.

18. INTELLECTUAL PROPERTY

18.1 Proprietary software

Whilst the Operator uses software (other than software which can be purchased commercially off the shelf or is provided as part of the Tramlink System and other than software provided by the Tram Maintenance Contractor in relation to Tram Maintenance Services) for the purpose of storing or utilizing records or in respect of the Services and any systems relating thereto or otherwise in accordance with its obligations under this Agreement, the Operator shall ensure, at the Concessionaire's expense, that on revocation, termination or expiry of this Agreement, subject to assumption of the burden thereof by the Concessionaire or the Corporation, the right to use such software is capable of being assigned or licensed to the Concessionaire and/or the Corporation and thereafter used by the Concessionaire and/or the Corporation. The assignment or licence shall be at fair market value, if any.

18.2 Intellectual Property Owned by the Operator

Where the Operator owns any other intellectual property rights which are necessary for the operation of the Tramlink System the Operator shall on termination or expiry of this Agreement transfer to the Concessionaire at the Concessionaire's cost an interest in such intellectual property rights sufficient to enable the Concessionaire to operate the Tramlink System at fair market value, if any, and shall grant to the Concessionaire a non-exclusive and royalty-free licence in respect of such software for such period as the Concessionaire may reasonably require.

18.3 Indemnity

18.3.1 The Operator shall hold harmless, defend and indemnify the Concessionaire from and against any and all claims, demands or proceedings brought by any person for or on account of infringement by the Concessionaire in using any intellectual property provided to the Concessionaire pursuant to this Clause 18.

18.3.2 The Concessionaire shall hold harmless, defend and indemnify the Operator from and against any and all claims, demands or proceedings brought by any person for or on account of infringement by the Operator in using any right in intellectual property provided to the Operator as part of the Tramlink System pursuant to this Agreement.

19. QUALITY ASSURANCE

19.1 Management of Quality Assurance

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

19.1.1 the requirements of ISO 9002; and

19.1.2 the relevant parts of the Operator Specification where obligations are imposed therein on the Operator.

19.2 Quality Plans

19.2.1 The Operator shall prepare the Quality Plans prior to the Actual Opening Date in respect of the performance of the Services which shall comply with the requirements of Clause 19.1 and which shall be subject to the prior approval of the Concessionaire such approval not to be unreasonably withheld or delayed.

19.2.2 Without limitation to the generality of Clause 19.1, in performing the Services the Operator shall comply with the Quality Plans. The Operator shall notify the Concessionaire of any proposed changes to the Quality Plans. Any such changes shall require the written consent of the Concessionaire provided that the Concessionaire 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 19.1. Any consent will be deemed given if no reasonable objection is received by the Operator within 20 Business Days.

19.3 Effectiveness of contractor's quality systems

The Operator shall monitor its contractors quality systems and ensure that they operate appropriate quality systems based on the relevant requirements of ISO 9002 series standard or other equivalent British or European standard appropriate to their scope of supply. The Operator shall be responsible for monitoring the performance of such persons with the requirements of their respective quality systems.

19.4 Quality assurance audit

The Concessionaire shall be entitled to audit compliance with the Quality Plans on a random basis at reasonable times and on reasonable notice to the Operator. Any such audit may involve the examination or inspection of work or activities on or off the Tramlink System. The Operator shall and shall reasonable endeavours to procure that third parties shall provide to the representatives of the Concessionaire conducting such an audit 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 Operator shall comply with any recommendations regarding its Quality Plans arising from any such audit subject to any dispute which shall be referred to the Expert. Any additional costs and expenses in implementing such recommendations, unless such recommendations result from a breach by the Operator of its obligations hereunder, shall be dealt with in accordance with Clause 6.7.1.

20. OPERATING AND MAINTENANCE PLANS

20.1 Maintenance Plans and Operating Plan

20.1.1 The Operator shall after consultation with the Concessionaire develop an Operating Plan before the Actual Opening Date which shall where appropriate:

20.1.1.1 be designed to ensure that the Tramlink System can be maintained to ensure that requirements of Clause 9 are met;

20.1.1.2 so far as can be reasonably anticipated enable the Operator and the Concessionaire to comply in full with their respective obligations to operate and maintain the Tramlink System in the case of the Operator under this Agreement and in the case of the Concessionaire the Project Agreements;

20.1.1.3 comply and be consistent with the O&M Manuals; and

20.1.1.4 comply with Good Industry Practice and Concessionaire Good Industry Practice.

20.1.2 Save to the extent specified in the Operator Specification the Concessionaire shall notify the Operator of any specific requirements to be incorporated into the Plans arising from its obligations under the Project Agreements and following such notification the Operator shall incorporate such requirements into the Plans. Provided such requirements are incorporated in accordance with the requirements of this Clause it shall be the responsibility of the Concessionaire to ensure that the Plans comply with the Concessionaire's obligations under the Project Agreements and Concessionaire Good Industry Practice.

20.1.3 Notwithstanding the obligations of the Operator in Clause 20.1.1, the Operator shall procure that so far as can be reasonably anticipated the Plans are sufficient to ensure:

20.1.3.1 that the requirements laid down in the Performance Specification and the Specification and referred to in Part 2 of Schedule 4 are met for all of the period of this Agreement; and

20.1.3.2 that the Tramlink System is operated and maintained in accordance with the Safety Case, Good Industry Practice and Applicable Requirements.

The Plans shall be submitted to the Concessionaire for review and approved in accordance with Clause 20.5 but in respect of the Infrastructure Maintenance Plan on the basis that the Infrastructure is of a standard that complies with the provisions of Clause 9, the Performance Specification and the Specification.

20.2 Contents of Operating Plan

The Operating Plan shall show in such detail as is reasonably practicable and in relation to the Operating Year to which it relates:-

20.2.1 any capital expenditure which the Operator recommends;

20.2.2 such other information as the Concessionaire shall have reasonably requested the Operator to provide.

20.3 Annual Infrastructure Maintenance Plan

The annual Infrastructure Maintenance Plan shall, in addition to the requirements of Clause 20.1:-

20.3.1 show all Infrastructure maintenance and repair activities which is necessary for the forthcoming Operating Year to maintain the Infrastructure in accordance with Clause 9;

20.3.2 show the periods during which each maintenance activity is to be carried out;

20.3.3 show the Possessions that are required for such maintenance activities and the measures to be put in place when Possessions are required; and

20.3.4 show such other information as the Concessionaire shall have reasonably requested the Operator to provide.

20.4 Annual Revisions

Not less than 40 Business Days before the beginning of each subsequent Operating Year the Operator shall prepare and submit for review by the Concessionaire in accordance with Clause 20.5 the Plans (including for the purposes of this Clause 20.4 and Clauses 20.5 and 20.6, the Tram Maintenance Plan initially provided to the Operator by the Contractor and the Routine Maintenance Plan to be prepared pursuant to Schedule 5) for the following Operating Year. Each such Plan shall comply with Clauses 20.2 and/or 20.3 as appropriate and the Concessionaire shall contribute to such Plan and accept responsibility for their contents in accordance with its obligations under Clause 20.1.2. Clauses 20.1, 20.2 and 20.3 shall apply in respect of each such Plan as relevant.

20.5 Consultation on Operating and Maintenance Plan

Within 20 Business Days of receipt of a proposed Plan the Concessionaire shall return to the Operator one copy thereof either marked "No Comments" or with written comments and/or amendments. If the proposed Plan is returned by the Concessionaire with written comments and/or amendments, the Operator shall discuss with the Concessionaire and shall have due regard to such comments and/or amendments. If the Operator amends a proposed Plan as a result of any comments and/or amendments made by the Concessionaire the amended version shall be resubmitted to the Concessionaire for review and the provisions of this Clause 20.5 shall again apply. Upon agreement being reached, the proposed Plan shall become the final Plan in respect of each Operating Year for the purposes of this Agreement subject to any amendments required to be made to the Plan subsequently in an Operating Year as a result of an unplanned event and subject always to Clause 20.6.

20.6 Changes to Maintenance Plans

If the Concessionaire or the Operator wish to make changes to any of the Plans for the current Operating Year it shall give written notice to the other of the proposed changes and the proposed date of implementation providing reasonable notice in all cases. The Parties shall then consult in respect of such proposed change and consider the implications for both Parties. Where agreement is reached in respect of the proposed change to any Plan it shall be implemented on that basis. The Operator shall in any event be required to implement any changes to any of the Plans required by the Concessionaire but without prejudice to the provisions of Clause 9 and, unless the circumstances

requiring the change are covered by any other express Clause of this Agreement (in which case such Clause shall prevail), the Operator shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7 save always that changes to the Tram Maintenance Plan shall not be required to be implemented until the Tram Maintenance Contractor's revised fee as a consequence of such implementation has been agreed between the relevant parties.

20.7 Budget

Together with each proposed Infrastructure Maintenance Plan submitted to the Concessionaire under Clause 20, the Operator shall prepare and submit to the Concessionaire a proposed Budget for the following Operating Year covering the proposed expenditure required to maintain Infrastructure in accordance with the proposed Infrastructure Maintenance Plan.

21. FEES

21.1 Fees

Subject to the provisions of this Agreement, in consideration for the provision of the following Services, the Concessionaire shall pay to the Operator the following fees:-

21.1.1 the fee calculated and payable in accordance with Part 1 of Schedule 2 for the Preliminary Services;

21.1.2 the fee calculated and payable in accordance with Part 2 of Schedule 2 for the Mobilisation Services;

21.1.3 the fee calculated and payable in accordance with Part 3 of Schedule 2 for the Operating Services;

21.1.4 the fee calculated and payable in accordance with Part 4 of Schedule 2 for the Infrastructure Maintenance Management Services;

21.1.5 the fee calculated and payable in accordance with Part 5 of Schedule 2 for the Tram Maintenance Services;

21.1.6 the fee calculated and payable in accordance with Clause 6.5.2(b) for the Routine Maintenance Services.

21.2 Indexation, damages and rebasing

21.2.1.1 The fees calculated in accordance with Clause 21.1 above shall be adjusted by Indexation in accordance with paragraphs (a) and (b) of Schedule 2.

- 21.2.1.2 The fees calculated in accordance with Clause 21.1.3 above shall be adjusted in respect of each Financial Period in accordance with Schedule 4.
- 21.2.1.3 The fees calculated in accordance with Clause 21.1 above shall be further adjusted in respect of each Financial Period by the addition of any amounts in respect of Additional Services or otherwise expressed to be recoverable by the Operator hereunder which have become due.
- 21.2.2 The basis upon which the fees for the Services are calculated shall be adjusted in every fifth Operating Year in accordance with paragraph (c) and (d) of Schedule 2 and the fees subsequently payable shall be amended accordingly.

21.3 Reconciliation

The Operator shall, on a daily basis, apportion responsibility for any failure to achieve Scheduled Kilometrage by assigning reasons against the categorisations in Part 2 of Schedule 4 and shall submit to the Concessionaire on the Financial Period Payment Date (or more frequently if reasonably required by the Concessionaire) a report showing all such daily reconciliations in respect of the previous Financial Period. If the Concessionaire and Operator are unable to agree any daily reconciliation or the categorisation of failures, the dispute shall be referred to the Fee Panel.

21.4 Invoice

- 21.4.1 The Operator shall on or prior to the tenth Business Day of each Financial Period deliver to the Concessionaire an invoice in respect of the Fees due in respect of Operating Services and related Additional Services for that Financial Period or any earlier Financial Period which has not been invoiced and shall supply with such invoice full details of the calculations used to ascertain such sums.
- 21.4.2 The Operator shall within one week after the end of each Financial Period or month (as appropriate) to which payment relates deliver to the Concessionaire an invoice in respect of Fees due in respect of all Services, other than Operating Services and related Additional Services, for that Financial Period or any earlier Financial Period which has not been invoiced and shall supply with such invoice full details of the calculations used to ascertain such sums.
- 21.4.3 The Concessionaire shall pay to the Operator the Preliminary Fee and the Mobilisation Fee within 20 Business Days of receipt of the invoice relating thereto provided always that the Operator shall submit an invoice in respect of Preliminary and Mobilisation Fees no more than once in any one month.

21.5 Approval and Payment of Invoice

21.5.1 On each Financial Period Payment Date the Concessionaire shall, subject always to Clause 21.6:-

21.5.1.1 pay to the Operator (a) 75 per cent of the sum shown as due in the invoice delivered pursuant to Clause 21.4.1 in respect of the Operating Fee and related Additional Services in the current Financial Period and (b) the sum shown as due in the invoices delivered pursuant to Clause 21.4.2 in respect of the Tram Maintenance Fee, the Routine Maintenance Fee and the Infrastructure Maintenance Management Fee; and

21.5.1.2 pay to the Operator 25 per cent of the sum shown as due in the invoice delivered pursuant to Clause 21.4.1 in the previous Financial Period in respect of the Operating Fee and the related Additional Services less any amounts which are still in dispute.

21.6 Approval of Calculations

21.6.1 The Concessionaire shall, within 5 Business Days of receipt of the invoice delivered pursuant to Clause 21.4 notify the Operator of anything contained in the invoice with which it disagrees giving reasons for such disagreement and stating what it considers to be the correct amount due to the Operator.

21.6.2 If the Parties cannot agree the fee payable on any Financial Period Payment Date or any monthly date (as appropriate) within 3 Business Days of receipt by the Operator of the notice given by the Concessionaire under Clause 21.6.1 either Party may serve notice on the other and the Fee Panel specifying the dispute and the Fee Panel shall meet within 5 Business Days of service of notice by either Party under this Clause.

21.7 Withholding

The Concessionaire shall during the Term be entitled to withhold an amount in excess of the 25 per cent of the Operating Fee shown as due in an invoice delivered pursuant to Clause 21.4.1 which it is entitled to adjust pursuant to Clause 21.2 1.2 up to the full amount of such sum shown in that invoice to the extent in respect of any previous Financial Period there is a dispute outstanding which is referred to the Fee Panel in respect of the amounts calculated pursuant to Schedule 4.

21.8 Fee Panel

The Fee Panel shall consist of four persons (comprising two representatives nominated from time to time by each of the Concessionaire and the Operator). Any decision by the Fee Panel on an alteration in the amount of Fees from

that shown in the invoice under Clause 21.4, or on a daily reconciliation referred to it under Clause 21.2, requires the approval of at least one representative of the Concessionaire and one representative of the Operator. Meetings of the Fee Panel shall take place at such time and place as shall be agreed from time to time between the Concessionaire and the Operator. The Fee Panel shall not be required to meet more than once every Financial Period to consider disputes referred to it under Clause 21.3. If any dispute cannot be resolved by the Fee Panel, then the provisions of Clause 21.9 shall apply in respect of the difference between the amounts specified by the Concessionaire and the Operator.

21.9 Disputed Sums

Any remaining dispute concerning the amounts properly payable to either Party by the other if not resolved by the Fee Panel shall be referred to the Expert for decision. If it is subsequently agreed or determined by the Expert 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 invoice the other Party for such sum (together with accrued interest) in accordance with Clause 21.10 and payment shall then be made by the relevant Party.

21.10 Supplementary Invoices

21.10.1 The Parties may from time to time render an invoice to the other in respect of any additional sums which shall become due in accordance with this Agreement and the procedures set out in Clauses 21.4 to 21.9 inclusive shall apply thereto. Where additional sums have been agreed by the Parties neither party shall be entitled to dispute such amounts pursuant to Clause 21.9.

21.10.2 For the period of two years after the Actual Opening Date the Concessionaire shall pay on the relevant Financial Period Payment Date amounts set out in supplementary invoices submitted in accordance with Clause 21.10.1 if received by the Concessionaire at least 10 Business Days prior to the relevant Financial Period Payment Date and to the extent such amounts are agreed.

21.11 Time for payment and interest

21.11.1 For the period after the second anniversary of the Actual Opening Date, unless otherwise stated all amounts properly due in respect of an invoice submitted pursuant to Clause 21.10 shall be paid within 20 Business Days of receipt by the paying Party of the relevant invoice to the extent such amounts are agreed.

21.11.2 Subject as provided in Clause 21.11.3, any amount properly due from one Party to the other pursuant to this Agreement and which shall remain unpaid after the date when payment becomes due shall bear interest at the Prescribed 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.

21.11.3 Interest shall accrue in respect of amounts determined to be payable following a decision of the Fee Panel or the Expert in accordance with Clauses 21.8 or 21.9 from the due date of the original underpayment or overpayment as the case may be.

21.12 Taxes, Customs Duties

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.

21.13 Revenue Sharing

The Parties intend to include a revenue sharing scheme which shall be implemented at the end of the fifth Operating Year.

21.14 Scope of obligations excluded from the Fees

Save for additional fees, costs or expenses or other amounts which the Operator is expressly entitled to recover under the terms of this Agreement or by Law the Fees shall be the total amount which the Operator is entitled to recover from the Concessionaire hereunder.

21.15 No set-off

Save as is otherwise expressly provided in Clause 21 or where an amount has been determined by the Expert to be payable to the payer or is otherwise agreed all payments to be made under this Agreement shall be made in full free and clear of any right of set-off or counter-claim and free from any deduction or withholding whatsoever.

22. INSURANCE

22.1 Operator Insurance

The Operator shall take out and maintain or shall cause to be taken out and maintained throughout the Term appropriate insurance with respect to employer's liability having regard to the parameters of such insurance required to be effected during operation of the Tramlink System under the Concession

Agreement of which the Concessionaire shall be obliged to inform the Operator and having regard to relevant circumstances during such period of operation.

22.2 Concessionaire Insurances

The Concessionaire shall take out and maintain or shall cause to be taken out and maintained during the Term the insurances set out in Schedule 6.

22.3 Terms of insurances to be approved

All insurances required by Clause 22.2 shall be taken out with such insurance companies, in such amounts and upon such terms (including terms as to the level of deductibles) as shall have been previously approved by the Operator such approval in each case not to be unreasonably withheld or delayed.

22.4 Insurances to be in joint names

Each insurance maintained or procured by the Concessionaire in accordance with Clause 22.2 shall be, inter alia, a composite policy in the names of the Operator and the Concessionaire, for their respective rights and interests 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 the Concessionaire to maintain the policies in force after termination of this Agreement. The Concessionaire shall, for such period that it is the Concessionaire under the Concession Agreement, maintain such policies in the manner required by Clause 22.2 until all potential limitation periods have expired under this Agreement in relation to the Operator's liabilities as Operator of the Tramlink System. All insurances taken out by the Concessionaire shall waive all rights of subrogation against the Operator, save for contractors in respect of Tram Maintenance Services.

22.5 Change of Concessionaire's Insurances

22.5.1 If the Concessionaire proposes during the Term to vary in any way which affects or may affect the Operator the insurances it is required to effect in accordance with this Clause 22, the Concessionaire shall obtain the approval of the Operator regarding the proposed changes such approval not to be unreasonably withheld or delayed.

22.5.2 It shall be a term of the insurances required by Clause 22.2 that underwriters will waive any rights of recovery against any director, employee or former employee of an insured or, at an insured's election any other person indemnified under the terms of the policy.

22.6 Concessionaire to supply insurance policies

Upon being required to do so by the Operator the Concessionaire shall produce for inspection by the Operator a copy of the certificates and policies of insurance required to be maintained in compliance with the provisions of this Clause 22 together with sufficient evidence to show that all premiums payable

in respect of the insurance have in fact been paid up to date. Where the Concessionaire has failed to pay any such premium by the due date, the Operator shall be entitled by giving no less than ten Business Days' notice in writing to the Operator to pay such premium on behalf of the Concessionaire and to include an amount equivalent to such premium from the next subsequent payment(s) of the Fees.

22.7 Compliance with requirements of insurers

The Operator and the Concessionaire shall comply with all terms, whether express or implied of the insurers in relation to insurances effected pursuant to this Clause 22 and shall not do anything which might render void or voidable any such policy of insurance or as a result of which payment of insurance moneys might be withheld in whole or in part under the terms of the relevant insurance policy.

22.8 Operator'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 it under this Clause 22 or fails upon being requested to do so to provide the Operator with the evidence required by Clause 22.5 and the Operator has reasonable grounds for believing such insurances are not in effect or being maintained, the Operator shall (without prejudice to any other rights under or pursuant to this Agreement) have the right upon giving the Concessionaire no less than 10 Business Days' notice in writing to arrange equivalent insurances. The Concessionaire shall reimburse the Operator all premiums and other costs payable or incurred by the Operator in exercising its rights under this Clause 22.8 together 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 the Operator.

22.9 Proceeds

Claims under the insurance polic[ies] shall be handled in the manner to be agreed between the Operator and the Concessionaire. The Concessionaire may decide in its discretion whether to apply the proceeds of any claim including the amount of any deductible (save where the deductible is to be met by the Operator under this Agreement) in relation to loss or damage to the Tramlink System or Concessionaire Tram Spares in reinstating the Tramlink System or the Concessionaire Tram Spares to the standard required hereunder save that where the Concessionaire decides not to so apply such proceeds in such manner the Concessionaire shall consult with the Operator and the Parties shall determine how their respective obligations hereunder shall be altered as a result thereof and in the absence of agreement to be determined in accordance with Clause 38 and Schedule 9.

22.10 Notification of Claims

Each Party shall give to the other prompt notification of any claim in excess of £50,000 under any of the insurance policies referred to in this Clause 22

accompanied by full details of the incident giving rise to such claim and shall afford each other all assistance as may be required for the preparation and negotiation of insurance claims. It shall be the responsibility of the Operator to pursue with all due diligence claims under such insurance policies.

23. FORCE MAJEURE

23.1 Definition of Force Majeure

23.1.1 Force Majeure means:-

- (a) an act of war (whether war is declared or not), hostilities, invasion, act of foreign enemies, rebellion, terrorism, revolution, military insurrection, civil disorder or civil disobedience; or
- (b) tempest, earthquake (due exclusively to natural causes) or other natural disaster of overwhelming proportions; or
- (c) ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
- (e) save for circumstances or events for which responsibility for the existence occurrence or consequences of which are expressly allocated to either Party pursuant to this Agreement not being a circumstance or event described in paragraphs (a) to (d) of Clause 23.1.1, any circumstances which are beyond the reasonable control of the Affected Party (as defined in Clause 23.3) and which could not have been foreseen and avoided by, in the case of the Operator, an experienced tram system operator and in the case of the Concessionaire Concessionaire Good Industry Practice having regard to the Concessionaire's and the Operator's state of knowledge; or
- (f) an event of force majeure under the Tram Maintenance Contract.

23.1.2 The following events and circumstances shall not constitute Force Majeure:-

- (a) strikes, lock-out or other industrial or trade dispute by the workforce of a Party; or
- (b) lack of availability of labour or materials unless caused by an event specified in Clause 23.1.1; or

- (c) disputes or legal actions affecting either Party; or
- (d) lack of funds or increased cost to either Party of performing its obligations under the Project Agreements; or
- (e) adverse weather conditions except as referred to in Clause 23.1.1(b); or
- (f) an event of force majeure under the Tram Maintenance Contract unless such event falls within the same definition of force majeure as is contained in Clause 23.1.1 (a) to (e) mutatis mutandis.

23.2 Exclusion of liability/extension of time

For the purpose of this Agreement:-

23.2.1 no Party shall be considered to be in default or in breach of its obligations under this Agreement or be liable to the other Party for any losses or damages of any nature whatsoever incurred or suffered as a result of any failures and delays in performance due to an event or circumstance constituting Force Majeure provided that the Concessionaire shall continue to pay all amounts it would otherwise have paid but for such event of Force Majeure subject to the provisions of Clause 23.7; and

23.2.2 the periods of time referred to in any provision of this Agreement for the purpose of performance of an obligation shall be extended by a period of time equal to the period of delay caused by or which arises out of or is attributable to an event or circumstance constituting Force Majeure; and

23.2.3 the provisions of Clause 23.7 shall apply in relation to any period of suspension of a Tram Service on the Tramlink System during or following an event of Force Majeure.

23.3 Notification

Forthwith following a Party (the "Affected Party") becoming aware of an event of Force Majeure causing that Party to be unable to fulfil its contractual obligations under this Agreement the Affected Party shall notify to the other Party (the "Notified Party") details of the Force Majeure including:-

23.3.1 the nature of the event or circumstance constituting Force Majeure;

23.3.2 the date from which the Affected Party has been prevented or hindered from performing its obligations;

23.3.3 the precise obligations affected; and

23.3.4 its best estimate of the date or dates on which it will be able to resume the performance of its obligations so affected.

23.4 Notification of developments

The Affected Party shall keep the Notified Party fully informed of all developments relating to the Force Majeure of which it is aware and the steps being taken by the Affected Party to minimise the effects of the Force Majeure pursuant to Clause 23.5. If any of the details relating to the Force Majeure notified by the Affected Party to the Notified Party shall change the Affected Party shall reissue the notice amended as necessary.

23.5 Mitigation

The Parties shall use all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any event of Force Majeure. Following the occurrence of Force Majeure the Party who would otherwise be required to do so hereunder shall make safe any Track and manage the making safe of any Infrastructure affected thereby, so as to prevent the Tramlink System causing physical damage to any person or property.

23.6 Failure to mitigate

The exclusion of liability and/or the extension of time under this Clause resulting from an event of Force Majeure shall not operate if and to the extent that:-

23.6.1 the Affected Party could, by the exercise of reasonable foresight and diligence, have prevented or reduced the effect of the event of Force Majeure; and

23.6.2 the Affected Party could, whether before or after the occurrence of the event of Force Majeure, have reduced or eliminated the resulting failure to discharge its obligations under this Agreement by taking reasonable steps and "reasonable steps" means steps that it would be reasonable for the Affected Party to take at the time when they would have had to be taken to reduce or eliminate such failure having regard to the circumstances at such time.

23.7 Operator's obligations during Force Majeure

23.7.1 Notwithstanding the Parties' obligations to mitigate pursuant to Clause 23.5, during any period of suspension of the operation of the Tramlink System during or following an Event of Force Majeure the Concessionaire shall, after consultation with the Operator be entitled to require the Operator to take any action it considers appropriate but in accordance with the following:-

23.7.1.1 if the Concessionaire requires a reduction in the workforce required to operate the Tramlink System the

Concessionaire shall pay to the Operator those costs which it incurs in maintaining its remaining capability (if any) to operate the Tramlink System at the end of the period of suspension and in carrying out any necessary maintenance to the Trams or Routine Maintenance and in managing any other part of the Infrastructure which the Operator is responsible for managing;

23.7.1.2 where this Agreement has not been terminated but the Concessionaire requires the Operator to terminate the employment of the whole or part of the workforce required to operate the Tramlink System the Concessionaire shall bear the reasonable and properly authenticated costs and expenses incurred terminating the employment of such workforce and in recruiting and training sufficient personnel to reinstate the Operator's capability of performing the Services when required to do so by the Concessionaire; and

23.7.1.3 where any other course of action has been agreed between the Concessionaire and the Operator, the Concessionaire and the Operator shall also agree the appropriate cost incurred by the Operator (if any) as a result, which shall be paid to the Operator by the Concessionaire.

23.7.2 Where as a result of an event of Force Majeure which affects the Operator, but not the Concessionaire the operation of the entire Tramlink System is suspended, then during the period of such suspension the Concessionaire shall pay to the Operator only that part of the relevant Fee or Fees which relates to the Operator's costs in performing its obligations under this Agreement as if the operation of the Tramlink System had not been so suspended, such costs to be mitigated in accordance with Clause 23.7.1 but not any part of such relevant Fee or Fees as relates to the profit of the Operator.

23.7.3 Where as a result of an event of Force Majeure which affects the Concessionaire, but not the Operator, the operation of the entire Tramlink System is suspended, then during the period of such suspension the Concessionaire shall pay to the Operator whatever it would otherwise have been paid as if the operation of the Tramlink System had not been so suspended, such costs to be mitigated in accordance with Clause 23.7.1.

23.7.4 Where as a result of an event of Force Majeure which affects the Operator, but not the Concessionaire any part of the Tramlink System is suspended then the Concessionaire shall pay during the period of such suspension to the Operator:-

(i) in relation to that part of the Tramlink System which is not suspended (the "Operating Part") that part of the relevant Fee

or Fees attributable to the Operating Part (calculated on a pro rata basis by reference to the kilometrage of the Operating Part); and

- (ii) in relation to that part of the Tramlink System which is suspended (the "Non-Operating Part") that part of the relevant Fee or Fees attributable to the Non-Operating Part (calculated on a pro rata basis by reference to the kilometrage of the Non-Operating Part) mitigated in accordance with Clause 23.7.1 but not any part of such Fee or Fees as relates to the profit of the Operator.

23.7.5 Where as a result of an event of Force Majeure which affects the Concessionaire, but not the Operator, part of the Tramlink System is suspended, then during the period of such suspension, the Concessionaire shall pay to the Operator that part of the relevant Fee or Fees which relates to the Operator's costs in performing its obligations under this Agreement as if that part of the Tramlink System were not suspended, less the proportion of profit in such relevant Fee or Fees attributable to the Non-Operating part as calculated in accordance with Clause 23.7.4 but such proportion is only to be deducted for the first seven days of such suspension.

23.7.6 Where as a result of an event of Force Majeure which affects the Concessionaire and the Operator, the operation of the entire Tramlink System is suspended, then during the period of such suspension the provisions of Clause 23.7.2 shall apply.

23.7.7 Where as a result of an event of Force Majeure which affects the Concessionaire and the Operator, part or parts of the Tramlink System are suspended, then during the period of such suspension the provisions of Clause 23.7.4 shall apply.

24. EARLY TERMINATION

24.1 Termination of Services

24.1.1 The Concessionaire will be entitled to terminate this Agreement on no less than 3 months' written notice to the Operator expiring on the tenth or twentieth anniversary of the Actual Opening Date (a "Relevant Anniversary") in the following circumstances:-

- (a) without prejudice to Clause 24.2 at least 15 months prior to a forthcoming Relevant Anniversary the Concessionaire shall have notified the Operator in writing that, in the performance of the Services, it has failed to comply with the provisions of this Agreement in material and (if appropriate) persistent ways giving examples of such failures, and the Operator shall have failed to remedy such failures, to the reasonable satisfaction of the Concessionaire within the following 12 month period; or

- (b) at least 6 months prior to a forthcoming Relevant Anniversary the Concessionaire shall have notified the Operator that it considers the total remuneration to which the Operator is entitled for the performance of his obligations under this Agreement to be materially greater than the prevailing market rate for the performance of such obligations giving reasons for such consideration and evidence of the prevailing market rate and the Operator shall not have reduced the Fees to a level not materially greater than the prevailing market rate and for the purposes of this Clause 24.1.1(b) "materially" shall mean in excess of █%.

24.1.2 The Concessionaire will be entitled to terminate the Infrastructure Maintenance Management Services by at least 3 months' written notice to the Operator. The Concessionaire shall ensure that any successor shall enter into all such agreements, arrangements and procedures with the Operator as the Operator may reasonably require.

24.1.3 The Concessionaire will be entitled to terminate this Agreement forthwith in the event that the Concessionaire is required to replace the Operator in accordance with Clause 20 of the Concession Agreement.

24.2 Early termination by the Concessionaire

24.2.1 The following shall constitute Operator Defaults:-

- (a) any Insolvency Event in relation to the Operator;
- (b) the Operator is in material and serious default in relation to its obligations under this Agreement whether by one or more breaches of the obligations of the Operator under this Agreement;
- (c) the Operator is issued with 1 Warning Notice and 4 notices under Clause 16.6.1 in any period of 3 years;
- (d) where Operator Controlled Lost Kilometrage (but excluding for these purposes any Operator Controlled Lost Kilometrage attributed to the Tram Maintenance Contractor) exceeds 8% of Scheduled Kilometrage for 3 consecutive Financial Periods or Operator Controlled Lost Kilometrage (but excluding for these purposes any Operator Controlled Lost Kilometrage attributed to the Tram Maintenance Contractor) exceeds 13% of Scheduled Milometrage for 3 Financial Periods in any period of 13 Financial Periods.

24.2.2 The Operator will notify the Concessionaire forthwith upon becoming aware of the occurrence of an Operator Default and will provide the Concessionaire with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of the Operator Default or otherwise in connection with it.

24.2.3 If an Operator Default within Clause 24.2.1(a) (c) or (d) has occurred, the Concessionaire may within 6 months of the relevant Operator Default by notice to the Operator terminate this Agreement forthwith. If an Operator Default within sub-clause 24.2.1(b) has occurred, the Concessionaire may, within 28 days of such Default coming to its notice, serve notice of such Default on the Operator in which case this Agreement will terminate on the date specified in such notice (being not less than 28 days after the date of service) unless such Default has been remedied or other steps taken in relation thereto agreed by the Concessionaire prior thereto to the reasonable satisfaction of the Concessionaire.

24.2.4 The Concessionaire may by notice in writing, subject to Clause 25, terminate this Agreement upon termination of the Concession Agreement for whatever reason.

24.2.5 If the Operator requests approval from the Concessionaire to terminate the Tram Maintenance Contract for good cause and such approval is denied then the Concessionaire shall not be entitled to terminate this Agreement as a result of an Operator Default arising thereafter from a default by the Tram Maintenance Contractor under the Tram Maintenance Contract.

24.3 Early termination by the Operator

24.3.1 The following shall constitute Concessionaire Defaults:-

- (a) any Insolvency Event in relation to the Concessionaire'
- (b) the Concessionaire fails to pay any amount due to the Operator pursuant to this Agreement within 28 days of the due date for such payment (except where the amount of any such payment is the subject of a bona fide dispute between the Parties);
- (c) the Concessionaire is in material and serious default in relation to its obligations under this Agreement whether by one or more breaches of the obligations of the Concessionaire under this Agreement.

24.3.2 The Concessionaire will notify the Operator forthwith upon becoming aware of the occurrence of a Concessionaire Default and will provide the Operator 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.

24.3.3 If a Concessionaire Default within Clause 24.3.1 (a) has occurred, the Operator may within 28 days of such default coming to its attention by notice to the Concessionaire terminate this Agreement forthwith. If a Concessionaire Default within Clause 24.3.1(b) (c) or (d) has occurred, the Operator may, within 28 days of such Default coming to its attention, serve notice of such Default on the Concessionaire in

which case this Agreement will terminate on the date specified in such notice (being not less than 28 days after the date of service) unless such Default has been remedied or other steps taken in relation thereto agreed by the Operator prior thereto to the reasonable satisfaction of the Operator.

25. OBLIGATIONS OF THE PARTIES FOLLOWING TERMINATION

25.1 Payment on termination

25.1.1 Where this Agreement is terminated by the Concessionaire as a result of an Operator Default, or where the Concession Agreement has been terminated (and as a consequence this Agreement has been terminated) as a result of Operator Default or in accordance with Clauses 24.1.1(a) or 24.1.3:-

- (a) the Concessionaire shall be entitled to appoint a new operator to operate the Tramlink System on its behalf, and shall subject to Clause 27 be entitled to recover from the Operator damages suffered by the Concessionaire as a result of such termination less any sums owed to the Operator by the Concessionaire under this Agreement; and
- (b) the Concessionaire shall not be required to make any further payment to the Operator after the date of termination of this Agreement until any sum due to the Concessionaire under Clause 25.1.1(a) has been agreed or established in accordance with Clause 38. Thereafter the Operator shall be entitled to recover any sum due to it in excess of any sums owed to the Concessionaire in accordance with Clause 25.1.1(a), (if any).

25.1.2 Where this Agreement is terminated as a result of a Concessionaire Default or as a result of the termination of the Concession Agreement for a reason other than Operator Default or the default of the Corporation:-

- (a) the Operator shall be entitled to recover from the Concessionaire damages suffered by the Operator as a result of such termination less any sums owed to the Concessionaire by the Operator under this Agreement; and
- (b) the Operator shall not be required to make any further payment to the Concessionaire after the date of termination of this Agreement until any sum due to the Operator under Clause 25.1.2(a) has been agreed or established in accordance with Clause 38. Thereafter the Concessionaire shall be entitled to recover any sum due to it in excess of any sums owed to the Operator in accordance with Clause 25.1.2(a), (if any).

25.1.3 Where this Agreement is terminated in accordance with Clause 24.1.1(b) or as a result of a Corporation default terminating the

Concession Agreement, the Concessionaire shall reimburse to the Operator its mitigated termination costs.

25.2 Provision of documents

Save as otherwise provided in this Agreement, upon termination of any of the Services or of this Agreement (howsoever caused), the Operator shall forthwith comply with its obligations which arise on termination under Clause 24 and further provide to the Concessionaire free of charge one copy of all documents, databases, records and other information necessary for the operation and maintenance of the Tramlink System (to the extent that such documents have not been previously supplied to the Concessionaire) including a complete record of the activities relating to safety matters and the Safety Case undertaken by the Operator throughout the Term and all other information in the Operator's possession or to which it has access and which is required to enable the Concessionaire to continue to operate and maintain the Infrastructure and the Trams. Such documentation can be, in the form of computer databases, microfilm or CAD data compatible with the software for which licences are provided to the Concessionaire in accordance with Clause 18.

25.3 Condition of records and systems

The Operator shall ensure that all such records, documentation, drawings and manuals are complete, up-to-date, properly catalogued and in a tidy condition for hand-back to the Concessionaire. The Operator shall also ensure that the maintenance management systems and procedures 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.

25.4 Continuance of activities

The Operator and the Concessionaire shall continue to perform their respective activities under this Agreement until the date of expiry or termination of the Agreement unless other phased handover procedures are agreed between the Parties. The Operator shall also give all reasonable cooperation to the Concessionaire to ensure a smooth and trouble free transition of such activities with no degradation of the standard thereof.

25.5 TUPE Regulations

25.5.1 In this Clause 25.5 and Schedule 19 the following definitions shall apply:-

"Operator Employees"	any employee of the Operator or any Affiliate of the Operator;
"TUPE Employees"	any person whose contract of employment may be transferred to a successor operator of the

Tramlink System by virtue of the operation of Law (including the Regulations as amended, replaced or substituted from time to time) or in respect of whom liabilities arising from the contract of employment or employment relationship may be transferred;

"TUPE Information"

the information in relation to the TUPE Employees specified in Schedule 19;

"the Regulations"

means the Transfer of Undertakings (Protection of Employment) Regulations 1981

25.5.2 Where reference is made in this Clause 25.5 to the last twelve months of the Term, such period shall be deemed to commence on the following dates (except and until the actual date of expiry of the Term is known):-

- (a) the date which is twelve months, as the case may be, prior to the date of expiry of the Term assuming that the parties do not agree to extend the Term in accordance with Clause 4;
- (b) the date on which notice is given to the Operator under Clause 24.1.1(a);
- (c) the date on which the Concessionaire becomes aware of an Operator Default and notifies the Operator that such period of twelve months shall be deemed to commence.

Any such period (which may be longer or shorter than twelve months, as the case may be) shall expire on the date of termination of this Agreement or, if earlier, in the case of periods commencing under sub-clause (c) of this Clause 25.5.2, the date falling twelve months after the date of any notice under sub-clause (c) of this Clause 25.5.2 or, in each case, such earlier date as the Concessionaire may determine.

25.5.3 The Operator shall not, without the prior consent of the Concessionaire (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions (as amended from time to time) of employment of any Operator Employee (including any promise to make any additional payment or provide any additional benefit) where such variation or addition:-

- (a) takes effect in the last twelve months of the Term unless it is in the ordinary course of business; or

- (b) results in any such employment not being terminable by the employer within six months of the expiry of the Term; or
- (c) relates to a payment or the provision of a benefit triggered by termination of employment; or
- (d) relates to the provision of a benefit (but excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Term save insofar as such provision is in the ordinary course of business; or
- (e) prevents, restricts or hinders any such employee from working for a successor operator or from performing the duties such employee performed for the Operator.

25.5.4 The Operator shall not, without the prior consent of the Concessionaire (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Operator Employee where such employment may commence during the last twelve months of the Term if and to the extent that:-

- (a) such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent Operator Employees at the date of commencement of employment of such new Operator Employee; and
- (b) if such terms or conditions were granted to such equivalent Operator Employees already employed by the Operator by way of variation to their terms or conditions of employment, the Operator would be in breach of Clause 25.5.3.

25.5.5 Subject to Clause 25.5.6 the Operator shall at the request of the Concessionaire in the last twelve months of the Term provide the TUPE Information within 28 days of such request and thereafter upon termination of this Agreement update such information in accordance with the reasonable requests of the Operator subject to the Operator's common law duties to its employees or under the Data Protection Act 1984.

25.5.6 The Operator shall use its reasonable endeavours to ensure that it will be in a position to provide TUPE Information pursuant to Clause 25.5.5 in respect of the TUPE Employees who are not also Operator Employees but, subject to the Operator having used such reasonable endeavours, the Operator's obligation to provide TUPE Information pursuant to Clause 25.5.5 in respect of such TUPE Employees shall be limited to the TUPE Information covering such TUPE Employees actually in the possession of or reasonably obtainable by the Operator.

25.6 Establishment of hand-over procedure

On termination or expiry of this Agreement the Operator and the Concessionaire shall establish appropriate handover procedures.

25.7 Training and technical support

Commencing 6 months prior to termination of any of the Services or of this Agreement the Operator shall conduct an appropriate training programme for various categories of the Concessionaire staff and third party staff nominated by the Concessionaire who will be responsible for the relevant Services following the termination to ensure the successful continuation of operational activities. The content and style of and programme for the training shall be submitted to the Concessionaire by the Operator for review 9 months prior to termination and the Operator shall comply with the Concessionaire'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. The provision of such training shall for the purposes of this Agreement be an Additional Service.

25.8 Saving provisions

25.8.1 Termination 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 rights and remedies arising out of Clauses 24 and 25.

25.8.2 Clauses 22.2, 22.3, 22.4, 22.5, 26 and 33 and of this Agreement shall remain in full force and effect notwithstanding the termination of this Agreement.

25.8.3 Save as aforesaid this Agreement shall be of no further force and effect following termination of this Agreement.

26. INDEMNITIES

26.1 Indemnity by Operator

26.1.1 The Operator shall be responsible for and shall release and indemnify the Concessionaire from and against all liability, loss, damage, claims, costs and expenses whatsoever:-

- (a) incurred by the Concessionaire as a result of death or personal injury to persons or loss of or damage to property (including property belonging to the Concessionaire or for which it is responsible); or
- (b) incurred by the Concessionaire as a result of the indemnity given by the Concessionaire under Clause 48.1(b) of the Concession Agreement (as originally entered into); or

- (c) incurred by the Concessionaire as a result of a breach by the Operator of the undertakings set out in Part 2 of Schedule 16,

but only to the extent such liability, loss, damage, claim, cost or expense arises out of or in consequence of the negligence to third parties of the Operator or a breach by the Operator of its obligations under this Agreement or, in the case of paragraph (c) above only, a breach by the Operator of its obligations under Part 2 of Schedule 16 provided always that the Operator shall not be responsible for or be obliged to indemnify the Concessionaire for any liability, loss, damage claims, costs and expenses to the extent caused by the negligence of the Concessionaire, or a breach by the Concessionaire of its obligations hereunder or in respect of any matter for which the Operator is not responsible or liable pursuant to Clause 6.4.1 or the design and construction of the Tramlink System.

26.2 Indemnity by Concessionaire

26.2.1 The Concessionaire shall be responsible for and shall release and indemnify the Operator from and against all liability, loss, damage, claims, costs and expenses whatsoever incurred by the Operator as a result of death or personal injury to persons or loss of or damage to property (including property belonging to the Operator or for which it is responsible) but only to the extent such liability, loss, damage, claim, cost or expense arises out of or in consequence of the breach by the Concessionaire of its obligations under this Agreement or the negligence to third parties of the Concessionaire, provided always that the Concessionaire shall not be responsible for or be obliged to indemnify the Operator for any liability, loss, damage, liability cost or expense to the extent caused by the negligence of the Operator or a breach by the Operator of its obligations hereunder.

26.3.1 If either Party ("the Recipient") becomes aware of any third party claim against the Recipient which may result in a claim 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:

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

(iii) 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.

26.3.2 The Recipient shall give the Covenantor all reasonable cooperation, access and assistance, technical or otherwise, for the purpose of resisting such a claim subject as provided in sub-clause 26.3.1(c).

26.3.3 If the Covenantor does not request the Recipient to take any action to resist such third party claim in accordance with this Clause 26 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 21 day period, the Recipient shall make no admission prejudicial to the resistance of such claim.

27. LIMITATIONS ON LIABILITY

27.1 Liability of the Parties

27.1.1 The rights, powers and remedies provided in this Agreement are not cumulative and exclude all substantive (but not procedural) rights, powers and remedies express or implied provided by common law, statute or custom or howsoever otherwise including (without limitation) any rights, powers or remedies any Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly each of the Parties hereby waives to the fullest extent possible all such rights, powers and remedies provided by common law, statute or custom or howsoever otherwise and releases the other its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law, statute or custom or howsoever otherwise in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein and in respect of death or personal injury caused by negligence.

27.1.2 Save for the Tram Maintenance Step-In Agreement and the Deed of Undertaking between the Corporation, the Concessionaire and the Operator of even date (to which this Agreement is subject) this Agreement constitutes the whole and only agreement between the Parties and between the Concessionaire and Centre West Limited relating to (and supersedes and extinguishes any prior drafts, previous agreements, undertakings representations, warranties and arrangements of any nature whatsoever, whether or not in writing between the Parties, in

connection with) the subject matter hereof. The Operator shall hold the benefit of this Clause on trust for CentreWest Limited.

27.1.3 Each of the Parties acknowledges that in entering into this Agreement on the terms set out in this Agreement it has not relied on or been induced to enter into this Agreement by any representation, warranty, undertaking, promise or assurance made or given or action taken in respect of the subject matter hereof by any other Party or any other person, whether or not in writing, at any time prior to the execution of this Agreement other than those expressly set out in this Agreement and neither party nor CentreWest Limited owes to the other any obligation or duty in respect of representation, warranty, undertaking, promise, assurance or advice made or given or action taken in respect of the subject matter hereof prior to the date hereof which is not expressly set out herein. The Operator shall hold the benefit of this clause on trust for CentreWest Limited.

27.2 Criminal Liability

27.2.1 Where the act or default of a Party or of its agents or contractors causes the other Party or the Corporation to commit an offence the first Party shall immediately take all reasonable steps necessary to ensure that act or default no longer causes the other Party or the Corporation to commit that offence.

27.2.2 Where a Party reasonably suspects that such an act or default is about to take place and it reasonably believes that this will result in the other Party or the Corporation committing an offence the first Party may issue an instruction to the other Party to remedy the act or default forthwith and the other Party shall take all reasonable steps to comply with the said instruction.

27.3 Consequential Losses

Save as otherwise expressly set out in this Agreement, neither Party shall be responsible to the other Party for consequential loss or damage resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement and for the purposes of this Clause "consequential loss or damage" shall mean loss of profit, loss of use, loss of contract or any other economic loss or any indirect and/or consequential damage or loss.

27.4 Generally

27.4.1.1 The amount payable by the Concessionaire in respect of any liability under this Agreement shall be reduced to the extent that the amount of any such liability is recovered pursuant to insurances required to be effected in accordance with the terms of this Agreement or otherwise or would otherwise have been recoverable save only for an act or omission on the part of the Concessionaire which renders such policy of insurance void save

that for the avoidance of doubt the Concessionaire shall be liable to the extent of any excess.

27.4.1.2 The amount payable by the Operator in respect of any liability under this Agreement excluding liability in respect of Clause 21.2.1.2 shall be reduced to the extent that the amount of any such liability is recovered pursuant to insurances required to be effected in accordance with the terms of this Agreement save only for an act or omission on the part of the Operator or otherwise or would otherwise have been recoverable and which, in knowledge of the terms of the insurances (and for the purposes of this Clause 27.4.1 knowledge of such terms shall be imputed in respect of those policies referred to in Schedule 6 where the Operator is named as insured) renders such policy of insurance void save that for the avoidance of doubt the Operator's liability for any excess in respect of such insurance shall not exceed £ [REDACTED].

27.4.2 Subject to Clause 27.4.3 the liability of the Operator in respect of any claim under this Agreement shall not (when aggregated with the amount of all other claims in any one Operating Year) exceed £ [REDACTED] including the Operator's liability referred to in Clause 16.1.2 in that Operating Year. To the extent that any liability of the Operator under this Agreement is reduced pursuant to Clause 27.4.1 such amount shall not be included for the purpose of calculating the limit of the Operator's liability under this Clause.

27.4.3 The limits on the Operator's liability as set out in Clause 27.4.2 shall apply in respect of termination of this Agreement save that where the Operator constructively abandons the performance of this Agreement and the Agreement is terminated by the Concessionaire, the Operator's maximum liability shall be the amount of the total remuneration paid to the Operator in the previous Operating Year in respect of Part 3 and 5 of Schedule 2. For the purpose of this Clause 27.4.3, "constructive abandonment" shall mean the Operator acting through the Operator's Representative or a director of the Operator:-

- (a) clearly and absolutely refusing to perform its obligations under this Agreement; or
- (b) deliberately engaging in a course of conduct which is designed to, or the Operator's Representative or such director is reckless as to whether it will disable the Operator from performing its obligations under this Agreement.

27.4.4 If the Concessionaire terminates this Agreement as a result of the termination of the Tram Maintenance Contract arising from default thereunder by the Tram Maintenance Contractor the limit

of the liability of the Operator to the Concessionaire under this Agreement shall be equivalent to the limit of the liability of the Tram Maintenance Contractor to the Operator under the Tram Maintenance Contract.

28. ASSIGNMENT AND SECURITY

28.1 Assignment by Concessionaire

The Concessionaire shall be entitled to assign or charge the benefit of any of this Agreement (or any part thereof) to any person assuming responsibility for the operation and/or maintenance of any part of the Tramlink System or to any Lender subject to such person assuming responsibility for the performance of the obligations of the Concessionaire hereunder save in the case of Lenders.

28.2 Assignment

Neither Party shall be entitled to assign without the written consent of other Party any right or interest under this Agreement save as provided under Clause 28.1. The liabilities of either Party under this Agreement shall not be increased by the assignment or charging by the other Party of any right or interest under this Agreement pursuant to this Clause 28.2.

29. SUB-CONTRACTS

29.1 Sub-contracting

29.1.1 The Operator may sub-contract any part of its obligations under this Agreement (but not the whole) with the consent of the Concessionaire such consent not to be unreasonably withheld or delayed. Such consent will not be required for sub-contracts where:-

- (i) the contract is not material in the context of the Agreement; or
- (ii) the contract is not for a total consideration in excess of £250,000 (Indexed).

save always, and notwithstanding the provisions of this Clause 29.1 the consent of the Concessionaire (not to be unreasonably withheld) shall be required in the event that the Operator proposes to subcontract any or all of its obligations in respect of the collection of revenue on the Tramlink System.

29.2 Operator to remain responsible

29.2.1 The Operator shall retain full responsibility and liability for the work of its employees contractors and sub-contractors and any breach of this Agreement caused by such employee, contractor

or subcontractor in the course of performing obligations under this Agreement on behalf of the Operator shall be a breach by the Operator.

29.2.2 The Concessionaire shall retain full responsibility and liability for the work of its employees contractors and sub-contractors (save for the Operator) and any breach of this Agreement caused by such employee, contractor or subcontractor in the course of performing obligations under this Agreement on behalf of the Concessionaire shall be a breach by the Concessionaire.

29.3 Sub-contracting requirements

29.3.1 The Operator shall ensure with respect to each contract or sub-contract for the procurement of goods and services hereunder which has a value in excess of £250,000 or is material in the context of this Agreement:-

- (a) the benefit of the contract or sub-contract can be freely assigned to the Concessionaire or any successor operator save for an obligation on the part of the assignee to assume the obligation on the part of the Operator under such contract or sub-contract;
- (b) the contract or sub-contract is entered into by the Operator as principal and the Concessionaire has no obligations pursuant thereto;

unless the Operator has previously notified the Concessionaire that any particular contract or sub-contract which falls within this Clause 29.3.1 does not satisfy the requirements of paragraph (a) above and the Concessionaire has not objected within 10 Business Days.

29.3.2 If the Operator enters into a contract or sub-contract to which Clause 29.3 would otherwise apply with any person for the supply of goods or services to or for the Tramlink System and such person is an Affiliate of the Operator, the terms of any such contract or sub-contract shall be in accordance with normal commercial practice and at arm's length and on such terms as would be appropriate if the contract or sub-contract had been entered into by a person other than an Affiliate of the Operator.

30. REPORTS, MEETINGS AND RECORDS

30.1 Reports

With effect from the Actual Opening Date, the Operator shall provide the Concessionaire within 21 days following the end of each quarter a report on the activities of the Operator during that quarter. The report shall include:-

30.1.1 details of all major maintenance performed by the Maintenance Contractors 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;

30.1.2 details of any other matter which is likely to affect the Operating Services during such following quarter;

30.1.3 copies of any notices received by the Operator during the quarter to which the report relates pursuant to any Applicable Requirement or from any competent authority and a statement of the action taken by the Operator in respect of such notices;

30.1.4 details of any special investigations carried out in relation to the state and condition of any element of the Tramlink System together with copies of all associated reports where the Concessionaire requires the same;

30.1.5 such other information as the Concessionaire shall have reasonably requested the Operator to provide during such quarter.

30.2 Meetings

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

30.2.1 quarterly progress and performance review meetings at which the parties shall review the Operator's quarterly reports; and

30.2.2 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).

30.3 Records and Reports

The Operator shall maintain, regularly update and make available to the Concessionaire records and reports of all Tram Services provided on the Tramlink System in accordance with a procedure to be agreed between the Parties taking account of the Concessionaire's obligations under Clause 69.4 of the Concession Agreement.

30.4 Provision of documents

The Operator shall make available to the Concessionaire one copy without charge of all documents and data of any nature acquired or brought into

existence in any manner whatsoever by or on behalf of the Operator (but not documents containing information of a confidential or proprietary nature) and which might reasonably be required by the Concessionaire for the purposes of exercising its rights or carrying out its duties and obligations under the Project Agreements.

31. COMPENSATION EVENTS

31.1 Change in Law

31.1.1 Where either Party becomes aware of any Compensation Event it shall notify the other Party as soon as practicable. The Parties shall assess the actual and potential financial effect of such Compensation Event on the Operator of performing this Agreement (the "Increased Costs") and shall agree the amount of Increased Costs as shall form part of the Concessionaire's claim under Clause 41 of the Concession Agreement (if any) and shall attribute such Increased Costs as relate to Tram Maintenance Services and the Operator shall assist the Concessionaire to comply with its obligations with regard to mitigation under Clause 40 of the Concession Agreement. Where the Parties cannot agree the amount of the Increased Costs to be included as part of the Concessionaire's claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement.

31.1.2 Where in any negotiation with the Corporation as to the appropriate amount of Increased Costs to be taken into account in determining the Concessionaire's entitlement to compensation under Clause 41 of the Concession Agreement the Corporation rejects the level of Increased Costs so proposed solely on the grounds such changes are not properly substantiated then either:

31.1.2.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Increased Costs with the Corporation; or

31.1.2.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

31.1.3 The Operator shall be entitled to recover from the Concessionaire the Increased Costs determined in accordance with Clause 31.1.1 in respect of any Compensation Event save where such amount is rejected by the Corporation in accordance with Clause 31.1.2 in which event it shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 31.1.2 or determined by the Expert less (where a deductible applies under the Concession Agreement) the lesser of

such deductible or the amount deductible in accordance with Clause 31.1.6.

- 31.1.4.1 In the event that as a result of the requirements of HMRI the costs and expenses of the Operator in performing its obligations under this Agreement are increased then the Operator shall bear and pay such increased costs and expenses up to the amount of £200,000 in any one Operating Year. If such costs and expenses of the Operator are increased in excess of £200,000 in any Operating Year, after meeting such costs up to the amount of £200,000, the Operator at its discretion may terminate this Agreement without prejudice to the Concessionaire's other accrued rights hereunder. Subject to Clause 6.6.2, each Party shall meet its own costs and expenses resulting from such termination.
- 31.1.4.2 If the Operator decides to terminate this Agreement in accordance with Clause 31.1.4.1, it shall give the Concessionaire written notice of its intention to terminate. Within 28 Business Days of receipt by the Concessionaire of such notice, the Concessionaire shall send a written response to the Operator either:
- (a) acknowledging the Operator's intention to terminate this Agreement; or
 - (b) confirming that the Concessionaire will bear the increased costs of the Operator as a result of the requirements of HMRI in excess of £200,000 in any one Operating Year.
- 31.1.4.3 If the Concessionaire responds to the Operator in accordance with Clause 31.2.4.2 (a) then the Operator shall be entitled to terminate this Agreement after the expiry of 6 months from the date of the written response provided to the Operator pursuant to Clause 31.1.4.2 (a) save always that during such six month period the Operator should not be obliged to incur additional costs in providing Services due to any failure on the part of the Concessionaire in implementing the requirements of HMRI pursuant to Clause 31.1.4.1 in excess of £200,000.
- 31.1.4.4 If the Concessionaire responds to the Operator in accordance with Clause 31.1.4.2 (b) then the Operator shall not be entitled to terminate this Agreement and the Parties shall continue to perform their respective obligations hereunder on the terms of the Concessionaire's confirmation given under Clause 31.1.4.2(b).
- 31.1.5 The Concessionaire shall consult with the Operator in the event that it is proposed by either Party that any Bye-Law be amended or altered but only to the extent that such amendment or alteration would affect the Operator in the provision of the

Operating Services pursuant to this Agreement. If the Concessionaire, without legal requirement, amends or alters any Bye-Law and as a direct result of such amendment or alteration the costs of the Operator in performing its obligations under this Agreement are increased and such increase is substantiated to the Concessionaire, then the Concessionaire shall reimburse to the Operator such amount being the equivalent of such increase in costs.

31.1.6 If at any time after the date hereof any Change of Safety Law or General Discriminatory Legislation occurs and the Concessionaire is unable to reclaim the Operator's Increased Costs in respect thereof then the Operator shall bear without recourse to the Concessionaire and without prejudice to the provisions of paragraph (c) of Schedule 2 the lowest of the first £ [redacted] of any Increased Costs arising out of the same or the deductible applicable in the circumstances under the Concession Agreement or the amount it is unable to recover in respect of the same.

31.1.7 The Operator shall continue to be entitled to compensation for a Compensation Event in accordance with this Clause 31.1 notwithstanding the end of the "First and Second Protection Periods" (each as defined in the Concession Agreement) as if the compensation were still available to the Concessionaire under Clause 41 of the Concession Agreement save that the Concessionaire and the Operator shall agree the level of Increased Costs and in the event that no agreement can be reached shall refer the dispute to the Expert.

~~31.1.8.1~~
31.1.8.1
Notwithstanding
any other
provisions of
this Agreement

Where a Change of Law requires any modification to the Trams and (if relevant) any changes to the nature or extent of the Tram Maintenance Services as a result of such modification to the Trams the Operator, when required by the Concessionaire, shall implement such works as are necessary to ensure that the Trams comply with the relevant Change of Law and any such changes to the Tram Maintenance Services shall be Additional Services in accordance with Clause 6.7. *Such works*

31.1.8.2 The Operator shall not be nor be deemed to be in breach of its obligations under this Agreement to comply with all Applicable Requirements or other Law to the extent that it is not required to carry out the Additional Services referred to above in accordance with the terms of this Agreement.

31.2 Construction Change

31.2.1 Where the Corporation or the Concessionaire issues a Concessionaire Change Order the Concessionaire shall notify the

Operator as soon as practical. Where required by the Operator the Concessionaire shall make a claim under Clause 27 of the Concession Agreement. The Parties shall assess the potential effect of such Concessionaire Change Order to the Operator of performing this Agreement (the "Increased Costs") and shall agree the amount of Increased Costs as shall form part of the Concessionaire's claim under Clause 27 of the Concession Agreement (if any) and the Operator shall assist the Concessionaire to comply with its obligations under Clause 27 of the Concession Agreement. Where the Parties cannot agree the amount of the Increased Costs to be included as part of the Concessionaire's claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement.

31.2.2 Where in any negotiation with the Corporation as to the appropriate amount of Increased Costs to be taken into account in determining the value of the Corporation Change Order in accordance with Clause 29.3 of the Concession Agreement the Corporation rejects the level of Increased Costs so proposed solely on the grounds such changes are not properly substantiated then either:

31.2.2.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Increased Costs with the Corporation; or

31.2.2.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

31.2.3 The Operator shall be entitled to recover from the Concessionaire the Increased Costs determined in accordance with Clause 31.2.2 in respect of any Concessionaire Change Order save where such amount is rejected by the Corporation in accordance with Clause 31.2.2 in which event it shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 31.2.2 or determined by the Expert.

31.3 Where a Compensation Event or a Construction Change occurs the Parties shall assess the actual and potential financial effect of the same on the Operator and shall agree an appropriate reduction to the Fees or other sums due to the Operator under the Agreement as appropriate.

31.4 In respect of any Concessionaire Change Order required by the Concessionaire the Operator shall be entitled to recover in accordance with Clause 6.7.1 any Increased Costs.

32. DEREGULATION

If at any time Deregulation occurs:

- 32.1 the Fees shall be rebased in accordance with paragraph (c) of Schedule 2, and subsequently at five yearly intervals from that date and Clause 21.2.2 shall be adjusted accordingly; and
- 32.2 the Parties shall agree any further amendments that they wish to make to this Agreement as a result of Deregulation and if the Parties are unable to reach agreement as to any such amendments then the Operator shall be entitled to recover its "Change in Costs" or "Increased Costs" (as appropriate) under Clauses 16, 31.1 and 31.2 from the Concessionaire as it would have been entitled to if compensation were still payable to the Concessionaire under the Concession Agreement.

33. CONFIDENTIAL INFORMATION

33.1 Obligations as to Confidentiality

The Parties to this Agreement shall keep confidential all matters relating to this Agreement and the Concession Agreement and will not make any disclosure, and will use best endeavours to prevent their employees, agents and servants from making any disclosure, to any person of any information, data, documents, secrets, dealings, transactions or affairs of or relating to this Agreement or the Concession Agreement.

33.2 Permitted disclosure

The confidentiality obligation of the Parties shall not apply to the following:-

- 33.2.1 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 33;
- 33.2.2 any disclosure which may reasonably be required for the performance of that Party's obligations under this Agreement;
- 33.2.3 disclosure of information which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto);
- 33.2.4 disclosure of any information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
- 33.2.5 the provision of information to suppliers or subcontractors provided similar obligations of confidentiality to those contained

in this Agreement are imposed upon them before information is disclosed;

33.2.6 provision of information to any party to any of the Financing Documents or their professional advisers or insurance advisers;

33.2.7 compliance by the Operator with its obligations set out in Clause 30;

33.2.8 provision of information by the Concessionaire pursuant to the terms of the Concession Agreement or any of the Project Agreements;

33.2.9 provision of information to its professional advisers and financiers.

33.3 Continuing obligations

The provisions and obligations set out in this Clause shall survive and remain in force upon and following the termination of this Agreement.

34. DOCUMENTS, DUTIES AND FEES

34.1 Supply of documents

The following provisions shall apply where one Party is obliged under this Agreement to supply documents and drawings to the other Party:-

34.1.1 all paper based documents and drawings shall be of a suitable quality for reproduction, microfilming or scanning into electronic databases;

34.1.2 documents and drawings may be supplied on suitable electronic media provided such media is in a format which is compatible with the relevant Party's systems; and

34.1.3 each Party shall ensure that secure back-ups or archive copies of originals and revisions are maintained in respect of data supplied on electronic media.

35. PAYMENTS

35.1 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:-

35.1.1 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;

35.1.2 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;

35.1.3 without prejudice to the payee's right to receive payment on the due date, 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 35.1.1 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

35.1.4 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.

36. NOTICES

36.1 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:-

Concessionaire

Address: Macmillan House,
Paddington Station,
London W2 1TY
Facsimile No: 0171-706 1300
Attention: Project Director

Operator

Address: Macmillan House,
Paddington Station,
London W2 1TY
Facsimile No: 0171-706 1820
Attention: Company Secretary

36.2 Time of service

A notice shall be deemed to have been received:-

- 36.2.1 if delivered by hand, at the time when the notice is left at the address of the Party to be served;
- 36.2.2 if sent by post on the working day next following the day of posting or, if the day of posting was not a working day, the working day next following the first working day after the day of posting;
- 36.2.3 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.

37. GENERAL PROVISIONS

37.1 Waivers

None of the terms, provisions or conditions of this Agreement shall be considered waived by any Party to this Agreement unless a waiver is given in writing by that Party. No such waiver shall be a waiver of any past or future default or breach nor shall it create any amendment or addition to or deletion from any of the terms, provisions or conditions of this Agreement unless (and then only to the extent) expressly stipulated in the waiver.

37.2 Partial invalidity

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining part or provisions of this Agreement.

37.3 No liability for review or approval by the Concessionaire

Save where this Agreement provides for the Operator to respond to a direction or instruction given by or on behalf of the Concessionaire or for the Operator to seek the consent or approval of the Concessionaire and the Operator responds in the manner directed or instructed or acts in the manner for which consent or approval was sought or save as is agreed otherwise by the Operator and the Concessionaire, the obligations of the Operator hereunder shall not be affected by any instruction, direction, consent, approval, comment, acknowledgement or advice made or given by or on behalf of the Concessionaire and the Operator shall not be entitled to make any claim against the Concessionaire or to seek any relief or remedy of any nature by reason of any such action by or on behalf of the Concessionaire.

37.4 No liability for review or approval by the Operator

Save where this Agreement provides for the Concessionaire to respond to a direction or instruction given by or on behalf of the Operator or for the Concessionaire to seek the consent or approval of the Operator and the Concessionaire responds in the manner directed or instructed or acts in the manner for which consent or approval was sought or save as is agreed otherwise by the Concessionaire and the Operator, the obligations of the Concessionaire hereunder shall not be affected by any instruction, direction, consent, approval, comment, acknowledgement or advice made or given by or on behalf of the Operator and the Concessionaire shall not be entitled to make any claim against the Operator or to seek any relief or remedy of any nature by reason of any such action by or on behalf of the Operator.

37.5 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. Save as expressly authorised in this Agreement, neither Party shall be deemed to be the agent of the other and shall not hold itself out as having authority or power to bind the other in any way.

37.6 Further assurance

Each Party agrees, upon the request of the other, to execute any documents and take any further steps as may be reasonably necessary in order to implement and give full effect to this Agreement.

37.7 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 or arrangement of which this Agreement forms part and which is registrable or by virtue of which this Agreement is registrable.

37.8 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.

37.9 Language of Agreement

The language of this Agreement is the English language.

37.10 Announcements

Save as required by law or regulation the Parties shall not make any announcements in connection with this Agreement without the prior written consent of the other Party such consent not to be unreasonably withheld.

37.11 Costs

Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement.

38. DISPUTE RESOLUTION

Any dispute arising between the Parties hereunder shall be resolved in accordance with the provisions of Schedule 9.

39. PROPER LAW

This Agreement is subject to the Law of England and Wales and 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.

Executed as a Deed)
for and on behalf of)
Tramtrack Croydon Limited)
acting by:

Director

Director / ~~Secretary~~

Executed as a Deed)
for and on behalf of)
Tram Operations Limited)
acting by:

Director

Director / ~~Secretary~~

DATED 25 November 1996

(1) **TRAMTRACK CROYDON LIMITED**

- and -

(2) **TRAM OPERATIONS LIMITED**

SCHEDULES AND ANNEXURE
relating to the
Croydon Tramlink System Operating Agreement

ASHURST MORRIS CRISP
Broadwalk House
5 Appold Street
London EC2A 2HA

Tel: 0171-638-1111

Fax: 0171-972-7990

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SCHEDULE 1

THE SERVICES

PART 1: PRELIMINARY SERVICES

From the date of this Agreement until the start of the Mobilisation Period, the Operator shall:-

- liaise with the Contractor during the detail design process;
- review and, where applicable, comment on construction designs, timescales and proposals;
- review and, where applicable, comment on proposed and actual changes to the Specification, the Performance Specification and the Operator Specification;
- review and, where applicable, comment on proposed and actual Construction Changes, Change Orders, Service Changes, Service Parameter Changes, Indicative Change Orders (as defined in Clause 29.1 of the Concession Agreement);
- review and, where applicable, comment on any Change of Law, anticipated Change of Law or Compensation Event which may impact future operations of the Tramlink System;
- review any change in the Tramlink System and the Project Agreements and, where applicable, comment;
- attend meetings with HMRI and have input into Safety Case discussions;
- commence preparation of the safety cases relating to operation of the Tramlink System and to the stations;
- assist with discussions with the Corporation and with the Council, where an Operator input is applicable; and
- develop recruitment and training plans.

But not with respect to the Trams.

PART 2: MOBILISATION SERVICES

From the start of the Mobilisation Period until the Actual Opening Date the Operator shall:-

- review, and where applicable, comment on construction designs, timescales and proposals;
- review, and where applicable, comment proposed and actual changes to the Specification, the Performance Specification and the Operator Specification;

- review, and where applicable, comment proposed and actual Construction Changes, Change Orders, Service Changes, Service Parameter Changes and Indicative Change Orders (as defined in Clause 29.1 of the Concession Agreement);
- review, and where applicable, comment any Change of Law, anticipated Change of Law or Compensation Event which may impact future operations of the Tramlink System;
- review any change in the Tramlink System and the Project Agreements and, where applicable, comment;
- prepare the safety cases relating to operation of the Tramlink System and to the stations;
- assist with discussions with the Corporation and with the Council, where an Operator input is applicable;
- liaise with the Contractor in respect of arranging the training of Operator staff required for commissioning and listing and operating of the Tramlink System;
- develop recruitment and training plans;
- recruit and employ staff;
- train staff to the required standard (except in relation to training given by external suppliers referred to below);
- receive training in the operation of the Tramlink System both at the Site and at other sites (to be determined). Most of this training will be in respect of equipment suppliers;
- attend at meetings with HMRI regarding the Safety Case;
- develop a safety plan;
- develop Quality Plans;
- develop administration and management procedures and systems;
- arrange for the opening in Croydon town centre of a small office to handle marketing, lost property and ticket sales;
- tender and arrange contracts with sub-contractors;
- assist with obtaining the required Bye-laws;
- assist with the development of the Customer Charter;
- assist the Concessionaire and the Contractor with the required testing of the Tramlink System and comment to the Concessionaire and the Contractor (as relevant) on the findings of those tests.

But not with respect to the Trams

PART 3: OPERATIONAL SERVICES

1. Assumptions

The Parties acknowledge that the provision of the Services by the Operator assumes and is dependant on:-

- the supply of electricity free of charge save for that expressly assumed by the Operator hereunder;
- the payment by the Concessionaire of all rates and property related charges except those related to the Operator's offices in Croydon and gas, water and telephone at the Depot consumed by the Operator or its sub-contractors;
- the Trams can be operated using one man as is current Good Industry Practice;
- that tram operating speed, tram acceleration and tram braking are permitted at the levels contained in the Specification;
- the cleaning of graffiti and rectification of vandalism and other handling of crime remain at levels which can reasonably be expected with a tram system in that area;
- marketing to a level to be reasonably expected with a controlled fare regime operating in a regulated environment;
- that any change in livery is at the Concessionaire's cost;
- that the Tramlink System will be provided in accordance with Clause 9.1; *- from PoD*
- the Off-Tram Revenue Agreement does not impose survey requirements on the Operator in addition to standard revenue protection personnel;
- the level of training and visits required by the Concessionaire are reasonable;
- no additional policing or other staff requirements for special events;

and in the event of any change in such assumptions except where expressly addressed in this Agreement, such change will be treated as Additional Services and dealt with in accordance with Clause 6.7.

2. General

During the Operating Period, the Operator shall provide to the Concessionaire:-

- (a) tram drivers to meet the requirement of the Timetable;
- (b) tram drivers to provide, as required, shunting service within the Depot;

- (c) controllers on a 24 hour shift basis. The controllers' role is to man the Control Room, ensure the smooth operation of the Tramlink System and deal with all emergencies and incidents (with back-up support were necessary);
- (d) management of the drivers and controllers, including an on-call system outside of normal office hours;
- (e) a travel information service. During office hours, this would be provided by staff based at the Croydon office. Outside office hours, the telephone inquiry number would be linked to the control room at Therapia Lane. The Operator will provide information to LT for it to update its 24-hour London Travel Information service;
- (f) a marketing service. This will provide a range of publicity timetables, fare charts and general marketing information referred to above;
- (g) a lost property service in line with LT's current standard of lost property. It will be located in the Croydon office and be open during most normal office hours;
- (h) personnel and training resources suitable for the size of the operation;
- (i) contract management resource to cover tram maintenance, the Operator's sub-contractors and a maximum of 20 infrastructure maintenance contractors;
- (j) control of stores and inventory management for the Operator and the Tram Maintenance Contractor stock;
- (k) interface between infrastructure maintenance requirements on the Tramlink System and operational requirements;
- (l) organising, where applicable replacement bus services;
- (m) updating of O & M Procedures;
- (n) updating of Health and Safety Procedures and safety plan;
- (o) updating of Quality Plans;
- (p) evaluation of technical innovations and new products in the tram industry;
- (q) evaluation of technical problems impacting the operations;
- (r) monitoring of auditing and reporting on all aspects of safety relating to the Tramlink System. Working with the Concessionaire's Health and Safety Manager to provide a safe system working within the Safety Case;
- (s) revenue related services as more particularly detailed in Schedule 11;
- (t) provision of cleaning services as more particularly detailed in section 11 of the Operator Specification;

- (u) mobile van to attend breakdowns or emergencies;
- (v) liaison with emergency services and planning for response to emergencies;
- (w) liaison and, where applicable, use of an appropriate Police force to carry out both its statutory duties and to provide a level of surveillance. The use of a contractor to carry out some security work is envisaged;
- (x) liaison with the Tram Maintenance Contractor, and identification of interface issues between the Tram Maintenance Contractor and the Operator;
- (y) departure charges but only to the extent of the Timetable as at the date of this Agreement;
- (z) management of breakdown and/or emergency response;
- (aa) assist the Concessionaire and the Contractor with the required commissioning and testing of the Tramlink System from SAT 2 up to and including SAT 3 and comment to the Concessionaire and the Contractor (as relevant) on the finding of those texts;
- (bb) wheel turning in accordance with Good Industry Practice.

In the event of any conflict between the provisions of this Part of the Schedule and the other provisions of this Agreement (including the Operator Specification) the other provisions of this Agreement shall prevail.

PART 4: INFRASTRUCTURE MAINTENANCE MANAGEMENT SERVICES

1. The Operator shall:-

- (a) prepare and submit to the Concessionaire, maintenance budgets split between routine maintenance irregular and heavy maintenance, capital expenditure and project expenditure. The Operator will state which elements are fixed price or are provision sums. The Operator will also state the level of technical expertise required to evaluate the work;
- (b) prepare, issue and evaluate maintenance agreements;
- (c) employ on behalf of the Operator, technical expertise to advise on infrastructure maintenance. This advice shall include, but shall not be limited to architects, design consultants, surveyors, quality surveyors and environmental consultants;
- (d) place orders for maintenance work;
- (e) manage the relationship between the maintenance contractors, other contractors and the Operator;
- (f) ensure that safety aspects of maintenance work are reviewed and minimise any resultant risk to the operations and users of the System;

- (g) ensure that impacts on the passenger service are minimised, adequate notice to passengers are given and that substitute bus services are organised;
 - (h) assess the effect of the Infrastructure Maintenance Plan on the Operator Specification;
 - (i) ensure that, on completion of any maintenance work, that clearance is given for passenger services to commence.
2. For clarity the fee for Infrastructure Maintenance Management Services does not include amongst other things the following costs:
- any external costs including the use of consultants, advisors, surveyors, technical advisors etc;
 - the cost of infrastructure maintenance;
 - the cost of spares, storage and losses associated with infrastructure maintenance;
 - any costs associated with defect rectification and latent defects;
 - insurance of infrastructure maintenance, contractors and property and equipment subject to infrastructure maintenance

all of which, if incurred, would be treated as Additional Services and dealt with in accordance with Clause 6.7.

PART 5: TRAM MAINTENANCE SERVICES

A. GENERAL

1. Repair of the Trams and Routine Maintenance

For the purposes of this Part 5 of Schedule 1, the following definitions shall apply:-

"Tram Management Services": the contracting for and management of the provision of Tram Spares Services under the Tram Maintenance Contract;

"Tram Spares Services": the provision of spare parts for Trams by the Tram Maintenance Contractor.

Tram Maintenance

- 1.1 The Operator shall procure the provision of Tram Maintenance Services and Tram Spares Services by the Tram Maintenance Contractor in accordance with the Tram Maintenance Contract and shall be liable for the failure of the Tram Maintenance Contractor properly to perform such services as if such failure were a breach of this Agreement provided that notwithstanding anything else in this Agreement:-

- 1.1.1 the rights of the Concessionaire and liability (including any consequential liability) of the Operator under this Agreement where the Operator fails to procure the provision of Tram Maintenance Services in accordance with the Tram Maintenance Contract shall not exceed the rights of the Operator and the liability of the Tram Maintenance Contractor under the Tram Maintenance Contract where the Tram Maintenance Contractor fails properly to perform Tram Maintenance Services under that agreement:-
- (a) assuming enforcement thereof by the Operator; and
 - (b) ignoring for these purposes any right to relief, right of set-off, counterclaim or any similar such right which the Tram Maintenance Contractor may enjoy under the Tram Maintenance Contract to the extent arising from a breach by the Operator of the terms of that agreement which breach was not caused by the Concessionaire under this Agreement, by either party to the Concession Agreement or by any party to any of the other Project Agreements, in which case the Operator's obligations and liability hereunder shall not exceed the obligations and liability of the Tram Maintenance Contractor had it not enjoyed such right or such relief;
- 1.1.2 the obligation upon the Operator to procure Tram Spares Services is limited to the provision of Tram Management Services by the Operator and any failure on the part of the Tram Maintenance Contractor to provide Tram Spares Services shall not constitute a default on the part of the Operator hereunder except to the extent that such failure is attributable to a breach by the Operator in the provision of Tram Management Services hereunder. In such circumstances the obligation of the Operator shall be to work with the Concessionaire to source Tram Spares from another party and to use its best endeavours in doing so but without being required to expend excessive management time or to incur external costs in so doing;
- 1.1.3 if the Operator is prevented from providing any other Services as a result of a breach by the Tram Maintenance Contractor of the Tram Maintenance Contract then the total liability of the Operator hereunder in respect of any such breach shall not exceed the amount payable under the Tram Maintenance Contract.
- 1.2 The Operator shall provide Tram Management Services.
- 1.3 The obligation on the Operator to provide Tram Maintenance Services hereunder shall continue until the provision of Tram Maintenance Services under the Tram Maintenance Contract is terminated or expires whereupon it shall end and the Operator shall not be obliged to provide any Services hereunder to the extent it is unable to do so because of the termination or expiry of the Tram Maintenance Contract.
- 1.4 The obligation on the Operator to provide Tram Management Services hereunder shall continue until the Tram Maintenance Contract is terminated or expires whereupon it shall end.

- 1.5 The Operator shall not terminate the Tram Maintenance Contract or the provision of any services thereunder without the prior consent of the Concessionaire such consent not to be unreasonably withheld or delayed.
- 1.6 Where the Tram Maintenance Contract expires or is terminated the Concessionaire and the Operator shall consult together in order to recruit a new Tram Maintenance Contractor. No new appointment shall be made without the prior written consent of both Parties (such consent not to be unreasonably withheld) and any additional costs or expenses determined in accordance with Clause 6.7 arising from the appointment of a new Tram maintenance contractor shall be met by the Concessionaire. If any amendments to the Operating Agreement are necessary as a result of such appointment the Parties shall negotiate in good faith and using all reasonable endeavours to reach agreement on the terms of such amendments.
- 1.7 The obligation on the Operator to provide Tram Maintenance Services shall revive upon any successor Tram maintenance contractor being appointed on such appointment coming into effect, whereupon the obligation on the Operator shall revive on the same basis mutatis mutandis as if the Tram Maintenance Contract had not expired or terminated but taking into account the changes made to this Agreement pursuant to paragraph 1.6.
- 1.8 Where the termination or expiry of the Tram Maintenance Contract is anticipated or predictable the Operator and the Concessionaire shall co-operate in advance of such termination or expiry in accordance with paragraph 1.6 in order to appoint a successor Tram Maintenance Contractor.
- 1.9 The provisions of Clause 29 "Sub-Contracts" shall not apply to the provisions of the Tram Maintenance Contract.
- 1.10 The Operator undertakes to the Concessionaire that it will not make or agree to any material amendment to, or variation to, the Tram Maintenance Contract without the prior written consent of the Concessionaire, such consent not to be unreasonably withheld.
- 1.11 No part may be removed from any Tram by the Operator except in compliance with the terms and conditions of the Tram Maintenance Contract. The Operator may not make modifications to any Tram save as permitted or required by the Tram Maintenance Contract.
- 1.12.1 If the Operator wishes to amend or modify the Trams in a way which is outside the provisions of the Tram Specification (as defined in the Tram Maintenance Contract) then the Operator shall consult with the Concessionaire as to the acceptability of such amendment or modification, the potential cost savings, the effect on Tram Service Levels, the Timetable and other requirements of the Specification and its implementation. If the Concessionaire consents to any such amendment or modification then the Operator will carry out such amendment or modification in accordance with the requirements of the Concessionaire and shall take such further action as the Concessionaire shall reasonably require as a result of the same (including amending the Tram Maintenance Manuals and Tram Maintenance Plan and any other handbooks or

manuals used in connection with the Trams and providing replacement equipment). All costs and expenses reasonably and properly incurred by the Concessionaire in connection with such amendment or modification (including the costs of amending the Driver Manuals) shall be met by the Operator unless otherwise expressed.

- 1.12.2 If the Concessionaire wishes to amend or modify the Tramlink System or any of the Concessionaire Tram Spares then the Concessionaire shall consult with the Operator as to such amendment or modification, the potential cost savings, the effect on Tram Service Levels, the Timetable and other requirements of the Operator Specification and the implementation of such amendment or modification. Following such consultation, the Operator shall provide to the Concessionaire its assessment of the financial effects to it, if any, of such amendment or modification which shall be reviewed by the Concessionaire and a cost agreed between the Concessionaire and Operator. The Operator shall provide all reasonable assistance in implementing such modification or amendment if required by the Concessionaire. Any modification or amendment carried out pursuant to this paragraph 1.12.2 shall be treated as an Additional Service.
- 1.13 The Operator shall not be liable for any failure by the Operator to make Trams available in accordance with this Agreement to the extent such failure was due to the Trams not being available to the Operator for the provision of the Services (save where caused by a breach by the Operator hereunder).
- 1.14 The Concessionaire's right to receive Tram Maintenance Services pursuant to paragraph 1.1 shall not be affected by any failure to enforce rights on the part of the Operator under the Tram Maintenance Contract or any grant of waiver or other relief by the Operator thereunder except where such failure or grant is approved in writing by the Concessionaire such approval not to be unreasonably withheld or delayed.
- 1.15 The Operator shall not admit liability in any dispute with the Tram Maintenance Contractor under the Tram Maintenance Contract in a way which may affect adversely the Concessionaire without the approval in writing of the Concessionaire such approval not to be unreasonably withheld or delayed.
- 1.16 The Operator shall review and comment on the Train Maintenance Plan in accordance with the provisions of Clause 20 of this Agreement.

2. Other Requirements

The Operator shall, notwithstanding any term of the Tram Maintenance Contract comply with the following:

2.1 Removals, Substitutions and Replacements

- (a) Save as referred to in Clause 17.9 of the Tram Maintenance Contract all substitutions, replacements and renewals of parts of any Tram must become the unencumbered property of the owner of the Tram free of all liens and claims whatsoever within thirty (30) days of being

attached to such Tram and such substitutions, replacements and renewals shall immediately become part of such Tram and subject to this Agreement. The Operator may not make modifications to any Tram (or any part thereof) save as permitted or required by the terms of this Agreement.

- (b) The Operator shall ensure that any Concessionaire Tram Spare which is not installed in the Tram to which it relates is properly and safely stored in accordance with paragraph 4(b) below and kept free from liens.

2.2 Additions

- (a) Subject to compliance at all times by the Operator with the terms of this Agreement, the Operator may, at no cost or expense to the Concessionaire, make additions to any of the Trams so long as the making of such additions does not detrimentally affect the safety, saleability, utility or value of such Tram or Trams. Following the making of any material addition to any of the Trams, the Operator shall notify the Concessionaire in writing thereof and provide reasonable details of the addition in question so as to enable the Lessor to identify the same and where it is attached with reasonable precision.
- (b) The Operator shall be entitled to remove any addition to any Tram so long as the removal of such addition does not detrimentally affect the safety, saleability, utility or value of such Tram.

provided always that the Trams continue to comply with the Tram Specification (as defined in the Tram Maintenance Contract).

2.3 Notification of Events

The Operator shall:-

- (a) inform the Concessionaire immediately upon becoming aware thereof, of the loss, damage or destruction of any of the Trams;
- (b) as soon as reasonably practicable, but in any event within ten (10) Business Days of becoming aware thereof, of any loss, damage or destruction to any of the Trams provide the Concessionaire with a preliminary estimate of likely cost of repair, reinstatement or replacement of the Trams and, no later than thirty (30) Business Days after becoming aware thereof, of a final estimate;
- (c) inform the Concessionaire as soon as reasonably practicable, but in any event within thirty (30) Business Days of becoming aware thereof, of any lien having become, or being alleged to have become, attached to any of the Trams, or the enforcement or attempted enforcement of any lien against any of the Trams;

- (d) inform the Concessionaire immediately upon becoming aware thereof but in any event within ten (10) Business Days of becoming aware thereof, of any injury or damage to any person or any property caused by, or in connection with, any of the Trams;
- (e) inform the Concessionaire as soon as reasonably practicable, but in any event within ten (10) Business Days of becoming aware thereof, of any other event in respect of any of the Trams which might reasonably be expected to involve the Concessionaire in a loss, liability or claim;

3. Reconditioning

The Parties are to agree if and on what basis a midlife reconditioning of the Trams sufficient to restore to the Trams a remaining service life of 15 years is to be carried out.

4. Spares

- (a) The Concessionaire shall, as soon as practicable after the date hereof agree with the Operator and the Tram Maintenance Contractor a list of spare parts for the Trams to a value of £1,030,000 to be provided by the Contractor under the Construction Contract.
- (b) The Concessionaire shall supply to the Operator, no later than the Actual Opening Date, the Concessionaire Tram Spares. The Operator shall be responsible for storing and maintaining the Concessionaire Tram Spares in accordance with Good Industry Practice and shall be responsible for replacing any lost or damaged Concessionaire Tram Spares. Title to the Concessionaire Tram Spares shall at no time vest in the Operator.
- (c) The Operator shall, on termination of this Agreement deliver to the Concessionaire the Concessionaire Tram Spares in a condition commensurate with the Operator's obligations in relation to storage and reconditioning of such Spares required by this paragraph 4 (save where any Concessionaire Tram Spare is in the course of reconditioning.)
- (d) The Parties shall agree a basis for making changes to the content of the Concessionaire Tram Spares and in relation to the reconditioning of such Spares in accordance with Clause 17.6 of the Tram Maintenance Contract.
- (e) The Operator shall be permitted to use Concessionaire Tram Spares in the course of Tram Maintenance Services. Any such Concessionaire Tram Spares shall be replaced when so used or, if appropriate, the replaced part shall be sent for repair or reconditioning to be carried out in accordance with Good Industry Practice.

5. Funding of Repair Pending Insurance Recovery

- (a) If damage is caused to any Tram not as a result of the default of the Operator or the Tram Maintenance Contractor hereunder, then the Concessionaire shall bear the necessary costs of repairing such damage until amounts are recovered under the relevant policies of insurance required to be taken out by the Concessionaire pursuant to Clause 22. Upon such recovery the Concessionaire shall be entitled to be reimbursed from the proceeds of the relevant insurance such costs it has expended in effecting such repairs.

- (b) If damage is caused to any Tram as a result of the default of the Operator or the Tram Maintenance Contractor hereunder, then the Operator shall subject to the other terms and conditions of this Agreement bear the necessary costs of repairing such damages until amounts are recovered under the relevant policies of insurance required to be taken out by the Concessionaire pursuant to Clause 22. Upon such recovery the Operator shall be entitled to be reimbursed from the proceeds of the relevant insurance such costs it has expended in effecting such repairs.

PART 6: SITE AVAILABILITY

[NOT USED]

SCHEDULE 2

FEES

Generally:

- (a) Where reference is made in this Agreement to a sum of money "Indexed" that sum shall be deemed to be altered with effect from each anniversary of this Agreement in accordance with the Retail Price Index for the month in which such anniversary falls but if for any reason the Retail Price Index shall be otherwise altered or shall be abolished or replaced, there shall be substituted for the purposes of the Retail Price Index such index of retail price costs as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty's Government, save in respect of that element of the Tram Maintenance Fee relating to materials (which shall be deemed to be 50% of such Fee) when it shall be deemed to be a sum altered in accordance with the following formula:-

$$M = \frac{1}{100} \times \frac{R_0}{R} \times (+30 \times \frac{N}{N_0} + 70 \times \frac{Q}{Q_0})$$

Where:

- N = price index at such anniversary for "Maschinebauerzeugnisse, Fachserie 17, Reihe 2, GP-systematik 32" issued by the German Federal Statistics Institute of Wiesbaden.
 - No = price index at the date of this Agreement for "Machinebauerzeugnisse, Fachserie 17, Reihe 2, GP-Systematik 32" issued by the German Federal Statistics Institute of Wiesbaden.
 - Q = last issued price indices at such anniversary for "Facharbeiter-Ecklohn der Eisen-metall-, und Elektronindustrie, Tarifgebeit Nordehein-Westfalen, Tariflohngruppe , über 21 Jahre", issued by the German Authorities.
 - Qo = price indices at the date of this Agreement for "Facharbeiter-Ecklohn der Eisen, Metall-, und Elektronindustrie, Tarifgebeit Nordehein-Westfalen, Tariflohngruppe , über 21 Jahre", issued by the German Authorities.
 - R = average at such anniversary of the 120 last official conversion rate (middle rate) of the DEM to the GBP issued daily by the Deutsche Bank in Frankfurt.
 - Ro = average on the date of this Agreement of the 120 last official conversion rate (middle rate) of the DEM to the GBP issued daily by the Deutsche Bank in Frankfurt.
- (b) The Concessionaire shall not be responsible for paying the salaries, pension entitlements or other benefits of staff of the Operator required for the purposes of the Operating Services save indirectly through the payment of fees and other amounts under this Agreement.

- (c) (i) The Concessionaire and the Operator each acknowledge that changes in the Operator's costs may occur during the Term which changes will not be reflected in the indexation arrangements provided for in this Agreement and are not otherwise recoverable in whole or in part by the Operator pursuant to the other provisions of this Agreement
- (ii) The Concessionaire and the Operator accordingly agree that prior to every fifth anniversary of the date of Actual Opening Date (a "Quinquennium") they shall jointly review the Operator's entire costs in providing the Services at that time in each of the categories of costs set out below which have been used by the Operator in estimating its costs for the purpose of arriving at its fees at the commencement of this Agreement:-
- Staff costs (by major category of staff)
 - Maintenance costs, if applicable
 - Electricity costs
 - Station departure charges
 - Contractors costs
 - Utilities (other than electricity)
 - Vandalism and other Uninsured Losses
 - Insurance
 - Policing
 - Training
 - Rates, if applicable
 - Croydon office costs
 - Hire of buses (but not in respect of operational problems caused by the Operator defaulting under its obligations hereunder)
 - Marketing
 - Posters, publicity, timetables
 - Projects, eg. where the costs of replacing capital assets including managerial systems increase disproportionately
 - Other overheads, eg. uniforms, postage, entertainment expenses
 - Profit

The review shall be carried out in accordance with the subsequent provisions of this paragraph (c).

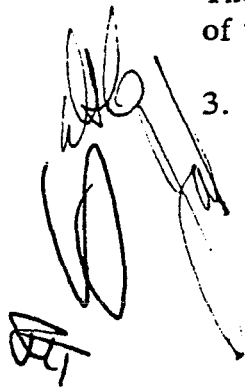
- (iii) The joint review referred to above shall not change the level of the profit margin percentage at the date of this Agreement. It shall however seek to identify factors external to the Operator which have increased and/or decreased costs and the extent to which such costs are not otherwise recoverable in full hereunder.
- (iv) At least six months prior to each Quinquennium the Operator shall prepare and send to the Concessionaire a review of costs in the categories identified above comparing each original cost used at the date of this Agreement or when last rebased (Indexed to the relevant Quinquennium) with the actual cost for such category at the date of such Quinquennium. The review shall also address those external factors

which in the opinion of the Operator are relevant to any increase and/or decrease in costs shown by the review.

- (v) Within one month of receipt of such review the Concessionaire shall submit to the Operator its proposal for meeting any cost changes addressed in the review which are not otherwise recoverable in full under the Agreement. The Operator shall within two weeks of receipt of such proposals, submit its own proposals (if different) in relation to such increases in costs.
 - (vi) Within two weeks of receipt of the Operator's proposals by the Concessionaire, both Parties shall meet to resolve any outstanding issues between them in relation to funding the changes in the Operator's costs which are not otherwise recoverable pursuant to the terms of this Agreement.
 - (vii) In the event that the Parties are unable to agree as to how changes in the Operator's costs which are not otherwise recoverable under this Agreement are to be funded such dispute shall be referred to the Expert for a decision. The Expert shall be required to decide as between the two sets of proposals how the Operator can best be compensated for increases in the categories of costs referred to above which are not recoverable in full already under this Agreement. Such sum shall bear interest at the Prescribed Rate from the date of the relevant Quinquennium.
 - (viii) In the event that the Parties agree that the aggregate annual value of increases in costs which are not otherwise recoverable under this Agreement is less than £ [REDACTED] (Indexed) then the Operator shall not be entitled to recover such costs.
 - (ix) In the event that increases in costs arise during the negotiation period referred to above then the Operator shall be permitted to include such costs in its review by a supplemental review which should be dealt within the same way as the original review subject to necessary changes in the time periods.
- (d) In respect of the rebasing by the Tram Maintenance Contractor under the Tram Maintenance Contract:-
1. The Tram Maintenance Contractor and the Operator each acknowledge that changes in the Tram Maintenance Contractor's costs may occur during the Term which will not be reflected in the Indexation arrangements provided for in this Agreement and are not otherwise recoverable in whole or in part by the Tram Maintenance Contractor pursuant to the other provisions of the Tram Maintenance Contract.
 2. The Tram Maintenance Contractor and the Operator accordingly agree that prior to each fifth anniversary of Actual Opening Date (a "Quinquennium") they shall jointly review:-

- (i) those costs of the Tram Maintenance Contractor in providing the Services which are Indexed in accordance with Schedule 2 Part 2 of the Tram Maintenance Contract (being the costs of labour and materials) with a view to determining whether the actual increase in such costs has been accurately reimbursed by such indexation; and
- (ii) any additional costs incurred by the Tram Maintenance Contractor in the preceding 5 years (or, in respect of the first Quinquennium, since the date of this Agreement) due to any Change of Law which affects the extent or performance of the Services hereunder (save for any Change of Law referred to in Clause 32) of the Tram Maintenance Contractor.

The review shall be carried out in accordance with the subsequent provisions of this Part.



3. The joint review referred to ^{in paragraph 2 above} shall not change the level of the prof. margin percentage at the date of the Tram Maintenance Contract or the level of internal management charges. It shall however seek to identify factors external to the Tram Maintenance Contractor, ~~excluding those specific risks assumed under the Tram Maintenance Contract~~ which have increased and/or decreased costs and the extent to which such costs are not otherwise recoverable in full hereunder.
4. At least seven months prior to each Quinquennium the Tram Maintenance Contractor shall prepare and send to the Operator details of any element of its costs to be incurred during the next five year period which it believes has increased, as allowed under Clause 2 above, and which will not be recovered pursuant to the other provisions of this Agreement together with supporting evidence of such increase.
5. Within two months of receipt of such review the Operator shall submit to the Tram Maintenance Contractor its proposal for meeting any cost changes. The Tram Maintenance Contractor shall within two weeks of receipt of such proposals, submit its own proposals (if different) in relation to such change in costs.
6. Within four weeks of receipt of the Tram Maintenance Contractor's proposals by the Operator, both parties shall meet to resolve any outstanding issues between them in relation to changes in the Tram Maintenance Contractor's costs which are not otherwise recoverable pursuant to the terms of this Agreement.
7. In the event that the parties are unable to agree as to how changes in the Tram Maintenance Contractor's costs which are not otherwise recoverable under the Tram Maintenance Contract are to be funded such dispute shall be referred to the Expert for a decision. The Expert shall be required to decide as between the two sets of proposals how the Tram Maintenance Contractor can best be compensated for changed costs referred to above which are not recoverable in full already under the

Tram Maintenance Contract. Such sum shall bear interest at the Prescribed Rate (as defined in the Tram Maintenance Contract) from the date of the relevant Quinquennium.

8. In the event that increases in costs arise during the negotiation period referred to above then the Tram Maintenance Contractor shall be permitted to include such costs in its review by a supplemental review which should be dealt with in the same way as the original review subject to necessary changes in the time periods.
9. All increases in costs pursuant to this part of this Schedule are Reimbursable Costs for the purposes of the Tram Maintenance Contract.
10. The agreed sums to be paid to the Tram Maintenance Contractor over each of the following 5 years will be indexed with escalation factors reset as at the date of the Quinquennium.

PART 1: PRELIMINARY PERIOD

The fees from the date of signing of the Agreement to the commencement of the Mobilisation Period will be:-

	£
First month	21,000
Second month	21,000
Subsequent months	14,750

Part of a month will be charged at a daily Business Day rate of one twentieth of the monthly charge.

PART 2 - MOBILISATION PERIOD

The fees from commencement of the Mobilisation Period to Actual Opening Date will be:-

<u>Month</u>	<u>£,000</u>
1	18
2	18
3	28
4	37
5	38
6	59
7	65
8	76
9	78

<u>Month</u>	<u>£.000</u>
10	80
11	83
12	87
13	109
14	163
15	173
16	173
17	173
18	173
19	173

Further periods shall be charged at the same rate as for period 19. Part of a month will be charged proportionately.

Drivers and controllers

The minimum Mobilisation Period shall be 18 months.

The minimum fees payable during the Mobilisation Period shall be £1,804,000.

OPERATING PERIOD

The fees from Actual Operating Date until the first Quinquennium rebasing will be:-

<u>Financial Period</u>	<u>£</u>
1	497,000
2 and subsequent periods (as adjusted by Additional Services)	456,154

Any period which is less than 4 weeks at the commencement of the Operating Period shall be charged at a daily rate based upon the charges for Financial Period 2.

PART 4: INFRASTRUCTURE MAINTENANCE FEE

1. Calculation of fee

The Infrastructure Maintenance Management Fee is incorporated within the Operating Fee. However if Infrastructure Maintenance Management Services are terminated then the Operating Fee shall be reduced by £40,000 per annum.

PART 5: TRAM MAINTENANCE FEE

Fees and other amounts payable under the Tram Maintenance Contract (assuming for these purposes of that contract they have been received by the Operator) other than Operator costs.

PART 6: ROUTINE MAINTENANCE FEE

The fee payable in accordance with the Clause 6.5.2(b) of the Agreement

PART 7: ADDITIONAL MOBILISATION COSTS FROM DELAY

In the event that the Mobilisation Period continues for longer than 19 months the Operator shall be entitled to all costs and expenses incurred by the Operator during that extended period in accordance with Clause 6.2.3 but subject to the following:-

- (a) subject to (b) and (c) such costs and expenses shall not exceed £173,000 per month save only that where there is a period of time between "Completion" (as defined in the Construction Contract) and Actual Opening Date such costs and expenses shall not exceed £293,000 per month; and
- (b) where and to the extent that the Mobilisation Period continues for longer than 19 months which continuation is caused by a "Delay Event" as defined in the Construction Contract, such costs and expenses shall not exceed £293,000 per month, subject to the provisions relating to Force Majeure in Clause 6.2.3; and
- (c) the Concessionaire is not required in any circumstances to pay the Operator more than £1.56m in respect of any extension of the Mobilisation Period; and
- (d) the Operator shall provide to the Concessionaire such information as it may reasonably request to substantiate such expenses.

SCHEDULE 3

AGREEMENTS

PART 1: CONTRACTS

Maintenance Contract
Infrastructure Maintenance Contract

PART 2: PROJECT AGREEMENTS

Concession Agreement
Construction Contract
Tramlink General Agreement
Off-Tram Revenue Agreement

PART 3: FINANCING AGREEMENTS

1. Senior Facility Agreement entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited, Bayerische Landesbank and Royal Bank of Scotland.
2. Intercreditor Agreement entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited and Others.
3. Senior Debenture entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited and Dai-Ichi Kangyo Bank Limited.
4. Subordinated Facility Agreement entered into on or about the date hereof between Concessionaire, Tramtrack Leasing Limited and 3i Group plc.
5. Subordinated Debenture entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited and 3i Group plc.
6. Insurance Agreement entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited, the Lessor and Others.
7. Shareholders Funding Agreement entered into on or about the date hereof between the Concessionaire, the Shareholders (Amey Tramlink Limited, Bombardier Prorail Limited, CentreWest, Sir Robert McAlpine (Holdings) Limited, Royal Bank Project Investments Limited and 3i Group plc and Bombardier Eurorail SA).

SCHEDULE 4

PERFORMANCE REQUIREMENTS

Part 1

1. The Operator shall maintain a record of:-

Actual Kilometrage - showing separately replacement bus kilometrage;

Lost Kilometrage;

Scheduled Kilometrage.

The Operator shall by the fourth Business Day of each Financial Period report in writing to the Concessionaire on such matters for each day in the immediately preceding Financial Period.

2. For the purposes of this Schedule 4 reference to 2% of Scheduled Kilometrage shall be treated as 5% of Scheduled Kilometrage during the period between the commencement of the Operating Period and the successful achievement of the Final Acceptance Tests.
3. Where Actual Kilometrage falls below 98% of Scheduled Kilometrage such report shall give the Operator's opinion of the reasons for Actual Kilometrage falling below 98% of Scheduled Kilometrage during such period apportioned in accordance with the categorisation in Part 2 of Schedule 4 and indicating in each case whether it is Operator Controlled Lost Kilometrage or other Lost Kilometrage.
4. Where Operator Controlled Lost Kilometrage in any Financial Period is greater than 2% of Schedule Kilometrage for such Financial Period then the Operator shall pay to the Concessionaire £■ per kilometre in respect of Operator Controlled Lost Kilometrage which is greater than 2% of Scheduled Kilometrage in such Financial Period provided that no amount shall be payable under this provision:-
- (i) due to a failure to provide Tram Maintenance Services, if Operator Controlled Lost Kilometrage attributable to such failure does not exceed 2% of Lost Kilometrage; or
 - (ii) due to a failure to provide Operating Services, if Operator Controlled Lost Kilometrage attributable to such failure does not exceed 1% of Lost Kilometrage; or
 - (iii) due to a failure to provide Routine Maintenance Services and Infrastructure Maintenance Management Services, if Operator Controlled Lost Kilometrage attributable to such failure does not exceed 1% of Lost Kilometrage.
5. The Operator and the Concessionaire shall use all reasonable endeavours to mitigate the effect of factors leading to Lost Kilometrage.

6. For the avoidance of doubt no payment is required to be made by the Operator if Actual Kilometrage does not fall below 98% of Scheduled Kilometrage or to the extent that Actual Kilometrage does fall below 98% of Scheduled Kilometrage where there is no Operator Controlled Lost Kilometrage.
7. Any payments required to be made pursuant to this Clause shall be shown in the next invoice issued pursuant to Clause 21.4 and in the event of a dispute in relation to any such report the amount in dispute shall be withheld pending the outcome of such dispute and the balance shall be settled forthwith.
8. The maximum amount payable by the Operator pursuant to this Part of this Schedule in any one Operating Year shall not exceed £[REDACTED] taking into account all other amounts paid or payable by the Operator to the Concessionaire under this Agreement in such Operating Year.
9. The maximum amount payable by the Operator pursuant to this Part of this Schedule in any one Operating Year in respect of Operator Controlled Lost Kilometrage attributable to a default on the part of the Tram Maintenance Contractor under the Tram Maintenance Contract shall not exceed the limit set out in Clause 28.6.4 of the Tram Maintenance Contract.
10. The Concessionaire shall have the right to audit any reports made by the Operator to the Concessionaire pursuant to paragraph 1 by reviewing the underlying reports and logs maintained by drivers and controllers.

Part 2

Categorisation of Lost Kilometrage

The provisions of this Part 2 are illustrative only and are without prejudice to the definitions of the various categories of Lost Kilometrage.

- | | |
|--|--|
| 1. Operator Controlled | <ul style="list-style-type: none"> - Driver shortage - Tram not available - Tram failure due to Tram Maintenance Contractor - Control Room staff shortage - Failure to carry out Routine Maintenance - Defective Routine Maintenance |
| 2. Infrastructure Maintenance Controlled | <ul style="list-style-type: none"> - Signal failure - Tram System maintenance failure - Infrastructure routine maintenance - Control room maintenance failure - Infrastructure non-routine maintenance |
| 3. Other supplied controlled | <ul style="list-style-type: none"> - Power failure - Power supply adequacy - Utilities failure |

- 4. Major infrastructure maintenance
 - Planned system closure to undertake planned infrastructure maintenance
 - Emergency infrastructure maintenance due to defect in system

- 5. TCL action
 - Agreed temporary changes to service pattern

- 6. External factors
 - Bomb scares
 - Special events
 - Accident
 - Adverse weather
 - Passenger fraud
 - Passenger sickness
 - Policy or emergency service instructions
 - Road closure
 - Vandalism whilst in service
 - Assault on staff or passenger
 - Traffic congestion
 - Traffic signal failure
 - Utility service work

SCHEDULE 5

ROUTINE MAINTENANCE

Routine Maintenance Specifications

- (a) The Parties shall, within 12 months of the date hereof, agree the scope of the Routine Maintenance to be performed by the Operator in accordance with Clause 6.5.2 and this Schedule taking into account the Infrastructure Maintenance Plans. Such scope shall include the following:
- (i) all aspects of Routine Maintenance to be performed by the Operator including the undertaking of an annual acceptance of each Tram;
 - (ii) the scope of the individual elements of such Routine Maintenance to be included in each Routine Maintenance sub-contract;
 - (iii) one or more standard sets of terms and conditions for the performance of the Routine Maintenance sub-contracts (the "Standard Conditions");
 - (iv) the minimum performance requirements and specifications for each Routine Maintenance sub-contract;
 - (v) a Routine Maintenance Plan which shall be updated annually in accordance with Clause 20.4
- (b) Routine Maintenance sub-contracts.

The Routine Maintenance sub-contracts shall be awarded, unless agreed otherwise, by competitive tender, in accordance with the following procedure for each Routine Maintenance sub-contract;

- (i) the Parties shall agree a list of no less than 3 contractors to be included on the tender list;
 - (ii) the tender documents shall inter alia include the appropriate set of Standard Conditions and the agreed minimum performance requirements and specifications for that Routine Maintenance sub-contract;
 - (iii) the contract shall be awarded to the lowest bidder from the agreed tender list which complies in all respects with the tender requirements specified in (ii) above unless agreed otherwise by the Operator and the Concessionaire.
- (c) For clarity the fee for Routine Maintenance does not include amongst other things any external costs including the use of consultants, advisers, surveyors, technical advisers etc.

Notwithstanding any of the above the Routine Maintenance Specification must require the Routine Maintenance Services to be carried out in accordance with Good Industry Practice.

SCHEDULE 6

INSURANCE

A. CONSTRUCTION PHASE

The Concessionaire shall take out and maintain the following insurances:-

1. **Type:** **EMPLOYERS LIABILITY INSURANCE**

- Insured:**
1. The Concessionaire
Tramtrack Croydon Limited and/or Tramtrack Leasing Limited
 2. (a) The Construction Joint Venture
Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies
 - (b) The Operator
Tram Operations Ltd

Interest: To indemnify the Insured in respect of its legal liabilities consequent upon death of or bodily injury, illness or disease to direct employees of the Insured arising out of or in the course of their employment in the design, manufacture, supply, delivery, construction, erection, setting to work, testing and commissioning of the Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley, England.

Period of Insurance: Estimated 36 months with effect from 20 November 1996 plus 24 months Defects Rectification period thereafter.

Limit of Indemnity: £ [REDACTED] for any one occurrence and unlimited for all occurrences in the Period of Insurance.

Territorial Limits: Great Britain, Northern Ireland, the Channel Islands, the Isle of Man (and temporary visits overseas).

Excess: Nil Excess

Extensions:

- Health and Safety at Work Act extension
- contractual liability
- court attendance costs
- unsatisfied court judgments clause

- indemnity to parent/subsidiary/associated companies
- including Tram Drivers
- contingent and retroactive indemnity
- cross liabilities clause

2. CONTRACTORS ALL RISKS, EXISTING STRUCTURES INSURANCE

- Insured:**
1. The Concessionaire
Tramtrack Croydon Limited and/or Tramtrack Leasing Limited
 - 2.(a) The Principals
London Regional Transport and/or The Secretary of State for Transport and/or their servants and agents
 - (b) The Financiers
The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents
 - 3.(a) The Construction Joint Venture
Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies
 - (b) The Tram Suppliers and Maintainers
Bombardier Eurorail S.A.
 - (c) The Operator
Tram Operations Limited
 - (d) General Subcontractors
Subcontractors of any tier together with all other suppliers and/or others engaged to provide goods or services at any Insured Location in connection with the Project.
 - (e) Consultants
Consultants (including *inter alia* Sir Alexander Gibb and Partners and/or Merz and McLellan and/or Parsons Brinckerhoff and/or Booz Allen and Hamilton and/or London Borough of Croydon) in respect of their site activities only
- Project:** All work in connection with the design, construction, maintenance and operation of the Croydon Tramlink System within the London Boroughs

of Merton, Sutton, Croydon and Bromley including performance testing, commissioning and tram trial running and all ancillary and associated works in connection therewith

Insured

Property:

To indemnify the Insured against "all risks" of loss, destruction or damage to the Insured Property arising from any cause whatsoever whilst on or about the site of the Project and elsewhere in the British Isles including whilst in transit (other than by sea) or during any transshipment, storage, or deviations en route and including loading and unloading.

Item (a) The permanent and/or temporary works, materials and supplies, plant, equipment, trams and supplies (including free issue materials) and any other property, for which the Insured is responsible, intended for use or incorporation in the Contract undertaken by the Insured

Item (b) Contract's plant, tools and equipment including spare parts, temporary buildings and their contents owned or hired in by the Insured (1) and (3)(a) or for which they are responsible

Item (c) Personal effects, clothing, tools and other belongings of the Insureds (1) or (3)(a) Employees

Item (d) The Existing Structures for which the Insureds (1) and (3)(a) are responsible or is required or has agreed to insure

Item (e) Property on or adjacent to the Contract temporarily occupied for the purpose of the Contract

Period of

Insurance:

36 months with effect from 20 November 1996 comprising 6 months site establishment works and 30 months full construction works (including testing and commissioning as per schedule supplied) plus 24 months Defects Rectification Period thereafter

Sums

Insured:

Item (a) Estimated at £ [redacted] (inclusive of £ [redacted] tram cost)

Item (b) £ [redacted]

Item (c) £ [redacted] any one employee any one occurrence

Item (d) Estimated at £ [redacted]

Item (e) £ [redacted] in all in the Period of Insurance

Situation: Anywhere in the Great Britain, Northern Ireland, Channel Islands and Isle of Man in connection with the Contract as more fully defined in the Policy Wording

Excess: Item (a)(i) £ [REDACTED] each and every loss in respect of loss or damage to the permanent works caused by fault, error or omission in design, plan, specification or workmanship of the permanent works. This excess will apply only to reinstatement, making good and the like of that part which is itself defective

(ii) £ [REDACTED] each and every loss in respect of testing, commissioning, trial runs and maintenance

(iii) £ [REDACTED] each and every loss in respect of storm, tempest, m flood, water damage, subsidence, collapse

(iv) £ [REDACTED] each and every other loss

Item (b) 15% each and every loss subject to a minimum of £ [REDACTED] each and every loss and a maximum of £ [REDACTED] each and every loss

Item (c) £ [REDACTED] each and every loss

Item (d) £ [REDACTED] each and every loss

Item (e) £ [REDACTED] each and every loss

In the event of a loss whereby more than one Excess applies, the aggregate amount to be deducted shall not be exceed the highest applicable Excess.

Extensions: Professional Fees - as per scale

Plans & Documents

Debris Removal - £ [REDACTED] any one occurrence

Expediting Expenses - £ [REDACTED] any one occurrence

Property Hired in/out

Loss Minimization

Local Authorities Reinstatement

Additional Costs Clause - Limit £ [REDACTED] any one occurrence

Increased Costs of Constructing Incomplete and Unbuilt Works - Limits £ [REDACTED] any one occurrence

Temporary Repairs Clause

Plant Recovery

Price Increase Clause - 125%

72 Hour Clause

Payments on Account

Munitions of War

Composite Insured Clause

Buildings due for demolition Clause (if applicable)

Automatic Reinstatement Clause. Additional Premium to be agreed for any one loss exceeding £ [REDACTED]

Ongoing maintenance works within the Construction period are included hereon

Joint Fire Code of Practice to apply to Depot/Trams whilst on site in UK in storage only

Full Terrorism Cover

Exclusions: Penalties and consequential loss

Motor, Craft etc

DE5 (1995) Design Materials and Workmanship Clause (permanent works only)

Wear and Tear and Corrosion

Inventory losses

Excluding inherent/pre existing defects in existing structures

3. Type: THIRD PARTY LIABILITY INSURANCE

Insured: 1. The Concessionaire

Tramtrack Croydon Limited and/or Tramtrack Leasing Limited

2.(a) The Principals

London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents

(b) The Financiers

The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents

3.(a) The Construction Joint Venture

Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies

(b) The Tram Suppliers and Maintainers

Bombardier Eurorail S.A.

(c) The Operator

Tram Operations Limited

(d) General Subcontractors

Subcontractors of any tier together with all other suppliers and/or others engaged to provide goods or services at any Insured Location in connection with the Project.

(e) Consultants

Consultants (including *inter alia* Sir Alexander Gibb and Partners and/or Merz and McLellan and/or Parsons Brinckerhoff and/or Booz Allen and Hamilton and/or London Borough of Croydon and/or Finance Parties Technical Consultant).

Project: The contract for the Croydon Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley. Works to include design, procurement, construction, operation, maintenance, performance testing, commissioning and tram trial running and all ancillary and associated works in connection therewith

Period of Insurance: 36 months with effect from 20 November 1996 comprising 6 site establishment works and 30 months full construction works (including testing and commissioning as per schedule supplied) plus 24 months Defects Rectification Period thereafter

Indemnity: All sums which the Insured shall become legally liable to pay (whether contractual or otherwise) in respect of or consequent upon

- (a) death or inquiry suffered by any person
- (b) loss of or damage to Material Property

- (c) obstruction, loss of amenities, trespass, nuisance, interference, denial of access or any like cause

arising in connection with the Project.

Limit of

Indemnity: £ [REDACTED] any one occurrence or series of occurrences arising out of one event and unlimited as to the number of occurrences during the Period of Insurance (other than in relation to pollution and contamination where the Limit of Indemnity will be £ [REDACTED] for all claim in aggregate during the Period of Insurance.)

Territorial

Limits: Worldwide

Excess: £ [REDACTED] each and every occurrence in respect of property damage only

Extensions: sudden & unintended pollution wording
disclosure of information
Data Protection legislation
infringement of privacy
social functions/activities
Consumer Protection Act 1987
Health and Safety at Work legislation
Defective Premises Act 1972 Clause
claims brought in USA/Canada subject to

- (a) punitive and exemplary damages exclusion
- (b) costs inclusive
- (c) NMA 1668

contingent motor liability
leased or rented property not excluded and property owned by London Regional Transport and London Borough of Croydon to be treated as Third Party Property
financial loss
cover for Officers/Members of Clubs & Organisations and of fire and first aid teams
munitions of war clause
including Maintenance activities
public relations clause
cross liabilities clause
composite Insured

Exclusions: Employers Liability
Motor
Aircraft/Waterborne Craft
Own property, custody or control
Contract Works
Liquidated Damages
War

Radioactivity
Deliberate Acts
Gradual Pollution
Fines

B. OPERATIONAL PHASE

1. Type: EMPLOYERS LIABILITY INSURANCE

Insured: 1. The Concessionaire

Tramtrack Croydon Limited and/or Tramlink Leasing Limited

Period of Insurance: 12 months from a date to be advised - renewable annually thereafter

Interest: To indemnify the Insured in respect of its legal liabilities consequence upon death of or bodily injury, illness or disease to employees arising out of or in the course of operating and maintaining the Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley, England.

Limit of Indemnity: £ [REDACTED] any one occurrence or series of occurrences arising out of any one event and unlimited in the Period of Insurance

Excess: Nil Excess

Extensions: The policy wording will include (but not be limited to):
- liabilities assumed under contract
- the waiver of subrogation rights where required by contract
- a note of the financiers interests

2. Type: THIRD PARTY LIABILITY INSURANCE

Insured: 1. The Concessionaire

Tramtrack Croydon Limited and/or Tramlink Leasing Limited

2.(a) The Principals

London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents

(b) The Financiers

The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents

3. The Operator

Tram Operations Limited

Period of

Insurance: 12 months from date to be advised - renewable annually thereafter.

Interest:

To indemnify the Insured against all sums which the Insured shall become legally liable to pay (whether contractual or otherwise) (including claimants costs and expenses) as damages in respect of:

- death or bodily injury, illness or disease contracted by any person
- loss of or damage to property
- interference to property or the enjoyment of use thereof by obstruction, trespass, nuisance, loss of amenities or any like cause

arising out of or in the course of operating and maintain the Tramlink System.

Limit of

Indemnity: Third Party Liability

£ [REDACTED] any one occurrence or series of occurrences arising out of one event and unlimited as to the number of occurrences during the Period of Insurance other than in relation to pollution and contamination where the Limit of Indemnity will be £ [REDACTED] for all claims in aggregate during the Period of Insurance.

Deductibles: £ [REDACTED] each and every occurrence in respect of property damage only

Extensions: The policy wording will include (but not limited to):

- Waiver of subrogation rights where required by contract
- Cross Liability Clause
- Legal Defence Costs in respect of Health and Safety at Work Act
- Vehicle risk arising out of the use of trams
- World-wide Jurisdiction (ex USA/Canada)

2. **Type:** MATERIAL DAMAGE INSURANCE

Insurance: 1. The Concessionaire

Tramtrack Croydon Limited and/or Tramlink Leasing Ltd

2.(a) The Principals

London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents

(b) The Financiers

The Banks, Financial Institutions, Lessors and The Security Trustee and their respective permitted successors, assigns, directors, employees, servants and agents

3. The Operator

Tram Operations Limited

Period of

Insurance: 12 months from a date to be advised - renewable annually thereafter

Interest: To reinstate the Insured's property following physical loss destruction or damage to buildings, machinery, plant, trams, stock and miscellaneous items all forming part of the Croydon Tramlink System including spares.

Limit of

Indemnity: To be the maximum likely value of the assets at risk during the Period of Insurance after inflation

Deductible: £ [REDACTED]

Extensions: The policy wording to include (but not limited to):

- Full Theft, Subsidence, Money and Computer Breakdown
- Public Authorities Clause
- Costs of Professional Fees and Debris Removal
- Terrorism cover - first loss limit £ [REDACTED] (subject to availability of such coverage on commercially acceptable terms)

SCHEDULE 7

OBLIGATIONS IN OTHER PROJECT AGREEMENTS

To extent that the Concessionaire requires relevant information relating to the operation and maintenance of the Tramlink System:-

1. the obligation of the Concessionaire to provide information to the Corporation contained in Clause 4.3 of the Off-Tram Revenue Agreement being the obligation to provide the following information:-
 - (a) On-Tram Revenue Data;
 - (b) amount of Stored Value Revenue (if any) collected by the Concessionaire;
 - (c) Kilometre Data; and
 - (d) details of any temporary unscheduled change in the service on the Tramlink System (including without limitation Service Interruptions) (all terms as defined in the Off-Tram Revenue Agreement).
2. the obligation of the Concessionaire to provide the Corporation with such other information as the Corporation shall reasonably require for the purpose of determining the Off-Tram Revenue in respect of a particular Payment Period and the obligation to provide to the Corporation such On Tram Revenue Data and other information as may be required by the Corporation to assist in the performance of the Corporation's obligations under the Off Tram Revenue Agreement (all terms as defined in the Off-Tram Revenue Agreement).
3. the obligation of the Concessionaire to co-operate with the consultants appointed from time to time by the Concessionaire and the Corporation to carry out the Tramlink Survey.
4. the obligation in respect of all data and other information which the Concessionaire is required to notify to the Corporation under the Off Tram Revenue Agreement that such data and other information is complete and accurate in all respects.
5. the obligation that the Concessionaire shall allow the Corporation on it giving reasonable notice during normal business hours to inspect all records relating to any of the information provided to the Corporation by the Concessionaire pursuant to the Off Tram Revenue Agreement; and
6. the obligation of the Concessionaire to permit the Auditor for the proper performance of his functions the same rights of access to the property as are afforded to the Corporation under Clause 4.7 of the Off Tram Revenue Agreement.

SCHEDULE 8

OPERATOR SPECIFICATION

SECTION 1

GENERAL

The obligations of the Operator under this Operator Specification shall be those which specifically allocate obligations to it.

STATUS

1.1 This document is the Operator Specification for the purposes of the Operating Agreement of which it forms part. Pursuant to the Concession Agreement the Contractor is obliged to design, construct and commission the Tramlink System as required by the Performance Specification. The Operator is obliged to operate the Tramlink System as required by the Operating Agreement.

The provisions of this Operator Specification shall apply as amended or varied by the Appendices to the Operator Specification attached hereto.

1.2 References herein to the Operator Specification includes references to all relevant Parts and Sections of the Operator Specification and any of them.

1.3 The Corporation's Performance Specification from which this document evolved comprises:

- (a) Part I which describes preliminary matters in relation to the Concession, certain cardinal requirements, design principles and requirements in respect of safety management;
- (b) Part II which describes pre-operational obligations;
- (c) Part III which describes the Performance Requirements in relation to undertaking the Project Works and generally in relation to the Construction Phase;
- (d) Part IV which describes operational and maintenance obligations;
- (e) Part V which contains a glossary of terms and abbreviations and rules for interpretation for use in conjunction with the Performance Specification;
- (f) the documents, plans, drawings and appendices which are referred to in the Performance Specification (one set of which is held by the Concessionaire (identified as such and initialled on behalf of the Concessionaire and the Contractor) and one set (similarly identified and initialled) is held by the Contractor); and

- (g) the Construction Practice Specification.

CARDINAL REQUIREMENTS

- 2.1 The Contractor and the Operator (subject to the terms and conditions of the Operating Agreement) will each undertake the Project so as to comply with the relevant detailed requirements of the Operator Specification that apply to each of them and comply with and satisfy the cardinal requirements set out below:
- (a) the Tramlink System shall be constructed (Contractor) and operated (Operator) so that it is safe, reliable, efficient and environmentally friendly and accessible to all irrespective of mobility impairments, as far as is reasonably practicable;
 - (b) the Contractor shall take account of the need to react safely and quickly to emergencies in all aspects of its design and construction of the Tramlink System;
 - (c) the operation of the Tramlink System shall reflect a high standard of presentation and public image. The Tramlink System shall be operated efficiently with minimum disturbance to the public and minimum delay to passengers;
- 2.2 The Tramlink System will operate as an integral part of the public transport network in Greater London. The Corporation is subject to a statutory duty to co-ordinate public transport services and their operations which includes the Tramlink System. The Operator shall co-operate with the Concessionaire in this respect and shall comply with the Concessionaire's reasonable requirements in relation to ensuring co-ordination of public transport services in those areas affected by the Tramlink System.
- 2.3 The Operator shall take all necessary measures to prevent its employees, agents and subcontractors from consuming or being under the influence of alcohol or drugs whilst carrying out any duties in connection with the operation and maintenance of the Tramlink System. For the purpose of this Alcohol and Drugs clause, 'drug' means any intoxicant other than alcohol.

The Operator shall submit its alcohol and drugs policy to the Concessionaire for its approval within two and a half months from the date of the Operating Agreement. The policy statement shall, as a minimum provide:

- (a) procedures to detect and prevent any person from reporting to or being at work in connection with the Project who is under the influence of alcohol or drugs;

- (b) at least in the case of staff covered by the Transport and Works Act 1992, procedures to subject persons at work in connection with the Project, randomly, periodically, before starting work or after an incident (as necessary) to alcohol and drug tests;
- (c) initiatives for making persons aware of its policy on alcohol and drugs; and
- (d) procedures and monitoring to demonstrate compliance with its policy.

The Operator shall ensure that all its contracts with sub-contractors which might ultimately affect operational safety, require the sub-contractors to comply with the first paragraph of this clause and co-operate with the Operator in implementing its alcohol and drugs policy. The Operator shall ensure that it has the right under those contracts to remove any person or subcontractor from work on the Tramlink System who is suspected of being under the influence of drink or drugs whilst at work and to submit any person to the alcohol and drugs testing under the policy.

The Operator shall provide an annual written update on compliance with the above alcohol and drugs policy to the Concessionaire. The Concessionaire may make recommendations to the Operator in respect of the policy at any time. The Operator shall take those recommendations into account in implementing its policy.

2.4 Quality Assurance

The Contractor shall develop, implement and monitor an effective quality system which shall ensure that the requirements of the Performance Specification are satisfied. The quality system shall:

- ensure that quality requirements are determined and satisfied for all process throughout the Construction Phase for the Tramlink System including design, development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, storage, site works, installation, training, commissioning, operations and maintenance;
- provide for early and prompt detection of actual or potential deficiencies, trends or conditions which shall result in unsatisfactory quality, and for timely and effective corrective actions;
- include the establishment and implementation of procedures, work instructions and method statements, which clearly identify organisational structure, roles and responsibilities (named personnel), and processes to ensure the satisfactory integration and interfacing of all elements comprising the Tramlink System;

- include a quality plan which is in accordance with the Quality System Model for Quality Assurance and Design Development Production Installation and Servicing (1994) ISO9001.

The Contractor shall allow the Employer access to documentation and other management systems developed for implementing and audit of the Contractor's quality system.'

- 2.5 The Contractor and the Operator shall each send an appropriate delegate to represent its interests at regular co-ordination and liaison meetings to be held with the Concessionaire. Such meetings, at which other parties may also be invited to attend as appropriate, shall be convened to discuss the following issues:-

- (a) Project Review (monthly)
- (b) Milestones (monthly)
- (c) Technical Reviews (monthly)
- (d) Additional meetings identified from time to time

The Concessionaire shall also instigate regular review meetings with HMRI to which the Operator shall be invited to attend.

Route

- 2.5 The Tramlink System shall be built along the route identified by, and in accordance with, the Context Study Drawings (the *Route*). The Drawings identifying the Route will together comprise the **Route Plan**. (Contractor)
- 2.6 The Tramlink System will replace existing conventional rail services from Wimbledon to West Croydon and between Blackhorse Lane and Elmers End. The Tramlink System will utilise former railway alignment between Blackhorse Lane and Fairfield Path. New tramway will be constructed to New Addington and across South Norwood Country Park as far as Beckenham to Crystal Palace railway alignment from where the remainder of the route to Beckenham Junction shall consist of a tramway running adjacent to an existing Railtrack line. The three routes are to be linked by new sections of tramway built in or adjacent to the highway from Sandilands in the east to Waddon New Road in the west. Stops shall be provided at frequent intervals at the locations shown by the Route Plan.

COMPLIANCE WITH LAW AND APPROVALS

- 3.1 The Contractor shall obtain and comply with the terms of all approvals, consents and licences required by law and the Performance Specification.

Various approvals shall be obtained by the Contractor from the Council or other appropriate authority in its capacity as local planning authority (including works requiring planning permission, advertisement consent, listed building consent, and conservation area consent), and as Highway Authority and under other statutory functions.

3.2 The Contractor shall obtain planning permission for the works detailed below:

- stops, their layout, access arrangements and equipment
- other buildings including the Depot and sub-stations
- new and altered vehicular access points to public highways
- bridges
- car parking areas
- stream diversion works

3.3 Further approvals shall be obtained from the relevant local authorities under the following provisions: (Contractor)

- (a) sections 20, 40 (the Council only), 42 and 57 of the Act;
- (b) an extension of the powers in section 40 of the Act set out in the Tramlink General Agreement, for Project Works which do not require planning consent for the following parts of the route:
 - that part of Work No. 1 lying between Waddon New Road (chainage 9200 as defined on the Parliamentary Plans) and its junction with Work No. 3
 - Work No. 7 - between Work No. 3 and the junction with Work No. 9 and at South Norwood Country Park and Love Lane (between chainage 2800 and 4150 as defined on the Parliamentary Plans)
 - Work No. 9 - from Fairfield Path (approximate chainage 1050 as defined on the Parliamentary Plans) to its junction with Work No. 10
 - Works No. 10, 11, 12 - all; and
- (c) approvals as set out in the Tramlink General Agreement.

3.4 Without prejudice to the Contractor general obligation under paragraph 3.1 of this Section 1 the Contractor shall obtain and comply with:

- (a) all necessary approvals from RT and the Train Operating Companies required by the Law (including the Act); and
- (b) the terms of the planning consent given in favour of the Corporation by the London Borough of Bromley in respect of Project Works located at Beckenham Junction, which fall outside the limits of deviation, so far as the detailed design of the Project Works supports such consent and if not the Contractor shall be responsible for seeking amendments to such consent notifying the Corporation in accordance with the Construction Change provision.

3.5 The Contractor agrees that, at Wimbledon Station, where Project Works fall outside the limits of deviation, the provisions of Part 17 of Schedule 2 to the GPDO shall apply. Plans are shown on drawing Ref. No. 95401/300/020 (Rev.A).

GENERAL REQUIREMENTS - CONSTRUCTION

4. In connection with the provision of the Tramlink System the Contractor shall comply with the following general requirements:

- (a) the details of hard and soft landscaping, and grassed track set out in Document Ref. Nos. AG0022 and the relevant provisions of the Tramlink General Agreement unless otherwise agreed in writing by the Council;
- (b) prior to commencing the Project Works the Contractor shall appoint a professional archaeological body of recognised standing to carry out the archaeological tasks identified in the Construction Practice Specification;
- (c) ensure that electric power is supplied to the Trams at a DC voltage of nominally 750v with a maximum acceptable deviation of plus 20% or minus 30%, and that the requirements of Section 6 of the Performance Specification are satisfied;
- (d) ensure that adequate standards of lighting which comply with BS5489 are provided for Stops, footpaths between each Stop and public highways, pedestrian crossings at Stops and for the Depot, as further described in Section 8 of the Performance Specification. Lighting at Stops shall be to a minimum level of 30 lux at floor level including the area within shelters. Lighting shall be provided for the alignment in tunnels and underpasses in order to maintain visibility to levels acceptable to HMRI. Street lighting which has to be removed as a result of the Project Works must be replaced in a manner to maintain at least the existing standard of street lighting, in accordance with details to be agreed with the relevant authority; and

- (e) reinstate, move or replace as necessary (subject to any necessary approvals) equipment in the highway which is affected by Project Works: this will include, but may not be limited to, traffic signals, monitoring equipment for signals, equipment boxes, telephone boxes, post boxes, sign-posts, and surface water drainage system.

DESIGN

5.1 The Contractor shall design the Tramlink System so that once built it satisfies all of the Performance Requirements and shall also comply with the following principles:

- (a) to ensure that unless otherwise required by relevant standards, the design of the Tramlink system accommodates the reasonably predictable extremes of the local climatic conditions;
- (b) the design and construction of the Tramlink System shall ensure that the appearance of both equipment and infrastructure is attractive and reduces visual intrusiveness as far as it reasonably practicable. The Tramlink System shall be landscaped in order to maintain the character of the areas through which it passes and to mitigate any adverse visual impact, (some of which landscaping is to be done by the Council in accordance with the provision of the Tramlink General Agreement);
- (c) the vehicles operated on the Tramlink System are to be designed to a high modern standard in terms of passenger comfort and ride quality. In addition, the vehicles shall be configured using modular construction allowing components to be used which are well proven and reliable. The Contractor shall provide a safe, reliable, attractive, energy efficient and environmentally friendly vehicle;
- (d) the Tramlink System is to be designed as an integrated system to provide the level of safety and reliability required by the Performance Specification;
- (e) the Tramlink System shall be capable, without the need to make *Significant Changes* to the fixed infrastructure, including the power supply and signalling system, of providing for a further 33% increase in passenger carrying capacity above that initially required by paragraph 1.2 of Section 9 of the Operator Specification and paragraph 3.11 of Section 5 of the Performance Specification. The increase in passenger carrying capacity shall be calculated by applying 33% to the product of:
 - (i) the passenger carrying capacity (at 5pax/m²) of the largest type of Tram initially introduced to operate on the Tramlink System; and

- (ii) the number of journeys that are scheduled to pass East Croydon Station in both directions during the busiest hour of the week as set out in the table in paragraph 1.2 of Section 9 of the Operator Specification.

This increase in passenger carrying capacity may be achieved either by operating more services (subject to the limits set out in paragraph 1.4 of Section 9 of the Operator Specification) and/or by employing longer Trams (subject to the limits set out in Section 5 of the Performance Specification).

- 5.2 The Tramlink System shall be designed, built(Contractor) and maintained(Operator), including the renewal of subsystems and components as necessary, to a standard that will ensure that it will be capable of continued operation for a period of at least forty years without the need for a Significant Change more frequently than once every five years.
- 5.3 The Contractor agrees to comply with the minimum design lives specified below for the various component parts.

<i>Element</i>	<i>Design Life (in years)</i>
New Structures	120
New Track	15
Track Bed	50
Switches and Crossings	10
Overhead line equipment	30
Power distribution cables	30

The Contractor shall refurbish existing structures and track so as to ensure safe and reliable operation of the Tramlink System.

- 5.4 The Concessionaire shall amend the Specification so as to reflect material and relevant changes which are made to the Tramlink System in accordance with Good Industry Practice.

ELECTROMAGNETIC COMPATIBILITY

- 6.1 The Contractor shall be responsible for (and shall demonstrate to the Corporation when required to do so) ensuring that all aspects of electromagnetic compatibility of the Tramlink System are dealt with as far as is reasonably practicable in the detailed design and its implementation. The Contractor shall comply with the provisions of this paragraph 6 relating to electromagnetic compatibility.

The level of electro-magnetic emissions and their effects shall be compliant with the requirements of the law, European pre-standard ENV 50121, CCI II, CCIR, UIC and BSI.

6.2 The Contractor shall produce a detailed EMC Plan, as part of its detailed design, which shall:

- (a) incorporate Appendix 5.1 to Section 5 of this Performance Specification which sets out the vehicle's compliance with the European standard EN 50121:-
- (b) demonstrate that the EMI which may be produced by equipment proposed to comprise the Tramlink System is calculated to be within the limits specified by the Performance Specification and also that such equipment is not susceptible to interference produced by other equipment (not comprising the Tramlink System) of which the Contractor knew or should reasonably have been aware at the Actual Opening Date.
- (c) Incorporate the preventative measures agreed with RT in accordance with the provisions of the RT General Works Agreement or any other third party; and
- (d) Incorporate a full EMC analysis on all equipment being procured for the Tramlink System for immunity to EMT and emission of EMI. Where areas of particular concern are identified within the analysis, simulation studies shall be instigated and reports made available.

6.3 The Contractor's EMC Plan shall set out measures to be taken during implementation processes for the Tramlink System so as to prevent:

- (a) electromagnetic interference to RT equipment with particular attention to signalling safety and control systems, telecommunications and track circuits;
- (b) EMI affecting the public telecommunications, public broadcast and private radio communications networks and other third parties/communications equipment;
- (c) interference which corrupts or distorts signals and processes within information technology, data handling, data processing systems and other computer equipment;
- (d) interference with radio and television reception;
- (e) electromagnetic induction from traction power supply current into electronic equipment on the Trains, along the track, at Stops and in the Control Centre; and

- (f) outside interference with electronic equipment of the Tramlink system from high voltage power lines and cables paralleling or crossing the track;
- (g) emissions generated within systems in the control of, or associated with the infrastructure and assets of Railtrack, its client operating companies and interfering with control, communications and data handling and processing systems applicable to the Tramlink System.

6.4 The Contractor undertakes that in the event of EMI being caused by or to the equipment comprising the Tramlink System, the Contractor shall effect such changes to the Tramlink System (and the EMC Plan) as are necessary to ensure that EMI is reduced to acceptable limits as soon as is reasonably practical and/or that such EMI has been eliminated pursuant to the provision of the RT General Works Agreement.

6.5 The Contractor undertakes to comply with the EMC Plan.

STRAY CURRENT

7.1 The Contractor shall agree with the Corporation through the Employer and subsequently comply with the Code of Practice for Stray Current Corrosion Protection and the new draft EN standard on this matter, prEN 50122-2: 1995. The Contractor shall ensure that once built the Tramlink System possesses the following characteristics:

- (a) track to earth resistance shall be as high as reasonably practicable, with no deliberate earthing. (Figures are given in the prEN);
- (b) along track resistance shall be as low as reasonably practicable, through high quality bonding and frequent cross bonding between rails and tracks;
- (c) Depot workshop tracks shall be isolated from the main line tracks and fed from a separate rectifier with its negative pole earthed;
- (d) recognised track voltage limits (CCITT recommendations) shall be 60V continuous and 430V instantaneous;
- (e) wherever earthed metalwork is closer than 2m to "negative" metalwork, (including a vehicle body) a self-restoring spark gap shall be installed to limit the touch/step potential to about 120V; and
- (f) under-track reinforcing shall be made electrically continuous within sections, each section being brought out to a test point.

- 7.2 The monitoring and control of, and the analysis of the effects of stray traction current shall be the subject of separate dedicated studies, the results of which shall be made available to RT.

ENVIRONMENTAL IMPACT AND CONSTRUCTION PRACTICE

- 8.1 The Contractor shall undertake the Project Works in a manner which, insofar as is reasonably practicable, minimises disturbances to the public and road users as well as to affected third parties such as statutory undertakers, local retailers and householders.

- 8.2 The Contractor shall:

- (a) undertake the Project Works in accordance with the requirements of the Construction Practice Specification;
- (b) comply with all safety laws and regulations (including the HSWA) for the benefit of employees and all other affected parties;
- (c) conform to the Corporation's environmental policy the current version of which is at Annex 1 to this Section 1. (The Corporation will send a copy of any revised version of Annex 1 to the Contractor through the Employer);
- (d) build and design the Tramlink System in a manner which minimises its impact on the built and natural environment, and which protects, as far as is reasonably practicable, the existing flora and fauna and minimises energy consumption and ecological damage and, in particular, complies with BS 5837 in relation to trees;
- (e) reinstate and landscape the area affected by the Project Works following construction and maintenance of the Permanent Way in accordance with the Council's landscaping requirements as set out in paragraph 4 of this Section 1;
- (f) incorporate the mitigation measures identified in the Environmental Statement submitted with the Act (Document Ref. No. AG0026) and additional studies required therein to assess further likely impacts of the Tramlink System. Relevant mitigation measures shall be incorporated by the Contractor into the detailed design and construction work;
- (g) prior to commencing the relevant design process produce an environmental action plan to ensure that all the identified mitigation measures and additional surveys are incorporated into the detailed design and the programming of the works; and
- (h) design all new structures having regard to operational noise and visual intrusion requirements each as specified in this paragraph 8 and Section 6.

Visual Intrusion

- 8.3 The overall visual intrusion of the Tramlink System shall be minimised by the Contractor (or the Council where the Council is under an obligation to provide landscaping under the provisions of the Tramlink General Agreement) using appropriate landscaping, the design of the Stops, power supply system and major structures. Visual assessments of the structural designs shall be undertaken by a specialist in this field and reasonably recommended mitigation measures incorporated.
- 8.4 In designing the OHLE the Contractor shall adopt the design criteria stated in Section 6 of the Performance Specification.

Operational Noise

- 8.5 Without prejudice to the specific requirements set out herein, the Contractor shall take all steps which are reasonably practicable so as to reduce the operating noise of the Tramlink System. The Contractor shall, whenever possible, reduce noise at source. All structures shall be designed and constructed (in particular the viaducts at Waddon New Road and Mitcham Junction) to mitigate operational noise and vibration propagation where appropriate and as far as is practicable by:
- (a) containment of the track in a concrete well;
 - (b) use of sound barriers; and
 - (c) use of resilient bearing materials.
- 8.6 The Contractor's specific obligations shall be to:
- (a) design the Tramlink system such that at existing noise sensitive properties, upon commencement of Tramlink operations:
 - 1) for areas with Existing Noise levels less than or equal to 59 dB(A), the System Noise shall not exceed 59 dB(A).
 - 2) for areas where the Existing Noise levels are greater than 59 dB(A), the increase in noise due to Tramlink operations shall not be greater than 3 dB(A).
 - (b) demonstrate to the satisfaction of the Corporation, as part of its detailed design, its ability to comply with the requirements in paragraph 8.6(a) of this Section 1.

- (c) agree with the Employer, within 3 months of the date of the Concession Award and as part of its detailed design, a method (including locations), and programme of noise measurements at existing properties, to establish Existing Noise levels and subsequent changes to noise levels, throughout the Concession Period, as a result of the Tramlink Operations;
- (d) operate and maintain the Tramlink System throughout the Concession Period, such that System Noise levels at existing properties are increased by no more than 4 dB(A) ($24 L_{a(eq \text{ facade})}$), above the predicted design value, as a result of the Tramlink operations;
- (e) comply with the Operational Noise and Vibration Requirements contained in Annex 2 of Schedule 1, throughout the Concession Period;
- (f) comply with the requirements for airborne noise from the Depot which shall be demonstrated by the use of predicted noise levels and the measurement of existing noise levels at affected dwellings. This estimated shall be undertaken during the design stage. Predicted levels shall be based on assumed activities and their duration, and shall be undertaken during the design stage. The Contractor shall ensure that any mitigation measures necessary are incorporated at the design stage; and
- (g) arrange for measurements to be undertaken at residential properties in the vicinity of the Depot to establish ambient (L_{Aeq}) and background (L_{A90}) noise levels. The Contractor shall design the Depot so far as practicable to minimise the likely generation of airborne noise from the Depot and will take all reasonable steps to reduce noise at source, thus ensuring that the difference between the rating of level of Depot noise as it affects dwellings or other buildings lawfully used for residential buildings, occupied prior to the date on which the Depot is first brought into operation, and the background L_{A90} noise levels does not exceed 5dB. The rating level shall be determined or assessed and the existing background noise level measured, in accordance with BS4142:1990, the difference between them will be as defined in Section 8.2 of BS4142:1990.

8.7 The Contractor shall use suitable qualified staff to undertake the calculation of noise levels attributable to the operation of the Tramlink System to determine eligibility for noise insulation of dwellings, as indicated in Operational Noise and Vibration Requirements (Document Ref. No. AG0020).

Ease of Access at Stops

8.8 The Contractor shall ensure that:

- (a) platforms and all passenger operated equipment are accessible by wheelchair users without the need for assistance;
- (b) at Tram doors designated for access by passengers the horizontal gap between the Tram and the edge of the trackside platforms never exceeds 100mm (for doors designated for passengers with disabilities, see Section 5);
- (c) passengers board the Tram at a maximum level of 350mm above the top of the rail;
- (d) the Trams shall be level with the platform whilst boarding (plus or minus a maximum of 50mm at all conditions of Tram loading unless otherwise required by HMRI). (For floors designated for passengers with disabilities see Section 5);
- (e) the needs of passengers who are disabled or partially sighted shall be taken into account when providing passenger information facilities;
- (f) all emergency alarm buttons, intercom facilities and ticket machines shall have at least a simplified set of operating instructions in Braille mounted on or near the equipment;
- (g) the use of bridge plates between the platform and the Tram is avoided; and

During the design stage and the Construction Phase, the Contractor shall consult with the Corporation's Unit for Disabled Passengers (or its equivalent from time to time).

Protection of Badgers

8.9 The Contractor is aware that parts of the Project Works may affect or cause disturbance to badgers. Badgers are a protected species under the Protection of Badgers Act 1992 and the Contractor is obliged to comply with the requirements of that legislation.

The Contractor shall appoint an appropriately qualified specialist to advise it in connection with badgers and to assist in complying with its obligations under the Protection of Badgers Act 1992 and the other requirements of this paragraph 8. In particular the Contractor shall obtain a licence from English Nature in accordance with Section 10 of the Protection of Badgers Act 1992 before carrying out any of the Project Works affecting setts or likely to cause disturbance to badgers occupying them.¹

- 8.10 In addition to the requirements imposed by English Nature as a condition of issue of the licence, the Corporation has agreed in principle to provide a licence to a local badger protection society - the Joseph Firbank Society - to occupy the cutting sides for the purposes of protection and management of the badger population. The Contractor shall grant such licence to the Joseph Firbank Society.
- 8.11 Before commencing any Project Works in the Bingham Road to Coombe Road area the Contractor shall consult with the Joseph Firbank Society on the works required and shall take account of their comments acting reasonably.
- 8.12 The Contractor shall agree the precise details of protective works required with English Nature. These are likely to include:
- (a) provision of badger-proof fencing adjacent to the alignment on either side;
 - (b) provision of under-track crossings;
 - (c) repair where necessary of perimeter fencing, allowing where required for the retention of badger paths; and
 - (d) provision of gated access points to the cutting sides at the locations specified in the draft licence which forms part of the Parliamentary Undertaking given to the Joseph Firbank Society.
- 9.1 A performance requirement specifying that a system, structure, material or article comply with a particular standard or procedure whether a BS or other named standard or procedure or otherwise, shall be satisfied by compliance with any relevant national or governmental standard of any member state of the EU, or any relevant international standard or procedure recognised in a member state of the EU, provided that in any case the standard or procedure in question establishes levels of safety, suitability and fitness for purpose equivalent to those established by the standard specified in the Performance Specification.

¹ The Concessionaire should note that English Nature advise that any operations within 20 metres of a set have the potential to disturb badgers, whilst, certain operations (e.g. pile driving) can be potentially disturbing over a greater distance.

- 9.2 A performance requirement requiring the use of any system, structure, material or article which is defined by reference to a named supplier or manufacturer or a specified quality assurance system or Agreement Board Certificate, or which is registered with or has otherwise received the approval of an appropriate supervisory authority shall be satisfied by using systems, structures, materials and articles which have received equivalent approval in another member state of the EU, provided that the system, structure, material or article in question is as safe, suitable and fit for the relevant purpose as the system, structure, material or article specified by the Performance Requirements.
- 9.3 Applicable standards or procedures required by this Operator Specification shall be determined by reference to the current edition of the relevant standards or other publications as amended or at the Concession Award Date. An Agreement Board Certificate will be deemed to demonstrate acceptable quality where no suitable standard exists.
- 9.4 Although all standards and applicable requirements, whether under the Operator Specification or required by law shall be met or satisfied. If a conflict arises as between the requirements of this Operator Specification, the following order of priority shall apply:
1. Operator Specification requirements.
 2. BS or equivalent EU member state or equivalent ISO standards.
 3. Design guidance and other non-mandatory information referenced herein.

ANNEX 1

Corporation's Environmental Policy

[to be supplied by LT]

SECTION 2

TRAMLINK SYSTEM SAFETY

Introduction

- 1.1 The Contractor has primary responsibility for the safety of the Tramlink System during the Construction Phase. The Operator has responsibility for the operational safety aspects of the Tramlink System during the Operating Period as set out in Clause 12.1 of the Operating Agreement. Without prejudice to such responsibility, as stated herein, the Corporation retains a statutory duty to have due regard for the safety of the public transport system operating in London, which includes the Tramlink System.

General

2. Without prejudice to the Contractor's obligation under paragraph 1.1 and the other provisions of this Section 2 and without prejudice to the Operator's general obligation under paragraph 1.1, the Contractor and Operator (where noted) shall:
- (a) comply with Safety Acts and all other applicable Laws (Contractor and Operator)
 - (b) comply with the requirements of HSE in relation to the Services (Operator), including the general and specific requirements of HMRI;
 - (c) comply with the Corporation's general policy on health and safety as amended from time to time (Contractor and Operator);
 - (d) provide all appropriate measures in relation to the Services (Operator) to ensure, so far as reasonably practicable, the safety of all passengers (including the mobility impaired), contractors, staff and the general public;
 - (e) consult with and adopt all requirements of the emergency services throughout the Construction Phase (Contractor) and the Operating Period in relation to the Services (Operator);
 - (f) as part of the design of Stops, Trams and equipment relating to the Tramlink System, take particular care to ensure safety at accesses and exits, while waiting, boarding or alighting and when moving along the Trams (Contractor); and

- (g) have due regard for the safety of third parties, in particular pedestrians and other road users, in the design and construction (Contractor), operation and maintenance (Operator) of the Tramlink System.

Construction Phase

- 3.1 The Contractor shall bear full responsibility for all safety requirements and shall observe all regulations regarding safety applicable during the Construction Phase.
- 3.2 Prior to commencement of the Project Works, the Contractor shall prepare and issue, with a copy to the Corporation through the Employer, a statement of its safety policy and method of implementation for the Construction Phase (called the *Construction Safety Plan*). The Construction Safety Plan shall comply with the requirements of the Construction (Design and Management) Regulations 1994 (the *CDM Regulations*), and all applicable Laws and Safety Acts.

Operation and Maintenance Phase

- 4.1 No later than 3 months prior to the Actual Opening Date, the Contractor shall issue to the Employer its contribution to the proposed Safety Case. The Employer shall respond with its comments no later than 30 days after receipt of the proposed Safety Case. The Safety Case shall be subject to the prior approval of HMRI and shall comply with the provisions of all applicable Laws and Safety Acts.
- 4.2 The Safety Case shall cover, as a minimum, the following aspects:
 - (a) scope and objective of the Tramlink System safety assurance activities; (Contractor and Operator)
 - (b) programme and resourcing; (Contractor and Operator)
 - (c) system and sub-system quantitative and qualitative safety design and operation criteria; and (Contractor)
 - (d) operational safety management in accordance with Section 9 of this Operator Specification (Operator).
- 4.3 As part of the Safety Case the Contractor and/or Operator (as noted) shall:
 - (a) provide appropriate facilities and proper training of staff to ensure safe and efficient evacuation from the Trams in case of emergency; (Contractor and Operator)

- (b) provide suitable warning signs for the public and differentiate where required by HMRI or the Highway Authority between the Swept Path and other areas of the highway along street Tramway sections; (Contractor)
- (c) provide warning signs and appropriate means of demarcation as required by the Act and by HMRI along segregated sections of Tramway. Where physical barriers are used to segregate the Tramway, adequate clearances shall be provided to minimise hazards to staff working on the track, trespassers, or straying animals; and (Contractor)
- (d) formulate a health and safety policy, which shall be reflected in a comprehensive safety management system applicable to the operation of the Tramlink System and which shall, in respect of the Construction Phase, form part of the Construction Safety Plan and in respect of the Operating Period form part of the Safety Case. The policy shall include the following aspects (without limitation): (Contractor and Operator as noted):
- safety monitoring (Contractor and Operator);
 - passenger safety and security (Contractor and Operator);
 - staff safety and security (Contractor and Operator);
 - third party safety (Contractor and Operator);
 - site safety (Contractor);
 - emergency conditions, including lines of communication to RT, BR and its successors, emergency services, the relevant local authorities and Highway Authorities (Contractor and Operator);
 - technical/design safety procedures (Contractor); and
 - maintenance (Operator)

The health and safety policy shall incorporate:

- (i) a statement that it is to be observed by Tramlink System (and sub-contractor's) personnel in the following situations:
- accidents and emergencies;

- normal operation;
 - predetermined failure conditions including staff shortages, power supply shortages and equipment failures; (Contractor and Operator)
- (ii) a description of the method of recovery of a failed Tram or Train and the lifting of a Tram involved in an accident (and associated activities). (Contractor and Operator)

4.4 Copies of the Safety Case (or those extracts of it which related to operations on the highway) shall be supplied for information to each relevant Highway Authority by the Concessionaire.

Safety Demonstrations, Tests and Monitoring

- 5.1 As part of safety management the Contractor shall identify all equipment and other devices critical to safety. For such devices it will use, where practicable, items which are certified by official standards or those which have been proved by safe and successful operation on a comparable public transport system.
- 5.2 The Contractor shall prepare plans, procedures and requirements for certification, contracts and testing, including design reviews, review of sub-contractor submittals, change requests and audits.
- 5.3 The Contractor and the Operator shall, in consultation with HMRI, through the Concessionaire, the Corporation and the Highways Authority, identify the activities they propose to monitor to measure its safety performance, including the procedures necessary for the notification of accidents where reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

Safety Training

6. The Contractor and the Operator (where relevant under its obligations in Clause 12 of the Operating Agreement) shall:
- (a) provide safety criteria and information on approved methods and procedures for inclusion in the instructions and associated publications for the training of Tramlink System operating and maintenance personnel. Protective devices and emergency equipment shall be identified and included in the training programme; and

- (b) be responsible for producing safety training material and publicity for the general public. The Contractor and the Operator shall participate in training programmes with road safety officers of the London Boroughs traversed by the Tramlink System.

Railtrack Requirements

- 7. The Contractor shall comply with all the requirements of Railtrack as set out in the RT General Works Agreement.

Safety Audit

- 8. The Contractor shall carry out and document internal safety audits. The Corporation shall have the right to inspect the Contractor's safety audit documentation and to carry out safety audits of its own at any time during the Concession Period. The Contractor agrees that it will inform the Employer promptly of any remedial work or any change in operating practices, management or other safety critical aspects of operations, which may be necessary for the safe operation of the Tramlink System, of which the Contractor becomes aware, as a result of a safety audit or otherwise.



Statement of general policy with regard to Health and Safety

London Transport

Policy

This policy applies to matters relating to health and safety and also, because of its close relationship, to matters relating to the environment.

It is the policy of the Board of London Transport to:

1. Comply with the spirit as well as the letter of current health, safety and environmental legislation, transport legislation, approved codes of practice and authoritative guidance literature.
2. Promote the safety, health and well-being of all its employees.
3. Ensure, so far as is reasonably practicable, that London Transport conduct its undertakings in a way such that passengers, staff, the public and others on or about their premises are not exposed to to their safety or health.
4. Achieve continuous improvement in safety and environmental performance.

Each head of department throughout the organisation is responsible for safety and health within their own department, and for ensuring that all managers, staff and contractors know and accept their personal responsibilities and duties.

The Board of London Transport reminds all employees of their own duty to take reasonable care for the safety and health of themselves and others who may be affected by their acts or omissions at work; and to co-operate with management in the promotion and maintenance of health and safety measures.

Monitoring and auditing compliance with this general policy throughout the organisation is one of the main duties of the London Transport Safety Audit Committee. The Committee reports to the Board of London Transport, who have the ultimate responsibility for safety and health matters throughout the organisation.

Organisation

Compliance with the Policy will depend on its enthusiastic and diligent implementation by all the employees of London Transport.

To this end, the Board of London Transport requires that the Managing Directors of subsidiary companies, and Heads of the following corporate business activities prepare, and as often as may be appropriate, revise and issue their own complementary statement of general policy, organisation and arrangements for promoting and ensuring compliance with the above policy.

Subsidiary Companies

London Underground Ltd
Victoria Coach Station Ltd
London Buses Ltd

Corporate Business Activities

London Transport Buses
London Transport Property
London Transport Museum
London Transport Medical Service
Pass Agents Sales Service (PASS)
Unit for Disabled Passengers

The Central Personnel Manager, LT is responsible for the issue of a statement of general policy, organisation and arrangements relating to businesses and services not detailed above.

A handwritten signature in black ink, appearing to read 'Peter Ford'.

Peter Ford

Chairman
London Transport

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

DEPOT FACILITIES

1. The Contractor shall design and construct a Depot for the servicing and maintenance of Trams at Therapia Lane, in the London Borough of Sutton as detailed in the Act and the undertaking given to London Borough of Sutton, designed to meet the Performance Requirements in Sections 9 and 11 of this Performance Specification and incorporating the requirements of this Section 8.

The layout of the Depot shall be designed to cater for an initial fleet of no less than 24 Trams, each 30.2m in length, together with such additional rail, road/rail and road vehicles as are required for operation and maintenance of the Tramlink System. The layout shall be capable of expansion, without material disruption to the facilities provided at the Depot and to operation of the Tramlink System, to cater for a fleet of Trams, each 43.3m in length, together with such additional rail, road/rail and road vehicles as are required for operation and maintenance of the expanded fleet on the Tramlink System.

The general layout of the facility, including tracks and buildings, shall be in accordance with the following drawings supplied by the Contractor:

- overall layout drawing 95401/300/003 Rev B
- building plan drawings No. 95401/A/101B and 95401/A/102A
- building elevation drawings No. 95401/A/103A and 95401/A/104A

The detailed layout will be developed during detailed design to suit operational and construction requirements within the constraints imposed by site boundaries.

2. DEPOT ACTIVITIES

The following activities shall be undertaken within and from the Depot:

2.1 Tram Stabling

All Trams shall be securely stabled at the Depot overnight, between peaks and at any other times when not required for service. However, outstabling, on a temporary basis only, will be permitted in order to accommodate pre-planned engineering works, special traffic requirements of an exceptional nature or an emergency requiring outstabling.

2.2 Breakdown and Maintenance Vehicle Stabling

The Contractor shall stable and make available at the Depot a road/rail breakdown and maintenance vehicle, and such other rail, road/rail and road vehicles as are required for operation and maintenance of the Tramlink System.

2.3 Tram Maintenance

Routine and preventative maintenance on Trams shall, where practicable, be undertaken at the Depot, as described in Section 11 of this Operator Specification.

2.4 Stores

The Contractor shall provide stores within the depot building. The Operator shall ensure that an associated inventory management service for itself and for Tram maintenance activities is provided.

2.5 System Monitoring and Control

The Operator shall ensure that the Control Centre is continually staffed 24 hours per day in order to monitor and control the Tramlink System, control Tram driver availability, respond to operational staff issues, contact with emergency services and other third parties when necessary and organise out of hours infrastructure, Operator's equipment and Tram maintenance. The Contractor shall ensure that the Control Centre shall be at the Depot and shall incorporate the requirements of Section 7 of the Performance Specification.

2.6 Driver Management

Drivers will sign on duty at the Depot, in the presence of an authorised supervisor.

3. PROTECTION OF RESIDENTIAL AMENITIES

3.1 Noise

The Contractor shall design the Depot so far as practicable to minimise the likely generation of noise or vibration from the Depot. The Contractor shall liaise with any relevant Authority through the Employer in respect of any mitigation measures which may be required to be incorporated in the design.

The Operator shall take all reasonably practicable steps by management of its activities undertaken at the Depot and in accordance with the Environmental Protection Act 1990 (as amended) to minimise noise and vibration as required by Clause A2.6 and A2.8 of the Operational Noise and Vibration Requirements.

3.2 Depot Lighting

The Contractor shall secure adequate disposition and intensity of the Depot lighting to enable essential maintenance and operations to be conducted safely. Lighting of the Depot shall be provided to a level of between 10 and 30 lux external to the Depot buildings and between 100 and 500 lux within the Depot buildings.

Spillage of light from the Depot towards adjoining residential properties shall be minimised through careful design and siting by the Contractor.

SECTION 9**OPERATION OF TRAMLINK SYSTEM****SERVICE PARAMETERS**

1.1 At least four months before the Actual Opening Date the Operator shall submit to the Concessionaire for its approval the detailed level, frequency and pattern of service and the Timetable (as described in paragraph 1.7 of this Section 9) it proposes to operate within the parameters set out in this Section 9 and providing that these services parameters are met the Concessionaire shall not unreasonably withhold its approval of the same and shall submit it to the Corporation. The Concessionaire agrees to notify the Operator of its approval or otherwise within fourteen (14) days of receipt of the Timetable. The Operator shall operate the Tramlink Service in accordance with the Timetable approved by the Concessionaire.

The Operator shall ensure that the service provided continues to comply with the accommodation limits and standards defined in Clause 5.1(e) of Section 1 in accordance with the provisions of Clause 16 of the Operating Agreement.

Frequency of Services

1.2 Throughout each operating day, the timetabled frequency of service provided on each section of route shall be as set out in the table below and in any event not less than two Trams per hour in each direction of travel. At certain times of the week, as specified in the table below, the minimum level of service to be provided shall be set at the higher level set out therein. Headways shall be evenly spaced wherever practicable.

Minimum number of Trams per hour in each direction on each section of route for the specified time periods: (tph = trains per hour)

Section of route	Mondays to Fridays (7am-7pm)	Saturdays (8am-7pm)	Sundays, Public Holidays & Other Operating Times
Central Croydon - Beckenham Junction	6 tph	6 tph	2 tph
East Croydon - Wimbledon Station	6 tph	6 tph	2 tph
Central Croydon - Elmers End Station	4 tph	4 tph	2 tph

Central Croydon - New Addington (Central Parade)	8 tph	8 tph	4 tph
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The Concessionaire and Operator acknowledge that it will be acceptable for the Wimbledon service to be linked to other services beyond East Croydon.

The Concessionaire and the Operator acknowledge that, in the event of the agreed Timetable allowing sufficient total running time plus stand time to provide the minimum 8 tph service it will be acceptable to adjust the frequency to enable a reliable service to be operated using seven (7) Trams.

1.3 The Operator shall provide a public Tram service throughout the Tramlink System in accordance with the Public Timetable. The Operator shall ensure that the first Tram departures shall be no later than the times shown below and that the last Tram departures shall be no earlier than the times shown below.

1. Mondays to Fridays and Saturdays:

	First Tram Departure	Last Tram Departure
From Wimbledon to E Croydon	0600	0000
From New Addington to E Croydon	0500	0035
From Beckenham Junction to E Croydon	0600	0000
From Elmers End to E Croydon	0530	0000
From E Croydon to Wimbledon	0600	0000
From E Croydon to New Addington	0440	0015
From E Croydon to Beckenham Junction	0600	0000
From E Croydon to Elmers End	0600	0010

2. Sundays

From Wimbledon to E Croydon	0735	0000
From New Addington to E Croydon	0645	0035

From Beckenham Junction to E Croydon	0730	0000
From Elmers End to E Croydon	0730	0000
From E Croydon to Wimbledon	0730	0000
From E Croydon to New Addington	0625	0015
From E Croydon to Beckenham Junction	0730	0000
From E Croydon to Elmers End	0730	0000

The Operator shall ensure that scheduled first and last journeys on each section of route operate as per the Public Timetable and as a priority over other timetabled journeys.

On Public Holidays (except Christmas Day and Boxing Day), the Operator shall as a minimum provide services as specified for Sundays, although the Operator shall be free to provide an enhanced service. A restricted half hourly service shall be provided on all sections of routes on Boxing Day, and the Operator shall not be obliged to provide a service on Christmas Day.

- 1.4 The Operator may provide a higher frequency than the minima stipulated up to the upper limits specified in the table below. The Operator acknowledges that changes to the level of service may affect the priorities available to Trams at junctions and that this is a matter for the Concessionaire to resolve with the relevant Highway Authority.

Upper limitation on Trams in each hour per direction passing along critical sections of route below:

Section of route	Maxima (at any time)
Addiscombe Road, Croydon	26 tph
Crossing Kingston Road, Merton Park	8 tph

Without prejudice to the procedure for varying the upper limitation in the Operating Agreement, this ceiling may be exceeded temporarily in exceptional circumstances, where possible to be agreed in advance with the Concessionaire and the relevant Highway Authority through the Concessionaire. In any event should the exceptional circumstances continue for more than one week the Operator shall follow the procedures set out in the Operating Agreement to vary this parameter.

Journey times

- 1.5 The Operator shall ensure that the journey times scheduled in the Public Timetable in either direction between East Croydon and the Terminus Stops listed below are not more than the following maxima, even if the Trams are required to serve each Stop:

East Croydon to/from Wimbledon	27 minutes
East Croydon to/from Beckenham Junction	22 minutes
East Croydon to/from New Addington	21 minutes
East Croydon to/from Elmers End	14 minutes

Upon application from the Operator made in accordance with the Operating Agreement, the Concessionaire may vary these times if it considers the traffic conditions to be creating unreliability.

Service Stops

- 1.6 Stops shall be provided at the locations listed below. Stops marked with an asterisk will be Compulsory Stops. Trams must therefore stop at these points on all journeys. Stops not marked with an asterisk are Request Stops. Trams must stop at Request Stops if a passenger at the Request Stop hails the Tram or if a passenger inside the Tram rings any signalling bell.

Wimbledon Station *
Dundonald Road
Merton Park
Morden Road
Phipps Bridge
Belgrave Walk
Mitcham
Mitcham Junction *
Beddington Lane
Therapia Lane
IKEA/Ampere Way
Waddon Marsh
Wandle Park
West Croydon Station *
Wellesley Road *
George Street *
Reeves Corner/Church Street*
East Croydon Station *
Lebanon Road

Sandilands *
Bingham Road *
Blackhorse Lane
Woodside
Arena*
Elmers End*
Harrington Road
Birkbeck
Avenue Road
Beckenham Road
Beckenham Junction *
Lloyd Park
Coombe Lane/Shirley Hills
Gravel Hill
Addington Village *
Fieldway*
King Henry's Drive
New Addington *

Service timetable

- 1.7 The Operator shall make available a Working Timetable which is consistent with the Timetable approved in accordance with paragraph 1.1 of this Section 9 to the Concessionaire, the Council and the London Regional Passengers' Committee through the Concessionaire at least three calendar months before commencement of each such timetabled service, and thereafter not less than three months prior to any Timetable revision. This shall fully detail all scheduled public journeys on each type of operating day stating departure times from all Compulsory Stops. For Terminus Stops arrival times shall be quoted.

The Operator shall make a derivative abbreviated Public Timetable available to the public not less than six weeks before commencement of each service, or six weeks before any change to an existing Timetable, and otherwise at intervals of not more than one year. For each type of operating day this shall indicate departure times from each Terminus Stop and Compulsory Stop, or service frequency where this is more frequent than once every ten (10) minutes. At Terminus Stops, arrival times shall also be shown. The Public Timetable shall be in a form and style to be agreed by the Corporation through the Concessionaire. The Operator shall display the Public Timetable appropriate to the service and direction of travel on all platforms, and inside all passenger carrying units of the Trams.

The Working Timetable and Public Timetable together shall constitute the *Timetable*.

SERVICE PERFORMANCE

2.1 The Operator shall operate the Tramlink System in accordance with the Timetable currently approved by the Concessionaire as varied from time to time in accordance with the Operating Agreement. The Operator shall correctly display appropriate service number designations as agreed with the Concessionaire and correct destination displays on all Trams operating in service.

Service disruptions

2.2 The Operator shall give, subject to paragraph 2.5 below, wherever practicable a minimum of five (5) days notice to the public if Stop closures or service disruptions (whether of part or all of the Tramlink System) are necessary for any reason including exceptional maintenance or repair activities.

2.3 The Operator shall, in the case of Stop closures, or in the case of pre-planned disruptions for engineering works affecting track, Trams, power supply, or otherwise, which impair the Operator's ability to provide Tramlink Services or in the case of Stop closures, post notices on all Stops and in all passenger carrying units of the Trams at least five (5) days in advance of such works detailing these events and giving details of alternative means of transport.

2.4 On the days on which a closure occurs announcements shall be made on Trams which continue to operate, and special messages shall be provided on Stop real-time displays.

2.5 Where it is not possible to operate all or part of the Tramlink System in accordance with the Operator Specification because of a temporary emergency, the Operator shall use its reasonable endeavours to minimise disruption and delay to the public caused by the emergency and to restore the service specified in the Public Timetable as soon as possible. The Operator shall liaise with the Concessionaire and inform the public as soon as practicable as to the nature of the emergency, its likely duration and the proposals for arrangements to deal with the same.

SERVICE RELIABILITY AND MONITORING

3. The Concessionaire shall from time to time agree with the Operator targets for service performance and for system maintenance and presentation with which the Operator will comply. The Concessionaire will monitor quality and quantity of service provided, particularly in respect of the adherence to the Timetable and excess waiting time for passengers.

The Corporation intends to undertake surveys to monitor performance by the Operator of its obligations under the Operating Agreement at a frequency not exceeding two occasions during any Financial Period unless otherwise agreed in advance with the Operator and in a manner which does not prejudice the Operator's performance of its obligations in accordance with the Operating Agreement. The Concessionaire will provide the Operator with a schedule of items to be monitored and a description of the method of monitoring. The results of this monitoring will be issued to the Operator, which will have the opportunity to comment. The Concessionaire will consider the Operator's written comments and pass them to the Corporation for consideration before determining whether written notice specifying the nature of any default is issued in accordance with the relevant provisions of applicable clauses of the Operating Agreement.

The Concessionaire and the Operator agree that the initial service performance standards with which the Operator shall comply shall be as follows:

Quality of Operated Service

- % of in-service scheduled timetabled kilometrage operated - 98%
- outside the section between Reeves Corner and Sandilands less than 4.5% occurrence of a gap in service of twice the timetabled interval.

For the purpose of this clause 3, the Concessionaire will not issue a warning notice under clause 16.6 of the Operating Agreement solely in relation to a failure to achieve the 98% in-service requirement during the 9 months immediately following the successful completion of SAT3.

The Concessionaire will not ordinarily consider any de-minimis failure to achieve the 98% in-service requirement as constituting grounds for the issue of a warning notice under clause 16.6 of the Operating Agreement.

In respect of the following three annual special events, the Concessionaire shall take into account the impact of such events on the ability of the Operator to achieve Scheduled Kilometrage in calculating the overall service quality statistics for the relevant Financial Period:

- (i) Croydon Carnival
- (ii) Remembrance Day Parade
- (iii) London to Brighton Vintage Vehicle Rally

Performance of Passenger Infrastructure

- at least 97% reliability of real-time information in service indicators during hours when the Tramlink System is in service.

- ticket machine availability 97% of system opening time;
- 100% of Stops to be cleaned daily;

Presentation of Vehicles

- 100% of Trams operated to be cleaned daily externally and internally before use the following day.
- 100% of Trams operated to be cleared of litter every 3 hours between 0930 hours and 1830 hours on Mondays to Saturdays.

The Operator shall adhere to maintenance standards so as to meet the above targets, and the requirements of Section 11 of this Operator Specification. The Operator shall ensure that adequate systems are in place to record the above information, and shall provide such information to the Concessionaire at the Operator's expense as reasonably requested by the Concessionaire.

FEEDER BUSES

4. The Concessionaire shall secure the provision of Bus Feeder Services in accordance with the terms of clause 24 of the Concession Agreement, and as detailed in Schedule 8 of the Concession Agreement.

CUSTOMER CHARTER AND PUBLIC ENQUIRIES

5. On or before the Actual Opening Date, the Operator shall publish a customer charter, which shall be subject to the approval of the Concessionaire, such approval not to be unreasonably withheld. The customer charter shall substantially be in the form of Annex 1 to this Section 9. Any valid claims under the Customer Charter shall be paid by the Operator and shall be agreed with the Concessionaire as to the liabilities between the Concessionaire and the Operator as detailed in Schedule 11 of the Operating Agreement. The Operator acknowledges that the Corporation will be concerned to ensure consistency in the customer charters applicable across its network. The Operator shall use its reasonable endeavours to ensure that its employees, servants and agents comply with the provisions of the charter relating to their conduct.

REPORTING OF INCIDENTS

6. The Operator shall comply with all statutory obligations relating to the reporting of accidents, injuries, diseases and dangerous occurrences. The Operator shall record details of all reportable occurrences on a register which shall normally be kept at a location to be agreed with the Concessionaire, and shall be available for inspection by the Concessionaire and the relevant Highway Authority at any time during normal office hours. For those incidents cited in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, and for all accidents involving fatalities or serious injuries details shall be sent to the Concessionaire within 24 hours of their occurrence. For those accidents which occur on the highway, a second copy of the information sent to the Concessionaire shall be supplied direct to the relevant Highway Authority. In addition, the Operator shall supply the Concessionaire with information concerning all accidents and assaults in accordance with the Concessionaire's procedure as notified to the Operator and amended from time to time. If required by the Concessionaire the Operator shall liaise with the Concessionaire about the occurrence of any incident and the future measures to be taken to prevent the recurrence thereof.

LOST PROPERTY

8. The Operator shall by the Actual Opening Date appoint a day on which any lost property regulations made under Section 60 of the Public Passenger Vehicles Act 1981 will apply to Tramlink. The Operator shall by notice inform the Concessionaire of the date appointed. From that date the Operator shall administer a system for dealing with lost property found in the Tramlink System in accordance with such regulations.

SMOKING

9. The Operator shall maintain all Trams in use on the Tramlink System such that notices therein stating that smoking is prohibited are conspicuous and shall use reasonable endeavours to ensure that the Trams are no smoking zones.

BYELAWS

10. Bylaws shall be as defined in Clause 31.1.5 of the Operating Agreement.

CONDITIONS OF CARRIAGE

11. The Operator shall consult with the Concessionaire about the terms and conditions on which the Operator issues tickets to passengers in order to ensure that, so far as is reasonably practicable, there is consistency between the terms and conditions on which tickets are issued on different modes of transport. The Operator shall ensure that any tickets are issued and fares are collected on behalf of the Concessionaire and that the terms and conditions on which tickets are issued are in the name of the Concessionaire.

DISPLAY OF NOTICES

12. The Operator shall ensure that route maps, safety notices, bylaws (if any) and any other notices which the Concessionaire may reasonably require are displayed in the interior of each of the main seating areas of the Tram.

Draft Customer Charter

A Charter for Tramlink Passengers

Welcome to your charter.

At Tramlink we aim to give you the best possible service.

This booklet sets out exactly what you can expect from us and explains how to make the most of the Tramlink service.

Trams on time

We know that reliability is what passengers want most from our service. Our target is to keep your waiting time as short as possible by keeping to the timetables we display.

- We display regular reports about our tram services at our stations.
- Where we have to change the service because of engineering works, we advertise the fact well in advance and make alternative arrangements if necessary.
- If we are unable to run the timetabled last tram for any reason we will do our best to get you to your destination station. The times of the last trams each day are displayed at stations and in our free Service Guides.
- If, because of our failure, your journey is seriously delayed, we will refund your fare with a voucher.

Helpful Staff

Our aim is to do all we can to make your journey as smooth and comfortable as possible and for every member of staff the needs of our customers come first.

- If you need help with your journey you can talk to us at any time. We have an Information Office conveniently situated in Croydon at (what is the address) and you can telephone us day or night on (what is the telephone number).
- All our trams have public address systems and next stop information is announced and displayed. If for any reason your journey is delayed the driver will tell you what the problem is and keep you updated.

- All our front line staff wear our Tramlink uniform and have name badges. If you telephone us we will give our names.
- We want you to enjoy travelling by Tramlink. Our service exists to serve your needs and we aim to make every journey a pleasant experience.

Safe, Clean Trams, Safe Clean Stations

Our trams and stations are brand new and designed with your safety as a priority. We aim to keep them sparkling clean.

- All our trams are thoroughly cleaned inside and out every day. After every return trip the tram is checked and any litter removed. The driver will ensure that lost property is safely collected.
- Our Trams incorporate features designed to make travel safer and more comfortable for everyone. These include a flat entrance from the platform, brightly coloured grab-poles and easy to use and reachable bell pushes. Safe positions are marked for passengers in wheelchairs.
- All tram-cars have alarms so that if you need to contact the driver in an emergency you can. Drivers have two-way radios to call for help if necessary.
- We provide shelter, light and seating at our stations wherever there is space to do so. At all stations there are screens showing the time of the next tram. We clean our stations at least once a day and we will normally repair any damage within 24 hours.

Clear Information about our Service

We want to make sure that you never have a problem finding out when Tramlink runs, where it stops or what it costs.

- We deliver Tramlink Service Guides to everyone living within easy range of a Tramlink stop.
- At all our stations there are real-time dot-matrix screens showing when the next tram will leave. There are also posters with full details of the service and fares. We will ensure that these are kept up to date and in good condition.
- On board the trams there are route diagrams showing where Tramlink goes with its links to buses and trains. Station names are announced automatically on arrival.
- If you prefer to ring us for information we have a recorded message available giving service details. If you would like to speak to someone about your journey you can telephone Travel Information number 24 hours a day.

Fares and Tickets

We want to make paying your fare on Tramlink as quick and easy as possible.

- At every station we have machines which sell a full range of tickets and can give change.
- You can buy Tramlink tickets in advance from [] outlets all over London, including rail stations, underground stations, bus garages and newsagents. You can also use your credit card to buy weekly, monthly or annual tickets.
- Our stations have no entrance barriers but if you board one of our trams you must always be in possession of a valid ticket. Anyone on the system without a valid ticket will be liable to pay £xx on the spot. Purchasing a ticket before travelling will ensure that we can identify the real fare dodgers and make sure that they are not subsidies by honest customers.

Making it Better for Everyone

Travelling together makes it important to think of others.

Please

- Don't smoke
- Don't leave litter behind
- Don't bring sticky or smelly food on board
- Don't play your personal stereo at a volume which will disturb others
- Don't put your feet on the seats

When travelling on Tramlink please remember that because trams are very quiet you may not hear them approach. Please be vigilant and, except in pedestrian areas, **NEVER STEP ON THE TRACKS**. If you need to cross over always use the market crossing or footbridge.

Getting in Touch with us

We want to hear from you and we treat all suggestions, comments and complaints very seriously. Please write to us at the address below or telephone us on XXX. Alternatively you can call in and speak to us at our office in XXX.

We will try to reply to you within seven working days. If we cannot give a full answer within this time we will send you an acknowledge within two days and reply to you in full within three weeks.

If you are not happy with our reply you can contact the independent passengers watchdog:

London Regional Passengers Committee
Clements House
14-18 Gresham Street
London EC2V 7PR

SECTION 10

FARES & FARE COLLECTION

FARES & TICKETS

- 1.1 The Concessionaire shall conform with London-wide zonal ticketing systems, Travelcard (or its equivalent) and concessionary fares (as described in the Concession Agreement). The Operator shall co-operate with the Concessionaire in this regard. The Corporation, through the Concessionaire shall determine the level and structure of fares to be charged on the Tramlink System, in accordance with Clause 23 of the Concession Agreement. The Operator shall accept Travelcards, LT Cards, Concessionary Permits (acceptance on Mondays to Fridays shall be only after 0900 hours), LT Staff Passes and Police Passes and any other multi modal tickets whose format and nature are determined by the Corporation through the Concessionaire. In addition, the Operator shall accept for travel, between Wimbledon and East Croydon only, those passes held by railway employees which allowed free travel between West Croydon and Wimbledon prior to the withdrawal of the conventional railway service over that section.
- 1.2 The Contractor shall design its ticketing equipment, as far as is reasonably practicable, to permit future implementation of smartcards or stored value ticketing systems on the same basis as other London area public transport operators. The Operator shall agree to the installation by the Concessionaire, at the cost of the Concessionaire, of any equipment required on Trams or on platforms for the purpose of electronic pass recognition or for other purposes related to the future allocation of Off-Tram Revenue or Stored Value Revenue provided that the Concessionaire, gives the Operator reasonable written notice of when such equipment is to be installed and after consultation with the Operator, installs the same at such times as (as far as is reasonably practicable) do not prejudice the ability of the Operator to provide the Services. The Operator shall bear its costs of making the Trams available at the Depot to the Concessionaire for the purposes of installing such equipment.

The Operator shall determine the size and material characteristics of other tickets provided by them, other than multi-modal tickets, but their design shall be subject to the approval of the Concessionaire, which shall not be unreasonably withheld or delayed.

- 1.3 The Operator shall adopt and charge fares as required by the provisions of the Concession Agreement. The first Fares Table shall be as set out in Schedule 6 of the Concession Agreement. The fare levels to be charged on the Tramlink System may be varied from time to time in accordance with the provision of the Concession Agreement. Without prejudice thereto, the Operator shall deliver to the Concessionaire by no later than 23rd November, in each calendar year, a proposed Fares Table, updated to reflect the circumstances at the time for application during the following calendar year on the basis that the Actual Opening Date has occurred. The first updated Fares Table shall be delivered to the Concessionaire by no later than 23rd November 1996. The fare levels and structure shown by the updated Fares Table shall be subject to the Corporation's approval.

Ticket Vending

- 2.1 The Contractor shall ensure that whatever system of automatic fare collection is employed minimises dwell times of Trams at Stops. The Contractor shall ensure that any ticket vending facilities shall as far as is reasonably practicable be easy to use by all passengers, including unassisted wheelchair users.

The Contractor agrees to install multi-fare ticket vending machines at all Stops, at least one per platform. In addition, tickets may also be sold from the Operator's Central Croydon office and from other agencies.

Tickets shall not be sold nor validated by drivers and shall not normally be sold on Trams. However, portable ticket issuing machines may be used by roving Revenue Inspectors for the purpose of checking passengers' tickets and passes as well as issuing penalty fares.

Tickets issued by the Operator or its agents shall be stated to be on the Concessionaire's terms and conditions of carriage and the Concessionaire's name shall appear on them.

Automatic Ticket Vending Machines

- 2.2 Automatic ticket vending machines, where installed by the Contractor, shall:
- give correct change either through the ticket vending machine or via a separate facility;
 - be weatherproof and vandal resistant;
 - be capable of operating effectively under weather conditions as specified in paragraph 4 of Section 4;
 - register the operations and transactions for statistical purposes (and the machine shall be able to produce data to meet the obligations under the Off-Tram Revenue Agreement);

- have sufficient ticket, money box and change capacity to carry out all normal transactions between routine servicing.

The Contractor shall supply and install multi-fare ticket vending machines which accept a reasonable range of UK coins and notes and will issue correct change. The machines shall also be capable of upgrade or modification to accept contactless smartcards and/or common stored value tickets at a later date.

Ticket Machine Failure

- 2.3 The Operator shall ensure that ticket machine availability shall be in accordance with the requirements of Section 9. The Contractor shall provide a system for reporting ticket machines requiring attention to the Control Centre which shall monitor the operational status of the remote ticket vending machines. Any equipment malfunction or tampering with automatic fare collection equipment shall immediately initiate appropriate alarms to alert controllers in the central Control Room. All system transactions and alarms shall be logged and time tagged.

Revenue Protection

- 3.1 The Operator shall ensure that a system, in accordance with Schedule 11 of the Operating Agreement, is in place to check that passengers are in possession of a valid ticket or tickets for journeys that are taken, and that ticketless and other travel without a valid ticket is deterred. The Operator shall secure that the system complies with Good Industry Practice and shall only utilise suitably trained staff.

Penalty Fares

- 3.2 The Operator shall, at his own expense, activate and operate a penalty fare scheme by means of the necessary secondary legislation. The Operator shall ensure that the scheme employed ensures that Penalty Fares are not imposed on passengers unable to purchase the correct ticket because the normal ticket selling facilities were not available at their point of joining the Tramlink System.

SECTION 11

MAINTENANCE OF TRAMLINK SYSTEM

1. GENERAL

1.1 Preventative Maintenance Schedule

Ten months after the signing of the Concession Agreement, the Concessionaire shall issue to the Operator the Draft PMS (Infrastructure). At most, three months after the commencement of the Mobilisation Period, the Operator shall prepare and submit to the Concessionaire an operations related Draft Preventative Maintenance Schedule (PMS) (Operations) which will reflect the needs of the users of the Tramlink System and of the general public (including all third parties e.g. pedestrians, road users, bus operators, owners of adjoining properties, shop lease holders etc.) in a safe, secure, comfortable and efficient way. The Draft PMS (Operations) shall take into account the Draft PMS (Infrastructure) that shall be prepared by the Contractor and issued to the Operator. The Draft PMS (Operations) shall be subject to the approval of the Concessionaire. The Operator shall ensure that subsequent revisions are submitted to the Concessionaire and such revisions shall be subject to the approval of the Concessionaire.

At least six months before the Actual Opening Date, the Operator shall prepare and submit to the Concessionaire, the final PMS (Operator). The Concessionaire shall forward to the Operator the Final PMS (Infrastructure) 8 months before the Actual Opening Date.

1.2 Responsibility

The Operator shall procure Tram Maintenance services as required by Schedule 1 Part 5 of the Operating Agreement.

The Operator shall ensure that all Tram maintenance Services is carried out so as not to cause adverse or detrimental effects to the Concessionaire's infrastructure maintenance cost.

The Operator shall liaise with the Contractor during the Commissioning Period, System Acceptance Testing Period and Defects Rectification Period for the purpose of enabling the Contractor to review his PMS by reference to operational characteristics of actual in-service experience of operational and maintenance staff during the periods stated.

The Operator shall ensure that all Tram Maintenance Services are carried out with the exercise of that degree of skill, diligence, prudence, foresight and practice as would reasonably and ordinarily be expected from a skilled and experience Tram Maintenance Contractor.

1.3 Stored Value Ticketing Equipment

The Operator shall allow reasonable access to the Concessionaire or the Corporation or any contractor for the purpose of maintaining any equipment relating to Stored Value Ticketing.

2. TRAM MAINTENANCE REQUIREMENTS

2.1 Tram Cleaning

2.1.1 General

The Operator shall ensure that the Tram cleaning arrangements provide for a high specification of Tram presentation for service and include effective methods of cleaning and graffiti removal.

Any change in the cleaning sub-contractor shall be approved by the Concessionaire having due regard to Clause 29.1 of the Operating Agreement.

2.1.2 Exterior Cleaning of Trams

The Operator shall utilise the vehicle exterior washing facility at the Depot and ensure a thorough wash of the Tram exterior.

Under normal circumstances, all Trams in service shall pass through the vehicle exterior washing facility each day in service.

Each Tram shall be given a deep clean at intervals which shall include no more than 30 days in service and as specified in the PMS.

2.1.3 Interior Cleaning of Trams

The Operator shall ensure that each Tram, when it has been in service, has the interior cleaned daily. The Operator shall ensure the Tram is thoroughly swept and mopped and that the windows are cleaned.

Additionally, the Operator shall litter pick each Tram in service at least every 3 hours between the hours of 0930 and 1830 on Mondays to Saturdays.

Each Tram shall be given a deep clean internally at intervals which shall include no more than 30 days in service, and as specified in the PMS.

2.1.4 Graffiti

The Operator shall use all reasonable endeavours to ensure that Trams do not enter service with significant and/or offensive graffiti in place. The Operator shall ensure that significant and/or offensive graffiti is removed within 24 hours of first being reported. All other graffiti is to be removed by no later than the next scheduled deep clean.

2.2 Tram Maintenance

2.2.1 Maintenance Regime

The Operator shall ensure that the Tram Maintenance Contractor operates a Tram Maintenance regime in accordance with the PMS. The Operator agrees that the PMS shall include the extract from Volume C1, Part 6, TC-95-3572 "Description of the Vehicle Maintenance Programme of Bombardier Eurorail", incorporated in Annex 1 of this Section 9.

The Operator shall ensure that Tram drivers note regularly the performance and general condition of Trams on which they are working and report any problems or damage that require, or are thought likely to require, particular attention.

2.2.2 Maintenance Scheduling and Staffing

The Operator shall ensure that all normal servicing, light scheduled and unscheduled maintenance and routine repairs is undertaken at the Depot provided at Therapia Lane in accordance with Section 8 of the Specification. Any damage which seriously affects the structure of a Tram may need to be repaired off-site, and the Operator shall use its best endeavours to minimise the period during which the Tram is removed from service on the Tramlink System.

The Operator shall ensure that the Tram Maintenance Contractor complies with the Tram maintenance schedules incorporated in document TC-95-3572 which is incorporated as Annex 1 of this Section 9. The Operator shall ensure that the Tram downtime for planned activities stated below is not exceeded:

<u>Exam</u>	<u>Interval</u>	<u>Downtime</u>
Safety check	Daily	½ hour by Tram driver/fitters
L	20,000kms	1 shift
B	80,000kms/annually	2 shifts
C	160,000kms	1 shift
C2	5 years	2 shifts

C3	7-8 years	3 shifts
C4	9-11 years	4-5 shifts (+5 shifts for bogies)
Mid-life	15 years	5 weeks

In this case, a shift shall not exceed 12 hours.

The Operator will ensure that the Tram Maintenance Contractor shall provide sufficient staff and devise rosters to meet or reduce the above quoted downtimes in practice.

2.2.3 Fleet Size Provision for Maintenance

The Operator shall ensure that its Tram maintenance activities ensure that operational fleet size is optimised to ensure compliance with operation requirements detailed in Section 9 of the Operator Specification.

The Operator shall ensure that one standby tram is normally available to replace any Tram which, by nature of the incident, must be withdrawn from service.

3. CIVIL WORKS, BUILDINGS AND TRACKWORK

3.1 Cleaning

The Operator shall manage cleaning arrangements for the infrastructure in accordance with the PMS.

3.2 Stop Cleaning

The Operator shall ensure that Stops are maintained in a clean condition. The Operator shall draw up, submit to the Concessionaire and implement a detailed specification in accordance with the PMS for cleaning of each Stop, depending on the level of usage and any particular locational and environmental circumstances pertaining, against which the level of expected cleaning work required will be declared.

A Stop exhibiting relatively low usage and not subject to particular soiling shall be cleaned daily, including seat cleaning, thorough litter picking of the Stop, emptying of waste bins and checking of the general state of cleanliness. Typically, all surrounding areas, including car parking, and notices, advertising, ticketing equipment and other surfaces shall be cleaned three times per week and, all lighting shall be cleaned and any grassed areas generally tidied on a weekly basis.

At busier Stops, the cleaning shall be more extensive as is required, achieved by both increased cleaning time and shorter intervals between cleaning visits. Where litter levels are high, the daily clean may require at least two visits per day.

3.3 Railway Corridor

The Operator shall ensure that where forming part of the Tramlink System, platforms and walkways linking to public rights of way or the highway shall be cleaned in accordance with Category 1 zones as defined by the Environmental Protection Act Code of Practice on Litter and Refuse, January 1991 (EPA 1991).

Where the alignment crosses park and open spaces, litter shall be cleared in accordance with Category 3 zones as required by EPA 1991. Where the alignment runs on the verges of highways, or adjacent to highways, litter shall be cleared in accordance with Category 7 zone (local roads), elsewhere the alignment shall be cleared of litter in accordance with Category 9 zone (railway embankments in urban areas) except within 100 metres of the Stops where Category 8 zone shall be applicable.

3.3 Graffiti

The Operator shall ensure that graffiti on Stops is removed promptly, with significant and/or offensive graffiti removed within 24 hours of first being reported.

4. DOCUMENT CONTROL AND MANAGEMENT

4.1 Technical Documentation

The Operator shall obtain from the Contractor, retain, maintain and safeguard all technical documentation relating to the Tramlink System.

The Operator shall record the results of all relevant inspections and details of all repairs or maintenance work carried out to satisfy Quality System Model for Quality Assurance in Design Development Production Installation and Servicing (1994), ISO 9001, and the Safety Case Regulations.

All reports and documentation shall be made available to the Concessionaire on request.

4.2 Operating equipment manuals in escrow

The Contractor shall provide to the Operator who shall safeguard and maintain operating and maintenance manuals for all systems and equipment supplied. The manuals shall apply to both hardware and software systems. These shall include, but need not be restricted to the following:

- (a) System manuals: a comprehensive description of all system principles at block diagram level.

- (b) **User/Operation manuals:** to enable non-technical staff to operate and fully exploit the facilities incorporated into the equipment provided.
- (c) **First line maintenance manuals:** to convey sufficient information on equipment principles and practice to enable first line fault diagnosis and rectification by technical staff.
- (d) **Maintenance manuals:** maintenance schedules, activities, key electrical and mechanical diagrams and data to enable all planned maintenance, fault rectification and setting-up to be accomplished.
- (e) **Building manuals:** operation and maintenance manuals for the civil, building and building services works, including details of all routine inspection and maintenance work proposed or recommended.

All manuals shall be updated regularly when equipment and procedures are changed. A clean set of current manuals shall be maintained, and shall be transferred to the Concessionaire upon termination of the Concession.

4.3 Training and training manuals and operational publications

The Operator shall also produce Operating and Maintenance procedures in accordance with clause 8.2.2, clause 8.2.3 and clause 8.2.4 of the Operating Agreement. These shall describe the obligations placed on all staff and specific instructions for the proper performance of their duties. The manuals of instruction and the rule book shall be approved by the HMRI before the trial running commences.

The rule book and training manuals shall be available for inspection by the Concessionaire at any time. A clean set of current rule books and training manuals shall be maintained and shall be transferred, including the intellectual property rights in these documents, to the Concessionaire upon termination of the Concession.

The Operator shall also transfer to the Corporation through the Concessionaire, upon termination of the Concession Agreement, a copy of the staff records of any persons employed on the Tramlink System whose contracts of employment are to be transferred to the Corporation or the Concessionaire, together with access to the staff records of any employee who has a claim against the Corporation or the Concessionaire by reason of the liabilities being transferred.

TCL SPECIFICATION REQUIREMENTS

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 1

GENERAL

The Operator shall develop recruitment and training plans and shall issue a copy of such plans to the Concessionaire. Any subsequent revision shall be issued to the Concessionaire.

The Operator shall assist the Concessionaire in relevant discussions with the Corporation and the Council, where an Operator input is applicable.

2.4 Quality Assurance

The Operator shall develop, implement and monitor an effective quality system which shall ensure that the requirements of the Operator Specification are satisfied. The Quality system shall:

- ensure that quality requirements are determined and satisfied for all processes throughout the Operating Period for the Tramlink System.
- provide for early and prompt detection of actual or potential deficiencies, trends or conditions which shall result in unsatisfactory quality, and or timely and effective corrective actions.
- include the establishment and implementation of administration and management procedures and systems, work instructions and method statements, which clearly identify organisational structure, roles and responsibilities (named personnel) and processes to ensure the satisfactory operation of all elements comprising the Tramlink System.
- include a quality plan which is in accordance with the Quality System Model for Quality Assurance (1994) ISO 9001. The Operator shall update the Quality plan throughout the life of the Concession.

The Operator shall allow the Concessionaire access to documentation and other management systems developed for implementing and audit of the Operator's quality system.

5.0 Provision for Future Growth

The Operator shall note the limitation upon maximum frequency of services as specified in Section 9 of the Operator Specification but in light of experience gained in operating the Tramlink System and upon the Concessionaire having obtained all the necessary approvals and in the event that it may prove both feasible and beneficial to operate Trams at a greater frequency the Operator shall revise these limits in accordance with the detailed provisions of the Operating Agreement.

5.1 Design

The Contractor shall provide the Operator with a programme indicating its information requirement from the Operator to facilitate design work. The Operator shall comply with this programme and shall provide such information in the format reasonably requested by the Contractor.

The Operator shall liaise with the Contractor by means of fortnightly (or other intervals as agreed with the Concessionaire) meetings to ensure that operational requirements of the Tramlink System are taken into account during the detail design process.

The Operator shall review, and where applicable comment on construction designs, timescales and proposals.

The Contractor shall provide the Operator with a programme to be agreed, such agreement not to be unreasonably withheld, indicating its proposed Operator staff equipment training regime to facilitate revenue generation by Actual Opening Date. The Operator shall comply with this programme and provide the necessary staff to be trained and liaise with the Contractor to organise relevant training of Operator staff required for Commissioning, Testing and Operation of the Tramlink System.

8.6(d) Operational Noise

Subject to the Operator's obligations to meet Tram Service Levels, the Operator shall operate and maintain the Tramlink System throughout the Operating Period such that noise levels at existing properties as a result of Tramlink operation are reasonably minimised. The Contractor's Infrastructure Maintenance Plan shall reflect the need to minimise System Noise levels. The Operator shall manage maintenance activities in accordance with the sections of this Infrastructure Maintenance Plan relating to noise levels.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 2

SAFETY

INTRODUCTION

4.1 Operations and Maintenance

The Operator's contribution to the Safety Case shall be as stated in the Operating Agreement and shall comply with the provisions of all applicable laws and safety acts and with HMRI requirements.

The Operator's contributions shall comply with the Railways (Safety Case) Regulations 1994 and shall cover, as a minimum, the relevant sections of Clause 4.2 and 4.3 of Section 2 of the Operator Specification with modifications as stated below:

4.3 (c) As part of the routine maintenance services, maintain warning signs and provide appropriate means of demarcating as required by the Act and by HMRI or the Highway Authority along segregated sections of tramway.

5.1 The Contractor shall identify to the Operator all equipment and other devices critical to safety. As part of safety management, the Operator shall ensure that all equipment and other devices critical to safety are identified.

The Operator shall ensure that the Health and Safety policy as well as the safety plan is updated throughout the life of the Concession.

8. Safety Audit

The Operator agrees that it will inform the Concessionaire promptly of any remedial work or any change in operating practices, management or other safety critical aspects of operations, which may be necessary for the safe operation of the Tramlink System, of which the Operator becomes aware, as a result of a safety audit or otherwise.

7. Tramlink Operations on Railtrack Land

The Operator shall comply with all relevant Safety Acts as it affects the operations on or adjacent Railtrack land.

TCL SPECIFICATION REQUIREMENT
APPENDIX TO THE OPERATOR SPECIFICATION
SECTION 3
PRE-OPERATIONAL REQUIREMENTS

GENERAL

The Operator shall co-operate with and assist the Concessionaire and the Contractor with the required testing of the Tramlink System. Such testing shall include those necessary for the successful achievement of SAT 1, SAT 2 and SAT 3 tests.

The Operator shall comment to the Concessionaire and the Contractor (as relevant) on the findings of such tests.

TCL SPECIFICATION REQUIREMENT
APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 6

POWER SUPPLIES

7. Electrical Safety

The Operator shall be made aware by the Contractor, of the mechanism for achieving emergency de-energisation. The Operator shall inform the emergency services of any changes to this mechanism.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

1. Depot Facilities

The Operator shall liaise with the Contractor to agree the internal layout of the Depot building.

The Operator shall give its approval to the final Depot internal layout 28 days after submission by the Contractor. Failure to respond within 28 days will be deemed as approval of the final Depot layout.

2.2 Breakdown and Maintenance Vehicle Stabling

The Operator shall stable at the Depot a road/rail breakdown and maintenance vehicle, and other rail, road/rail and road vehicles as are required for the operation and maintenance of the Tramlink System. The Operator shall provide a mobile van to attend breakdowns or emergencies.

2.5 System Monitoring and Control

The Operator shall ensure that his Operating Procedures detail procedures for management of drivers and Control Room controllers, including an on-call system outside of normal office hours.

The Operator shall ensure that the controller's role includes, but not limited to manning the Control Room, ensure the smooth operation of the Tramlink System and deal with all emergencies and incidents (with back-up support where necessary).

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 9

OPERATION OF THE TRAMLINK SYSTEM

1.2 The Operator shall operate the following pattern of services:-

- (a) Wimbledon - Elmers End
- (b) New Addington - Croydon Town Centre
- (c) Beckenham Junction - Croydon Town Centre (extended to Beddington Lane during evenings and on Sundays).

The following frequencies (trams per hour) shall be provided by the Operator:-

Terminals	Monday - Friday		Saturday		Sunday
	Day	Evening	Day	Evening	All Day
Wimbledon - Elmers End	6	2	6	2	2
New Addington - East Croydon	9	4	9	4	4
Beckenham Junction - East Croydon	6	-	6	-	-
Beckenham Junction - Beddington Lane	-	2	-	2	2

The Operator shall comply with the line speed requirements specified by the Concessionaire as determined by the Contractor's design. Such line speeds shall not adversely affect the Operator's ability to operate a reliable service.

5.0 Customer Charter and Public Enquiries

The Operator shall develop the Customer Charter of the Tramlink System which shall be subject to the approvals of the Concessionaire, such approval not to be unreasonably withheld.

The Operator shall provide a travel information service for the general public. During office hours, this shall be provided by Operator staff based at the Central Croydon shop and outside office hours, telephone enquiries shall be directed to the Control Room at Therapia Lane. The Operator shall provide information to the Corporation for it to update the Corporation's 24-hour London Travel Information Service.

The Operator shall provide a marketing service which shall provide a wide range of publicity timetables, fare charts and general marketing information relating to the above.

8.0 Lost Property

The Operator shall ensure that the lost property service is located in the Central Croydon office and shall be open during business days.

10.0 Bylaws

The Operator shall assist the Concessionaire in obtaining required bye-laws.

SECTION 12

GLOSSARY

1. Defined Terms

Agreement Board Certificate means Certificate issued by the British Board of Agreement;

Bus Feeder Services means the bus service routes edged in black, blue and green on the Tramlink Feeder Bus Service Plan in Schedule 7 of the Concession Agreement;

Compulsory Stop means a Stop at which it is compulsory for a service Tram to halt;

Concession means the rights and obligations in relation to the Tramlink System acquired and assumed by the Concessionaire under the Concession Agreement;

Concessionaire means Tramtrack Croydon Limited;

Concessionary Permits means travel permits issued by the London Boroughs, to those persons specified in section 50(7)(a)-(c) of the London Regional Transport Act 1984;

Concession Period means the period specified in clause 7.1 of the Concession Agreement;

Construction Phase means the period of time commencing on the Concession Award Date and ending on the Actual Opening Date;

Context Study Drawings means the set of drawing "Context Studies November 1995 issue, as amended on 5th November 1996" with the cover signed and the contents initialled by London Transport, London Borough of Croydon and Tramtrack Croydon Limited;

Contractor means the joint venture of Amey Construction Limited and Sir Robert McAlpine Limited which has been appointed by the Concessionaire with the approval of the Corporation to carry out the Project Works pursuant to the SPC or any replacement approved by the Corporation pursuant to clause 15.1 of the Concession Agreement;

Control Centre means the central control room and associated facilities as described in Section 7 of the Performance Specification;

Depot means the site at which Trams can be stabled, cleaned and maintained as described in Section 8 of this Operator Specification;

Developed Kinematic Envelope (DKE) means the Kinematic Envelope (KE) enlarged to allow for all of the effects resulting from horizontal and vertical curvature of track including end-throw and centre-throw of Trams and super elevation.

Certain Tram displacements, other than those due to end-throw and centre-throw, are greater on curved track than on straight track. These must be taken into account when deriving the DKE for the determination of clearances on curved track;

Electrical Safety Rules means those rules to be prepared by the Contractor in accordance with Section 6 of the Performance Specification to cover the Construction and Operation and Maintenance Phases of the Tramlink System;

Existing Noise means the level of noise, at a particular location, measured as 24 hour $L_{A(eq)}$ at relevant facade, existing before commencing of Tramlink operations and also before the removal of train services existing on the Concession Award Date;

Existing Noise Sensitive Resource means:

- (a) residential resources, existing at the Concession Award Date, where annoyance and disturbance will result from noise impacts from Tramlink System operations. This includes dwellings and other residential properties including sites of residential development with planning permission; and
- (b) non-residential resources, existing at the Concession Award Date, where the utility of the resource is dependent on the quality of the acoustic environment, and where the primary effect of noise impact would be a deterioration in that quality;

Fares Table means the fares table as described in Section 10;

Highway Authority means as defined in the Highways Act 1980;

Identified Utilities means the Undertakers' apparatus designed by the Corporation in the utilities Diversions Programme as requiring diversion so as to accommodate the construction and/or operations of the Tramlink System;

Immovable Property means the Project Works (including, without limitation, the Track) other than Moveable Property;

Kinematic Envelope (KE) means the static load gauge enlarges to allow for the maximum possible displacement of the Trams, when at rest or in motion, with respect to the nominal position of the rails, taking account of their suspension characteristics, including arrangements for body tilting if provided, making allowance for maximum permitted tolerances in the manufacture and maintenance of the Trams, including wear and of the maximum permitted tolerances in the gauge, alignment, top, and cross-level of the track including the effects of wear;

LT Card means a card identified as such and sold by, or with the agreement of, the Corporation with validity or travel on inter alia services to be operated by the Operator;

LT Staff Passes means the passes issued to Eligible Employees, their spouses, dependants and children, evidencing their eligibility for discretionary facilities primarily on rail and/or bus services operated or procured by the Corporation and, for these purposes **Eligible Employees** means eligible current and former staff of the Corporation and any of its current or former subsidiaries;

Operational Noise and Vibration Requirements means Document Ref No. AG 0020 previously issued to the Operator;

Parliamentary Undertakings means any undertaking given to a Parliamentary committee during the passage through Parliament of the Bill for the Croydon Tramlink Act 1994 and any undertaking or agreement given to a person in consideration of his/her refraining from opposition of that Bill;

Passengers Committee means the London Regional Passengers Committee;

Permanent Way means the track formation, bed and tracks comprised in the Tramlink system;

Police Passes means the passes, identification card or warrant card issued to any constable of any of Her Majesty's Police Forces;

Project means the overall activity of developing, financing, designing, constructing, installing, commissioning, operating and maintaining the Tramlink System;

Public Holidays means all bank holidays in any year (currently Easter Monday, first Monday in May, last Monday in May, Last Monday in August and 27th December in any year where 25th or 26th December is a Sunday) but excluding Boxing Day or any bank holiday in replacement for Boxing Day should it or Christmas Day fall on a Sunday, together with the common lay holidays of Christmas Day, Good Friday and New Year's Day (or the replacement bank holiday Monday where New Year's Day fall on a Saturday or a Sunday);

Public Timetable means the information provided to the public which summarises all individual scheduled journeys for Trams on the Tramlink System as set out in Section 9 of this Operator Specification;

Rail Regulator means the person for the time being holding the office Rail Regulator appointed by the Secretary of State pursuant to section 1 of the Railways Act 1993;

Rail Vehicle means any rail-bound vehicle running on the Tramlink System, including, but not limited to, Trams;

Request Stops means all Stops on the Tramlink System which are not Compulsory Stops;

Roundel means the Corporation's registered trademark being a bar and circle device;

Route means the route determined in accordance with the requirements of the Act and by the Context Study Drawings November 1995.

RT General Works Agreement means the agreement entered on or about the date hereof between the Corporation and Railtrack Plc and to be vested in the Concessionaire relating to the construction and supply of parts of the Tramlink System;

Safety Acts means, inter alia, any legislation relating to safety, including, without limitation, the Health & Safety at Work etc. Act 1974; Fire Precautions Act 1971; control of Pollution Act 1974; Office, Shops and Railways Premises Act 1963; Level Crossing Act 1983; Roads and Railway Traffic Act 1933; Transport Act 1968; Transport and Works Act 1992; Regulation of Railways Act 1840 to 1989, less sections excluded by the Act; Railways Employment (Prevention of Accidents) Act 1900; and any amendment, alteration or modification to or repeal of any existing safety legislation which takes effect after the date hereof, thereof or any subordinate legislation enacted thereunder, and any new safety legislation which comes into effect after the date hereof, and any requirement of any regulatory body for safety (including without limitation HSE, HMRI and the Highway Authority);

Safety Case means the safety case prepared in respect of the Tramlink system in accordance with all applicable Safety Acts;

Scheduled Opening Date means the date on which the Actual Opening Date is scheduled to occur as shown in the Outline construction Programme;

Secretary of State means the Secretary of State for Transport (or other government department responsible for public transport in London for the time being);

Significant Change means a change which would require the interruption of the Services for longer than one operating day;

SPC means the System Procurement Contract between the Concessionaire and the Contractor;

Statutory Undertaker means each of the following:

- (a) a licence holder under Part I of the Electricity Act 1989;
- (b) a public gas supplier within the meaning of Part I of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991;
- (d) Thames Water Utilities Limited;
- (e) a telecommunications operator within the meaning of the Telecommunications Act 1984; and

(f) the National Rivers Authority;

Stop means a point on the Tramlink System at which passengers may enter or leave the Tram;

Stored Value Tickets means a ticket or pass which enables passengers to buy, subject to conditions, a right to travel on the Tramlink System and/or other modes of transport up to the value stored on such ticket or pass (as the case may be), in respect of which the usage by the passenger is measured electronically such that the value stored on such ticket or pass decreases with passenger usage and expires when the value stored is exhausted unless the value of cash stored on such ticket or pass is recharged;

Swept Path means the projection on the plan of the Developed Kinematic Envelope plus the clearances, which are specified in the DoT provisional guidance note on the highway and vehicle engineering aspects of street running light rail systems;

System Noise means that level of noise, at a particular location, expressed as 24 hour $L_{A(eq)}$ at relevant facade, due to the operation of the Tramlink System. This shall be calculated using SELs measured for individual Trams at the particular location. All Trams that are scheduled to pass the particular location, shall be included in the calculation;

Terminus Stop means a stop at the end of a section of route at which the Train completes its journey or terminates its service;

Timetable means the Working Timetable and Public Timetable;

Train means one or more coupled Trams operating under the control of a single driver;

Train Operating Company means any person appointed by the Franchising Director pursuant to section 23 of the Railways Act 1993 to operate passenger services and Franchising Director means the Director of Passenger Rail Franchising appointed under section 1 of the Railways Act 1993;

Tramlink Agreement means;

- (a) the Project Agreements;
- (b) the Tramlink General Agreement;
- (c) the Incentive Sharing Agreement; and
- (d) the Direct Agreements.

Tram Supplier means Bombardier Eurorail Limited;

Tramway means any railway, or any part of a railway, authorised by the Act and thereby designated as a Tramway;

Undertakers' apparatus means apparatus (as defined in Part III of the New Roads and Street Works Act 1991) belongings to any of the Statutory Undertakers;

Unidentified Utilities means any Undertakers' apparatus not constituting an Identified Utility but which is required to be diverted so as to accommodate the construction and/or operations of the Tramlink System;

Utilities Diversions means moving the Identified Utilities and the Unidentified Utilities from their current location to a new location as required to accommodate the construction and/or operations of the Tramlink system;

Working Timetable means a document including details of all scheduled in service journeys made on the Tramlink System, together with all positioning journeys, showing timing of all scheduled in service journeys, and all associated vehicle workings;

Works means the authorised works as described in Schedule 1 of the Act.

2. Abbreviations

The abbreviations used in this Performance Specification shall bear the meanings set out below:-

AC	Alternating current
AVIAM	Automatic Vehicle Identification and Monitoring System
BD	Department of Transport technical memorandum
BR	British Rail
BRB	British Railways Board
BS	British Standard
BSI	British Standards Institute
CAD	Computer Aided Design/Drafting
CCICS	Central Control Integrated Computer System
CCIR	International Radio Consultative Committee
CCITT	International Telegraph and Telephone Consultative
CCTV	Closed Circuit Television
CIBS	Chartered Institute of Building Surveyors
DC	Direct current
DKE	Developed Kinematic Envelope
DIN	Deutsche Industrie-Norm
DoT	Department of Transport
DTI	Department of Trade and Industry
EMC	Electromagnetic compatibility
EMI	Electromagnetic interference
EU	European Union
FOC	Fire Officers Committee
FRP	Fire Resistance Period
FTI	Flammability Temperature Index
GPDO	Town and Country Planning (General Permitted Development) Order 1995
HA	Highway loading formula representing normal traffic (as defined within BS5400 Part 2: 1978)
HB	Highway loading formula representing abnormal vehicle unit loading (as defined within BS5400 Part 2: 1978)
HMSO	Her Majesty's Stationery Office
HMRI	Her Majesty's Railway Inspectorate
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc., Act 1974
HV	High Voltage
IP	Index of Protection
IEC	International Electrotechnical Commission
IEE	Institution of Electrical Engineers
ISO	International Standard Organisation
KEL	Knife Edge Loads Highway design loads, as defined in BS5400
KE	International Standard Organisation

LAN	Local Area Network
LBC	London Borough of Croydon
LFH	Limited Fire Hazard
LFCDA	London Fire and Civil Defence Authority
LRT	London Regional Transport
LUL	London Underground Limited
LV	Low Voltage
M1, M2 etc.	Vehicle loading (See Section 5)
MRM	Modified Rational Method
MTB(S)F	Mean Time Between (Service) Failure
MTTR	Mean Time to Restore
MV	Medium voltage
N	Newton
NF	Norme Francaise
NRSAWA	New Road and Street Works Act 1991
OHLE	Overhead Line Equipment
PA	Depot Public Announcements System
PABX	Private Automated Branch Exchange
pax	Passengers
pax/H	Passengers/hour
PCAS	Passenger Communication and Assistance System
pH	a measure of acidity/alkalinity
REC	Regional Electricity Company
PIDS	Passenger Information and Display System
PMS	Preventative Maintenance Schedule
REC	Regional Electricity Company
RL	Reduced Loading Railway loading - as defined within BS5400 Part 2: 1978
RMU	Ring Main Unit
RT	Railtrack PLC
SCADA	Supervision, Control and Data Acquisition
TCC	Traffic Control and Communications Diversion of the DoT
TCSU	Traffic Control Systems Unit
TIS	Train Identification System
UIC	Union Internationale Chemin de Fer
UDL	Uniformly distributed load
UTC	Urban Traffic Controller
VCR	Video Cassette Recorder
VDU	Visual Display Unit
VDV	Verband Deutscher Verkehrsunternehmen

SCHEDULE 9

EXPERT DETERMINATION AND DISPUTES RESOLUTION

Associated Contract Dispute

means

- (1) any dispute between the Concessionaire or the Operator and:
 - (a) the Corporation; or
 - (b) the Tram Maintenance Contractor; or
 - (c) the Contractor; or
 - (d) the Council; or
- (2) any dispute between the Operator and any sub-contractor of the Operator

which arises out of substantially the same circumstances as or is in any way connected with any Dispute or which raises issues which are substantially the same as or connected with issues raised in any Dispute and in respect of which:-

- (i) a notice is given requiring reference of the dispute to the Expert or to arbitration in accordance with this Schedule 9 no later than 14 days after the giving of the Notice of Dispute or in the case of a notice requiring reference to arbitration the Notice of Arbitration in relation to the Dispute with which it is to be determined, and
- (ii) any Third Party who is a party to the Associated Contract Dispute has signed a confidentiality and handback undertaking in the form attached at Annex 3.

Dispute

means any dispute between the Concessionaire and the Operator in connection with or arising out of this Agreement whether before or after repudiation or termination of this Agreement.

- Expert** means any expert in Annex 2 or otherwise appointed in accordance with this Schedule 9.
- List** means the list attached at Annex 2 and such other experts as are subsequently agreed by the Parties.
- Nominating Authority** means the London Court of International Arbitration or any other Nominating Authority agreed by the Parties from time to time.
- Notice of Arbitration** means a notice given by either the Concessionaire or the Operator to the other party requiring arbitration by an Official Referee (or other arbitrator) in accordance with this Schedule 9.
- Notice or notice** means notice in writing.
- Notice of Dispute** means a notice given by either the Concessionaire or the Operator to the other party requiring reference of a Dispute to the Expert in accordance with this Schedule 9.
- Notice of Dissatisfaction** means a notice given by either the Concessionaire or the Operator to the other party that it is dissatisfied with a decision of the Expert in accordance with this Schedule 9.
- Third Party** means any party or prospective party to an Associated Contract Dispute other than the Concessionaire and the Operator.
1. Where a Dispute arises the Operator and the Concessionaire shall endeavour in good faith and with due expedition to agree the identity of a person willing and suitable to act as Expert; and if they fail to agree the Expert will be appointed in accordance with paragraph 2 below.
 2. In the event that the Concessionaire and the Operator are unable to agree, the identity of a person willing and suitable to act as the Expert within 14 days after Notice of Dispute is given, either party may apply to the Nominating Authority to appoint an Expert. The application to the Nominating Authority shall attach a copy of the Notice of Dispute together with a list of those persons who have been considered by the parties under paragraph 1 above and who have been thought by either party not to be suitable. In the absence of agreement by both parties, the Nominating Authority shall not appoint any person who:
 - (a) is not:
 - (i) professionally qualified in the field in which the Dispute arises; and

- (ii) a practitioner with at least ten years experience in the field in which the Dispute arises and who continues to practice professionally in that field; and
 - (b) has been included on the list of persons thought by either party not to be suitable.
3. Either the Concessionaire or the Operator may at any time give the other Party a Notice of Dispute and immediately thereafter the Concessionaire and the Operator shall appoint an Expert in accordance with paragraph 1 and 2 above. Clause 36 of this Agreement shall apply to all notices and communications given or made under this Schedule 9.
 4. The appointment of the Expert shall be deemed to take place when having been agreed between the parties or appointed by the Nominating Authority he signifies in writing his willingness to act whether or not his terms of remuneration shall then have been agreed.
 5. The terms of the remuneration of the Expert including the remuneration of any specialist from whom the Expert may require to seek advice shall be mutually agreed upon by the Concessionaire, the Operator and the Expert or in the absence of agreement between the Concessionaire and the Operator, shall be mutually agreed between the Nominating Authority and the Expert. The Concessionaire and the Operator shall each pay one half of the Expert's remuneration in accordance with such terms.
 6. The Concessionaire and the Operator may terminate the Expert's appointment at any time by mutual agreement. In such a case or if at any time the Expert declines to act or is unable to act as a result of his death, disability, resignation or otherwise a suitably qualified person shall be appointed to replace the Expert in accordance with the provisions of paragraphs 1 to 4 of this Schedule 9.
 7. Forthwith upon the appointment of the Expert the party who gave Notice of Dispute shall send a copy thereof to the Expert. The Expert shall conduct the reference in accordance with Annex 1 to this Schedule 9 and no later than the 49th day (or if later agreed between the Concessionaire and the Operator) after his appointment, the Expert, acting as Expert and not as arbitrator shall give notice of his decision to the parties. Such notice shall include his reasons and shall state that it is given under this paragraph 7 of this Schedule 9.
 8. Unless this Agreement has already been repudiated or terminated, the Concessionaire and the Operator shall continue to observe and perform all the obligations contained in this Agreement, notwithstanding any reference to the Expert and shall give effect forthwith to every decision of the Expert, unless and until the same shall be revised, as hereinafter provided, by an amicable settlement, an arbitral award or by an order of the Court.
 9. If either party is dissatisfied with the Expert's decision, then either party, on or before the 28th day after the day on which it received notice of such decision, may give Notice of Dissatisfaction to the other party. If the Expert fails to give notice of his decision on or before 49th day after his appointment, then either party, on or before

the 28th day after the day on which the said period of 49 days has expired may give the other party Notice of Dissatisfaction. In either event, the Notice of Dissatisfaction shall state that it is given under this paragraph 9 of this Schedule 9 and shall set out the matters in dispute and the reason(s) for dissatisfaction.

10. If the Expert has given notice of his decision to the Concessionaire and the Operator and no Notice of Dissatisfaction has been given on or before the 28th day after the day on which the parties received the Expert's decision, then the Expert's decision shall become final and binding upon the Concessionaire and the Operator.

11. Where Notice of Dissatisfaction has been given, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the parties agree otherwise, arbitration may be commenced by Notice of Arbitration on or after the 49th day after the day on which Notice of Dissatisfaction was given, even if no attempt at amicable settlement has been made.

12. Any dispute in which:

(a) Notice of Dissatisfaction has been given within the time limited by paragraph 9 of this Schedule 9; and

(b) amicable settlement has not been reached,

may be referred to the arbitration of an Official Referee pursuant to Section 11 of the Arbitration Act 1950.

13. Any such arbitration shall be commenced by Notice of Arbitration given by either the Concessionaire and the Operator to the other party. The arbitration shall be held in London and the award of the Official Referee shall be final and binding upon the Concessionaire and the Operator. In relation to any such reference:

(a) the Official Referee sitting as an arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction or valuation of the Expert;

(b) neither party shall be limited in the proceedings before the Official Referee to the evidence or arguments put before the Expert;

(c) the Expert shall not be called as a witness nor required to give evidence before the Official Referee on any matter whatsoever.

14. If for any reason no Official Referee is willing to accept the appointment as arbitrator, either party may refer the dispute to a judge sitting in London dealing with Official Referees' Business. Either party may commence proceedings in the High Court by writ or originating summons (as the case may be) issued out of the Official Referees' Registry of the Queen's Bench Division of the High Court.

In relation to any such proceedings:

(a) the Official Referee shall have and the parties hereby agree pursuant to Section 43A of the Supreme Court Act 1981 that he shall be vested with the same full

power given to the arbitrator under this Agreement including (without limitation) the powers to open up, review and revise any decision, opinion, instruction, director or valuation of the Expert;

- (b) neither party shall be limited in the proceedings before the Official Referee to the evidence or arguments put before the Expert;
 - (c) the Expert shall not be called as a witness nor required to give evidence before the Official Referee on any matter whatsoever.
15. If for any reason the Official Referee shall not accept or not have all of the powers referred to in paragraph 13(a) of this Schedule 9 the Dispute shall be deemed to have been referred by the Notice of Arbitration and shall be referred to the arbitration of a person to be agreed between the parties or failing agreement within 14 days to be appointed on the application of either party by the Nominating Authority. Any such arbitrator shall be governed by the rules of the Nominating Authority.
 16. An Associated Contract Dispute may be determined in the same proceedings as the Dispute and the provisions of this Schedule 9 shall be modified accordingly and the Expert or arbitrator appointed in accordance with this Schedule 9 shall have the same powers in relation to the Associated Contract Dispute as he has in relation to the Dispute under this Schedule 9 and as if the procedure of the High Court in relation to co-defendants and third parties was available to the parties and to the Expert or the arbitrator.
 17. Where a Dispute and an Associated Contract Dispute have been determined in the same proceedings before the Expert, a notice of arbitration given in the Associated Contract Dispute shall be of no effect in relation to the Dispute and the Concessionaire and the Operator shall not be bound by the outcome of the arbitration of the Associated Contract Dispute unless the Dispute is also the subject of a Notice of Arbitration and is determined in the same proceedings.
 18. The Operator and the Concessionaire agree that, for the purposes of Section 5 of the Limitation Act 1980 time shall cease to run in respect of any Dispute on the date of service of the relevant Notice of Dispute for the purpose of the reference to the Expert of that Dispute and for any other subsequent arbitration or proceedings in respect of that Dispute.

ANNEX 1

1. Forthwith upon his appointment the Expert shall notify the parties of the address and the facsimile and telex numbers, if any, at which notices or other communications should be addressed to him and the provisions of Clause 36 of this Agreement shall apply to notices or other communications between the parties and the Expert.
2. Each Party shall make one written submission to the Expert, copied to the other party, within fourteen days of the Expert's appointment. The Expert shall consider such written submissions.
3. Where a Third Party becomes a party to the reference in accordance with paragraph 16 of Schedule 9 at any time after appointment of the Experts:-
 - (a) the Concessionaire, the Operator and the Third Party may within fourteen days make one written submission to the Expert in relation to the Associated Contract Dispute:
 - (b) all parties to the reference shall be deemed to have agreed that the time limit for issue of the Expert's decision shall be extended to expire 35 days after the making of the last of submissions referred to in paragraph 3(a) of this Annex 1.
 - (c) each of the parties to the reference shall pay an equal share of the Expert's remuneration and paragraph 5 of Schedule 9 shall be deemed to be amended accordingly.

The Expert may, in his discretion, but shall not be obliged to:

- (a) convene meetings at which all parties to the reference shall be entitled to be present upon reasonable notice to the parties;
- (b) submit lists of questions to the parties to be answered in such meetings or in writing within such reasonable time as he may require;
- (c) require the parties to provide him with such information, access to the site and other facilities as he may reasonably require for the determination of the Dispute or any Associated Contract Dispute;
- (d) seek such technical or legal advice as he may reasonably require for the determination of the Dispute or any Associated Contract Dispute;
- (e) otherwise take such action and adopt such procedures as shall be reasonable and proper for the just, expeditious and economical determination of the Dispute or any Associated Contract Dispute (including, for the avoidance of doubt extending the period allowed for written submissions in paragraphs 2 and 3(a) of this Annex 1) and, otherwise than in the event of an Associated Contract Dispute, the Expert shall have the power to extend the 49 day period referred to in paragraph 7 of this Schedule 9 subject to a maximum further period of 30 days;

Provided that:

- (i) the Expert shall adopt any procedures which may be agreed between the parties for determination of the Dispute or any Associated Contract Dispute;**
- (ii) all information of whatever nature provided to the Expert by any party shall be copied to all other parties or (where copying is not practicable) the other parties shall be entitled to inspect it;**
- (iii) all meetings shall be private and save as expressly provided in this Schedule 9 or as required by law the Expert shall keep confidential the Dispute, any Associated Contract Disputes, all information of whatever nature provided to him by or on behalf of either party and his determination of the Dispute or any Associated Contract Dispute.**

ANNEX 2

List of Experts

LAWYERS

[REDACTED]
1 Atkin Building
Grays Inn
London WC1R 5BQ

[REDACTED]
2 Crown Office Row
Temple
London EC4Y 7HJ

[REDACTED]
Keating Chambers
Essex Street
Outer Temple
London WC2R 3AA

[REDACTED]
1 Paper Buildings
Temple
London EC4

[REDACTED]
2 Temple Gardens
Temple
London EC4Y 9AY

[REDACTED]
Keating Chambers
10 Essex Street
Outer Temple
London WC2R 3AA

CHARTERED ENGINEERS

[REDACTED]
Brunel House
Muriel Road
Norwich NR2 3NZ

[REDACTED]
Somersby House
Stokesheath Road
Oxshott
Surrey KT22 OPS

[REDACTED]
White Young Consulting Engineers
Arndale Court
Headingley
Leeds LS6 2UJ

[REDACTED]
JMP Consultants Ltd
Stewart House
123 Elderslie Street
Glasgow
Scotland G3 7AR

[REDACTED]
North Yorkshire County Council
Environmental Services
North Yorkshire Consultancy

[REDACTED]
Thorburn Colouhoun Holdings plc
243 West George Street
Glasgow G24 QE

QUANTITY SURVEYORS

[REDACTED]
Beard Dove Ltd
Linton House
7-12 Tavistock Square
London WC1H 9LT

[REDACTED]
Franklin and Andrews
Sea Containers House
20 Upper Ground
London SE1 9LZ

[REDACTED]
W T Partnership
Laion House
233 High Street
Croydon
Surrey CR9 1YY



Widnell
Davis House
129 Wilson Road
London



Fairway Construction Consultants
Dragon Court
27-29 Macklin Street
London WC2B 5LZ

- (f) the information disclosed has come into public domain through no fault of ours.
- (ii) shall treat any Expert's determination of the Proceedings and any arbitrator's award (including the reasons) and any other decision of the arbitrator during the Proceedings as confidential and shall not disclose any of them to any other person at any time unless:-
 - (a) you have given your prior written consent;
 - (b) disclosure is required in order to enforce or challenge an Expert's determination, an arbitrator's award or a decision of a court made in the Proceedings; or
 - (c) disclosure is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto); or
 - (d) such disclosure is to our professional advisers or auditors provided that any such person either enters into a confidentiality undertaking on the same terms mutatis mutandis as those of this letter or is already bound by reason of their professional rules to keep such matters confidential; or
 - (e) the information disclosed has come into public domain through no fault of ours.
- (iii) shall on written request by you at any time after the conclusion of the Proceedings or of any proceedings for the challenge or the enforcement of any arbitrator's award or judgment given in the Proceedings (whichever shall be the later) deliver to you the originals and all copies (in whatsoever form of medium) of any written statements, documents and other evidence produced in the Proceedings by you and shall in good faith identify and destroy (and confirm to you in writing that we have so destroyed) all notes, documents or other records made by ourselves recording, summarising or referring to the Proceedings) and shall thereafter have no right to keep or use the same for any purpose whatsoever. This paragraph (iii) shall not apply to:
 - (a) documents which were in existence and in our possession prior to the commencement of the Proceedings and were not prepared for use in the Proceedings; or
 - (b) (without prejudice to the undertakings given at paragraphs (i) and (ii) above) notes, documents or other records to which litigation privilege or legal professional privilege attach.

Yours faithfully

[To be signed by the prospective Third Party].

SCHEDULE 10

[NOT USED]

SCHEDULE 11

TICKETING SYSTEM AND REVENUE COLLECTION

1. Management of Ticket Machines

1.1 Management

The Operator shall manage the Ticket Machines in accordance with the terms of this Agreement. The Operator shall be required to:-

- (a) manage on a day-to-day basis the contractor duly appointed to repair, maintain and programme the Ticket Machines pursuant to a contract entered into by or on behalf of the Concessionaire, the performance of which shall remain the sole responsibilities of the Concessionaire and such contractor. The Operator shall have the right to approve such contractor, such approval not to be unreasonably withheld or delayed;
- (b) perform on a daily basis visual inspections, and carry out daily automatic readings, of the Ticket Machines;
- (c) carry out on-line monitoring of the Ticket Machines from the Control Centre and log and time tag any alarms indicating malfunction, illegal tampering or vandalism of the Ticket Machines;
- (d) refill and clean the Ticket Machines daily.

1.2 Electricity

The cost of supplying electricity to the Ticket Machines shall be borne by the Concessionaire in accordance with the general provisions relating to utilities.

1.3 Insurance

It shall be the responsibility of the Concessionaire to insure or otherwise be responsible for the Ticket Machines and their contents in respect of loss, damage or theft. The Concessionaire shall take out and maintain adequate insurance cover in respect of the cost of repairing or replacing the Ticket Machines and their contents in respect of loss, damage or theft (including loss resulting from fraud or theft by the security contractor appointed pursuant to paragraph 3.2) and to claim under such policies with all speed to ensure that damaged Ticket Machines are repaired or replaced as soon as possible or that the cost of so doing is reimbursed to the Operator as soon as possible.

1.4 Changes

Any proposed alteration by the Concessionaire to the number and/or the Specification in respect of the Ticket Machines shall be agreed in advance with the Operator who shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7.

2. Tickets Fares

2.1 Fares

The Operator shall charge passengers fares in accordance with Clause 16.

2.2 Cards and passes

The Operator shall accept Travelcards, LT Cards, Concessionary Permits (acceptance of which shall be only after 9am on any Business Day), LT Staff Passes, Police Passes, Railway Staff Passes and any other multi-modal tickets whose format and nature are reasonably required by the Concessionaire. The Operator shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7 arising from any alteration in the type of tickets required to be accepted from the date of this Agreement.

2.3 Installation of new equipment

The Operator shall agree to the installation by the Concessionaire, at the cost of the Concessionaire, of any equipment required on Trams or on platforms for the purpose of electronic pass recognition or for other purposes related to the future allocation of Off-Tram Revenue or Stored Value Revenue provided that the Concessionaire gives the Operator reasonable written notice of when such equipment is to be installed and, after consultation with the Operator, installs the same at such times as (as far as is reasonably practicable) do not prejudice the ability of the Operator to provide the Services. The Operator shall bear all its costs in making the Trams available at the Depot to the Concessionaire for the purposes of installing such equipment.

2.4 Issue

Tickets shall be sold in accordance with the Bye-laws.

3. Revenue Collection

3.1 Management

The Operator shall manage revenue collection in accordance with this Agreement.

3.2 Security contractor

The Operator shall appoint a security contractor subject to the approval of the Concessionaire, such approval not to be unreasonably withheld or delayed, to organise collections from each of the Ticket Machines. Such collections will take place on each Business Day between 9am and 5pm. Any additional collections required by the Concessionaire shall be performed by the security contractor at the expense of the Concessionaire. Any collections from the Central Croydon Ticket Office in respect of revenue due to the Concessionaire

shall take place on a basis to be agreed between the Concessionaire and the Operator.

3.3 Deposit of revenue

The Operator shall arrange for the security contractor to deliver all revenue collected from each Ticket Machine on each Business Day to the Croydon branch of a bank nominated by the Concessionaire. The Concessionaire shall be responsible for all bank charges arising from the deposit of the revenue with such banks. The deposit of revenue from the Central Croydon Ticket Office in respect of revenue due to the Concessionaire shall take place on a basis to be agreed between the Concessionaire and the Operator.

3.4 Reconciliation

The Operator shall prepare and submit to the Concessionaire a daily reconciliation breakdown in respect of each revenue collection and analysis thereon setting out details of any discrepancies between the data produced by the Ticket Machines and the actual amount collected and delivered to the bank by the security contractor. With the exception of any discrepancies resulting from fraud or theft on the part of the security contractor and in the event of which the Operator's sole responsibility under this Agreement shall be to use its reasonable endeavours to recover any losses from the security contractor, the Concessionaire shall be responsible at its risk for all other discrepancies including without limitation those caused by the malfunction of any of the Ticket Machines, the use of illegal tender, any unaccepted credit card sales, any illegal tampering, theft, other cash losses and those discrepancies caused by the nominated bank of the Concessionaire.

3.5 Revenue information

The Operator shall on a regular basis prepare and submit to the Concessionaire management information summarising receipts, in particular details of the types of tickets sold by the Operator and such other general revenue statistics as the Concessionaire may reasonably require.

4. Revenue inspectors

4.1 Number

The Operator shall employ, at its own expense, a sufficient number of revenue inspectors so as to have the capability to check approximately 5% of the actual passenger journeys on the Tramlink System.

4.2 Responsibilities

The revenue inspectors shall be required to:

- (a) carry portable ticket issuing machines;

- (b) check the validity of tickets to a level of 5% of passenger journeys and passes in accordance with guidance notes drawn up by the Operator with the co-operation and approval of the Concessionaire (such approval not to be unreasonably withheld or delayed) and deter ticketless travel on the Tramlink System throughout each operating day;
- (c) where relevant, issue penalty fares to passengers in accordance with the Bye-Laws;
- (d) perform visual inspections, and obtain readings, of the Ticket Machines and report any failure or damage to the Control Centre;
- (e) carry out appropriate investigations where there is reasonable suspicion of fraud in the use of any ticket or pass;
- (f) perform passenger surveys of 0.1% of duties of tram drivers on a basis agreed with the Concessionaire for the purposes of the Off-Tram Revenue Agreement;
- (g) provide all reasonable assistance to passengers;
- (h) administer the Customer Charter and any legitimate refund claims under the Customer Charter. Where due to the Operator's default hereunder, the refund claim shall be met by the Operator. In all other circumstances such refund shall be reimbursed to the Operator by the Concessionaire. Where a refund is due for a passenger journey not taken the Concessionaire shall reimburse the Operator for such refund.
- (i) operate, as far as is practicable, a ticket checking presence on the Tramlink System on each operating day;
- (j) back-up ticket checking operations with activities including Penalty Fares and assist and participate as reasonably required with prosecutions, official cautions, Police liaison, anti-fraud publicity and close liaison with L Buses and Train Operating Companies revenue protection operations.

5. Penalty fares

5.1 Operation

The Operator shall operate a penalty fares system on behalf of the Concessionaire in accordance with the Bye-Laws. Any receipts recovered under this system will be retained by the Operator to the extent necessary to cover the cost of administering and enforcing the system and the balance, if any, shall be paid to the Concessionaire by the Operator.

5.2 Legal action

Each decision as to whether to prosecute a defaulter shall be at the sole discretion of the Operator and will be based on a realistic assessment of the chance of success in enforcing and recovering the penalty fare in such case.

6. Off-Tram Revenue Agreement

6.1 Assistance

The Operator shall provide reasonable assistance to the Concessionaire in the negotiation of the Off-Tram Revenue Agreement with the Corporation. For the avoidance of doubt any analysis by the Operator of survey information pursuant to the Off-Tram Revenue Agreement shall be carried out at the expense of the Concessionaire.

7. Central Croydon ticket office

7.1 Tickets

The Operator shall be entitled to sell Travelcards and other tickets from the Croydon Central ticket office and is entitled to receive commission on such sales for its own account. For the purposes of this paragraph 7.1 the Central Croydon ticket office shall be regarded as a PASS outlet of the Corporation.

7.2 Other items

The Operator shall be entitled to sell miscellaneous items approved by the Concessionaire such approval not to be unreasonably withheld from the Central Croydon ticket office and any profit made from such sales shall be for the Operator's account save in respect of Tramlink merchandise which shall be sold on behalf of the Concessionaire in accordance with paragraphs 8.2 to 8.4 below.

8. Responsibilities of the Concessionaire

8.1 Areas of responsibility

For the avoidance of doubt and without limitation the Concessionaire shall have responsibility for paying the following costs:

- (a) commission generated by ticket sales by other ticket agencies and any commission payable to the Corporation under the Off-Tram Revenue Agreement;
- (b) commission generated by credit card sales;
- (c) any costs arising from the negotiation of, and subsequent amendment to, the Off-Tram Revenue Agreement with the Corporation;
- (d) all bank charges (including sorting charges) incurred at the bank nominated by the Concessionaire pursuant to Clause 3.3 of this Schedule 11.

9. Increase in costs

9.1 Change

Any increase in the costs of the Operator resulting from amendment, alteration or modification by the Concessionaire to the ticketing and revenue collection systems referred to in this Agreement shall be recoverable in accordance with Clause 6.7.

SCHEDULE 12

[NOT USED]

SCHEDULE 13

[NOT USED]

SCHEDULE 14

OPERATOR'S EQUIPMENT

The Operator will be responsible for providing the following equipment and works:

- fitting out of Central Croydon ticket office;
- the Operator's systems for payroll, allocation, scheduling, finance, inventory control, purchasing, engineering and plant records, and administration;
- locker room equipment for the Operator's staff;
- racking and signage within the Operator's and the Tram Maintenance Contractor's storage area;
- furniture and ancillary items within the Operator's offices.

SCHEDULE 15

[NOT USED]

SCHEDULE 16

PART 1

HEADS OF TERMS

SUB-LEASE OF DEPOT FORMING PART OF THE CROYDON TRAMLINK

1. PARTIES

The Concessionaire as Landlord and the Operator as Tenant.

2. PROPERTY

The tram depot at Therapia Lane shown edged red on the attached drawing.

3. TERM

Subject to paragraph 11.1 30 years commencing on the Actual Opening Date.

4. EXCLUSION ORDER

The Sub-Lease will be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.

5. RENT

£10 per annum payable annually on the anniversary of the date of completion of the Sub-Lease.

6. RIGHTS GRANTED

As set out in the Land Lease to the extent they are appurtenant to the Property, but excluding those encompassed within the Superior Lease and Deed of Grant, Running Rights Agreement and BR Property Agreement which are not relevant to the Property. Note: The Concessionaire shall grant in addition such further rights as it is able to grant and which are required for the provision of the Services and/or the occupation of the Property in accordance with the Sub-Lease.

7. RIGHTS RESERVED

As set out in the Land Lease (but excluding those referred to in paragraph 7 of the Third Schedule to the Land Lease and in the BR Property Agreement) together with the right at all times in case of emergency and otherwise at all reasonable times on reasonable prior written notice to enter onto the Property with or without vehicles in order to perform obligations on the part of the Concessionaire in the Operating Agreement Concession Agreement and Project Agreements (but subject to the same

provisions as are set out in the final paragraph of paragraph 4 of the Third Schedule to the Land Lease).

8. PROPERTY SUBJECT TO

The Property will be demised subject to the documents referred to in paragraphs 2 6 and 7 of the Fourth Schedule to the Land Lease.

9. TENANT'S COVENANTS

These will be consistent with those in the Land Lease save as mentioned below. The covenants are (save for paragraph 9.5 and 9.6) referred to by the same headings which appear in the Land Lease.

9.1 Outgoings

The Operator will be responsible for the service charges in respect of the following services:-

- low voltage electricity;
- gas;
- telecommunications;
- water and sewerage

The Concessionaire will be responsible for all other outgoings in respect of the Property.

9.2 Common Expenses

The Concessionaire will be responsible for all common expenses relating to the Property.

9.3 Yield Up

The Operator will be obliged to yield up the Property so far as applicable, in accordance with the covenants and conditions contained in the Sub-Lease, but together with all fixtures and fittings on or forming part of the Property at the relevant time that are required for the performance of the Services in accordance with the Operating Agreement save for the Operator's Equipment (as defined in the Operating Agreement).

9.4 Notices

The covenant will be qualified so as not to override the provisions of the Operating Agreement.

9.5 Maintenance

The Operator will be responsible for:-

- cleaning the office premises at the Property internally and externally (including the windows thereof);
- cleaning the remainder of the Property (including the service roads and car park);
- de-icing and snow clearance at the Property

9.6 Alterations

The Operator will not be permitted to carry out any alterations to the Property (structural or otherwise) without the Concessionaire's approval (such approval not to be unreasonably withheld or delayed). The Operator will be responsible for obtaining any planning permission or other consents required in respect of such alterations.

9.7 Statutory Requirements

To the extent only that the Operator is not obliged to comply with such requirements under the Operating Agreement or otherwise, under the terms of the Sub-Lease the Concessionaire will ensure that all statutory requirements affecting the Property and the provisions of paragraphs 7.1 to 7.3 of the Fifth Schedule to the Land Lease are complied with.

9.8 Planning

The Operator will comply with all planning requirements so far only as they relate to the provision of the Services in accordance with the Operating Agreement (and save that any such requirements which involve expenditure or work on or to the Property will be for the Concessionaire to comply with at its own cost). The Concessionaire will ensure that all other such requirements which relate to the Property are complied with and will be responsible for complying with paragraph 8(b) of the Fifth Schedule to the Land Lease in respect of the Property (save as provided for in paragraph 9.6 above).

9.9 User

The Property shall not be used other than for the operation of a depot for the garaging servicing, cleaning and maintenance of Trams and other vehicles together with offices, workshops, control rooms, storage, staff facilities and all other facilities and uses required for or in connection with the provision of the Services in accordance with the Operating Agreement, insofar as permitted by the Land Lease.

9.10 Prevent encroachment

Any action to be taken will be at the cost of the Concessionaire.

9.11 Alienation

- (a) not to assign or charge part of the Property;
- (b) not to underlet the whole of the Property other than to a company forming part of the same Group and subject to obtaining the Concessionaire's and the Corporation's prior consent (such consent not to be unreasonably withheld);
- (c) not to assign or charge the whole of the Property other than to a person to whom the Operating Agreement has simultaneously been assigned or charged
- (d) not to underlet the whole or part of the Property without ensuring that the underlease is contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954; and
- (e) save as provided in paragraphs 9.11.2 and 9.11.4 not to part with possession or share occupation of the whole or part of the Property in a manner which creates a relationship of landlord or tenant or any right of security

9.12 Indemnify Landlord

This covenant to reflect the indemnity provisions in the Operating Agreement (so that the Operator will only indemnify the Concessionaire in respect of losses etc incurred by the Concessionaire as a result of breach by the Operator of the covenants on its part contained in the Sub-Lease).

9.13 Comply with title matters and other obligations

The Operator shall be required to covenant to comply with the documents/matters referred to in paragraph 8 above (save for the Railtrack Property Agreement), but the cost of compliance shall be treated as Additional Services pursuant to the provisions of the Operating Agreement save for the first £[REDACTED] of the Operator's costs for complying with any document referred to in paragraph 2 of the Fourth Schedule to the Land Lease (excepting the Railtrack Property Agreement).

9.14 Costs

The Operator will only be required to pay Value Added Tax on or included in any amounts re-imbursable by the Operator to the Concessionaire subject to receiving a valid Value Added Tax invoice from the Concessionaire.

10. LANDLORD'S COVENANTS

10.1 Quiet enjoyment.

10.2 To pay the rent reserved by the Land Lease and to comply with the covenants on its part contained in the Land Lease save to the extent that these are to be observed by the Operator in relation to the Property by virtue of the terms of the Sub-Lease.

- 10.3 To use all reasonable endeavours to procure that the Corporation (and its successors) comply with the covenants on the part of the Superior Landlord contained in the Land Lease.
- 10.4 To the extent that the consent of the Corporation (or its successors as Superior Landlord) is required by virtue of the provisions of the Sub-Lease, to use all reasonable endeavours to obtain such consent when requested by the Operator.
- 10.5 The Concessionaire shall decorate, repair, maintain and renew the Property in accordance with its obligations in that regard contained or referred to in the Operating Agreement.
- 10.6 To comply with the obligations on the part of the Concessionaire identified in paragraph 9 above.

11. PROVISOS AGREEMENTS AND DECLARATIONS

These shall follow the form of those set out in the Seventh Schedule to the Land Lease save that (adopting the same headings as in that Schedule):-

11.1 Termination

The term shall determine upon the earlier of the termination of the Concession Agreement or the Operating Agreement. Paragraph I (b) of the Seventh Schedule to the Land Lease shall not apply.

11.2 Exclusion of Liability

Paragraph 5 of the Seventh Schedule to the Land Lease shall not be included in the Sub-Lease.

11.3 Expert Determination and Dispute

The provisions of Schedule 9 to the Operating Agreement shall apply.

Note: Words and expressions used in these Heads of Terms shall where appropriate have the same meanings as are ascribed to them in the Operating Agreement or the Concession Agreement (as the case may be).

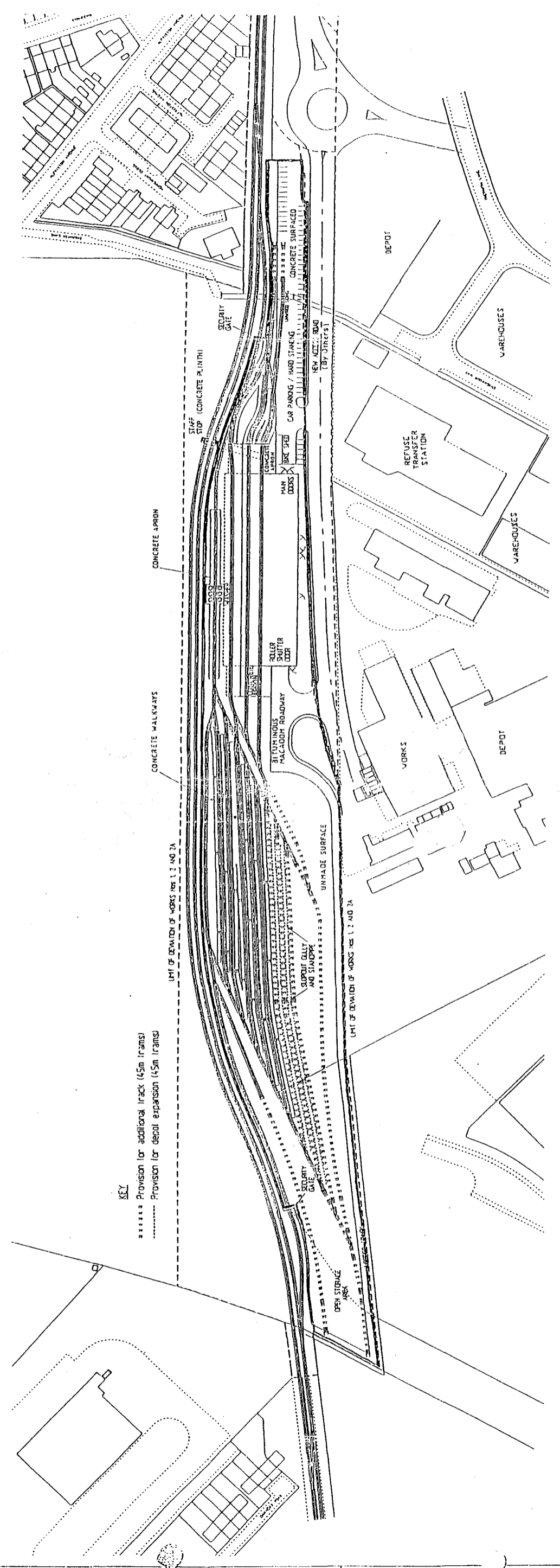
SCHEDULE 16

PART 2: OPERATOR SITE UNDERTAKINGS

The Operator agrees and undertakes to the Concessionaire in accordance with its obligations pursuant to Clause 8.3.1 and Clause 8.4.1 that during the Licence Period it will:-

- (a) carry out the Services with minimum disruption to neighbouring properties in accordance with this Agreement;
- (b) use the Site only for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement;
- (c) keep the Site as clean and tidy as is practicable;
- (d) not display any signs or notices at the Site without the prior written consent of the Concessionaire (such consent not to be unreasonably withheld or delayed);
- (e) observe such reasonable rules and regulations as the Concessionaire may make and of which the Concessionaire shall notify the Operator from time to time governing the use of the Site (being rules and regulations which are intended to be and are applied to all parties using the Site save during the Mobilisation Period when such rules and regulations may be specific);
- (f) not impede in any way the Corporation or the Concessionaire or its officers servants or agents in the exercise of any supervision rights the Corporation or the Concessionaire may have over the Site and will not prevent the Concessionaire the Contractor or any other person authorised by the Concessionaire from having access to the Tramlink System at all times in case of emergency and otherwise at all reasonable times on reasonable prior written notice in order to comply with the obligations and/or to exercise the rights on its part and/or in its favour contained in this Agreement or the Concession Agreement or the Project Agreements subject to the Concessionaire the Contractor and/or the other relevant person complying with all relevant safety requirements and the Operator's reasonable rules and regulations relating to the operation of the Tramlink System and provided that the operation of the Tramlink System shall not be prevented or materially interrupted or otherwise affected by such access by the Concessionaire the Contractor or any other person authorised by the Concessionaire;
- (g) subject to the provisions of Clause 8.3.3(c) and Clause 8.4.3(c) not assign, charge or otherwise transfer the benefit of its licence to use the Site (excluding the Depot) and occupy the Depot

Provided that (as regards the Depot) if there shall be any conflict between the provisions of this Part of Schedule 16 and the Sub-Lease terms which apply during the Licence Period by virtue of Clause 8.4 then the Sub-Lease terms shall prevail



KEY
 - - - - - Provision for additional track (45m trams)
 - - - - - Provision for depot expansion (45m trams)

DRAFT

THIS DRAWING IS NOT TO BE USED IN WHOLE OR PART
 OTHER THAN FOR THE INTENDED PURPOSE AND PROJECT.
 REFER TO THE CONTRACT FOR FULL TERMS AND CONDITIONS

DATE	01/10/16
DRAWN BY	SM/LL/CF/01/16
CHECKED BY	01/10/16
REVIEWED BY	01/10/16

A
 FIRST ISSUE

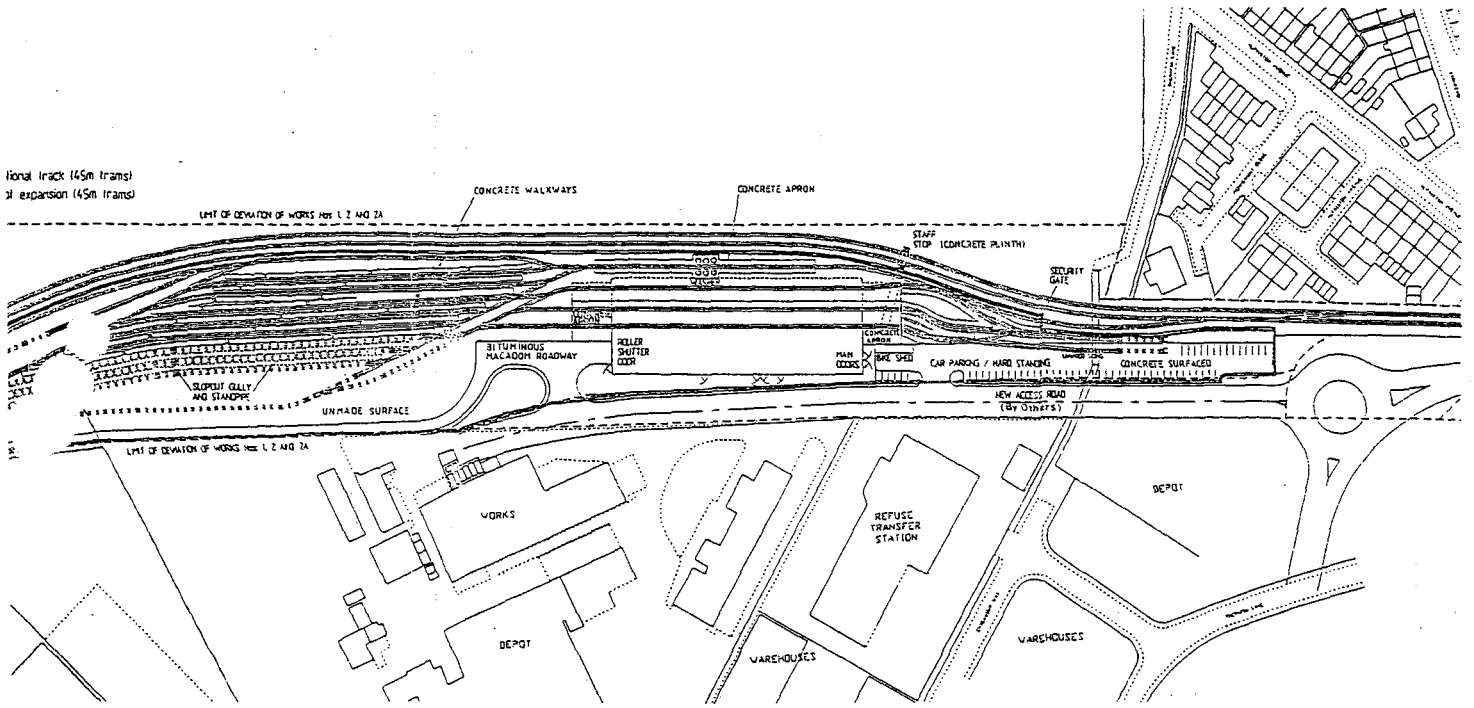
NOTES:
 BASED ON ENLARGED 1:2500 SHEET.
 DIMENSIONS SUBJECT TO TOPOGRAPHICAL CHECK

SCALES
 1:1000

GIBB

CROYDON TRAMLIN
 THERAPIA LANE DEPOT
 (30m TRAMS)
 DEPOT SURFACE FINISHES

Normal track (45m trams)
 21 expansion (45m trams)



DRAFT

NOTES :
 BASED ON ENLARGED 1:2500 SHEET.
 DIMENSIONS SUBJECT TO TOPOGRAPHICAL CHECK.

SCALES

1:1000

DATE

GIBB

**CROYDON TRAMLIN
 THERAPIA LANE DEPOT
 (30m TRAMS)
 DEPOT SURFACE FINISHES**

SCHEDULE 17

[NOT USED]

SCHEDULE 18

[NOT USED]

SCHEDULE 19

TUPE INFORMATION

1. the number of staff who are TUPE Employees
2. in relation to each employee who falls within the scope of paragraph 1 above:-
 - (a) the employee's age and gender (so that pension entitlements can be calculated and provided for); and
 - (b) the employee's salary, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the Operator and any redundancy entitlement;
3. information relating to or connected with the other terms and conditions of the contracts of employment with employees falling within the scope of paragraph 1 above including details of:-
 - (a) terms incorporated from any collective agreement;
 - (b) so far as the Operator should reasonably be aware any outstanding liability for past breaches of such contracts;
 - (c) so far as the Operator should reasonably be aware any outstanding statutory liability (for example, any claim under non-discrimination legislation); and
 - (d) so far as the Operator should reasonably be aware any other outstanding liability required to be met by the successor Operator if its tender is accepted; and
4. such other information as the Concessionaire may reasonably require in relation to TUPE Employees.

ANNEXURE

BYE-LAWS

TRAMTRACK CROYDON LIMITED

PROPOSED BYELAWS

1. In these byelaws unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them:-
 - "the company" means TRAMTRACK CROYDON LIMITED "the tramway" means the tram and station premises of the company, including stations, platforms and the approaches to stations; "authorised person" means any officer, employee or agent of the company, or any operator of the tramway on behalf of the company, and any constable, acting in the execution of his or her duty upon or in connection with the tram;
 - "ticket" means any ticket or document issued for the conveyance of any passenger, animal or article on the railway, or any platform ticket, or car or bicycle parking ticket, and includes in particular but without prejudice to the generality of the foregoing any season ticket, free pass, privilege ticket, or any warrant, identity card, voucher or other similar authority in exchange for or on production of which any ticket for the conveyance of any passenger may be issued;
 - "vehicle" means any tram vehicle on the tramway and includes any compartment of any such vehicle.

2. (1) Any person offending against any of the following Byelaws numbered 5, 6, 7, 11, 12, 15, 17, 19, 20(2), and 22 shall be liable for every such offence to a penalty not exceeding level 3 on the standard scale of Section 37 Criminal Justice Act 1982.
(2) Any person offending against any other of these Byelaws, except Byelaw 3, shall be liable for every such offence to a penalty not exceeding level 2 on the standard scale of Section 37 Criminal Justice Act 1982.
(3) Any person offending against any of the following Byelaws numbered 3, 5, 8, 9, 10, 14, 15, 18, 20, 21, 23, 24, 25, 26, 27, 28, and 29, and failing to desist or quit, or failing to comply with the Byelaw, as the case may be, when requested to do so by an authorised person may be removed from the tramway or any part thereof or any vehicle by an authorised person without prejudice where any penalty is described as aforesaid for the contravention of any such Byelaw to such penalty.

3. No person other than an authorised person shall enter any vehicle unless and until he or she or someone on his or her behalf shall have obtained from the company or from an authorised person, a ticket or other authority entitling the holder to travel thereon and such ticket or other authority shall be produced on demand to any authorised person.

4. When the fare to an intermediate station exceeds the fare to a more distant station, no person shall, for the purpose of travelling to such intermediate station, take or use or attempt to use a ticket for the more distant station with intent to avoid payment of the additional fare to such intermediate station. The liability to or infliction or any penalty incurred by the contravention of this Byelaw shall not prejudice any right of

the company to treat such ticket as forfeited and to recover the full fare for the distance actually travelled by the Company.

5. No person with the intent that the Company shall be defrauded or prejudiced shall
 - (1) alter, deface, mutilate or destroy any ticket; or
 - (2) knowingly and wilfully use or attempt to use any ticket which shall have been in any respect materially altered, defaced or mutilated.

6. (1) Subject to paragraph (3) of this Byelaw no person shall, with intent that any person shall use the same for the purpose of travelling or conveyance upon the tramway
 - (a) sell or buy any ticket; or
 - (b) transfer or receive (i) any partly used ticket or (ii) any season ticket, free pass, privilege ticket, warrant, identity card, voucher or other similar authority or ticket issued in exchange for or on production of any warrant, identity card, voucher or other similar authority.

(2) No person shall knowingly and wilfully use or attempt to use any tick which has been sold, bought, transferred or received in contravention of subparagraph (1)(a) or (1)(b) of this Byelaw.

(3) The sale or transfer or attempted transfer by, or the purchase or receipt or attempted purchase or receipt from, an authorised person is excepted from the provisions of this Byelaw.

7. No person with the intent that the company shall be defrauded or prejudiced, shall
 - (1) tender or deliver up to an authorised person a ticket or money on behalf of another person with intent to enable the person on whose behalf the ticket or money is tendered or delivered up to travel without having previously paid his or her fare;
 - (2) transfer, tender or deliver up a ticket to another person with intent to enable any person to travel on the tramway without having previously paid his or her fare.

8. No person shall enter or attempt to enter any vehicle through any door thereof unless all persons who are leaving or are on the way to leave such vehicle through such door shall have passed out of such door.

9. When a vehicle contains the full number of passengers which it is constructed to carry no additional person shall enter or remain therein if requested by an authorised person not to do so.

10. No person except an authorised person shall mount or attempt to mount on any vehicle except on such part or parts as are provided for the carriage of passengers.

11. No person except an authorised person shall
 - (1) operate, move, work or tamper with any mechanical or electrical appliance upon the tramway or any switch lever or other device operating or controlling any mechanical or electrical appliance upon the tramway except
 - (a) in cases of emergency, any switch lever or other device or mechanical or electrical appliance upon or near which is displayed a notice that it is intended to be operated in cases of emergency; or

(b) in the case of an automatic door in any vehicle (when such door is immediately adjacent to and given immediate access to, and such vehicle is stationary at, a platform or place appointed for passengers to enter or leave the vehicle) any switch lever or other device or mechanical or electrical appliance upon or near which is displayed a notice that it is intended to be operated by passengers to open or close such doors; or

(c) any switch lever or other device or mechanical or electrical appliance provided in a compartment of any vehicle for the operation or control of heating, ventilating or lighting apparatus by passengers therein.

12. No person, except an authorised person shall
- (1) open the door, or stand, or attempt to stand on the step or foot-board of any vehicle whilst it is in motion or (except in the case of accident or other emergency) between stations; or
 - (2) open the door of any vehicle at a station other than at the side of the vehicle adjoining the platform or place appointed for passengers to enter or leave the vehicle; or
 - (3) enter or leave or attempt to enter or leave any such vehicle whilst it is in motion or (except in case of accident or other emergency) between stations or otherwise than at the side of the vehicle adjoining the platform or place appointed for passengers to enter or leave the vehicle; or
 - (4) attempt to enter or leave the vehicle after the doors have commenced to close; or
 - (5) where notices are exhibited in a vehicle indicating that a door shall be used for entrance thereto and another door for exit therefrom (except in case of accident or other emergency) enter or attempt to enter by the door indicated for the exit or leave or attempt to leave by the door indicated for entrance.
13. Except by permission in writing of an authorised person no person suffering from an infectious or contagious disease or disorder shall enter or remain and no person having the custody charge or care of any such person shall cause or permit such person to enter or remain upon the tramway and the Company may refuse to receive or carry any such person or to permit any such person to enter remain or be upon the tramway or to travel on the tramway. Any person suffering as aforesaid and any person having having the custody, charge or care of any such person may be removed from the tramway by, or under the direction of, an authorised person and shall be liable to the tramway for the cost of disinfecting the tramway's premises and any vehicle in which such person shall have been, and to make good any other damage to the property of the tramway through the contravention of this Byelaw without prejudice to any penalty incurred by such contravention.
14. No person in a state of intoxication shall enter or remain upon the tramway and no person who is in an unfit or improper condition to travel by tram or whose dress or clothing is in a condition liable to soil or injure the linings or cushions of any carriage, or the dress or clothing of any passenger, shall enter or remain in any vehicle. Provided that no person shall be prevented from entering or remaining in or on any vehicle under the provisions of this Byelaw on the ground of the condition of his or her dress or clothing, when he or she so enters or remains in or on the vehicle

with the permission of an authorised person, or when the vehicle is specially provided or set apart for workmen.

15. No person shall at any time upon the tramway
 - (1) use any threatening abusive obscene or offensive language; or
 - (2) behave in a riotous disorderly indecent or offensive manner; or
 - (3) write, draw or affix any abusive, obscene or offensive word, representation or character upon, or wilfully soil or defile, the railway or any vehicle; or
 - (4) molest or wilfully interfere with the comfort or convenience of any passenger or person in or upon the tramway.

16. No person shall take or cause to be taken on to, or cause to allow to remain the tramway, if requested not to do so by an authorised person, any animal, article or thing which by reason of its nature, is in the opinion of such authorised person likely to cause or in fact does cause annoyance or damage to any passenger or damage to any property. If any person in charge of such animal, article, or thing fails when requested by an authorised person immediately to remove the same from the tramway then the same may be removed therefrom by or under the direction of such authorised person, without prejudice to any penalty incurred by the contravention of this Byelaw.

17. No person shall take or cause to be taken upon, or place or cause to be placed upon the tramway or, while upon the tramway, have in his or her possession or discharge, as the case may be, any loaded weapon of any kind, or any cinematograph film or any inflammable, explosive or corrosive gas, spirit, liquid, substance or matter, or any article or thing which is or may become dangerous to any person or property. Provided that nothing in this Byelaw shall apply to (a) small quantities of spirit or liquid carried for the personal use of such person and not for the purpose of trade or business, provided that all due precautions are taken for the prevention of accident or injury therefrom; (b) cinematograph film formed on a cellulose acetate base that is so called "safety" "slow burning" or similar types; (c) the carriage of explosives in accordance with any Byelaws in force at the time of such carriage and made by the Company or their predecessors and sanctioned by the Minister of Transport under and in pursuance of the Explosives Act of 1875, or any Act amending the same, or (d) the carriage of dangerous goods (other than explosives) in accordance with the conditions and regulations for the time being applicable to the carriage of such goods on the tramway. If any person offending against this Byelaw fails to remove from the tramway immediately upon request by an authorised person, any article or thing to which this Byelaw relates, the same may be removed therefrom by or under the direction of an authorised person without prejudice to any penalty incurred by the contravention of this Byelaw.

18. No person shall smoke or carry a lighted pipe, cigar, or cigarette in any vehicle or elsewhere upon the tramway where smoking is expressly prohibited by the Company by a notice exhibited in a conspicuous position in such vehicle or upon or near such other part of the tramway or if requested by an authorised person not to do so in or upon any part of the tramway where smoking or carrying a lighted pipe, cigar or cigarette may be dangerous.

19. No person shall wilfully, wantonly or maliciously
 - (1) move or set in motion or stop or attempt to stop, any vehicle or automatic door except:

(a) in cases of emergency by means of a switch or appliance upon or near which is displayed a notice that is intended to be operated in cases of emergency; or

(b) in the case of an automatic door, when the vehicle of which the door forms part is stationary at and the door is immediately adjacent to and gives immediate access to a platform or place appointed for passengers to leave or enter such vehicle, by means of a switch or appliance upon or which is displayed a notice that is intended to be operated by passengers to open or close such door; or

(2) break, cut, scratch, soil, deface, or damage any vehicle or any other of the fittings, furniture, decorations, or equipment thereof, or any notice, advertisement, number plate, number, figure or letter therein or thereupon, or remove therefrom or detach any such article or thing or

(3) deface or damage any part of the tramway or any property upon the tramway.

Any person offending against this Byelaw shall be liable to the Company for the amount of damage done to any property of the Company, without prejudice to any penalty incurred by the contravention of this Byelaw.

(4) remove, displace or alter any notice board, fare table, route indicator or destination board, or any printed or other notice or advertisement in or on the premises.

20. (1) No person, while upon the tramway shall, to the annoyance of any other person, sing, perform on any musical or other instrument or use any gramophone, record player, tape recorder, portable telephone or portable wireless apparatus.
- (2) No person, while upon the tramway shall, except by permission of an authorised person:-
- (a) display or exhibit any printed, written or pictorial matter or any article for the purpose of advertising or publicity, or distribute any book, leaflet or other printed matter or any sample or other article; or
 - (b) sell or expose or offer for sale any article or goods whatsoever; or
 - (c) tout, ply for, or solicit alms, reward or custom or employment of any description.
21. (1) No person shall enter or remain upon the tramway for the purpose of bookmaking or betting or wagering or agreeing to bet or wager or paying or receiving or settling bets with any other person.
- (2) No person playing for money or moneys worth at any game or pretended game of chance or skill upon the tramway shall continue to do so after having been requested by an authorised person to desist therefrom.
- (3) No person shall loiter or remain upon the tramway after having been requested by an authorised person to depart unless such person is lawfully entitled so to do.
22. No person shall throw or wilfully drop on or from any vehicle or any conveyance on the tramway any article or thing whatsoever capable of injuring, damaging or endangering any person or property.
23. No driver, conductor, or person in charge of any public service vehicle, motor car, cab, carriage, wagon, bicycle, or other conveyance or of any animal in or upon the tramway shall
- (1) leave or place any such conveyance or animal in or upon the tramway

- (a) in any matter or place so as to cause an obstruction or hindrance to the Company or to persons using the tramway; or
- (b) otherwise than in accordance with any reasonable direction of an authorised person; or
- (c) where parking is prohibited; or

(2) leave or place any such conveyance or animal in or upon the tramway (otherwise than in a carpark or other place expressly authorised by the Company) for a period longer than necessary for such person to transact any lawful business upon the tramway at or adjacent to the place at which such conveyance or animal has been left or placed; or

(3) leave or place any animal in or upon the tramway (other than in a place expressly appointed by the Company) unattended; or

(4) conduct himself or herself in a disorderly manner.

Any conveyance or animal so left or placed in breach of this Byelaw may be removed by or under the direction of an authorised person, and the cost thereof shall be paid to the Company by the said driver, conductor or person in charge of the conveyance or animal without prejudice to any penalty incurred by the contravention of this Byelaw.

24. No person in charge of any public service vehicle, motor car, cab, carriage, wagon, bicycle, or other conveyance which is parked at a place on the tramway for the use of which parking charges are levied by the Company shall remove or attempt to remove such conveyance from such place without previously having paid the appropriate charge and with intent to evade payment thereof. Provided that no person shall be subject to any penalty under this Byelaw unless it be proved to the satisfaction of the Court before whom complaint is laid that a public notice was exhibited at that place specifying the charges payable for parking thereat.
25. No person shall
- (1) spit upon the floor or in upon or against any part of any vehicle upon the tramway or upon the platform or the permanent way at any station of the Company, or in upon or against any hall, office, waiting room, public room, or public passage at any station of the Company or
 - (2) place or throw any litter upon the tramway except in receptacles expressly provided for that purpose.
26. The Company may establish queues on the tramway for the purpose of regulating the access to services and facilities provided on or in the immediate vicinity of the tramway, and every person desirous of availing himself or herself of any such service or facility shall, upon notice or request by the Company or an authorised person take up position in the rear of one of such queues and move forward in an orderly and regular manner, and obey the reasonable instructions of an authorised person regulating such queues.
27. No person shall by means of any machine provided by the Company upon the tramway change or procure to be changed any coin or coins or any currency note or notes otherwise than for the purpose of obtaining immediately a ticket or tickets from the Company or from an authorised person at the station where such machine is provided.



28. No person other than an authorised person shall ride a bicycle, tricycle, motorcycle or other similar machine or bring any handcart barrow or similar conveyance upon any footbridge, footpath, causeway or subway on the tramway and made or set apart for the use of accommodation of pedestrians only. Provided that no person shall be subject to any penalty under this Byelaw unless it shall be proved to the satisfaction of the court before whom the complaint is laid that public warning has been given that the footbridge, footpath, causeway or subway in respect of which the complaint is made has been set apart for the use or accommodation of pedestrians only by notice clearly exhibited at the footbridge, footpath, causeway, or subway where and at the time at which any offence under this Byelaw is alleged to have been committed.
29. Any person who is reasonably suspected of committing or attempting to commit any offence against these Byelaws shall give his or her name and address to any authorised person when requested to do so.
30. These Byelaws will come into operation in accordance with the provisions of Section - --- of the ---- Act and shall, in so far as they apply to the tramway be and the same are hereby revoked without prejudice, however, to the validity of anything done thereunder or to any liability incurred in respect of any act or omission before the date of the coming into operation of these Byelaws.

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed the day and year first before written.

Executed as a Deed
for and on behalf of
Tramtrack Croydon Limited)
acting by:

Director



Director / Secretary

Executed as a Deed
for and on behalf of
Tram Operations Limited)
acting by:

Director

Director / Secretary

Operating Contract -
borrowed by AWW

PART 2

THE 2008 AGREEMENT

The 2008 Agreement is contained on the CD signed by the Parties for identification.

DATED 25 NOVEMBER 1996

AMENDED AND RE-STATED

2008

(1) TRAMTRACK CROYDON LIMITED

- and -

(2) TRAM OPERATIONS LIMITED

OPERATING AGREEMENT

relating to

the Croydon Tramlink System

ASHURST MORRIS CRISP

Broadwalk House

5 Appold Street

London EC2A 2HA

Tel: 0171 638 1111

Fax: 0171 972 7990

Amended and Re-Statd

Burges Salmon LLP

Narrow Quay House

Narrow Quay

Bristol BS1 4AH

Tel: 0117 939 2000

Ref: CF02/20225.2/FLETC

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THIS AGREEMENT is made as a Deed this 25 day of November 1996 and is amended and re-stated as a Deed this day of 2008

BETWEEN

- (1) **TRAMTRACK CROYDON LIMITED** (company number: 3092613) with its registered office at Tramlink Depot, Coomber Way, Croydon, CR0 4TQ (“the Concessionaire”); and
- (2) **TRAM OPERATIONS LIMITED** (company number: 3097532) with its registered office at Macmillan House, Paddington Station, London W2 1TY (“the Operator”).

WHEREAS

- (A) On 2nd October 1995 the Corporation issued an invitation to tender for the construction and operation of the Tramlink System and that tender has been awarded to the Concessionaire.
- (B) The parties have agreed that the Operator will provide to the Concessionaire operating and maintenance services in respect of the Tramlink System upon and subject to the terms set out in this Agreement.
- (C) The parties have agreed to the amended operating and maintenance services on the terms of this revised Agreement.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITIONS

1.1 Definitions

In this Agreement the following words and expressions shall have the meanings given to them below:-

“Act”	the Croydon Tramlink Act 1994;
“Actual Kilometrage”	the aggregate kilometrage travelled by the Trams on the Tramlink System in the course of carrying fare-paying passengers during any Financial Period in complying with the Timetable during such Financial Period including kilometrage that would have been travelled by the Trams where a replacement bus service has been provided during such Financial Period in accordance with this Agreement;
“Actual Opening Date”	the date on which the whole of the Tramlink System opens for fare-paying passenger service (agreed by the parties to be 10 May 2000);

“Additional Services”	additional services or recovery of additional costs or expenses referred to in Clause 6.7;
“Affiliate of the Operator”	<ul style="list-style-type: none"> (a) a company which owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in the Operator; or (b) a company of which the Operator owns directly or indirectly more than 50 per cent of the voting power or of the ordinary share capital in such company; or (c) a third company of which a company within paragraph (a) above owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in such third company;
“Agreement”	this amended and re-stated agreement including the Recitals, Schedules and Appendices;
“Annual Schedule to the Maintenance Plans”	means the annual schedule referred to in Clause 20.3;
“Applicable Requirements”	any Law relating to the Services or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Services including the Management of Health Safety at Work Regulations 1992, the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996 and the Railways and other Guided Transport System (Safety) Regulations 2006;
“Business Day”	a day other than a Saturday or Sunday on which banks are generally open in London for normal business;
“Bye-Laws”	the bye-laws required by the Act and annexed hereto as the Annexure in the agreed form;
“Change of Law”	(i) any amendment, alteration or modification to or repeal of existing

	Law which takes effect after the date hereof; or
	(ii) the introduction of any new Law which comes into effect after the date hereof
	but excluding any change in the interpretation of any existing Law and any Change of Law which has been published prior to 26 th June 1996 and subsequently comes into force substantially in the form so published;
“Change of Safety Law”	Change of Law which relates to or is connected with safety and requires:- <ul style="list-style-type: none"> (a) physical alterations or modifications to the Tramlink System (or to its method of operation); or (b) works to be carried out in addition to the Project Works;
“Commission or Commissioning”	commission or commissioning in accordance with the Construction Programme and the procedures set out in Schedule 11 of the Construction Contract;
“Compensation Event”	each of the following events:- <ul style="list-style-type: none"> (a) Change of Safety Law; (b) Discriminatory Legislation:
“Concession Agreement”	the agreement entered or to be entered into between the Concessionaire and the Corporation pursuant to award of the tender referred to in Recital A in the agreed form;
“Concession Award Date”	the date when all the conditions precedent referred to in Clause 2 of the Concession Agreement have been satisfied;
“Concessionaire Change Order”	has the meaning given in Clause 28.1(a) of the Concession Agreement to Construction Change Order and Specification Change Order and the meaning given in Clause 1.1 of the Concession Agreement to Change Order.

“Concessionaire Default”	any of the events specified in Clause 24.3.1;
“Concessionaire Delay Period”	such extensions of the relevant period or periods identified in the Construction Programme as may be agreed between the Corporation and the Concessionaire pursuant to Clause 18.7 of the Concession Agreement;
“Concessionaire’s Environmental Damage”	any injury or damage to persons (including offence to their senses) premises or other property or any pollution of the environment resulting from the discharge emission escape or migration of any substance energy noise or vibration and which is not Operator’s Environmental Damage;
“Concessionaire Good Industry Practice”	the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced concessionaire of a light rail system over a period of 99 years engaged in the same undertaking as the Concessionaire;
“Concessionaire’s Parliamentary Undertakings”	those undertakings given to a Parliamentary Committee during the passage through Parliament of the Bill for the Croydon Tramlink Act 1994 as set out in Schedule 3 of the Concession Agreement and any undertakings or agreements given to a person in consideration of his refraining from opposition to that Bill as set out in Schedule 3 of the Concession Agreement;
“Concessionaire’s Representative”	the representative of the Concessionaire or any replacement or alternate to be appointed pursuant to Clause 5.1;
“Concessionaire Tram Spares”	the spare parts for the Trams to be agreed in accordance with paragraph 4(a) of Part 5 of Schedule 1 and all replacements thereof;
“Construction Change”	(a) an addition, deletion or other change to the Project Works from that required by the Specification or envisaged by the Milestone Schedule or (b) an alteration to the sequence of Work anticipated by the

	Construction Programme;
“Construction Contract”	the contract entered into or to be entered into between the Concessionaire and the Contractor for the construction and procurement of the Project Works;
“Construction Programme”	the construction programme, including the Outline Construction Programme, delivered by the Concessionaire to the Corporation pursuant to Clause 70.5(a) of the Concession Agreement as updated from time to time pursuant to Clause 70.5(b) of the Concession Agreement;
“Contractor”	the McAlpine-Amey joint venture or any other entity or entities appointed by the Concessionaire with the approval of the Corporation to carry out the Project Works pursuant to the Construction Contract;
“Control Centre”	the twenty-four hour control centre of the Tramlink System;
“Corporation”	Transport for London;
“Corporation Service Change”	has the meaning given in Clause 25.2(a) of the Concession Agreement to the term “Service Change”;
“Corporation Service Parameters Change”	has the meaning given in Clause 25.2(b) of the Concession Agreement to the term “Service Parameters Change”;
“Council”	London Borough of Croydon;
“Customer Charter”	the customer charter of the Tramlink System drawn up by the Operator with the co-operation and approval of the Concessionaire, such approval not to be unreasonably withheld or delayed.
“Delay Events”	has the meaning given in Clause 18.2 of the Concession Agreement;
“Depot”	the tram depot at Therapia Lane shown edged red on Drawing No. 95401/300/022 attached to the Heads of Terms set out in Part 1 of Schedule 16
“Deregulation”	bus service deregulation being extended to

	London either by virtue of Section 46 of the Transport Act 1985 and/or the enactment of other legislation whereby bus operators are granted substantial freedoms to operate bus services in London and to determine for themselves, routes, service levels and frequencies and fares;
“Discriminatory Legislation”	Specific Discriminatory or General Discriminatory Legislation;
“Dispute”	as defined in Schedule 9;
“Excluded Equipment”	the radio communication equipment and cabling thereto and other equipment attached to Trams referred to as “Free Issue Equipment” in the Construction Contract;
“Expert”	a person appointed pursuant to Schedule 9 to determine a Dispute or other difference between the parties arising under this Agreement;
“Fees”	the fees payable to the Operator under Clause 21;
“Final Acceptance Tests”	the final Tramlink System acceptance test to be performed in accordance with Schedule 11 to the Construction Contract;
“Financial Impact Sums”	has the meaning given in Clause 1.1 of the Concession Agreement;
“Financial Period”	each consecutive period as defined in the Off-Tram Revenue Agreement as Payment Periods but the first Financial Period shall be the period between the Actual Opening Date and the commencing date of the first Payment Period under the Off-Tram Revenue Agreement and where the Off-Tram Revenue Agreement is terminated, each consecutive period of 4 weeks following the last Payment Period under the Off-Tram Revenue Agreement;
“Financial Period Payment Date”	in respect of any Financial Period, the third Wednesday of such Financial Period and if such date is not a Business Day, the preceding Business Day;

“Financing Agreements”	the agreements listed in Part 3 of Schedule 3;
“Force Majeure”	shall have the meaning specified in Clause 23.1.1;
“General Discriminatory Legislation”	Change of Law (other than Deregulation) which discriminates against Light Rail Concessionaires in relation to other companies operating a transport service in the Tramlink Bus Area and which results in any actual or prospective change in costs or revenue of the Operator;
“Good Industry Practice”	the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced light rail operator responsible for those aspects of tram maintenance and operation of a light rail system over a period of 30 years engaged in the same undertaking as the Operator;
“HMRI”	Her Majesty’s Railway Inspectorate and any successor body or bodies;
“HSE”	the Health and Safety Executive and any successor body or bodies;
“Infrastructure”	all of the Tramlink System other than the Trams;
“Infrastructure Maintenance Management Fees”	the fees payable to the Operator under Clause 21.1.4;
“Infrastructure Maintenance Management Services”	the services referred to in Clause 6.5;
“Infrastructure Maintenance Plan”	the maintenance plan relating to Infrastructure prepared initially by the Contractor and subsequently updated by the Operator and now to be updated by the Concessionaire and Operator in accordance with Clause 20;
“Insolvency Event”	each of the following events:- (a) the issue of a petition for winding-up which petition is not dismissed within 28 days of its issue; or

- (b) the making of an order or an effective resolution being passed for winding-up except for the purpose of a solvent reconstruction or amalgamation on a basis previously approved by the Concessionaire or the Operator (as appropriate) in writing (such approval not to be unreasonably withheld); or
- (c) the making of an order for the appointment of an administrative receiver, administrator, trustee or similar officer; or
- (d) an encumbrancer, receiver (including an administrative receiver) or other similar officer taking possession of the whole or any part (which is material in the context of the performance of the affected person's obligations under the Operating Agreement) of such person's undertaking, property or assets; or
- (e) the making of a composition with creditors generally; or
- (f) being unable to pay debts as they fall due;

“Intellectual Property”

all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unregistered designs, know-how, inventions, confidential information and other intellectual property rights;

“Key Staff Positions”

key staff positions within the Operator's organisation being the general manager, the operations manager, the engineering manager and the contracts manager and, in the event that the Operator's Representative is not one of the aforementioned the Operator's Representative;

“Land Lease”

the form of lease attached as Appendix 5 of Schedule 3 to the Concession

Agreement

- “Law” any Act of Parliament or subordinate legislation within the meaning of section 21(1), Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of section 2, European Communities Act 1972;
- “Lender[s]” the banks party to the facility agreement of approximately £93,000,000 with the Concessionaire in its capacity as borrower thereunder on or about the same date as this Agreement;
- “Lessor” Lombard Venture Leasing Limited;
- “Libor” (a) with respect to any period:-
- (i) the rate per annum of the offered quotation for deposits in sterling for a period comparable to the relevant period which appears on Telerate Page 3750 at or about 11.00 am. on the first day of the relevant period; or
 - (ii) if no such offered quotation appears on the Telerate Page 3750 at or about 11.00 am on the applicable date, the arithmetic mean (rounded upward to the nearest 1/16th of 1%) of the rates per annum, as notified to the Facility Agent at which each of the Reference Banks was offering to leading banks in the London Interbank Market deposits in sterling at or about 11.00 am on the first day of the relevant period for a period comparable to the relevant period;
- (b) for the purpose of this definition of LIBOR, “**Telerate Page 3750**” means the display designated as “Page 3750” on the Telerate Service (or such other page as may replace Page 3750 on that service or such

	<p>other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement rates for deposits in sterling;</p> <p>(c) for the purposes of this definition of LIBOR, definitions used herein shall have the same meaning as set out in the Facility Agreement.</p>
“Licence Period”	<p>the date on which the Mobilisation Period shall commence until whichever shall be the earlier of:-</p> <p>(a) the date of the determination of the Concession Agreement; or</p> <p>(b) (in respect only for that part of the Site which comprises the Depot) the date of grant of the Sub-Lease;</p>
“Light Rail Concessionaires”	<p>companies undertaking the design, construction, financing and maintenance of light railways or train systems in the UK pursuant to a single contract similar to the Concession Agreement;</p>
“Lost Kilometrage”	<p>the difference between Scheduled Kilometrage and Actual Kilometrage;</p>
“Maintenance Contracts”	<p>the agreements entered into, or to be entered into, by or on behalf of the Concessionaire or by the Operator and any of the Maintenance Contractors (including the Construction Contract);</p>
“Maintenance Contractors”	<p>such person or persons as may be appointed by the Concessionaire or the Operator from time to time in accordance with this Agreement to carry out certain repairs to and maintenance of the Infrastructure;</p>
“Maintenance Plan”	<p>means the maintenance plans referred to in Clause 20;</p>
“Major Maintenance”	<p>means all aspects of maintenance of the Infrastructure which are not Routine Maintenance;</p>

“Milestone”	an event which is the completion in whole of one or more specified activities, such activities being as set out in the Milestone Schedule in the column headed Milestone Description;
“Milestone Schedule”	the schedule of Milestones set out in Schedule 1 to the Concession Agreement;
“Mobilisation Fee”	the fee payable to the Operator under Clause 21.1.2;
“Mobilisation Period”	the period of time of at least 18 months commencing on the date specified in the Construction Programme or such other date as is notified to the Operator in accordance with Clause 8.1 and ending on the Actual Opening Date;
“Mobilisation Services”	the services to be provided by the Operator during the Mobilisation Period as referred to in Clause 6.2;
“Off-Tram Revenue Agreement”	has the meaning given in the Concession Agreement;
“Operating Fee”	the fee payable to the Operator under Clause 21.1.3;
“Operating Period”	the period of time commencing on the Actual Opening Date and ending at the end of the Term;
“Operating Plan”	means the operating plan to be prepared by the Operator in accordance with Clause 20;
“Operating Services”	the services to be provided by the Operator during the Operating Period as referred to in Clause 6.4;
“Operating Year”	a year ending on an anniversary of the Actual Opening Date;
“O&M Manuals”	the operation and maintenance manuals in respect of the Tramlink System prepared by the Contractor pursuant to the Construction Contract or prepared by or on behalf of the Concessionaire pursuant to this Agreement;

“O&M Procedures”	the procedures prepared by the Operator in accordance with Clause 8.2.2;
“Operational Land Lease”	the form of agreement attached as Schedule 14 to the Concession Agreement;
“Operator Controlled Lost Kilometrage”	Lost Kilometrage to the extent attributable to a default on the part of the Operator hereunder or to the extent attributable to a default on the part of the Tram Maintenance Contractor under the Tram Maintenance Contract save to the extent such default was attributable to matters beyond the Operator’s or the Tram Maintenance Contractor’s reasonable control and could not have been avoided by use of Good Industry Practice;
“Operator Default”	any of the events specified in Clause 24.2.1;
“Operator’s Environmental Damage”	means any injury or damage to persons (including offence to their senses) premises or other property or any pollution of the environment resulting from the discharge emission escape or migration of any substance energy noise or vibration caused by a breach by the Operator of the terms of this Agreement;
“Operator’s Representative”	the representative of the Operator or any replacement or alternate to be appointed pursuant to Clause 5.2;
“Operator Specification”	the specification for the operation of the Tramlink System attached as Schedule 8 as amended from time to time;
“Outline Construction Programme”	the outline construction programme referred to in Clause 70.5(a) of the Concession Agreement;
“Party”	a party to this Agreement;
“Performance Specification”	the performance specification for the Tramlink System in the agreed form as between the Corporation and the Concessionaire as referred to in the Concession Agreement;
“Plans”	the Operating Plan and the Infrastructure

	Maintenance Plan;
“Possession”	possession of any part of the Infrastructure for maintenance and/or repair purposes which prevents, impairs or otherwise affects the ability of the Operator to operate to the Tram Service Levels on all or part of the Tramlink System;
“Preliminary Fee”	the fee payable to the Operator under Clause 21.1.1;
“Preliminary Services”	the services to be provided by the Operator as referred to in Clause 6.1;
“Prescribed Rate”	Libor plus 2 per cent;
“Project Agreements”	the agreements listed in Part 2 of Schedule 3;
“Project Works”	<p>all of the works and equipment required for the supply and completion of the Tramlink System in accordance with the Tramlink Agreements (as defined in Clause 1.1 of the Concession Agreement) (without limitation):</p> <ul style="list-style-type: none"> (a) all work concerning the detailed design, construction and completion of the Tramlink System; (b) the Depot and ancillary buildings; (c) bridges, structures and other permanent works; (d) track work; (e) overhead wires and cables; (f) other jigs, tools, fixtures and fittings; and (g) the Moveable Property (as defined in Clause 1.1 of the Concession Agreement);
“Quality Plans”	the quality plans to be prepared by the Operator in accordance with Clause 19.2.1;

“Railtrack Maintenance Agreement”	the agreement entered into on or about the date hereof between the Corporation and Railtrack plc and to be vested in the Concessionaire relating to the future maintenance of parts of the Tramlink System;
“Routine Maintenance Fee”	the fee payable to the Operator under Clause 21.1.6;
“Routine Maintenance Services”	the carrying out of all maintenance services to the Infrastructure of a routine nature which a Concessionaire or Operator (as appropriate) would be required to undertake in order to maintain a tram system such as the Tramlink System in accordance with Good Industry Practice and to the extent specified in the Routine Maintenance Specification;
“Routine Maintenance Specification”	the Routine Maintenance Services specified in or otherwise to be agreed in accordance with Schedule 5;
“Routine Maintenance Sub-Contract”	any sub-contract entered into by the Concessionaire or Operator (as appropriate) in accordance with Clause 6.5.2 and Schedule 5 in respect of any part of the Routine Maintenance Services;
“Safety Management System”	A Safety Management System as defined in the Railways and other Guided Transport Systems (Safety) Regulations 2005.
“SAT 2”	the second Tramlink System acceptance test to be performed in accordance with Schedule 11 of the Construction Contract;
“Scheduled Kilometrage”	the aggregate kilometrage scheduled to be travelled by the Trams on the Tramlink System carrying fare paying passengers during any Financial Period assuming compliance with the Timetable during such Financial Period excluding for the avoidance of doubt positioning, shunting, testing, tram substitution, incident attendance, training and vehicle washing
“Services”	all of the Preliminary Services, Mobilisation Services, Operating

	Services, Infrastructure Maintenance Management Services to be carried out by the Operator, Routine Maintenance Services to be carried out by the Operator and Tram Maintenance Services and any Additional Services;
“Service Change”	has the meaning set out in Clause 25.2(a) of the Concession Agreement;
“Service Parameter Change”	has the meaning set out in Clause 25.2(b) of the Concession Agreement;
“Site”	the area which is to be made available to the Concessionaire by the Corporation pursuant to the Concession Agreement for the purposes of constructing and operating the Tramlink System;
“Specific Discriminatory Legislation”	Change of Law (other than Deregulation) which discriminates against:- <ul style="list-style-type: none"> (a) the Tramlink System in relation to other light rail or tram networks in the UK; or (b) the Concessionaire or the Operator (but not other Light Rail Concessionaires) in relation to other companies operating a transport service in the Tramlink Bus Area; and which results in any actual or prospective change in costs or revenues of the Operator;
“Specification”	the specification for the Tramlink System attached as Schedules 2 and 3 to the Construction Contract as amended from time to time;
“Specification Change”	a variation to the Specification, Performance Specification or Operator Specification which requires a change in operating practices or procedures on the Tramlink System which is not a Construction Change, a Service Change or a Service Parameters Change;
“Step-in Undertakings”	the undertakings entered into, or to be entered into:-

(i) between, inter alia, the Operator and the Lenders (or an agent on their behalf) and

(ii) between, inter alia, the Tram Maintenance Contractor and the Lenders (or an agent on their behalf);

“Sub-Lease”

the sub-lease of the Depot to be entered into between the Concessionaire (1) and the Operator (2) in such form as may be agreed between the parties both acting reasonably but based on and incorporating the terms contained in the Heads of Terms set out in Part 1 of Schedule 16 and otherwise being consistent with the Land Lease;

“Supplemental Sub-Lease”

supplemental sub-lease(s) the purpose of which is to include within the demise in the Sub-Lease and on exactly the same terms as the Sub-Lease those parts (if any) of the Depot which may be comprised in the Supplemental Lease(s) granted pursuant to paragraphs 7.7 and/or 7.8 of Part 1 of Schedule 3 to the Concession Agreement in such form as may be agreed between the parties both acting reasonably;

“Taking-Over Certificate”

the Taking-Over Certificate issued in accordance with Clause 49 of the Construction Contract;

“Term”

the period of time commencing on the date of this Agreement and ending upon termination or expiry of this Agreement in accordance with its terms;

“Ticket Machines”

the 77 automatic ticket vending machines described in the Specification or such other type and/or number of automatic ticket vending machines as the Operator shall agree with the Concessionaire to manage in accordance with this Agreement;

“Timetable”

the timetable for the operation of Tram services on the Tramlink System referred to in or determined in accordance with Section 9 of the Operator Specification as amended from time to time in accordance

“Tram Maintenance Contract”	with Clause 16; the agreement entered into between the Operator and the Tram Maintenance Contractor in relation to maintenance of the Trams;
“Tram Maintenance Contractor”	Bombardier Prorail Limited or such other person appointed to maintain the Trams in accordance with Clause 6.6;
“Tram Maintenance Direct Agreement”	the agreement entitled Direct Agreement in respect of the Maintenance of Trains entered or for the Croydon Tramlink System into of 25 November 1996 between (inter alia) the Concessionaire, the Operator and the Tram Maintenance Contractor;
“Tram Maintenance Fee”	the fee payable to the Operator under Clause 21.1.5;
“Tram Maintenance Plan”	the tram maintenance plan to be prepared initially by the Contractor and subsequently maintained by the Tram Maintenance Contractor in accordance with the provisions of Clause 9 of the Tram Maintenance Contract.
“Tram Maintenance Services”	the services referred to in Clause 6.1.1 of the Tram Maintenance Contract;
“Tramlink Applicable Requirements”	any Law relating to the Tramlink System or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Tramlink System;
“Tramlink Bus Area”	the area edged in red on the Tramlink Bus Area Plan;
“Tramlink Bus Area Plan”	the plan at Part 1 of Schedule 7 of the Concession Agreement;
“Tramlink General Agreement”	the agreement entered into on or about the date hereof between the Council and the Concessionaire, relating, inter alia, to the procedures for the Concessionaire to obtain approvals and consents requested from the Council and specific requirements of the Council in respect of the Tramlink System in the agreed form;
“Tramlink System”	the system of light rail transit to be

	constructed and operated in certain parts of the London Boroughs of Merton, Sutton, Croydon and Bromley, as more fully described in the Specification including the Excluded Equipment and the Trams;
“Tram Service Levels”	the level (including passenger carrying capacity and journey times) pattern and frequency of service for the Tramlink System specified in Section 9 of the Operator Specification as the same may be amended from time to time in accordance with this Agreement;
“Trams”	the 24 Trams to be provided under the Construction Contract as part of the Project Works for operation on the Tramlink System or any substitutes therefore including, in the case of each of the Trams, the pantograph attached to its roof and any equipment or spare parts which are subsequently fitted to such Trams or any substitutes thereof, save for the Excluded Equipment;
“Travelcard”	shall have the meaning ascribed to it by the Off-Tram Revenue Agreement;
“Vesting Order”	the Croydon Tramlink (Transfer of Functions) Order 1996;
“Warning Notice”	a notice issued by the Expert to the Operator pursuant to Clause 16.6.3.

1.2 Interpretation

In this Agreement:-

- 1.2.1 where the context requires words importing the singular shall include the plural and vice versa;
- 1.2.2 where the context requires words importing persons shall include firms and corporations;
- 1.2.3 a reference in this Agreement to any clause, sub-clause, paragraph, schedule or appendix is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or appendix of this Agreement;
- 1.2.4 headings are for convenience of reference only;

- 1.2.5 each reference to this Agreement or to any other document, contract or agreement shall include a reference to each lawful variation of or supplement to this Agreement and of such document, contract or agreement as amended, varied or supplemented from time to time;
- 1.2.6 references to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under any such statute;
- 1.2.7 a person includes its successors and permitted assigns or transferees;
- 1.2.8 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 such thing to be done by any subcontractor, agent or employee of such Party;
- 1.2.9 the words 'include' and 'including' are to be construed without limitation;
- 1.2.10 references to any period of 14 days or less shall exclude any public holidays in England falling within any such period;
- 1.2.11 a reference in this Agreement to any document being in the agreed form is a reference to such document in the form agreed by the Concessionaire and the Operator at the date of signature and as may be subsequently amended.

1.3 Notices, Consents, Approvals, Certificates & Determinations

- 1.3.1 Wherever in this Agreement provision is made for the giving or issue of any notice, endorsement, consent, approval, certificate or determination by any person, unless otherwise specified such notice, endorsement, consent, approval, certificate or determination ("Consent") shall be in writing and the words "notify", "endorsed", "certify" or "determine" shall be construed accordingly.
- 1.3.2 Where this Agreement expressly states that any Consent is not to be unreasonably withheld or delayed it is agreed that the Consent shall be treated as being reasonably withheld or delayed where a similar consent is required to be obtained by the Concessionaire under the terms of the Concession Agreement or by the Operator under the Tram Maintenance Contract and such consent has been withheld or delayed for any reason whatsoever not connected with unreasonable behaviour on the part of the Concessionaire (including default by the Concessionaire under any of the Project Agreements) or the Operator as the case may be.
- 1.3.3 Neither Party shall be obliged to investigate as to whether the other has obtained any consents or approvals which may be required to be given by any third parties prior to such other giving any notice, endorsement, consent, approval, certification or other determination.

1.4 Change in Project Agreements

- 1.4.1.1 Where the Operator incurs costs or expenses in relation to its obligations under the Agreement which are not recoverable in full from the

Concessionaire, the Concessionaire shall take all reasonable steps in consultation with the Operator to mitigate the extent of the costs or expenses so incurred.

1.4.1.2 Subject to any express provision of this Agreement, in the event that any of the following are proposed to be amended or altered in a way which materially affects the Operator in its provision of the Services in accordance with the terms of this Agreement, the Concessionaire shall notify the Operator and, where reasonably practicable, shall consult with the Operator in respect of such amendment or alteration prior to the making thereof but in the event that such prior consultation is not reasonably practicable shall consult after the making of such amendments or alteration. The following are:-

- (a) the Specification;
- (b) the Construction Contract;
- (c) Concession Agreement (including the Performance Specification)
- (d) Railtrack Maintenance Agreement;
- (e) Off-Tram Revenue Agreement;
- (f) Tramlink General Agreement;

or any other agreement or document relating to the Tramlink System. Such consultation shall be for the purposes of assessment by the Parties of the implications and effects on the Operator of such amendment or alteration. The Operator shall provide the Concessionaire with its estimate of the costs and an assessment of the impact arising from such amendment or alteration as soon as reasonably practicable.

1.4.1.3 Where the provision of the Services by the Operator under this Agreement is affected by any amendment or alteration to any of the documents referred to in Clause 1.4.1.2(a) to (f) above then Clause 6.7 shall apply.

1.4.1.4 If the Concessionaire fails to notify the Operator of such proposed amendment or alteration in accordance with Clause 1.4.1.2, then the Operator's only remedies shall be pursuant to the provisions of Clause 1.4.1.3 and 2.5.2.1.

1.4.2 Where under this Agreement the Parties are required to assess, consider, discuss, reimburse, claim for or mitigate the costs or expenses or profit of the Operator then the fees of any sub-contractors of the Operator including the Tram Maintenance Contractor shall also be taken into account.

1.5 Limitation

No claim may be made under this Agreement unless proceedings are commenced within six years of the date of the breach or other cause of action first arising unless the claiming Party did not know and could not reasonably have known of such breach or other cause of action within six years of the date of the breach or other cause of action. For the purpose of this Clause 1.5 "commence proceedings" means the first notice to be served by the claiming Party giving notice of a Dispute in relation to the breach of the Agreement in accordance with Clause 38 and Schedule 9.

1.6 Other Agreements between the Parties

Following the execution of the original Operating Agreement, the parties entered into a Supplemental Operating Agreement, dated 20 April 2000, and a Phase Opening Agreement, dated 10 May 2000. On the basis that the definition of Actual Opening Date within this Agreement is now recorded as being 10 May 2000, the parties agree that neither the Supplemental Opening Agreement nor the Phase Opening Agreement is now required, both Agreements cease to have any effect and are therefore hereby terminated. Each party acknowledges that it has and shall have no claim against the other arising from either the Supplemental Operating Agreement, or the Phase Opening Agreement.

2. APPOINTMENT

2.1 Appointment of Operator

The Concessionaire hereby appoints the Operator to provide to the Concessionaire on an exclusive basis the Services (save in respect of Additional Services which shall be treated in accordance with Clause 6.7) in accordance with and subject to the terms and conditions of this Agreement and the Operator hereby accepts such exclusive appointment in accordance with and subject to such terms and conditions.

2.2 Operator's general obligations

2.2.1 In performing the Services the Operator shall, at all times observe and comply with the following, in the order of priority listed:-

- (a) all Applicable Requirements;
- (b) the Operator's Safety Management System and the Concessionaire's Safety Management System;
- (c) the relevant parts of the Operator Specification where obligations are imposed therein on the Operator;
- (d) terms and conditions of this Agreement;
- (e) Good Industry Practice.

If at any time either Party becomes aware of any conflict between any of the above or any divergence between any of the above and the activities of the Operator, it shall within two Business Days of becoming aware of such divergence give notice to the other Party specifying the conflict or divergence. Without prejudice to the obligations of the Operator under this Agreement the Parties shall discuss with the aim of agreeing how to provide for such divergence or conflict.

2.2.2 Where the standards imposed by Good Industry Practice at any time change, the Operator shall not be entitled to any additional payment in

respect thereof unless expressly entitled under this Agreement save that it shall be entitled to recover amounts where relevant pursuant to the rebasing effected in accordance with Clause 21.2.2.

2.3 Information provided by the Corporation

2.3.1 The Operator shall not be relieved in any way from any obligation under this Agreement should any information produced by the Corporation whether obtained from the Concessionaire or otherwise in respect of the Tramlink System and the Operator's obligations under this Agreement be incorrect and/or insufficient (whether or not contained in the Performance Specification) and shall make its own enquiries as to the accuracy and adequacy of such information.

2.3.2 The Operator acknowledges and confirms that prior to the date of this Agreement it has reviewed the Performance Specification, the Specification and the Operator Specification and on successful completion of the Construction Contract (including the successful completion of SAT 2 and the issuing of the Taking-Over Certificate), the Operator, subject to Clause 6.2.4, will operate the Tramlink System in accordance with this Agreement and accordingly the Operator shall, without prejudice to any express rights in this Agreement, have no right to any increase in the fees payable in respect thereof.

2.4 Concessionaire's general obligations

2.4.1 The Concessionaire shall in performing its obligations under this Agreement, at all times observe and comply with the following in order of priority listed:-

- (a) all Laws or any lawful requirement or demand of any relevant authority who has jurisdiction with regard to the Tramlink System;
- (b) the Safety Management System;
- (c) Concessionaire's Parliamentary Undertakings;
- (d) the Performance Specification and the Specification;
- (e) terms and conditions of this Agreement;
- (f) Concessionaire Good Industry Practice;

save that it shall be under no such obligation where it is prevented from so observing and complying as a result of any breach or any act or omission by the Operator of any term or condition of this Agreement or as a result of a breach by the Corporation of any term or condition of the Concession Agreement or breach by the Council of any term or condition of the Tramlink General Agreement. If at any time either Party becomes aware of any conflict between any of the above or any divergence between any of the above and the activities of the Concessionaire, it shall within two Business Days of becoming aware

of such divergence give notice to the other Party specifying the conflict or divergence. Without prejudice to the obligations of the Concessionaire under this Agreement, the Parties shall discuss with the aim of agreeing how to provide for such divergence or conflict.

2.5 Other Project Agreements

2.5.1 The Operator shall carry out its obligations under this Agreement and perform the Services so as not to put the Concessionaire in breach of obligations of the Concessionaire in other of the Project Agreements, such obligations specified at Schedule 7.

2.5.2.1 The Operator shall not be in breach of the terms and conditions of this Agreement or have failed to perform its obligations hereunder for so long and/or to the extent that such breach or failure has been caused as a result of any act or omission by the Concessionaire or the Concessionaire or any other party breaching any of the terms and conditions of this Agreement or any of the Project Agreements or failing to perform its obligations thereunder or enforce any right thereunder save to the extent that such breach is caused by the Operator breaching any of the terms and conditions of this Agreement. The Operator shall notify the Concessionaire forthwith upon becoming aware that the Operator is in breach of any of the terms and conditions of this Agreement and shall notify details of such breach to the Concessionaire. The Operator shall use all reasonable endeavours to mitigate the effect of such breach.

2.5.2.2 If the Concessionaire instructs the Operator to perform any specific obligation pursuant to this Agreement the Operator shall notify the Concessionaire if it considers that complying with such obligation would put it in breach of other provisions of this Agreement. If the Concessionaire thereafter confirms such instruction then the Operator shall not be liable to the Concessionaire to the extent that complying with such instruction puts it in breach of this Agreement save always that relief from such liability shall be in respect only of those obligations of the Operator under this Agreement identified to the Concessionaire and the Operator shall use reasonable endeavours to mitigate the effect of such breach.

2.5.2.3 The Operator shall be entitled to a reimbursement of all additional costs and expenses in accordance with Clause 6.7 suffered by it as a result of a failure on the part of the Concessionaire to comply with its obligations to enforce its rights under any Project Agreement or in Law. The Operator shall mitigate such costs and expenses.

2.5.3 The Concessionaire may determine in its absolute discretion whether to enforce its rights under any of the Project Agreements or in Law save always that in the event that it does not so enforce then to the extent that the Operator is as a result unable to perform any of its obligations hereunder then the Concessionaire:-

- (a) shall continue to pay the relevant amounts due to the Operator pursuant to this Agreement as if the Operator had been able to perform its obligations hereunder; and
- (b) shall not be entitled to make any deduction from amounts due and payable to the Operator pursuant to this Agreement as it would otherwise have been entitled under Clause 21.2.1.2 and Schedule 4.

2.6 Notification

The Concessionaire shall, as soon as reasonably practicable after becoming aware, notify and inform the Operator of the following, save always it shall only be under an obligation to do so:-

- (a) to the extent that the Operator is reasonably likely to be affected thereby; and
 - (b) insofar as the Concessionaire is actually aware of such facts or circumstances; and
 - (c) subject to the confidentiality provisions set out in any of the Project Agreements to which the Concessionaire is a party;
- 2.6.1 any breach or alleged breach of the Concession Agreement whether by the Corporation or the Concessionaire (including any persistent minor breach) and any “Warning Notice” (for the purpose of this Clause 2.6.1 such Warning Notice being that as may be issued to the Concessionaire under the Concession Agreement) and other notice to terminate or the occurrence of a Suspension Period (for the purpose of this Clause 2.6.1 as defined in Clause 63 of the Concession Agreement);
 - 2.6.2 any Construction Change or Concessionaire Change Order and the effect and implications of the same;
 - 2.6.3 any delays to the Actual Opening Date, any Delay Events and the length of any Concessionaire Delay Period;
 - 2.6.4 the results of any audit or inspection of the Tramlink System carried out by the Corporation and any remedial work or change in operating procedures or management of safety critical aspects of operations required by the Corporation to be carried out to the Tramlink System;
 - 2.6.5 the level and structure of fares to apply to the Tramlink System;
 - 2.6.6 arrangements to introduce the Concessionaire’s own tickets or passes;
 - 2.6.7 any assignment of the Concession Agreement;
 - 2.6.8 any Compensation Amounts and Financial Impact Sums and other relevant information in relation thereto provided by the Corporation;

2.6.9 any Compensation Event and any allegation of Discriminatory Legislation by the Concessionaire;

2.6.10 any breach of, notice served pursuant to or any other matter arising from the Tramlink General Agreement, the Off-Tram Revenue Agreement or the Financing Agreements;

and in each case shall consult with the Operator in respect thereof.

2.7 The Concessionaire shall notify the Operator as soon as practicable in respect of any matter arising from the Tramlink General Agreement to the extent that such matter affects the obligations of the Operator hereunder and shall consult with the Operator in respect thereof.

2.8 If either Party becomes aware that the other Party is in breach of any of the terms and conditions of this Agreement it shall as soon as practicable notify the other Party of such breach.

3. COMMENCEMENT OF AGREEMENT

3.1 Conditions precedent

The rights and obligations of the Parties under this Agreement shall be conditional upon, and accordingly shall have no force or effect until the satisfaction of all conditions precedent to the Concession Agreement being, for the avoidance of doubt, where such conditions precedent are satisfied by confirmations, only when such confirmations are given in accordance with the Concession Agreement in good faith or the Operator has agreed that the same may be amended or waived where such conditions precedent relate to the rights and obligations of the Operator under this Agreement or to the Tramlink System, save in respect of the rights and obligations of the Parties under this Agreement which relate to the Preliminary Services which shall have immediate effect.

4. TERM OF AGREEMENT

4.1 The Term

Subject to Clause 4.2 this Agreement shall commence on the date hereof and shall terminate on the thirtieth anniversary of the Actual Opening Date unless this Agreement shall have been terminated earlier in accordance with the provisions of this Agreement.

4.2 Extension of the Term

4.2.1 No later than 2 years prior to the thirtieth anniversary of the Actual Opening Date the Parties shall make arrangements to meet and consider the terms (if any) upon which the Operator is willing to be engaged as operator of the Tramlink System after the thirtieth anniversary of the Actual Opening Date and the terms (if any) upon which the Concessionaire is willing to engage the Operator as operator of the Tramlink System after such date.

4.2.2 The Parties shall use all reasonable endeavours to meet to discuss such terms no later than two years prior to the thirtieth anniversary of the Actual Opening Date to ascertain whether there is a prospect of extending the term of this Agreement on its expiry.

5. REPRESENTATIVES

5.1 Concessionaire's Representative

The Concessionaire shall notify the Operator of the identity of the Concessionaire's Representative who is to act as the representative of the Concessionaire under and pursuant to this Agreement. The Concessionaire's Representative may by notice to the Operator appoint a temporary alternate in the event of his absence from the office for any reason. The Concessionaire may from time to time replace the Concessionaire's Representative and shall forthwith notify the Operator of the identity of any replacement Concessionaire's Representative.

5.2 Operator's Representative

The Operator shall notify the Concessionaire of the identity of the Operator's Representative who is to act as the representative of the Operator under and pursuant to this Agreement. The Operator's Representative may by notice to the Concessionaire appoint a temporary alternate in the event of his absence from the office for any reason.

5.3 Replacement of the Operator's Representatives

The Operator may from time to time replace the Operator's Representative provided that the Operator shall only replace such person with a person who shall have been previously approved in writing by the Concessionaire (such approval not to be unreasonably withheld or delayed).

5.4 Authority

The Concessionaire's Representative and the Operator's Representative shall have full authority to act on behalf of his principal for all purposes in connection with this Agreement and (unless otherwise agreed) may represent the principal (accompanied by such other personnel as may be necessary) at any meeting in relation to the Services.

6. SERVICES

6.1 Preliminary Services

The Operator shall from the date of this Agreement until the commencement of the Mobilisation Period carry out the services set out in Part 1 of Schedule 1 and all other services which are necessarily ancillary to or are necessarily implied as part of those services.

6.2 Mobilisation Services

6.2.1.1 The Operator shall during the Mobilisation Period carry out all such preparation as may be necessary to enable it to provide the Services it is required to provide for the Actual Operating Date including the services set out in Part 2 of Schedule 1, and all other services which are necessarily ancillary to or are necessarily implied as part of those services.

- 6.2.1.2 The Concessionaire shall procure that the Operator is appointed as contractor to the Contractor for the purpose of providing drivers and operational staff required for commissioning and testing.
- 6.2.2 Where there is a delay to the programmed Actual Opening Date specified in the Construction Contract and providing the appropriate periods of notice required by Clause 7.1 of the Actual Opening Date have been given, then to the extent that such delay has been caused by the Operator in acting as Operator under this Agreement, but for the avoidance of doubt not in respect of any obligation in respect of Trams up to SAT 2, the Operator shall pay to the Concessionaire an amount equivalent to any loss suffered or incurred by the Concessionaire as a result of such delay which amount shall be determined by the Expert provided that in no event shall the liability of the Operator under this Clause exceed £1.25 million. The Concessionaire shall substantiate and mitigate its losses save that such obligation shall not require the Concessionaire to suffer any adverse financial or other effect as a result of taking steps to so mitigate.
- 6.2.3 Where the Mobilisation Period continues for longer than 19 months then to the extent that such continuation has not been caused by the Operator in acting as Operator under this Agreement the Concessionaire shall pay to the Operator all costs or expenses incurred by the Operator as a result of such continuation in accordance with Part 7 of Schedule 2. The Operator shall co-operate with all reasonable requests of the Concessionaire to mitigate such costs and expenses and where such continuation is as a result of Force Majeure then Clause 23.7.1 shall apply in respect of such mitigation and costs in accordance with Clause 23.7.2 shall be paid.
- 6.2.4 If the Tramlink System is opened for the carrying of fare paying passengers after the SAT 2 have been commenced but before the Taking-Over Certificate is issued under the Construction Contract, the Operating Period shall commence on the date that the Tramlink System is so opened and the Operator shall operate the Tramlink System in accordance with the terms of this Agreement. If such early opening, the non completion of any part of the Tramlink System or the failure of the Tramlink System to have achieved taking-over so that the Taking-Over Certificate is not issued and SAT 2 not completed has an impact on the cost to the Operator of operating the Tramlink System then such early opening, non completion or failure shall be treated as a change to the Tramlink System for the purposes of Clause 6.7.
- 6.2.5 The Concessionaire shall provide the Operator with all information it has which is necessary for the Operator to assess the effect of such early opening, non-completion, failure or change and shall procure that the Operator is permitted to attend, through the Concessionaire, in the procedures for issuing the Taking-Over Certificate, SAT 2 and Final Acceptance Tests.

- 6.2.6.1 The Concessionaire shall ensure that the Operator receives copies of all notices issued to it pursuant to the Construction Contract relating to the issue of the Taking Over Certificate including the Certificate itself and copies of any reasons for not issuing such Certificate and shall keep the Operator informed of all matters (whether minor or not) in respect of which the Project Works are not completed in accordance with the Specification.
- 6.2.6.2 The Concessionaire shall fully appraise the Operator in writing in the event that Project Works do not comply in all respects with the Specification and the Performance Specification including the consequences thereof and in the event that all of the commissioning, the Final Acceptance Tests including SAT 2, have not been completed and satisfied to the level required to meet the Specification and the Performance Specification including the consequences thereof and will agree with the Operator in writing a method of dealing with such non-compliance including changes to the operating programme and operating procedures and or the Fees. In the absence of agreement the provisions of Schedule 9 shall apply.
- 6.2.6.3 The Concessionaire shall give to the Operator the information provided in accordance with Schedule 11 of the Construction Contract and shall in particular ensure that the Operator receives the monthly progress report together with all incorporated documents and the monthly notification of trial runs and performance tests and has the right granted to the Corporation and Lenders in respect of the matters referred to in paragraph 1(c) of Schedule 4 to the Construction Contract.

6.3 Achievement of Final Acceptance Tests

Where there is a delay to the date for the achievement of the Final Acceptance Tests as a result of a breach of the Operator's obligations under this Agreement, then without prejudice to the rights of the Concessionaire under Clauses 16 and 24 the Operator shall pay to the Concessionaire an amount of £1,340 for each day that the Final Acceptance Tests remain unpassed after the date such tests would otherwise have been passed save for such breach but only to the extent that the delay is caused by the Operator and to the extent that all or any part of the payment contingent upon completion of milestone SB12 in Schedule 1 of the Concession Agreement is not received under the Concession Agreement on the basis that such amounts is:-

- 6.3.1 a genuine pre-estimate of all or part of the loss suffered by the Concessionaire based upon interest or other amounts payable to the Contractor under the Construction Contract for failure to make such payment; and
- 6.3.2 the only amounts payable by the Operator for delay in achieving the Final Acceptance Tests due to a breach of the Operator's obligations under this Agreement.

6.4 Operating Services

6.4.1 The Operator shall during the Operating Period operate the Tramlink System and perform all operational obligations of the Concessionaire under the Concession Agreement as specified in the relevant parts of the Operator Specification where obligations are imposed therein on the Operator including the services set out in Part 3 of Schedule 1 but subject to the limitations and assumptions set out therein, and all other services which are necessarily ancillary to or are necessarily implied as part of those services and shall assume the risks arising from the economic conditions prevalent in the area in which the Tramlink System is to be located as such conditions relate to such Services provided that the obligation assumed by the Operator pursuant to this Clause 6.4 shall not include the performance of or responsibility or liability for the following activities or the consequences of any of the following events save to the extent expressly set out in this Agreement and save to the extent that such liability arises from a breach of the terms and conditions of this Agreement by the Operator:-

- (a) defects in the design and construction of the Tramlink System or defects in the maintenance of the Infrastructure for which the Concessionaire is responsible;
- (b) failures of Existing Structures (as defined in the Construction Contract) on the Tramlink System;
- (c) the O&M Manuals save to the extent that such liability is caused by a breach of the Operator's obligation hereunder in contributing to or commenting on such O&M Manuals;
- (d) compliance with operating noise levels and electro-magnetic fields;
- (e) compliance with all planning requirements and other licences and consents to implement the Project Works and operate the Tramlink System;
- (f) any matter with respect to land including the right to occupy land;
- (g) insurance management;
- (h) traffic management in the London Borough of Croydon.

6.4.2 The Operator shall not be obliged to carry out its obligations under this Agreement to the extent there are not granted to it or made available to it all rights necessary to enable it to do so (including rights to access to all or any part of the Site or where the Site is subject to third party rights or obligations in favour of third parties or restrictions which affect performance of the Services) save to the extent that it is obliged to procure the granting of such rights pursuant to Clause 6.4.3. To the extent that such rights are not granted the costs and expenses of the Operator incurred as a result of the same shall be dealt with in accordance with Clause 6.7.1.

6.4.3 As between the Operator and the Concessionaire, the Concessionaire shall be responsible for obtaining all consents and licences which are necessary to enable the performance of this Agreement save for licences required by the Operator to enable it to provide Mobilisation Services up to SAT 2 and to enable it to provide the Services after SAT 2 have been passed which licences shall be obtained by the Operator. The Operator shall assist the Concessionaire in obtaining such consents and licences in accordance with Clause 12.6.

6.5 Infrastructure Maintenance Management Services

6.5.0 Responsibility for managing the maintenance of the Infrastructure is divided between the Concessionaire and the Operator in accordance with Schedule 5, Part 1. References in this sub-clause and elsewhere in the Agreement to maintenance of the Infrastructure apply to the Concessionaire in respect of those items allocated to the Concessionaire in Schedule 5, Part 1 and to the Operator in respect of those items allocated to the Operator.

6.5.1 On receipt of the first Infrastructure Maintenance Plan from the Contractor in accordance with Clause 20.1.2 the Operator and the Concessionaire shall discuss the most efficient and economical basis for carrying out the Major Maintenance of the Infrastructure.

6.5.2 The Concessionaire or the Operator (as appropriate) shall perform the Routine Maintenance Services in accordance with the terms and conditions of this Agreement and which shall be provided for in the following manner:-

- (a) the Operator and the Concessionaire shall within 12 months of the date hereof agree the Routine Maintenance Specification for the items maintained by the Operator of Tramlink System during the Operating Period in accordance with Schedule 5 and the Operator shall enter into sub-contracts for the performance of such Routine Maintenance in accordance with the procedure set out in Schedule 5;
- (b) the Concessionaire agrees to pay to the Operator in respect of such Routine Maintenance the sum due under each Routine Maintenance sub-contract when due thereunder together with an annual sum equal to the higher of [£10,000] or 4% of the aggregate of all amounts payable under such contracts (excluding any deductions or set-off) per annum. Such Routine Maintenance Fee shall be paid by equal monthly instalments during each year plus a balancing payment following the year end.

- 6.5.3 The Operator shall in any event during the Operating Period manage and monitor the performance by each of the Maintenance Contractors appointed by the Operator to carry out Routine or Major Maintenance of its obligations under the Maintenance Contracts and provide the infrastructure maintenance management services set out in Part 4 of Schedule 1 and all other services which are necessarily ancillary to or are necessarily implied as part of those Services.
- 6.5.4 Other than in respect of Routine Maintenance the Operator shall propose the identity of each Maintenance Contractor and the terms of each Maintenance Contract and the Concessionaire shall approve each such Maintenance Contractor (such approval not to be unreasonably withheld or delayed).

6.6 Tram Maintenance Services

- 6.6.1 The provisions of Part 5 of Schedule 1 shall apply.
- 6.6.2 In the event that this Agreement is terminated other than by reason of the termination of the Concession Agreement or default of the Tram Maintenance Contractor then the Concessionaire shall, in its absolute discretion, either (a) assume the rights and obligations of the Operator under the Tram Maintenance Contract pursuant to the terms of the Tram Maintenance Step-In Agreement upon assignment of the same to it by the Operator or (b) reimburse the mitigated costs and expenses of the Operator incurred as a result of it terminating the Tram Maintenance Contract.

6.7 Additional Services

This Clause 6.7 shall apply where either this Agreement specifies that the Operator is entitled to additional costs or expenses or where the Concessionaire requests the Operator from time to time to carry out services additional to those specified in this Agreement or omit services specified in this Agreement or otherwise change the Services provided that this Clause shall not apply to changes in Tram Service Levels to which Clause 16 shall apply or where this Agreement provides otherwise. Where the Concessionaire requests the Operator to so provide or omit services all such requests shall be in writing and the Operator shall comply with any such request in accordance with this Clause.

6.7.1 Upon the issue of such a request or where there is an entitlement to additional costs or expenses the Operator and the Concessionaire shall negotiate in good faith and shall use all reasonable endeavours to reach agreement on the basis and terms of provision of Additional Services within a reasonable timescale. In the event that no agreement is reached or there is an entitlement to additional costs and expenses which have been incurred the Operator shall provide free of charge a quotation based on substantiated costs required to carry out such Additional Services in an economic and efficient way together with profit (including any group management charges) not to exceed ■% as appropriate to the Additional Services required for carrying out the proposed Additional Services which shall show, as requested by the Concessionaire:-

6.7.1.1 the proposed revision to the Fees specified in Clause 21; and/or

6.7.1.2 a lump sum;

in each case with an itemised breakdown and calculation of the revised Fees or lump sum. The Operator shall provide the above with all reasonable speed and in any event not less than 18 Business Days following the date it is clear no agreement can be reached.

6.7.2 The Operator and the Concessionaire shall negotiate in good faith and shall use all reasonable endeavours to reach agreement on the basis and terms of provision of any Additional Services within a reasonable timescale. The Operator shall if so required by the Concessionaire (and at the Concessionaire's expense) at the time of negotiation for such Additional Services, obtain competitive tenders on terms and from a list of tenderers previously approved by the Concessionaire (such approval not to be unreasonably withheld) in respect thereof and shall provide the Concessionaire with copies of any bid documentation and evidence that competitive tenders have been requested.

6.7.3 The Concessionaire may either:-

6.7.3.1 accept the quotation provided by the Operator; or

6.7.3.2 require further clarification as to the proposed quotation and the Parties shall use all reasonable endeavours to reach an agreement on the appropriate revision to the Fees or lump sum for the Additional Services; or

6.7.3.3 reject the proposed quotation and notify the Operator that it does not wish the Operator to carry out the proposed Additional Services.

6.7.4 Where the Concessionaire requires the Operator to omit any part of the Services the same procedure shall be applied as set out in Clause 6.7.1, 6.7.2 and 6.7.3 (mutatis mutandis) in order to determine the resulting reduction in the Fees (including a proportionate reduction in Operator's profit).

- 6.7.5 If the Concessionaire and the Operator are unable to agree on the terms on which the Operator is prepared to provide any Additional Services, the Concessionaire shall, having complied with Clauses 6.7.2 and 6.7.8, have the right to engage such other person or persons to perform the Additional Services on such terms as the Concessionaire and such person may agree. The Concessionaire shall obtain the approval of the Operator as to the identity of any such other person and the basis upon which they may be permitted access to the Tramlink System or provide their services to the Tramlink System but such approval may only be withheld where there are reasonable grounds for believing that such person is not acceptable to the Operator for safety reasons. The Concessionaire shall reimburse to the Operator all additional costs or expenses incurred by it as a result of the appointment of such other person and such Additional Services in accordance with Clause 6.7.1.
- 6.7.6 Where Sub-Clause 6.7.3.1 applies or the Concessionaire accepts a revised quotation under Sub-Clause 6.7.3.2 the Fees shall be amended accordingly and Clause 21.10 shall apply. The Fees agreed for such Additional Services shall be re-based in accordance with Clause 21.2.2 and shall be Indexed in accordance with Clause 21.2.1.1 where appropriate save where paid as a lump sum.
- 6.7.7 Where the Additional Services require amendments to the Infrastructure Maintenance Plan, the Tram Maintenance Plan or the Operating Plan such amendments shall be made in accordance with Clause 20.6.
- 6.7.8 Where negotiating such Additional Services, the Parties shall agree in writing upon the amendments (if any) required to be made to this Agreement and any other related agreement or arrangement to reflect such Additional Services. In the absence of any written agreement no such amendment shall be made pursuant to this Clause 6.7.8.
- 6.7.9 Where the procedures in this Clause 6.7 cannot be followed completely because costs have already been incurred then such costs shall be reimbursed in accordance with the principles set out in Clause 6.7.1.

7. ACTUAL OPENING DATE

7.1 Notice of Actual Opening Date

The Concessionaire shall give the Operator no less than 6 weeks notice of the programmed Actual Opening Date and no less than 10 weeks notice in the event that the programmed Actual Opening Date is to be advanced.

7.2 Extent of available access to the Site

During the period between the Handover Date (as defined in the Concession Agreement) and the commencement of the Licence Period the Concessionaire shall make available to the Operator (and/or its contractors any sub-contractors of any tier and its and/or their work persons, servants and agents) the relevant part or parts of the Site to which the Operator requires access (subject to clause 7.3 below) provided that:-

7.2.1 the Operator shall consult with the Concessionaire regarding the relevant part or parts of the Site to which the Operator requires access prior to notifying the Contractor in accordance with clause 7.2.2 below and the Operator shall take due account of any comments the Concessionaire may have; and

7.2.2 the Operator shall then notify the Contractor that it (and/or its contractors any sub-contractors of any tier and its/or their work persons, servants and agents) wish(es) to access the relevant part or parts of the Site on a date which is not less than seven days hence and the Concessionaire shall procure that the Contractor shall give consent to such access.

7.3 Compliance with Construction Site Regulations Prior to the Mobilisation Period

Prior to the commencement of the Mobilisation Period the Operator shall procure that any of its personnel (or those of its contractors or sub-contractors of any tier or its (or their) work persons, servants and agents) present on the Tramlink System comply with any regulations and instructions made or given by the Contractor pursuant to the Construction Contract for the safe and efficient construction and Commissioning of the Tramlink System and in addition the Operator shall procure that any such personnel work persons servants and agents shall comply with the conditions set out in Part 2 of Schedule 16.

8. MOBILISATION

8.1 Mobilisation Period

The Mobilisation Period shall commence on the date specified in the Construction Programme. The Concessionaire shall notify the Operator as soon as the Concessionaire becomes aware of any circumstances which, in the reasonable opinion of the Concessionaire may require the Mobilisation Period to commence on a date which is different from that set out in the Construction Programme. In any event it shall give the Operator no less than 6 weeks notice of the date on which the Mobilisation Period shall commence.

8.2 Operating and Maintenance Procedures

- 8.2.1 The Concessionaire shall in accordance with the Construction Programme provide to the Operator the O&M Manuals and the maintenance plan prepared by the Contractor pursuant to the Construction Contract. The Operator shall within eight weeks of receiving such O&M Manuals provide to the Concessionaire its written comments on the same having reviewed such in accordance with Good Industry Practice. The Operator and the Concessionaire shall consult with each other and agree, acting reasonably, any amendments which they require the Contractor to make to the O&M Manuals and which the Concessionaire is entitled to require under the terms of the Construction Contract.
- 8.2.2 Within 12 weeks of receipt of the finally approved O&M Manuals, the Operator shall prepare and submit to the Concessionaire draft O&M Procedures setting out details of the procedures which are necessary for the operation and maintenance of the Tramlink System in accordance with this Agreement. The Concessionaire shall be entitled to require the Operator to make such amendments to the draft as the Concessionaire may reasonably require in order that they shall comply with Clause 8.2.3 and the Operator shall issue the O&M Procedures as so amended.
- 8.2.3 The O&M Procedures shall be drawn up so as to:-
- (a) comply with the Safety Management System;
 - (b) provide the Services in accordance with this Agreement; and
 - (c) be compatible with the O&M Manuals, the Maintenance Plan and the Operator Specification.
- 8.2.4 Following the adoption of the O&M Procedures pursuant to Clause 8.2.2 the Concessionaire shall be entitled to require the Operator to make such reasonable amendments, modifications or supplements to the O&M Procedures, either generally or in any specific instance, as are required in order that the O&M Procedures shall comply with Clause 8.2.3. The Concessionaire shall consult with the Operator before making any such requirement.
- 8.2.5 Following the adoption of the O&M Procedures pursuant to Clause 8.2.2 the Operator shall also be entitled to make reasonable amendments, modifications or supplements to the O&M Procedures provided that the Operator requests the prior consent of the Concessionaire to such amendments, modifications or supplements and the Concessionaire is reasonably satisfied that such amendments will not prevent the O&M Procedures from complying with Clause 8.2.3. The Concessionaire's consent to any amendment, modifications or supplements proposed by the Operator shall not be unreasonably withheld or delayed.

- 8.2.6 The Operator shall, where required by the Concessionaire, prepare a report setting out the cost implications of any changes made pursuant to Clause 8.2.4 and 8.2.5. Any changes made pursuant to Clause 8.2.4 and 8.2.5 shall be treated as Additional Services unless such changes are required because of a failure by the Operator to comply with this Agreement.
- 8.2.7 If the Concessionaire introduces different Infrastructure or Trams to the Tramlink System after the Actual Opening Date which requires the introduction of new O&M Manuals and which thereby affects the existing and current O&M Procedures as drawn up or the manner in which the Operator performs its Services under this Agreement then Clause 6.7 shall apply. Where the effect of the introduction of new O&M Manuals reduces the costs or expenses of the Operator in performing its obligations under this Agreement then such reduction to be determined in accordance with Clause 6.7 shall be deducted from the Operating Fee.

8.3 Licence to use the Site

- 8.3.1 Subject to the Operator complying with its obligations in Part 2 of Schedule 16 the Operator shall have the right to use the Site (excluding the Depot) during the Licence Period for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement.
- 8.3.2 The licence to use the Site (excluding the Depot) contained in Clause 8.3.1 is granted subject to the provisions of the Act which the Operator hereby covenants to comply with insofar as it relates to the provision of the Services under this Agreement and are not required to be complied with by the Concessionaire by virtue of the other provisions of this Agreement.
- 8.3.3 The Concessionaire and the Operator agree that
- (a) the right to use granted pursuant to Clause 8.3.1 shall determine on termination of the Concession (as defined in the Concession Agreement) in accordance with Part 11 of the Concession Agreement;
 - (b) the Operator's right to use the Site (excluding the Depot) will be as licensee only and nothing shall confer on the Operator any greater interest than that of licensee and in particular the licence granted by Clause 8.3.1 shall not create any relationship of landlord and tenant;
 - (c) the benefit of the licence granted by Clause 8.3.1 is personal to the Operator, its contractors, any sub-contractors of any tier and its and/or their work persons, servants and agents and is not assignable and the rights given in Clause 8.3.1 may only be exercised by the Operator, its contractors and sub-contractors of any tier and its and/or their work persons servants and agents.

8.3.4 Notwithstanding the other terms of this Clause 8.3 (and Part 2 of Schedule 16) it is agreed that, prior to the Actual Opening Date, all costs and expenses incurred in maintaining and running the Site (excluding the Depot) including rates, police and vandalism and cleaning shall be the responsibility of the Concessionaire. Thereafter such cost and expenses shall remain the responsibility of the Concessionaire save and to the extent only that any of the same shall become the responsibility of the Operator by virtue of the other terms of this Agreement.

8.4 Occupation of the Depot

8.4.1 Subject to the Operator complying with its obligations in Part 2 of Schedule 16 the Operator shall have the right during the Licence Period to enter on to remain on and occupy those parts of the Depot over which the Concessionaire has been granted a licence by the Corporation in accordance with Schedule 3 to the Concession Agreement for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement.

8.4.2 The licence to occupy the Depot contained in Clause 8.4.1 is granted subject to the provisions of the following which the Operator hereby covenants to comply with:-

- (a) the Sub-Lease as if the same had been granted (so far as its provisions are applicable to a licence);
- (b) the Act insofar as it relates to the provision of the Services and is not required to be complied with by the Concessionaire by virtue of the other provisions of this Agreement;
- (c) Clauses 6(4) and 7(7) of the Agreement between London Regional Transport and the London Borough of Sutton dated 1st March 1993 (compliance with which shall be treated as part of Routine Maintenance Services).

8.4.3 The Concessionaire and the Operator agree that:-

- (a) the right to occupy granted pursuant to Clause 8.4.1 shall determine on termination of the Concession in accordance with Part 11 of the Concession Agreement;
- (b) the Operator's occupation of the Depot will be as licensee only and nothing pending the grant of the Sub-Lease, shall confer on the Operator any greater interest than that of licensee and in particular the licence granted by Clause 8.4.1 shall not create any relationship of landlord and tenant;

- (c) the benefit of the licence granted by Clause 8.4.1 is personal to the Operator, its contractors and sub-contractors of any tier and its and/or their work persons, servants and agents and is not assignable and the rights given in Clause 8.4.1 may only be exercised by the Operator, its contractors and sub-contractors of any tier and its and/or their work persons servants and agents.

8.4.4 The Concessionaire agrees and undertakes with the Operator during the Licence Period, without prejudice to the other terms of this Clause 8.4 to perform the covenants in the Sub-Lease as if the Sub-Lease had already been granted.

8.4.5 Notwithstanding the other terms of this Clause 8.4 (and Part 2 of Schedule 16) it is agreed that, during the Licence Period, all costs and expenses incurred in maintaining and running the Depot including rates, police and vandalism and cleaning shall be the responsibility of the Concessionaire save that with effect from the Actual Opening Date:-

- (a) the Operator will be responsible for the service charges in respect of the following services:-

- low voltage electricity;
- gas;
- telecommunications;
- water and sewerage; and

- (b) the Operator will be responsible for:-

- cleaning of the office premises at the Depot internally and externally (including the windows thereof);
- cleaning the remainder of the Depot (including the service roads and car park);
- de-icing and snow clearance at the Depot

8.5 Sub-Lease grant

8.5.1 The Concessionaire shall within 10 working days of the plans for the Land Lease having been approved or determined in accordance with paragraphs 7.1 – 7.4 of Part 1 of Schedule 3 to the Concession Agreement, submit to the Operator for approval proposed demise plans for the Sub-Lease. Such plans shall be appropriate for the Sub-Lease and shall be either in the same form as the relevant plans approved or determined as aforesaid or otherwise consistent in all respects with such plans.

8.5.2 The Operator's approval of such plans shall not be unreasonably withheld and if the Operator shall not have objected to them within 20 working days of receipt then such plans shall be deemed to be approved. The Concessionaire and the Operator shall each use all reasonable endeavours to agree the form of the Sub-Lease as soon as reasonably practicable following the submission of such plans by the Concessionaire pursuant to Clause 8.5.1. Any dispute between the parties as to the demise plans for the Sub-Lease or the form of the Sub-Lease shall be determined under the provisions of Schedule 9, save that for these purposes the Nominating Authority means, in respect of any dispute regarding such plans, The Royal Institution of Chartered Surveyors and, in respect of any dispute regarding the form of the Sub-Lease, The Law Society and, in respect of any dispute regarding such plans, the decision of the Expert shall be final and binding on the parties (save in the case of manifest error).

8.5.3 Within 20 working days of the later of:-

- (a) the demise plans for the Sub-Lease being approved or determined;
- (b) the form of the Sub-Lease being agreed or determined;
- (c) the Land Lease being completed in accordance with the Concession Agreement; and
- (d) the grant of a court order authorising the exclusion of the provision of sections 24-28 (inclusive) of Part II of the Landlord and Tenant Act 1954 (as amended) from the Sub-Lease.

the Concessionaire shall grant and the Operator shall accept, the Sub-Lease of the Depot or such part thereof as shall be included in the land and premises demised to the Concessionaire by the Land Lease.

8.5.4 In the event (and if applicable on each occasion) that the Concessionaire shall complete a Supplemental Lease, pursuant to paragraphs 7.7 or 7.8 of Part 1 of Schedule 3 to the Concession Agreement, of any part or parts of the Depot not included in the Sub-Lease completed pursuant to Clause 8.5.3, then the Concessionaire shall:

- (a) within 10 working days of completing each such Supplemental Lease, notify the Operator accordingly; and
- (b) within 20 working days of service of such notice pursuant to Clause 8.5.4(a), grant (and the Operator shall accept) a Supplemental Sub-Lease of the relevant part or parts of the Depot and the Operator shall contemporaneously execute and deliver to the Concessionaire a counterpart of that Supplemental Sub-Lease.

- 8.5.5 The Concessionaire confirms that it will, at the earliest practicable date, exercise its right to require the grant of a Supplemental Lease pursuant to the said paragraph 7.8 of the Concession Agreement in respect of any part or parts of the Depot not included in the Sub-Lease completed pursuant to Clause 8.5.3.
- 8.5.6 The Concessionaire shall not itself create any new rights relating to the Site and/or the Depot which would affect the grant of the Sub-Lease (or any Supplemental Sub-Lease) to the Operator or which would prejudice the licences granted pursuant to Clause 8.3.1 and Clause 8.4.1.

8.6 Title

- 8.6.1 The Concessionaire shall provide to the Operator:-
- (a) certified copies of all documents of title, conveyances, transfers and other instruments provided to it which relate to the Depot pursuant to paragraph 9.1 of Part 1 of Schedule 3 to the Concession Agreement within fifteen working days of receipt thereof; and
 - (b) certified copies of the Land Lease and any documents referred to therein not provided pursuant to Clause 8.6.1(a) within fifteen working days of the completed Land Lease being stamped in accordance with Clause 8.6.2.
- 8.6.2 The Concessionaire shall procure that the Land Lease is stamped with any applicable ad valorem stamp duty and a PD stamp as soon as reasonably practicable after being completed and in accordance with the relevant statutory requirements.
- 8.6.3 The Concessionaire shall use all reasonable endeavours to register itself at HM Land Registry with absolute leasehold title in respect of the premises demised by the Land Lease and any Supplemental Lease, granted pursuant to the Concession Agreement as soon as reasonably practicable following completion of the Land Lease or any such Supplemental Lease so as to enable the Operator to similarly register itself with absolute leasehold title in respect of the premises demised by the Sub-Lease and any Supplemental Sub-Lease.
- 8.6.4 The Concessionaire agrees at the Operator's cost to use all reasonable endeavours to provide such assistance as the Operator may reasonably require to deal with any requisitions it may receive from HM Land Registry in respect of its application to register the Sub-Lease and any Supplemental Sub-Lease at HM Land Registry including (without limitation) providing to the Operator, on completion of the Sub-Lease and any Supplemental Sub-Lease, certified copies of all consents required from any chargee or chargees to such completion.

- 8.6.5 In so far as they may be relevant to the premises demised by the Sub-Lease and any Supplemental Sub-Lease the Concessionaire shall place its land certificate(s) or cause its charge certificate(s) to be placed on deposit at HM Land Registry as soon as reasonably practicable after completion of the registration of the Land Lease and any Supplemental Lease granted pursuant to the Concession Agreement, to meet the Operator's applications for registration of the Sub-Lease and any Supplemental Sub-Lease and shall on each occasion notify the Operator of the allocated deposit number.
- 8.6.6 The Operator shall not incur any liability hereunder to the extent that it is unable properly to carry out the Services and its other obligations hereunder due to:-
- (a) a failure on the part of the Concessionaire to make the Site (or any part thereof) available to the Operator at the times referred to in Clause 7.2 or at any time or times during the Licence Period; or
 - (b) the Site being subject to rights and/or obligations in favour of third parties or restrictions whether contained or referred to in the Land Lease or otherwise; or
 - (c) the Site or any part thereof not having the benefit of the rights necessary to provide the Services and/or to comply with such other obligations or any of them.

9. AVAILABILITY OF TRAMLINK SYSTEM

9.1 Concessionaire's obligation to make available

- 9.1.1 The Concessionaire shall ensure that at Actual Opening Date the Infrastructure and the Trams shall comply with the Specification and Performance Specification, and meet all Tramlink Applicable Requirements and the Safety Case provided that the Parties acknowledge that the issuing of the Taking-Over Certificate shall be conclusive thereto.
- 9.1.2 The Concessionaire shall ensure that throughout the Term the Infrastructure is made available to the Operator to a standard which allows the Operator to operate the Tramlink System to the Operator Specification.
- 9.1.3 The Concessionaire shall ensure that throughout the Term the Infrastructure meets all Tramlink Applicable Requirements and the Concessionaire's Safety Management System.
- 9.1.4 With effect from the Actual Opening Date, the Concessionaire shall, in accordance with the terms of this Agreement, subject to the requirements of the Tramlink General Agreement and Possessions, make the Tramlink System available to the Operator for the provision of all the Services other than the Preliminary and Mobilisation Services.

9.1.5 The Operator shall supply the equipment it requires to perform its obligations under this Agreement as specified in Schedule 14. The Operator shall use all equipment supplied by the Concessionaire in accordance with Good Industry Practice.

9.2 Possessions

The Operator shall make the Infrastructure available for such periods during non-operational or operational hours for Possessions:-

- (a) in the event that the Concessionaire is required to give Possessions pursuant to its obligations under any Project Agreement;
- (b) otherwise as may be reasonably required by prior written notice from the Concessionaire; or
- (c) as may be required for the purpose of Infrastructure Maintenance.

The Concessionaire shall, in determining when Possessions are to take place pursuant to Clause 9.2(c), whenever possible schedule such for periods during which the Tramlink System is non-operational taking into account noise, nuisance and other relevant matters. Without prejudice to Clause 9.2(a), (b) or (c), the Parties shall agree the basis for Possessions.

9.3 Replacement Bus Service

9.3.1 Where any part or parts of the Infrastructure is required to be made available for scheduled Possessions, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate a replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage and operate such service and the Concessionaire shall bear the costs of the same.

9.3.2 If as a result of an unplanned event affecting the Tramlink System not caused as a result of a breach by the Operator of its obligations hereunder, a replacement bus service is required to be operated, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate such replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage and operate such service and the Concessionaire shall bear the costs of the same.

- 9.3.3 If as a result of an unplanned event affecting the Tramlink System caused as a result of a breach by the Operator of its obligations hereunder, a replacement bus service is required to be operated, then the Concessionaire shall, in its absolute discretion, decide whether it requires the Operator to operate such replacement bus service. If the Concessionaire decides that the Operator shall be required to operate such replacement bus service then the Operator shall organise, manage, operate such service and bear the costs of the same.
- 9.3.4 Where, as a result of a default by the Tram Maintenance Contractor under the Tram Maintenance Contract, the Concessionaire decides that a replacement bus service is required to be operated by the Operator then the Operator shall organise, manage and operate such service and bear the costs of the same. Where the Operator's costs in operating such replacement bus service are less than the amounts it recovers from the Tram Maintenance Contractor by reason of such default pursuant to Clause 22.2.2 of and Schedule 4 to the Tram Maintenance Contract then the Operator shall pay such excess amount to the Concessionaire. Where the Operator's costs in so operating are more than the amounts it recovers from the Tram Maintenance Contractor as aforesaid then the Concessionaire shall re-imburse the Operator such shortfall amount save always that such costs shall not include any element of profit. Sums payable to the Operator under this Clause 9.3.4 shall be determined on the same basis as is set out in Clause 6.7.
- 9.3.5 All replacement bus services shall be sufficient to meet actual demand and shall be provided in accordance with Good Industry Practice.

9.4 Co-operation of the Concessionaire's Contractors

The Concessionaire shall use reasonable efforts to procure that the Contractor and the Concessionaire's Maintenance Contractors co-operate with the Operator as the Operator may reasonably require in order to facilitate the performance by the Operator of the Services.

9.5 Extensions to the Tramlink System

For the avoidance of doubt, nothing in this Agreement shall prevent the Concessionaire from constructing or procuring the construction of extensions to the Tramlink System and the Operator shall, subject to agreement with the Concessionaire as to the basis and terms of any Additional Services, cooperate with regard to the planning, implementation and operation of any extensions.

9.6 Increased cost of maintaining Trams

If the Operator incurs additional costs in providing Tram Maintenance Services as a result of the Concessionaire failing to meet its obligation under Clause 9.1 other than due to a default by the Operator hereunder then the Operator shall, for the purposes of determining the amount of such additional costs and expenses which shall be reimbursed in accordance with Clause 6.7, produce a report demonstrating that the cost of providing Tram Maintenance Services has increased as a result of such failure by the Concessionaire. The Operator shall take all reasonable measures to mitigate the effect of this Clause 9.6.

10. BREAKDOWNS/EMERGENCIES

10.1 Operator's obligation to perform

The Operator shall subject to the requirements of the emergency services and the legal requirements of the other relevant authorities (if any) undertake all breakdown/emergency response on the Tramlink System. If the Concessionaire becomes aware of any incidents requiring breakdown/emergency response it shall notify the Operator immediately.

10.2 Breakdown/Emergency Response

Breakdown/emergency response is the initial response to a failure of, damage to or other incident occurring on the Tramlink System which affects or, in the Operator's reasonable opinion, is likely to affect Tram Service Levels on the Tramlink System. Breakdown/emergency response comprises the following activities and all other activities which are necessarily ancillary to or necessarily implied as part of these activities:-

- 10.2.1 initial reporting of the occurrence of a failure, damage or other incident by the Operator, Concessionaire or Maintenance Contractor to the Control Centre unless already reported;
- 10.2.2 where necessary attendance at the site of the occurrence by the Operator's (and, if appropriate, Concessionaire's) staff to assess the cause of the problem;
- 10.2.3 determination by the Operator, in consultation with the Concessionaire if appropriate, of the appropriate course of action;
- 10.2.4 where relevant possible and safe and within the capabilities immediately available to the Operator and/or Concessionaire, rectification of the problem in situ or where not relevant possible and safe removal of the Tram to the Depot or to any other place which causes minimum disruption to the operation of Tram Service Levels on the Tramlink System;

- 10.2.5 implementation by the Operator and/or Concessionaire of measures to overcome and/or mitigate the effect to Tram Service Levels;
- 10.2.6 where relevant possible and safe and within the Operator's and/or Concessionaire's immediately available capabilities, implementation by the Operator of temporary repairs;
- 10.2.7 notification of the emergency services in the event of an accident requiring their presence;
- 10.2.8 notification of the ambulance service in the event of illness on the Tram where ambulance services are necessary;
- 10.2.9 call out of the relevant Maintenance Contractors in the event of a pantograph, track, signal, power or other fault or incident requiring their attention.

Breakdown/emergency response does not require the performance by the Operator of repairs except where these are of a minor or trivial nature or otherwise part of the Operator's obligations under this Agreement.

10.3 Notification to Concessionaire

Except where the Concessionaire has notified the Operator in accordance with Clause 10.1, the Operator shall notify the Concessionaire's Representative 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 Breakdown/Emergency Response or in accordance with any other notification procedure the Parties may otherwise agree in writing.

10.4 Concessionaire Attendance

Representatives of the Concessionaire shall be entitled to attend the site of any incident in order to consult on the appropriate measures to be taken to restore normal Tram Service Levels and to observe any actions taken by the Operator. As soon as practicable following the incident, the Operator 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.

10.5 Costs of Breakdown Emergency Response

Save to the extent that the Concessionaire is in breach of its obligations pursuant to Clauses 9.1 and 11.1 the Operator shall not be entitled to recover from the Concessionaire its additional costs and expenses incurred in complying with its obligations under this Clause 10.

10.6 Tram Maintenance Contractor Breakdown Emergency Response

The Operator shall not be in breach of Schedule 4 to the extent that such breach is caused by the Tram Maintenance Contractor having to provide assistance pursuant to Clause 10.1.1 of the Tram Maintenance Contract unless the need to provide such assistance has arisen as a result of any breach by the Operator of its obligations under this Agreement and/or by the Tram Maintenance Contractor of its obligations under the Tram Maintenance Contract.

11. REPAIR OF FAILURES AND DAMAGES AND SPARE PARTS

11.1 Concessionaire's obligation to repair

The Concessionaire shall as soon as practicable effect the repair of defects in, failures of or damage to the Infrastructure including such repairs required to be undertaken as part of the Routine Maintenance Services. The Concessionaire shall effect all such repairs at its own cost but without prejudice to its rights against the Operator hereunder. The Concessionaire shall liaise with the Operator in relation to any such repair.

11.2 Standard of repairs

All repairs to the Infrastructure shall be carried out by the Concessionaire to a standard that meets the obligations of the Concessionaire set out in Clause 9 save where, in the reasonable opinion of either Party it is uneconomic, unsafe or impractical in which event the relevant items shall be replaced or alternative arrangements shall be agreed between the Parties.

11.3 Temporary repairs

Where necessary the Concessionaire shall be entitled to carry out temporary repairs to failures or damage to the Infrastructure subject, where necessary, to obtaining the prior approval of all appropriate regulatory authorities. All temporary repairs shall be fully repaired at the earliest opportunity.

12. SAFETY REGULATORY AND ENVIRONMENTAL

12.1 Safety Management

12.1.1 The Concessionaire shall be responsible for all matters relating to safety on the Tramlink System save that the Operator shall be responsible for all safety matters related to the performance of the Services.

- 12.1.2 The Concessionaire shall be responsible for interpreting all Applicable Requirements relating to the safety of the Tramlink System. In performing its obligations under this Agreement, the Operator shall comply with the Concessionaire's interpretation of the Applicable Requirements relating to safety save always that to the extent that the Operator incurs additional costs or expenses in performing such obligations as a result of the Concessionaire modifying or amending its interpretation of the Applicable Requirements from the interpretation originally given to the Operator, then the Operator shall be entitled to recover such additional costs or expenses from the Concessionaire in accordance with Clause 6.7.1.
- 12.1.3 The Concessionaire shall have the right to require the Operator to suspend the operation of the Tramlink System. In such circumstances the normal fees payable to the Operator shall be paid together with any additional costs and expenses incurred by the Operator in accordance with Clause 6.7.1 save to the extent such suspension is justified by a breach by the Operator hereunder, in which event no profit element shall be paid in respect of such fees and a replacement bus service may be provided at the discretion of the Concessionaire in accordance with Clause 9.3.3.
- 12.1.4 The Concessionaire is responsible for the scope of its own undertaking, both as Concessionaire and in respect of the Concessionaire's responsibilities for maintaining the Infrastructure items for which it has that responsibility. The Concessionaire will liaise with HMRI in respect of its responsibilities.
- 12.1.5 The Operator is responsible for the scope of its undertaking in providing the Services. The Operator will liaise with HMRI in respect of its responsibilities.
- 12.1.6 The Concessionaire shall be the responsible authority for the purposes of the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996.
- 12.1.7 The Operator shall employ an appropriate system for managing safety, the management of safety matters, including the following matters to the extent that they fall within the scope of the Operator's undertaking:-
- 12.1.7.1 where appropriate developing and promulgating safety procedures and providing all reasonable assistance to the Concessionaire for the purposes of agreeing these with the relevant regulatory authorities;
 - 12.1.7.2 defining specific safety measures for particular activities, jobs, and sites and producing method statements on safety aspects;
 - 12.1.7.3 producing safety documentation;
 - 12.1.7.4 defining and reporting on tests and trials needed to demonstrate safety;

- 12.1.7.5 performing safety analyses and quantified risk assessments;
- 12.1.7.6 reporting on safety matters and accident statistics to the Concessionaire, the Corporation, the London Boroughs of Merton, Sutton, Croydon and Bromley, HSE, RAIB and HMRI as appropriate. The Concessionaire will ensure that any of its contractors and sub-contractors provide the Operator with the information required to enable the Operator to comply with this obligation. This obligation does not relieve any Party (or the contractor or sub-contractor of any party) of their own obligations under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 and the Railway (Accident Investigation and Reporting) Regulations 2005;
- 12.1.7.7 training the Operator's personnel and, to an appropriate level, the Concessionaire's directly employed personnel on all safety matters (except training of the Concessionaire's personnel relating to the Concessionaire's responsibility for management of infrastructure works) and ensuring relevant staff of sub-contractors of the Operator of any tier have adequate safety procedures and have received sufficient training to enable them to carry out their functions with respect to the Tramlink System safely;
- 12.1.7.8 performing safety inspections, audits and spot checks on its own and sub-contractors' personnel;
- 12.1.7.9 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 Operator's organisation and shall have sufficient authority to ensure that safety requirements are complied with by all of the Operator's and sub-contractors' personnel.

12.1.8 The Operator hereby agrees to comply with any reasonable request that the Concessionaire may make as respects any aspect of the operation which affects or is likely to affect the performance of the health and safety duties which it has as Concessionaire. Where such a requirement imposes an obligation to provide Additional Services, Clause 6.7 shall apply.

12.2 Safety Management Systems

12.2.1 Within 28 days of the execution of this revised Agreement, the Safety Management Systems for the Tramlink System shall be prepared:

- (a) by the Concessionaire in respect of requirements relating to the maintenance of those elements of the Infrastructure maintained by the Concessionaire (the "Concessionaire's Safety Management System"); and

- (b) by the Operator in respect of all other safety issues (the "Operator's Safety Management System"), including those elements of the Infrastructure maintained by the Operator,

following the guidelines for the preparation of Safety Management System to comply with the Railways and other Guided Transport Systems (Safety) Regulations 2006, Regulation 6;

- 12.2.2 The Operator's Safety Management System shall incorporate the Operator's responsibilities for operating the system and its maintenance responsibilities (set out in Schedule 5, Part I) and shall distinguish between these separate responsibilities. The Operator shall consult the Concessionaire in preparing the Operator's Safety Management System and obtain approval before finalising and issuing the Operator's Safety Management System.
- 12.2.3 The Concessionaire's Safety Management System will incorporate the Concessionaire's responsibilities as Concessionaire and its responsibilities for maintaining the Infrastructure (set out in Schedule 5, Part I) and will distinguish between these separate responsibilities. The Concessionaire shall consult the Operator in preparing those aspects of the Concessionaire's Safety Management System relating to infrastructure maintenance affecting operations and shall obtain the Operator's agreement before finalising the Concessionaire's Safety Management System.
- 12.2.4 If agreement cannot be reached between the Concessionaire and the Operator in the preparation/revision of a Safety Management System then either party may request non-binding guidance from the Concessionaire's Safety Committee. If it is not possible to obtain agreement after receiving guidance from the Concessionaire's Safety Committee then either party may refer the matter to dispute resolution in accordance with the terms of this Agreement.
- 12.2.5 The Operator shall review and revise its Safety Management System as necessary, any revisions shall be subject to the prior approval of the Concessionaire.
- 12.2.6 The Concessionaire shall review and revise the Concessionaire's Safety Management System as necessary, consulting the Operator and obtaining its agreement to any revisions in relation to Infrastructure maintenance affecting operations.
- 12.2.7 Each of the Operator and Concessionaire shall procure that its subcontractors of every tier shall comply with its own Safety Management System.

12.3 Safety Plans

- 12.3.1 The Concessionaire shall deliver the Safety Plans provided by the Maintenance Contractors responsible for the Routine Maintenance Services (Concessionaire) to the Operator within 28 days of the execution of this

revised Operating Agreement in respect of the maintenance of the Infrastructure. The Operator shall agree the Safety Plans so delivered with the Concessionaire. The Concessionaire shall have a continuing duty to maintain and deliver such Safety Plans. Safety Plans for major works are produced by the Principal Contractor under the Construction Design and Management (CDM) Regulations. Those which are likely to affect operations will be subject of pre-construction liaison between the Concessionaire (as client), the Principal Contractor and the Operator.

- 12.3.2 The Concessionaire shall deliver a Safety Plan in respect of the Trams to the Operator before the Actual Opening Date. The Operator shall agree the Safety Plan so delivered with the Concessionaire and the Operator shall, following such agreement, approve the Safety Plan.
- 12.3.3 The Operator shall deliver the Operator's Safety Plan to the Concessionaire within 28 days of the execution of this revised Operating Agreement in respect of the operation of Trams on the Tramlink System. The Concessionaire shall agree the Safety Plan so delivered with the Operator. The Operator shall have a continuing duty to maintain and deliver the Operator's Safety Plan.
- 12.3.4 All Safety Plans referred to in this sub-Clause 12.3 shall comply with all Applicable Requirements and with the other requirements of the Specification in respect thereof. The Operator and Concessionaire will consult each other in the preparation of these Safety Plans, which shall make specific references to the interfaces between the Operator and the Concessionaire.
- 12.3.5 Should the Parties be unable to reach agreement on either Safety Plan the procedure set out in Sub-clause 12.2.4 shall be followed.

12.4 Audit of safety procedures

- 12.4.1 The Operator shall allow the Concessionaire and the Corporation from time to time after the Actual Opening Date on reasonable notice (unless either the Concessionaire or the Corporation have good cause to require an immediate inspection) to enter upon, audit and inspect the Tramlink System, without disrupting the operation of the Tramlink System, to ensure the Concessionaire's and the Operator's obligations in respect of the operation and maintenance of the Tramlink System are being discharged in accordance with the safety requirements of this Agreement.
- 12.4.2 In the event that any such audit of the safety aspects of the Tramlink System or any inspection reveals:-
 - (a) any remedial work; or
 - (b) any change in operating practices, management or other safety critical aspects of operations,

necessary in either case for the safe operation of the Tramlink System, then the Concessionaire shall, after consultation with the Operator, require the Operator to carry out such remedial work, or implement the necessary change in operating practices, management, or other safety critical aspects of operations for which the Operator is responsible under this Agreement, in each case as soon as reasonably practicable having regard to the nature of the matter and the risks to safety of persons. To the extent that such a change in the Services, or how they are provided, is necessary because the Operator has breached this Agreement, or there has been a change in Good Industry Practice in relation to the safety aspects of the Services, then the cost of implementing the necessary change in the Services or how they are provided shall be borne by the Operator, otherwise, save as provided in Clause 12.4.3, such costs shall be met by the Concessionaire, save to the extent that the Operator is required to bear them under Clause 31. If the Operator disputes the results of any such safety audit in circumstances where the Operator bears the costs of implementing the necessary changes in the Service or how they are provided, the Concessionaire shall, subject to Clause 12.4.3, be entitled to require the Operator to carry out such remedial work or implement such change in operating practices, subject to the Concessionaire being obliged to reimburse the Operator for all costs and expenses incurred in connection with such work or change in operating practices in accordance with Clause 6.7.1 if the Expert subsequently determines that the results of the safety audit were incorrect, or the conclusions resulting from it were incorrect, or in excess of what was reasonably required.

12.4.3.1 where any remedial work to the Infrastructure is required by HMRI as a result of any such audit of the safety aspects of the Tramlink System and such remedial work is required as a result of a breach by the Operator of this Agreement which can only be remedied by such remedial work, then to the extent attributable to such breach the costs of implementing such remedial work shall be borne by the Operator up to a maximum amount of £200,000. In the event the costs of such remedial work exceed £200,000 then after meeting such costs up to the amount of £200,000, the Operator at its discretion may terminate this Agreement without prejudice to the Concessionaire's other accrued rights hereunder. Subject to Clause 6.6.2 each Party shall meet its own costs and expenses resulting from such termination.

12.4.3.2 If the Operator decides to terminate this Agreement in accordance with Clause 12.4.3.1, it shall give the Concessionaire written notice of its intention to terminate. Within 28 Business Days of receipt by the Concessionaire of such notice, the Concessionaire shall send a written response to the Operator either:

- (a) acknowledging the Operator's intention to terminate this Agreement; or

- (b) confirming that the Concessionaire will bear the costs of implementing such remedial work required in accordance with Clause 12.4.3.1 in excess of £200,000.
- 12.4.3.3 If the Concessionaire responds to the Operator in accordance with Clause 12.4.3.2(a) then this Agreement shall terminate after the expiry of 6 months from the date of the written response provided to the Operator pursuant to Clause 12.4.3.2(a), save always that during such six month period the Operator should not be obliged to incur additional costs in providing Services due to any failure on the part of the Concessionaire in implementing remedial work pursuant to Clause 12.4.3.1 in excess of £200,000.
- 12.4.3.4 If the Concessionaire responds to the Operator in accordance with Clause 12.4.3.2(b) then the Operator shall not be entitled to terminate this Agreement and the Parties shall continue to perform their respective obligations hereunder on the terms of the Concessionaire's confirmation given under Clause 12.4.3.2(b).
- 12.4.4 In the event that the Operator fails to perform such remedial work within the period referred to in Clause 12.4.2, having been requested to do so by the Concessionaire, the Concessionaire may after having given the Operator twenty-one (21) days' notice of its intention to do so (or forthwith if the Concessionaire believes there is a risk to the safety of any person) and without prejudice to any other right or remedy which it may have, arrange for such remedial work to be carried out and shall be entitled to recover the reasonable costs of such action from the Operator where the Operator would have been responsible therefor.
- 12.4.5 Failure by the Operator to implement a necessary change in operating practices, management or safety critical aspects of operations having been requested by the Concessionaire to do so within the period referred to in Clause 12.4.2 (which may be forthwith if the Concessionaire believes there is a risk to safety of any person) will, unless the Expert has determined that such change was not necessary, constitute a material and serious default by the Operator of this Agreement where such failure constitutes a material and serious default under the Concession Agreement, but without prejudice to the Concessionaire's other rights hereunder.
- 12.4.6 The Concessionaire shall provide to the Operator the programme of planned audits which cover the Concessionaire's responsibilities for infrastructure maintenance and will provide an amended programme if the planned programme changes. The Concessionaire shall provide to the Operator on request copies of any such audits.

12.5 Applicable Requirements

Subject to Clause 31, the Operator shall, after prior consultation with the Concessionaire, implement all alterations and changes to the Services which are required by an Applicable Requirement in force or which come into force after the date of this Agreement relating to safety.

12.6 Approvals and Certificates

12.6.1 The Concessionaire shall obtain and maintain (and, when obtained or renewed, shall supply the Operator with copies of) all approvals licences or certificates required to operate the Tramlink System save for those which the Operator is required to obtain pursuant to Clause 6.4.3.

12.6.2 Each party shall provide to the other such assistance as the other may reasonably require in order to obtain and maintain during the Term such approvals, licences and certificates. This support shall include assistance in 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.

12.7 Environmental Liabilities

12.7.1 Obligations on both Parties

12.7.1.1 Each Party shall as soon as reasonably practicable notify the other Party (and where such notification is given orally promptly confirm such notification in writing) of any written complaint made to or order or notice served on that Party by a competent authority or by a third party threatening legal proceedings related to Concessionaire's Environmental Damage or Operator's Environmental Damage.

12.7.1.2 Each Party shall take all reasonable care in carrying out any environmental investigation and take such steps as a prudent licensee or tenant of land would take to limit Concessionaire's Environmental Damage or Operator's Environmental Damage (as appropriate) or any other injury arising from such investigation, and shall reinstate any damage as is reasonable caused to the Site by such investigation once it has carried out that investigation.

12.7.1.3 Each Party shall copy to the other and notify the other in writing of the results of any tests to assess the presence and nature of any Concessionaire's Environmental Damage or Operator's Environmental Damage within 14 days of receipt of the same, and both the Concessionaire and the Operator shall maintain as confidential the results of those tests in accordance with Clause 33.

12.7.2 Concessionaire's Environmental Damage

- 12.7.2.1 In the event that the Operator is not able to provide the Services because the Concessionaire has not remedied Concessionaire's Environmental Damage and such failure to remedy has resulted in a specific health and safety or other environmental damage issue which is recognised by competent authority as requiring action the non-provision of the Services shall be treated as constituting Force Majeure and Clause 23 of the Agreement shall apply save that the indemnity in Clause 12.7.2.3 shall apply in place of the cost sharing arrangements in Clause 23.7.
- 12.7.2.2 The Concessionaire shall be responsible for and keep the Operator indemnified for and against all actions, proceedings, demands, claims, costs, actions, damages expenses, losses and liabilities (including costs reasonably and properly incurred in investigating or defending any claim, proceeding, demand or other costs or expenses properly and reasonably incurred in preventing, avoiding or mitigating loss, liability or damage) resulting from any actions, claims, proceedings or demands brought by third parties (which term shall include employees, agents and contractors of any tier and any competent authority including the Corporation, the Council and Network Rail) in respect of the Concessionaire's Environmental Damage;
- 12.7.2.3 The Concessionaire shall pay to the Operator any costs or expenses incurred by the Operator in performing the Services to the extent such costs are additional to the normal costs of performing the Services and are incurred directly as a result of the Concessionaire's Environmental Damage in accordance with Clause 6.7 save that this sub-clause 12.7.2.3 shall not apply in cases where the Concessionaire's Environmental Damage is attributable to an identified third party in which case the Operator shall be expected to pursue any remedies in law against the third party.
- 12.7.2.4 In the event that the Operator considers that Concessionaire's Environmental Damage is being caused or is reasonably foreseeable, the Operator shall notify the Concessionaire who shall carry out such tests sampling or other investigations which the Concessionaire considers necessary to enable it to determine whether Concessionaire's Environmental Damage has occurred or is reasonably foreseeable.

12.7.2.5 The Concessionaire shall ensure that at the Actual Opening Date there are no hazardous or dangerous substances or waste at, on, in, under or arising from the Site which could cause any person acting under environmental laws in force during the term of this Agreement to require the carrying out of any remedial or preventative action by the Operator in relation to the Site or any neighbouring property and indemnify the Operator from and against all operations, claims, proceedings, losses, damage, expenses, costs, demands and liabilities (including costs properly incurred in preventing, avoiding or mitigating loss) liability or damage suffered or incurred by the Operator as a result of failure on the part of the Concessionaire to ensure the compliance with this Clause 12.7.2.5.

12.7.3 Operator's Environmental Damage

12.7.3.1 The Operator shall take whatever action is required by a competent authority or as a result of agreement between the Parties to prevent, mitigate or (in the case only of premises or property damage or pollution of the environment) remedy any Operator's Environmental Damage and reinstate the Tramlink System to a standard required by Clause 9.1 to the extent that Operator's Environmental Damage has caused it to fall below that standard provided that the Concessionaire shall be notified in writing in advance (except in case of emergency in which case the Concessionaire shall be notified as soon as reasonably practicable after the action) of any action proposed under this clause and shall be entitled to require that any such action be monitored by the Concessionaire or any environmental consultant appointed by the Concessionaire (at the cost of the Operator), and where the Operator fails to take, carry out properly or complete such action within a reasonable period of time then the Concessionaire shall be entitled to take or complete such action as is reasonable and to recover from the Operator the cost (including all appropriate professional fees) properly and reasonably incurred or payable in respect of taking or completing such action.

12.7.3.2 The Operator shall be responsible for and keep the Concessionaire indemnified from and against:-

(a) all costs, actions, proceedings, demands, claims, damages, expenses, losses and liabilities (including costs reasonably and properly incurred in investigating or defending any claim, proceeding, demand or other costs or expenses properly and reasonably incurred in preventing, avoiding or mitigating loss, liability or damage (save those arising from preventing, avoiding or mitigating Operator's Environmental Damage)) resulting from any actions, claims, proceedings or demands brought by third parties (which term shall include a competent authority including the Corporation, the Council and Network Rail) in respect of the Operator's Environmental Damage.

12.7.3.3 The Concessionaire shall be entitled, at all times in case of emergency, and otherwise after notifying the Operator and subject to the Operator's safety requirements and site regulations to carry out any tests sampling or other investigations which the Concessionaire considers necessary to enable it to determine whether Operator's Environmental Damage has occurred or could be caused by the activities of the Operator and the Concessionaire may require the Operator to take any steps to rectify any condition of the Site which has either resulted in, or which it is reasonably foreseeable could result in Operator's Environmental Damage. The Concessionaire shall be notified in writing in advance of the action proposed in response to the Concessionaire's requirement under this Clause and shall be entitled to require that any such action be monitored by the Concessionaire or any environmental consultant appointed by the Concessionaire (at the cost of the Operator), and where the Operator fails to take, carry out properly or complete such action within a reasonable period of time then the Concessionaire shall be entitled to take or complete such action as is reasonable and to recover from the Operator the cost (including all appropriate professional fees) properly and reasonably incurred or payable in respect of taking or completing such action;

12.7.4 The Operator shall not deposit on the Site any controlled waste as defined in Section 75 of the Environmental Protection Act 1990 other than controlled waste which is lawfully deposited and in accordance with Good Industry Practice nor deposit on the Site any radioactive waste as defined in Section 2 of the Radioactive Substances Act or other hazardous or dangerous materials except where necessary in the course of providing the Services, and the deposit is in accordance with law and Good Industry Practice.

13. PERSONNEL

13.1 Operator's responsibility

The Operator shall ensure that its personnel and the personnel employed by the Operator's contractors and their sub-contractors of any tier are competent to perform the work assigned to them.

13.2 Qualified persons

If so requested by the Concessionaire, the Operator shall provide to the Concessionaire evidence of the assessment of competence of the personnel in Key Staff Positions, including details of previous experience and qualifications. The Concessionaire after consultation with the Operator may require the Operator to remove and replace any of such personnel at the expense of the Operator having demonstrated good cause for requiring such removal. The Operator shall replace any personnel so removed from Key Staff Positions with other competent personnel as soon as practicable.

13.3 Safety critical work

Where the Operator's personnel (including those of contractors and sub-contractors of any tier) are engaged in any form of safety critical work, the Operator shall ensure that such personnel comply with the requirements of Part 4 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006". The Operator shall provide to the Concessionaire evidence that persons have been properly assessed as competent to perform their safety critical duties whenever requested by the Concessionaire.

13.4 Key Staff Positions

The Operator shall not reduce the number of the Key Staff Positions or change the identity of the persons performing such functions without the prior written consent of the Concessionaire. The Operator shall notify and consult with the Concessionaire in advance regarding any proposed replacement. The Concessionaire's consent shall not be unreasonably withheld or delayed where the Operator is replacing such persons with competent personnel.

13.5 Concessionaire's Personnel

The Concessionaire shall ensure that its personnel and the personnel employed by the Concessionaire's contractors and their sub-contractors of any tier are 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 such personnel comply with the requirements of Part 4 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006. The Concessionaire shall provide to the Operator evidence that persons have been properly assessed as competent to perform their safety critical duties whenever requested by the Operator. The Concessionaire shall ensure that all of its employees comply with the safety plans for the Tramlink System prepared by the Operator and approved by the Concessionaire.

13.6 Removal of Personnel

The Operator shall have power to remove any individual other than the Concessionaire's Health and Safety Manager from the Site performing safety critical work if the Operator has good cause to believe such person is not competent or is not complying with the requirements of Part 4 of the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

14. POLICING, EMERGENCY EXERCISES AND ENQUIRIES

14.1 Policing the Tramlink System

From the Actual Operating Date the Operator shall make all necessary arrangements, for the policing of the public areas of the Tramlink System to meet with all Applicable Requirements. The Operator shall cooperate with the Concessionaire in relation to the planning, organisation and control of extraordinary passenger movements resulting from the holding of special events. If special events are held the arranging of additional policing and the cost of additional policing shall be an Additional Service.

14.2 Emergencies and emergency exercises

The Parties undertake to cooperate with each other 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 Tramlink System. Each Party will use reasonable endeavours to ensure that the other is party to all discussions and communications with the statutory authorities in respect of any emergency exercises.

14.3 Cooperation with special enquiries

Each Party shall to the extent reasonable cooperate with any special enquires or investigations carried out by the Concessionaire or regulatory authorities as a result of accidents, incidents or proposed changes in legislation and shall promptly provide all information, resources and facilities within its control which are reasonably required for such enquiries or investigations.

15. DETERMINATION OF FARES

The Operator shall charge fares and make available and accept tickets in accordance with the level and structure notified by the Concessionaire from time to time to the Operator after consultation with the Operator and on providing reasonable notice by the Concessionaire. The Concessionaire shall, where practicable, consult with the Operator as to the appropriate level and structure of fares. The provisions of Schedule 11 shall apply in relation to ticketing and revenue collection.

16. TRAM SERVICE LEVELS/TIMETABLE

16.1 Service Levels

- 16.1.1 The Operator shall operate the Tramlink System so as to comply with the Tram Service Levels, the Timetable and the other requirements of the Operator Specification without prejudice to the other terms and conditions of this Agreement.

16.1.2 Without prejudice to Clause 24 sums deducted from the Fees in accordance with clause 21.2.1.2 and Schedule 4 will be the Operator's only financial liability to the Concessionaire for failure to operate Scheduled Kilometrage or to operate a replacement bus service. Where and to the extent that the cause of the Operator failing to operate the Scheduled Kilometrage or operate a replacement bus service is a failure of the Tram Maintenance Contractor to comply with the Tram Maintenance Contract, the Operator's liability in respect of such failure shall be limited as stated in the Tram Maintenance Contract.

16.2 Corporation Service Changes

If the Concessionaire receives any proposals for a Corporation Service Change, or a Corporation Service Parameters Change, the Concessionaire shall provide to the Operator as soon as practicable all information obtained from the Corporation in respect thereof and shall consult with the Operator concerning such Corporation Service Change or Corporation Service Parameters Change. The Concessionaire shall if required by the Operator (and the Concessionaire is able to do so) arrange for the Operator and the Tram Maintenance Contractor to attend any meetings to discuss the same with the Corporation. The Operator shall comply with such Corporation Service Change or Corporation Service Parameters Change (and any consequential obligations to produce Timetables) within the time specified in the notice received by the Concessionaire, and provided promptly to the Operator, of the Corporation Service Change or Corporation Service Parameters Change.

16.3 Consultation

The Operator shall provide such information as the Concessionaire may reasonably require and assist the Concessionaire in preparation of representations concerning the effect of the proposed Corporation Service Change or Corporation Service Parameters Change for the purpose of the consultation process set out in Clauses 25.4 and 25.5 of the Concession Agreement. The Concessionaire shall, in preparing its representations to be made to the Corporation take into account any reasonable representations of the Operator.

16.4 Costs implications

16.4.1 The Operator shall assist the Concessionaire in negotiating with the Corporation pursuant to Clause 25 of the Concession Agreement (including any reference to any Expert pursuant thereto) to determine the cost implications of a Corporation Service Change.

- 16.4.2 Where the Corporation or the Concessionaire has issued a Service Parameter Change or the Concessionaire has issued a Service Change the Parties shall assess the financial effect of the same on the Operator of performing this Agreement (the “Change in Cost”) and in the case of a Service Parameter Change issued by the Corporation shall agree the amount of Change in Cost as shall form part of the Concessionaire’s claim under Clause 25.5 of the Concession Agreement (if any). Where the Parties cannot agree the amount of the Change in Cost to be included as part of the Concessionaire’s claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement. In the case of a reduction in cost the provisions of this Clause 16.4 shall apply mutatis mutandis.
- 16.4.3 Where in any negotiation with the Corporation as to the appropriate amount of the Change in Cost to be taken into account in determining the Concessionaire’s entitlement to compensation under Clause 25.5 of the Concession Agreement the Corporation rejects the level of the Change in Cost so proposed solely on the grounds that such costs are not properly substantiated then either:
- 16.4.3.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Change in Cost with the Corporation; or
 - 16.4.3.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.
- 16.4.4 The Operator shall be entitled to recover from the Concessionaire the Change in Cost determined in accordance with Clause 16.4.2 in respect of any Service Parameters Change requested by the Corporation or Corporation Service Change save where such Change in Cost is rejected by the Corporation in accordance with Clause 16.4.3 in which event the Operator shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 16.4.3 or determined by the Expert.
- 16.4.5 In respect of any Service Parameters Change or Service Change required by the Concessionaire the Operator shall be entitled to recover in accordance with Clause 6.7.1 any Change in Cost determined in accordance with Clause 16.4.2.

16.5 Other Tram Service Level Changes

If either the Concessionaire or the Operator proposes a change in the Tram Service Levels or the Timetable, the Concessionaire and the Operator shall negotiate on a good faith basis to reach agreement between themselves as to the basis and terms of any such change. If the Concessionaire and the Operator reach such agreement, the Concessionaire shall propose such change to the Tram Service Levels or the Timetable under Clause 25.2 of the Concession Agreement and each Party shall provide all such assistance as the other shall reasonably require in order to obtain approval of the Corporation in accordance with Clause 25.2 of the Concession Agreement. No change to the Tram Service Levels or the Timetable shall be implemented until all necessary approvals are obtained including those required under the Concession Agreement and from HMRI.

16.6 Persistent Minor Breach

- 16.6.1 Without prejudice to any other right or remedy which it may have, if the Concessionaire is in breach of any of the provisions listed in Parts 1 and 2 of Schedule 12 to the Concession Agreement and the Concessionaire has received a notice in respect of such breach under Clause 26 of the Concession Agreement and such breach has been caused by a breach by the Operator, the Concessionaire may give the Operator a written notice specifying the nature of the default and, a request that it is remedied within the period specified in the notice which period shall be reasonable in all the circumstances.
- 16.6.2 Where the Concessionaire is required to pay liquidated damages to the Corporation under Clause 26 of the Concession Agreement the Concessionaire shall to the extent the liquidated damages are attributable to a breach by the Operator notify the Operator of the amount of such liquidated damages and the Operator shall pay the same to the Concessionaire within 27 days of such notice provided that where the alleged failure has been referred to the Expert for determination the obligation to pay will be suspended pending the outcome of such determination.
- 16.6.3 If the Concessionaire gives to the Operator more than 8 notices under Clause 16.6.1, in each of two consecutive periods of 6 months during the Term, the Concessionaire may refer the list of alleged failures to comply with this Agreement to the Expert and if the Expert determines that each such notice has been properly served following breach of this Agreement by the Operator such that there has been a persistent failure by the Operator to comply with this Agreement he shall issue a Warning Notice to the Operator.

17. ADVERTISING AND OTHER REVENUE

17.1 Advertising on Trams and stations

In the event that the Concessionaire determines to undertake any advertising activities or procure such activities are undertaken on its behalf on the Trams and the stations within the Tramlink System the Operator shall co-operate with the Concessionaire's reasonable requirements in respect of the arrangement of such activities.

17.2 Concessionaire corporate image

The Concessionaire is to be referred to in all promotional literature to be published by the Operator in relation to the Tramlink System in a format to be agreed between the Parties.

18. INTELLECTUAL PROPERTY

18.1 Proprietary software

Whilst the Operator uses software (other than software which can be purchased commercially off the shelf or is provided as part of the Tramlink System and other than software provided by the Tram Maintenance Contractor in relation to Tram Maintenance Services) for the purpose of storing or utilizing records or in respect of the Services and any systems relating thereto or otherwise in accordance with its obligations under this Agreement, the Operator shall ensure, at the Concessionaire's expense, that on revocation, termination or expiry of this Agreement, subject to assumption of the burden thereof by the Concessionaire or the Corporation, the right to use such software is capable of being assigned or licensed to the Concessionaire and/or the Corporation and thereafter used by the Concessionaire and/or the Corporation. The assignment or licence shall be at fair market value, if any.

18.2 Intellectual Property Owned by the Operator

Where the Operator owns any other intellectual property rights which are necessary for the operation of the Tramlink System the Operator shall on termination or expiry of this Agreement transfer to the Concessionaire at the Concessionaire's cost an interest in such intellectual property rights sufficient to enable the Concessionaire to operate the Tramlink System at fair market value, if any, and shall grant to the Concessionaire a non-exclusive and royalty-free licence in respect of such software for such period as the Concessionaire may reasonably require.

18.3 Indemnity

18.3.1 The Operator shall hold harmless, defend and indemnify the Concessionaire from and against any and all claims, demands or proceedings brought by any person for or on account of infringement by the Concessionaire in using any intellectual property provided to the Concessionaire pursuant to this Clause 18.

18.3.2 The Concessionaire shall hold harmless, defend and indemnify the Operator from and against any and all claims, demands or proceedings brought by any person for or on account of infringement by the Operator in using any rights in intellectual property provided to the Operator as part of the Tramlink System pursuant to this Agreement.

19. QUALITY ASSURANCE

19.1 Management of Quality Assurance

19.1.1 The Operator shall procure that all aspects of the Services are the subject of appropriate quality management systems which comply with:-

19.1.1.1 the requirements of ISO 9001/2000, or an equivalent British or European quality system; and

19.1.1.2 the relevant parts of the Operator Specification where obligations are imposed therein on the Operator.

19.1.2 The Concessionaire shall procure that the maintenance of those elements of the Infrastructure for which it is responsible will be the subject of appropriate quality management systems which comply with the requirements of ISO 9001/2000, or an equivalent British or European quality system.

19.2 Quality Plans

19.2.1 The Operator shall prepare the Quality Plans prior to the Actual Opening Date in respect of the performance of the Services which shall comply with the requirements of Clause 19.1 and which shall be subject to the prior approval of the Concessionaire such approval not to be unreasonably withheld or delayed.

19.2.2 Without limitation to the generality of Clause 19.1, in performing the Services the Operator shall comply with the Quality Plans. The Operator shall notify the Concessionaire of any proposed changes to the Quality Plans. Any such changes shall require the written consent of the Concessionaire provided that the Concessionaire 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 19.1. Any consent will be deemed given if no reasonable objection is received by the Operator within 20 Business Days.

19.2.3 The Concessionaire, either itself or by its Maintenance Contractors, shall maintain the Quality Plans in respect of the maintenance of the Infrastructure for which it is responsible. These Quality Plans shall comply with the requirements of Clause 19.1.

19.2.4 Without limitation to the generality of Clause 19.1, in maintaining those elements of the Infrastructure for which it is responsible the Concessionaire shall comply with the Quality Plans. The Concessionaire shall notify the Operator of any proposed changes to the Quality Plans for which it is responsible and which affect the Services provided by the Operator. Any such changes shall require the written consent of the Operator, provided that the Operator 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 19.1. Any consent will be deemed to be given if no reasonable objection is received by the Concessionaire within 20 Business Days.

19.3 Effectiveness of contractors' quality systems

The Concessionaire and the Operator shall monitor their respective contractors' quality systems and ensure that they operate appropriate quality systems based on the relevant requirements of ISO 9002 series standard or other equivalent British or European standard appropriate to their scope of supply. The Concessionaire and the Operator shall be responsible for monitoring the performance of such persons with the requirements of their respective quality systems.

19.4 Quality assurance audit

The Concessionaire shall be entitled to audit compliance with the Quality Plans on a random basis at reasonable times and on reasonable notice to the Operator. Any such audit may involve the examination or inspection of works or activities on or off the Tramlink System. The Operator shall use reasonable endeavours to procure that third parties shall provide to the representatives of the Concessionaire conducting such an audit 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 Operator shall comply with any recommendations regarding its Quality Plans arising from any such audit subject to any dispute which shall be referred to the Expert. Any additional costs and expenses in implementing such recommendations, unless such recommendations result from a breach by the Operator of its obligations hereunder, shall be dealt with in accordance with Clause 6.7.1.

20. OPERATING AND MAINTENANCE PLANS

20.1 Operating Plan and Maintenance Plans

20.1.1 The following Plans shall be maintained by the Concessionaire and Operator (as indicated):

20.1.1.1 An Operating Plan (Operator);

20.1.1.2 A Maintenance Plan in respect of those Infrastructure items which are maintained by the Operator (the Operator's Maintenance Plan) (Operator);

20.1.1.3 A Maintenance Plan in respect of those Infrastructure items which are to be maintained by the Concessionaire (the Concessionaire's Maintenance Plan) (Concessionaire).

20.1.2 The Operating Plan shall:

20.1.2.1 so far as can be reasonably anticipated enable the Operator and the Concessionaire to comply in full with their respective obligations to operate and maintain the Tramlink System in the case of the Operator under this Agreement and in the case of the Concessionaire the Project Agreements;

20.1.2.2 comply and be consistent with the O&M Manuals; and

20.1.2.3 comply with Good Industry Practice and Concessionaire Good Industry Practice.

20.1.3 The Maintenance Plans shall:

20.1.3.1 be designed to ensure that those Infrastructure items which are maintained by the Concessionaire and the Operator respectively on the Tramlink System can be maintained to ensure that requirement of Clause 9 can be met or on the basis that the Infrastructure is of a standard that complies with the provision of Clause 9, the Performance Specification and the Specification;

20.1.3.2 so far as can be reasonably anticipated enable the Operator and the Concessionaire to comply in full with their respective obligations to maintain the Tramlink System in the case of the Operator under this Agreement and in the case of the Concessionaire both the Project Agreements and this Agreement;

20.1.3.3 comply and be consistent with the O&M Manuals;

20.1.3.4 comply with Good Industry Practice and Concessionaire Good Industry Practice; and

20.1.3.5 shall be supported by the Annual Schedule to the Maintenance Plans referred to in Clause 20.3.

20.1.4 Save to the extent specified in the Operator Specification the Concessionaire shall notify the Operator of any specific requirements to be incorporated into the Plans arising from its obligations under the Project Agreements and following such notification the Operator shall incorporate such requirements into its Plans. Provided such requirements are incorporated in accordance with the requirements of this Clause it shall be the responsibility of the Concessionaire to ensure that the Plans comply with the Concessionaire's obligations under the Project Agreements and Concessionaire Good Industry Practice.

20.1.5 The Operator shall procure that so far as can be reasonably anticipated the Plans for which it is responsible are sufficient to ensure:

20.1.5.1 that the requirements laid down in the Performance Specification and the Specification as responsibilities of the Operator are met for all of the period of this Agreement; and

20.1.5.2 that the Tramlink System is operated and that those Infrastructure items that are the responsibility of the Operator are maintained in accordance with the Safety Management System, Good Industry Practice and Applicable Requirements.

20.1.6 The Concessionaire shall procure that so far as can be reasonably anticipated the Plans for which it is responsible is sufficient to ensure:

20.1.6.1 that the requirements laid down in the Performance Specification and the Specification as responsibilities of the Concessionaire are met for all of the period of this Agreement;

20.1.6.2 that those Infrastructure items that are the responsibility of the Concessionaire are maintained in accordance with the Safety Management System, Concessionaire Good Industry Practice and Applicable Requirements; and

20.1.7 those Plans for which the Operator is responsible shall be submitted to the Concessionaire for review and approved in accordance with Clause 20.5, but in respect of the Operator's Maintenance Plan on the basis that the Infrastructure is of a standard that complies with the provisions of Clause 9, the Performance Specification and the Specification.

20.2 Contents of Operating Plan

The Operating Plan shall show in such detail as is reasonably practicable and in relation to the Operating Year to which it relates:-

20.2.1 any capital expenditure which the Operator recommends;

20.2.2 such other information as the Concessionaire shall have reasonably requested the Operator to provide.

20.3 Annual Schedule to the Maintenance Plans

20.3.1 The Annual Schedule to the Maintenance Plan in respect of Infrastructure items for which the Concessionaire is responsible shall, in addition to the requirements of Clause 20.1:-

20.3.1.1 show all Infrastructure maintenance and repair activities which are necessary for the forthcoming Operating Year to maintain the Infrastructure in accordance with Section 9;

20.3.1.2 show the periods during which each maintenance activity is to be carried out;

20.3.1.3 show the Possessions that are required for such maintenance activities and the measures to be put in place when Possessions are required; and

20.3.1.4 show such other information as the Operator shall have reasonably requested the Concessionaire to provide;

20.3.1.5 be prepared by the Concessionaire in consultation with the Operator.

20.3.2 The Annual Schedule to the Maintenance Plan in respect of Infrastructure items for which the Operator is responsible shall, in addition to the requirements of Clause 20.1:-

20.3.2.1 show all Infrastructure maintenance and repair activities which are necessary for the forthcoming Operating Year to maintain the Infrastructure in accordance with Section 9;

20.3.2.2 show the periods during which each maintenance activity is to be carried out;

20.3.2.3 show any Possessions that are required for such maintenance activities and the measures to be put in place when Possessions are required; and

20.3.2.4 show such other information as the Concessionaire shall have reasonably requested the Operator to provide;

20.3.2.5 be prepared by the Operator in consultation with the Concessionaire.

20.4 Annual Revisions

- 20.4.1 Not less than 40 Business Days before the beginning of each Operating Year the Operator shall prepare and submit for review by the Concessionaire in accordance with Clause 20.5 the Plans, which in this Clause 20 includes Annual Schedules (as appropriate) for which the Operator is responsible (including for the purposes of this Clause 20.4 and Clauses 20.5 and 20.6, the Tram Maintenance Plan initially provided to the Operator by the Contractor and the Routine Maintenance Plan to be prepared pursuant to Schedule 5) for the following Operating Year. Each such Plan shall comply with Clauses 20.1, 20.2 and/or 20.3 as appropriate and the Concessionaire shall contribute to such Plan and accept responsibility for their contents in accordance with its obligations under Clause 20.1.4. Clauses 20.1, 20.2 and 20.3 shall apply in respect of each such Plan as relevant.
- 20.4.2 Not less than 40 Business Days before the beginning of each Operating Year the Concessionaire shall prepare the Annual Schedule to the Concessionaire's Maintenance Plan in respect of Infrastructure Items for which the Concessionaire is responsible, complying with Clause 20.3. The Concessionaire shall accept responsibility for its contents in accordance with its obligations under Clause 20.1.4.

20.5 Consultation on Operating and Maintenance Plans

- 20.5.1 Within 20 Business Days of receipt of a proposed Plan the Concessionaire shall return to the Operator one copy thereof either marked "No Comments" or with written comments and/or amendments. If the proposed Plan is returned by the Concessionaire with written comments and/or amendments, the Operator shall discuss with the Concessionaire and shall have due regard to such comments and/or amendments. If the Operator amends a proposed Plan as a result of any comments and/or amendments made by the Concessionaire the amended version shall be resubmitted to the Concessionaire for review and the provisions of this Clause 20.5 shall again apply. Upon agreement being reached, the proposed Plan shall become the final Plan in respect of each Operating Year for the purposes of this Agreement subject to any amendments required to be made to the Plan subsequently in an Operating Year as a result of an unplanned event and subject always to Clause 20.6.

20.5.2 Within 20 Business Days of receipt of a proposed Infrastructure Maintenance Plan the Operator shall return to the Concessionaire one copy thereof either marked "No Comments" or with written comments and/or amendments. If the proposed Plan is returned by the Operator with written comments and/or amendments, the Concessionaire shall discuss with the Operator and shall have due regards to such comments and/or amendments. If the Concessionaire amends a proposed Plan as a result of any comments and/or amendments made by the Operator the amended version shall be resubmitted to the Operator for review and the provisions of this Clause 20.5 shall again apply. Upon agreement being reached, the proposed Plan shall become the final Plan in respect of each Operating Year for the purposes of this Agreement subject to any amendments required to be made to the Plan subsequently in an Operating Year as a result of an unplanned event and subject always to Clause 20.6.

20.6 Changes to Maintenance Plans

If the Concessionaire or the Operator wish to make changes to any of the Maintenance Plans for the current Operating Year it shall give written notice to the other of the proposed changes and the proposed date of implementation providing reasonable notice in all cases. The Parties shall then consult in respect of such proposed change and consider the implications for both Parties. Where agreement is reached in respect of the proposed change to any Plan it shall be implemented on that basis. The Operator shall in any event be required to implement any changes to any of the Plans required by the Concessionaire but without prejudice to the provisions of Clause 9 and, unless the circumstances requiring the change are covered by any other express Clause of this Agreement (in which case such Clause shall prevail), the Operator shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7, save always that changes to the Tram Maintenance Plan shall not be required to be implemented until the Tram Maintenance Contractor's revised fee as a consequence of such implementation has been agreed between the relevant parties.

20.7 Budget

In respect of Infrastructure items for which the Operator is responsible, together with each proposed Annual Schedule to the Operator's Maintenance Plan submitted to the Concessionaire under Clause 20, the Operator shall prepare and submit to the Concessionaire a proposed Budget for the following Operating Year covering the proposed expenditure required to maintain Infrastructure in accordance with the proposed Annual Schedule to the Operator's Maintenance Plan.

21. FEES

21.1 Fees

Subject to the provisions of this Agreement, in consideration for the provision of the following Services, the Concessionaire shall pay to the Operator the following fees:-

- 21.1.1 the fee calculated and payable in accordance with Part 1 of Schedule 2 for the Preliminary Services;
- 21.1.2 the fee calculated and payable in accordance with Part 2 of Schedule 2 for the Mobilisation Services;
- 21.1.3 the fee calculated and payable in accordance with Part 3 of Schedule 2 of the Operating Services;
- 21.1.4 the fee calculated and payable in accordance with Part 4 of Schedule 2 for the Infrastructure Maintenance Management Services;
- 21.1.5 the fee calculated and payable in accordance with Part 5 of Schedule 2 for the Tram Maintenance Services;
- 21.1.6 the fee calculated and payable in accordance with Clause 6.5.2(b) for the Routine Maintenance Services.

21.2 Indexation, damages and rebasing

- 21.2.1.1 The fees calculated in accordance with Clause 21.1 above shall be adjusted by Indexation in accordance with paragraphs (a) and (b) of Schedule 2.
- 21.2.1.2 The fees calculated in accordance with Clause 21.1.3 above shall be adjusted in respect of each Financial Period in accordance with Schedule 4.
- 21.2.1.3 The fees calculated in accordance with Clause 21.1 above shall be further adjusted in respect of each Financial Period by the addition of any amounts in respect of Additional Services or otherwise expressed to be recoverable by the Operator hereunder which have become due.
- 21.2.2 The basis upon which the fees for the Services are calculated shall be adjusted in every fifth Operating Year in accordance with paragraph (c) and (d) of Schedule 2 and the fees subsequently payable shall be amended accordingly.

21.3 Reconciliation

The Operator shall, on a daily basis, apportion responsibility for any failure to achieve Scheduled Kilometrage by assigning reasons against the categorisations in Part 2 of Schedule 4 and shall submit to the Concessionaire on the Financial Period Payment Date (or more frequently if reasonably required by the Concessionaire) a report showing all such daily reconciliations in respect of the previous Financial Period. If the Concessionaire and Operator are unable to agree any daily reconciliation or the categorisation of failures, the dispute shall be referred to the Fee Panel.

21.4 Invoice

21.4.1 The Operator shall on or prior to the tenth Business Day of each Financial Period deliver to the Concessionaire an invoice in respect of the Fees due in respect of Operating Services and related Additional Services for that Financial Period or any earlier Financial Period which has not been invoiced and shall supply with such invoice full details of the calculations used to ascertain such sums.

21.4.2 The Operator shall within one week after the end of each Financial Period or month (as appropriate) to which payment relates deliver to the Concessionaire an invoice in respect of Fees due in respect of all Services, other than Operating Services and related Additional Services, for that Financial Period or any earlier Financial Period which has not been invoiced and shall supply with such invoice full details of the calculations used to ascertain such sums.

21.4.3 The Concessionaire shall pay to the Operator the Preliminary Fee and the Mobilisation Fee within 20 Business Days of receipt of the invoice relating thereto provided always that the Operator shall submit an invoice in respect of Preliminary and Mobilisation Fees no more than once in any one month.

21.5 Approval and Payment of Invoice

21.5.1 On each Financial Period Payment Date the Concessionaire shall, subject always to Clause 21.6:-

21.5.1.1 pay to the Operator (a) 75 per cent of the sum shown as due in the invoice delivered pursuant to Clause 21.4.1 in respect of the Operating Fee and related Additional Services in the current Financial Period and (b) the sum shown as due in the invoices delivered pursuant to Clause 21.4.2 in respect of the Tram Maintenance Fee, the Routine Maintenance Fee and the Infrastructure Maintenance Management Fee; and

21.5.1.2 pay to the Operator 25 per cent of the sum shown as due in the invoice delivered pursuant to Clause 21.4.1 in the previous Financial Period in respect of the Operating Fee and the related Additional Services less any amounts which are still in dispute.

21.6 Approval of Calculations

- 21.6.1 The Concessionaire shall notify the Operator of anything contained in the invoice delivered pursuant to Clause 21.4 with which it disagrees, giving reasons for such disagreement and stating what it considers to be the correct amount due to the Operator, by the date on which payment of that invoice is due under Clause 21.5.1.1.
- 21.6.2 If the notice required under Clause 21.6.1 is not received by the Operator by the date on which payment is required under Clause 21.5.1.1, and that payment is not made, then the invoice concerned shall be deemed to be in dispute. In this event the Concessionaire shall serve the notice required by Clause 21.6.1 on the Operator within 5 Business Days of the date on which payment was due under Clause 21.5.1.1.
- 21.6.3 Within 5 Business Days of service of such a notice (whether served under Clause 21.6.1 or 21.6.2) the Financial Controller of the Concessionaire and the Finance Director of the Operator (or such other representatives as either Party may nominate from time to time) shall meet to try to resolve the disputed items/disputed sums.
- 21.6.4 If the meeting required by Clause 21.6.3 cannot resolve any items still in dispute, then within 10 Business Days of that meeting (or within such other time as may be agreed by the Parties) the Managing Director of the Concessionaire and the Managing Director of the Operator (or such other representative as either Party may nominate) shall meet to try to resolve any items still in dispute.
- 21.6.5 If the Concessionaire does not pay an invoice by the due date under Clause 21.5.1.1, but does not then serve the notice required under Clause 21.6.2, then the Operator may refer the sum unpaid to the Expert under Clause 21.9.
- 21.6.6 Once an invoice has been paid, then the Concessionaire shall no longer be able to claim that it should not have been paid for any reason of principle. Paid invoices can only be challenged on the grounds of substantive error.

21.7 Withholding

The Concessionaire shall during the Term be entitled to withhold an amount in excess of the 25 per cent of the Operating Fee shown as due in an invoice delivered pursuant to Clause 21.4.1 which it is entitled to adjust pursuant to Clause 21.2.1.2 up to the full amount of such sum shown in that invoice to the extent in respect of any previous Financial Period there is a dispute outstanding which is referred to the meeting of Managing Directors required by Clause 21.6.4 in respect of the amounts calculated pursuant to Schedule 4.

21.8 Disputed Sums

Any remaining dispute concerning the amounts properly payable to either Party by the other if not resolved by the meeting of Managing Directors required by Clause 21.6.4 shall be referred to the Expert for decision. If it is subsequently agreed or

determined by the Expert 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 invoice the other Party for such sums (together with accrued interest) in accordance with Clause 21.10 and payment shall then be made by the relevant Party.

21.9 Supplementary Invoices

- 21.9.1 The Parties may from time to time render an invoice to the other in respect of any additional sums which shall become due in accordance with this Agreement and the procedures set out in Clauses 21.4 to 21.8 inclusive shall apply thereto. Where additional sums have been agreed by the Parties neither party shall be entitled to dispute such amounts pursuant to Clause 21.8.
- 21.9.2 For the period of two years after the Actual Opening Date the Concessionaire shall pay on the relevant Financial Period Payment Date amounts set out in supplementary invoices submitted in accordance with Clause 21.9.1 if received by the Concessionaire at least 10 Business Days prior to the relevant Financial Period Payment Date and to the extent such amounts are agreed.

21.10 Time for payment and interest

- 21.10.1 For the period after the second anniversary of the Actual Opening Date, unless otherwise stated all amounts properly due in respect of an invoice submitted pursuant to Clause 21.9 shall be paid within 20 Business Days of receipt by the paying Party of the relevant invoice to the extent such amounts are agreed.
- 21.10.2 Subject as provided in Clause 21.10.3, any amount properly due from one Party to the other pursuant to this Agreement and which shall remain unpaid after the date when payment becomes due shall bear interest at the Prescribed 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.
- 21.10.3 Interest shall accrue in respect of amounts determined to be payable following a decision of the meeting of Managing Directors or the Expert in accordance with Clauses 21.6.4 or 21.8 from the due date of the original underpayment or overpayment as the case may be.

21.11 Taxes, Customs Duties

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.

21.12 Revenue Sharing

The Parties intend to include a revenue sharing scheme which shall be implemented at the end of the fifth Operating Year.

21.13 Scope of obligations excluded from the Fees

Save for additional fees, costs or expenses or other amounts which the Operator is expressly entitled to recover under the terms of this Agreement, or by Law, the Fees shall be the total amount which the Operator is entitled to recover from the Concessionaire hereunder.

21.14 No set-off

Save as is otherwise expressly provided in Clause 21, or where an amount has been determined by the Expert to be payable to the payer, or is otherwise agreed, all payments to be made under this Agreement shall be made in full, free and clear of any right of set-off or counter-claim and free from any deduction or withholding whatsoever.

22 INSURANCE

22.1 Operator Insurance

The Operator shall take out and maintain or shall cause to be taken out and maintained throughout the Term appropriate insurance with respect to employer's liability having regard to the parameters of such insurance required to be effected during operation of the Tramlink System under the Concession Agreement of which the Concessionaire shall be obliged to inform the Operator and having regard to relevant circumstances during such period of operation.

22.2 Concessionaire Insurances

The Concessionaire shall take out and maintain or shall cause to be taken out and maintained during the Term the insurances set out in Schedule 6.

22.3 Terms of insurances to be approved

All insurances required by Clause 22.2 shall be taken out with such insurance companies, in such amounts and upon such terms (including terms as to the level of deductibles) as shall have been previously approved by the Operator such approval in each case not to be unreasonably withheld or delayed.

22.4 Insurances to be in joint names

Each insurance maintained or procured by the Concessionaire in accordance with Clause 22.2 shall be, inter alia, a composite policy in the names of the Operator and the Concessionaire, from their respective rights and interests 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 the Concessionaire to maintain the policies in force after termination of this Agreement. The Concessionaire shall, for such period that it is the Concessionaire under the Concession Agreement, maintain such policies in the manner required by Clause 22.2 until all potential limitation periods have expired under this Agreement in relation to the Operator's liabilities as Operator of the Tramlink System. All insurances taken out by the Concessionaire shall waive all rights of subrogation against the Operator, and with the agreement of the Concessionaire all contractors of any tier, save for contractors in respect of Tram Maintenance Services.

22.5 Change of Concessionaire's Insurances

22.5.1 If the Concessionaire proposes during the Term to vary in any way which affects or may affect the Operator the insurances it is required to effect in accordance with this Clause 22, the Concessionaire shall obtain the approval of the Operator regarding the proposed changes such approval not to be unreasonably withheld or delayed.

22.5.2 It shall be a term of the insurances required by Clause 22.2 that underwriters will waive any rights of recovery against any director, employee or former

employee of an insured or, at an insured's election any other person indemnified under the terms of the policy.

22.6 Concessionaire to supply insurance policies

Upon being required to do so by the Operator the Concessionaire shall produce for inspection by the Operator a copy of the certificates and policies of insurance required to be maintained in compliance with the provisions of this Clause 22 together with sufficient evidence to show that all premiums payable in respect of the insurance have in fact been paid up to date. Where the Concessionaire has failed to pay any such premium by the due date, the Operator shall be entitled by giving no less than ten Business Days' notice in writing to the Concessionaire to pay such premium on behalf of the Concessionaire and to include an amount equivalent to such premium from the next subsequent payment(s) of the Fees.

22.7 Compliance with requirements of the insurers

The Operator and the Concessionaire shall comply with all terms, whether express or implied of the insurers in relation to insurances effected pursuant to this Clause 22 and shall not do anything which might render void or voidable any such policy of insurance or as a result of which payment of insurance moneys might be withheld in whole or in part under the terms of the relevant insurance policy.

22.8 Operator'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 it under this Clause 22 or fails upon being requested to do so to provide the Operator with the evidence required by Clause 22.5 and the Operator has reasonable grounds for believing such insurances are not in effect or being maintained, the Operator shall (without prejudice to any other rights under or pursuant to this Agreement) have the right upon giving the Concessionaire no less than 10 Business Days' notice in writing to arrange equivalent insurances. The Concessionaire shall reimburse the Operator all premiums and other costs payable or incurred by the Operator in exercising its rights under this Clause 22.8 together 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 the Operator.

22.9 Proceeds

Claims under the insurance polic[ies] shall be handled in the manner to be agreed between the Operator and the Concessionaire . The Concessionaire may decide in its discretion whether to apply the proceeds of any claim including the amount of any deductible (save where the deductible is to be met by the Operator under this Agreement) in relation to loss or damage to the Tramlink System or Concessionaire Tram Spares in reinstating the Tramlink System or the Concessionaire Tram Spares to the standard required hereunder save that where the Concessionaire decides not to so apply such proceeds in such manner the Concessionaire shall consult with the Operator and the Parties shall determine how their respective obligations hereunder shall be altered as a result thereof and in the absence of agreement to be determined in accordance with Clause 38 and Schedule 9.

22.10 Notification of Claims

Each Party shall give to the other prompt notification of any claim in excess of £50,000 under any of the insurance policies referred to in this Clause 22 accompanied by full details of the incident giving rise to such claim and shall afford each other all assistance as may be required for the preparation and negotiation of insurance claims. It shall be the responsibility of the Operator to pursue with all due diligence claims under such insurance policies.

23. FORCE MAJEURE

23.1 Definition of Force Majeure

23.1.1 Force Majeure means:-

- (a) an act of war (whether war is declared or not), hostilities, invasion, act of foreign enemies, rebellion, terrorism, revolution, military insurrection, civil disorder or civil disobedience; or
- (b) tempest, earthquake (due exclusively to natural causes) or other natural disaster of overwhelming proportions; or
- (c) ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
- (e) save for circumstances or events for which responsibility for the existence occurrence or consequences of which are expressly allocated to either Party pursuant to this Agreement not being a circumstance or event described in paragraphs (a) to (d) of Clause 23.1.1, any circumstances which are beyond the reasonable control of the Affected Party (as defined in Clause 23.3) and which could not have been foreseen and avoided by, in the case of the Operator, an experienced tram system operator and in the case of the Concessionaire Good Industry Practice having regard to the Concessionaire's and the Operator's state of knowledge; or
- (f) an event of force majeure under the Tram Maintenance Contract.

23.1.2 The following events and circumstances shall not constitute Force Majeure:-

- (a) strikes, lock-out or other industrial or trade dispute by the workforce of a Party; or
- (b) lack of availability of labour or materials unless caused by an event specified in Clause 23.1.1; or
- (c) disputes or legal actions affecting either Party; or
- (d) lack of funds or increased cost to either Party of performing its obligations under the Project Agreements; or
- (e) adverse weather conditions except as referred to in Clause 23.1.1(b); or

- (f) an event of force majeure under the Tram Maintenance Contract unless such event falls within the same definition of force majeure as is contained in Clause 23.1.1 (a) to (e) mutatis mutandis.

23.2 Exclusion of liability/extension of time

For the purpose of this Agreement:-

- 23.2.1 no Party shall be considered to be in default or in breach of its obligations under this Agreement or be liable to the other Party for any losses or damages or any nature whatsoever incurred or suffered as a result of any failures and delays in performance due to an event or circumstance constituting Force Majeure provided that the Concessionaire shall continue to pay all amounts it would otherwise have paid but for such event of Force Majeure subject to the provisions of Clause 23.7; and
- 23.2.2 the periods of time referred to in any provision of this Agreement for the purpose of performance of an obligation shall be extended by a period of time equal to the period of delay caused by or which arises out of or is attributable to an event or circumstance constituting Force Majeure; and
- 23.2.3 the provisions of Clause 23.7 shall apply in relation to any period of suspension of a Tram Service on the Tramlink System during or following an event of Force Majeure.

23.3 Notification

Forthwith following a Party (the “Affected Party”) becoming aware of an event of Force Majeure causing that Party to be unable to fulfil its contractual obligations under this Agreement the Affected Party shall notify to the other Party (the “Notified Party”) details of the Force Majeure including:-

- 23.3.1 the nature of the event or circumstance constituting Force Majeure;
- 23.3.2 the date from which the Affected Party has been prevented or hindered from performing its obligations;
- 23.3.3 the precise obligations affected; and
- 23.3.4 its best estimate of the date or dates on which it will be able to resume the performance of its obligations so affected.

23.4 Notification of Developments

The Affected Party shall keep the Notified Party fully informed of all developments relating to the Force Majeure of which it is aware and the steps being taken by the Affected Party to minimise the effects of the Force Majeure pursuant to Clause 23.5. If any of the details relating to the Force Majeure notified by the Affected Party to the Notified Party shall change the Affected Party shall reissue the notice amended as necessary.

23.5 Mitigation

The Parties shall use all reasonable endeavours to prevent and reduce to a minimum and mitigate the effect of any delay occasioned by any event of Force Majeure. Following the occurrence of Force Majeure the Party who would otherwise be required to do so hereunder shall make safe any Trams and manage the making safe of any Infrastructure affected thereby, so as to prevent the Tramlink System causing physical damage to any person or property.

23.6 Failure to mitigate

The exclusion of liability and/or the extension of time under this Clause resulting from an event of Force Majeure shall not operate if and to the extent that:-

23.6.1 the Affected Party could, by the exercise of reasonable foresight and diligence, have prevented or reduced the effect of the event of Force Majeure; and

23.6.2 the Affected Party could, whether before or after the occurrence of the event of Force Majeure, have reduced or eliminated the resulting failure to discharge its obligations under this Agreement by taking reasonable steps and “reasonable steps” means steps that it would be reasonable for the Affected Party to take at the time when they would have had to be taken to reduce or eliminate such failure having regard to the circumstances at such time.

23.7 Operator’s obligations during Force Majeure

23.7.1 Notwithstanding the Parties’ obligations to mitigate pursuant to Clause 23.5, during any period of suspension of the operation of the Tramlink System during or following an Event of Force Majeure the Concessionaire shall, after consultation with the Operator be entitled to require the Operator to take any action it considers appropriate but in accordance with the following:-

23.7.1.1 if the Concessionaire requires a reduction in the workforce required to operate the Tramlink System the Concessionaire shall pay to the Operator those costs which it incurs in maintaining its remaining capability (if any) to operate the Tramlink System at the end of the period of suspension and in carrying out any necessary maintenance to the Trams or Routine Maintenance and in managing any other part of the Infrastructure which the Operator is responsible for managing;

- 23.7.1.2 where this Agreement has not been terminated but the Concessionaire requires the Operator to terminate the employment of the whole or part of the workforce required to operate the Tramlink System the Concessionaire shall bear the reasonable and properly authenticated costs and expenses incurred terminating the employment of such workforce and in recruiting and training sufficient personnel to reinstate the Operator's capability of performing the Services when required to do so by the Concessionaire; and
- 23.7.1.3 where any other course of action has been agreed between the Concessionaire and the Operator, the Concessionaire and the Operator shall also agree the appropriate cost incurred by the Operator (if any) as a result, which shall be paid to the Operator by the Concessionaire .
- 23.7.2 Where as a result of an event of Force Majeure which affects the Operator, but not the Concessionaire, the operation of the entire Tramlink System is suspended, then during the period of such suspension the Concessionaire shall pay to the Operator only that part of the relevant Fee or Fees which relates to the Operator's costs in performing its obligations under this Agreement as if the operation of the Tramlink system had not been so suspended, such costs to be mitigated in accordance with Clause 23.7.1 but not any part of such relevant Fee or Fees as relates to the profit of the Operator.
- 23.7.3 Where as a result of an event of Force Majeure which affects the Concessionaire, but not the Operator, the operation of the entire Tramlink System is suspended, then during the period of such suspension the Concessionaire shall pay to the Operator whatever it would otherwise have been paid as if the operation of the Tramlink System had not been so suspended, such costs to be mitigated in accordance with Clause 23.7.1
- 23.7.4 Where as a result of an event of Force Majeure which affects the Operator, but not the Concessionaire any part of the Tramlink System is suspended then the Concessionaire shall pay during the period of such suspension to the Operator:-
- (i) in relation to that part of the Tramlink System which is not suspended (the "Operating Part") that part of the relevant Fee or Fees attributable to the Operating Part (calculated on a pro rata basis by reference to the kilometerage of the Operating Part); and

- (ii) in relation to that part of the Tramlink System which is suspended (the Non-Operating Part”) that part of the relevant Fee or Fees attributable to the Non-Operating Part (calculated on a pro rata basis by reference to the kilometrage of the Non-Operating Part) mitigated in accordance with Clause 23.7.1 but not any part of such Fee or Fees as relates to the profit of the Operator.

23.7.5 Where as a result of an event of Force Majeure which affects the Concessionaire, but not the Operator, part of the Tramlink System is suspended, then during the period of such suspension, the Concessionaire shall pay to the Operator that part of the relevant Fee or Fees which relates to the Operator’s costs in performing its obligations under this Agreement as if that part of the Tramlink System were not suspended, less the proportion of profit in such relevant Fee or Fees attributable to the Non-Operating part as calculated in accordance with Clause 23.7.4 but such proportion is only to be deducted for the first seven days of such suspension.

23.7.6 Where as a result of an event of Force Majeure which affects the Concessionaire and the Operator, the operation of the entire Tramlink System is suspended, then during the period of such suspension the provisions of Clause 23.7.2 shall apply.

23.7.7 Where as a result of an event of Force Majeure which affects the Concessionaire and the Operator, part or parts of the Tramlink System are suspended, then during the period of such suspension the provisions of Clause 23.7.4 shall apply.

24. EARLY TERMINATION

24.1 Termination of Services

24.1.1 The Concessionaire will be entitled to terminate this Agreement on no less than 3 months’ written notice to the Operator expiring on the tenth or twentieth anniversary of the Actual Opening Date (a “Relevant Anniversary”) in the following circumstances:-

- (a) without prejudice to Clause 24.2 at least 15 months prior to a forthcoming Relevant Anniversary the Concessionaire shall have notified the Operator in writing that, in the performance of the Services, it has failed to comply with the provisions of this Agreement in material and (if appropriate) persistent ways giving examples of such failures, and the Operator shall have failed to remedy such failures, to the reasonable satisfaction of the Concessionaire within the following 12 month period; or

- (b) at least 6 months prior to a forthcoming Relevant Anniversary the Concessionaire shall have notified the Operator that it considers the total remuneration to which the Operator is entitled for the performance of his obligations under this Agreement to be materially greater than the prevailing market rate for the performance of such obligations giving reasons for such consideration and evidence of the prevailing market rate and the Operator shall not have reduced the Fees to a level not materially greater than the prevailing market rate and for the purposes of this Clause 24.1.1(b) “materially” shall mean in excess of ■%.

24.1.2 The Concessionaire will be entitled to terminate the Infrastructure Maintenance Management Services by at least 3 months’ written notice to the Operator. The Concessionaire shall ensure that any successor shall enter into all such agreements, arrangements and procedures with the Operator as the Operator may reasonably require.

24.1.3 The Concessionaire will be entitled to terminate this Agreement forthwith in the event that the Concessionaire is required to replace the Operator in accordance with Clause 20 of the Concession Agreement.

24.2 Early termination by the Concessionaire

24.2.1 The following shall constitute Operator Defaults:-

- (a) any Insolvency Event in relation to the Operator;
- (b) the Operator is in material and serious default in relation to its obligations under this Agreement whether by one or more breaches of the obligations of the Operator under this Agreement;
- (c) the Operator is issued with 1 Warning Notice and 4 notices under Clause 16.6.1 in any period of 3 years;
- (d) where Operator Controlled Lost Kilometrage (but excluding for these purposes any Operator Controlled Lost Kilometrage attributed to the Tram Maintenance Contractor) exceeds 8% of Scheduled Kilometrage for 3 consecutive Financial Periods or Operator Controlled Lost Kilometrage (but excluding for these purposes any Operator Controlled Lost Kilometrage attributed to the Tram Maintenance Contractor) exceeds 13% of Scheduled Milometrage for 3 Financial Periods in any period of 13 Financial Periods.

24.2.2 The Operator will notify the Concessionaire forthwith upon becoming aware of the occurrence of an Operator Default and will provide the Concessionaire with full details of any steps which it is taking, or is considering taking, in order to remedy or mitigate the effect of the Operator Default or otherwise in connection with it.

- 24.2.3 If an Operator Default within Clause 24.2.1(a)(c) or (d) has occurred, the Concessionaire may within 6 months of the relevant Operator Default by notice to the Operator terminate this Agreement forthwith. If an Operator Default within sub-clause 24.2.1(b) has occurred, the Concessionaire may, within 28 days of such Default coming to its notice, serve notice of such Default on the Operator in which case this Agreement will terminate on the date specified in such notice (being not less than 28 days after the date of service) unless such Default has been remedied or other steps taken in relation thereto agreed by the Concessionaire prior thereto to the reasonable satisfaction of the Concessionaire.
- 24.2.4 The Concessionaire may by notice in writing, subject to Clause 25, terminate this Agreement upon termination of the Concession Agreement for whatever reason.
- 24.2.5 If the Operator requests approval from the Concessionaire to terminate the Tram Maintenance Contract for good cause and such approval is denied then the Concessionaire shall not be entitled to terminate this Agreement as a result of the an Operator Default arising thereafter from a default by the Tram Maintenance Contractor under the Tram Maintenance Contract.

24.3 Early termination by the Operator

24.3.1 The following shall constitute Concessionaire Defaults:-

- (a) any Insolvency Event in relation to the Concessionaire;
- (b) the Concessionaire fails to pay any amount due to the Operator pursuant to this Agreement within 28 days of the due date for such payment (except where the amount of any such payment is the subject of a bona fide dispute between the Parties);
- (c) the Concessionaire is in material and serious default in relation to its obligations under this Agreement whether by one or more breaches of the obligations of the Concessionaire under this Agreement.

24.3.2 The Concessionaire will notify the Operator forthwith upon becoming aware of the occurrence of a Concessionaire Default and will provide the Operator 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.

24.3.3 If a Concessionaire Default within Clause 24.3.1(a) has occurred, the Operator may within 28 days of such default coming to its attention by notice to the Concessionaire terminate this Agreement forthwith. If a Concessionaire Default within Clause 24.3.1(b) or (c) has occurred, the Operator may, within 28 days of such Default coming to its attention, serve notice of such Default on the Concessionaire in which case this Agreement will terminate on the date specified in such notice (being not less than 28 days after the date of service) unless such Default has been remedied or other steps taken in relation thereto agreed by the Operator prior thereto to the reasonable satisfaction of the Operator.

25. OBLIGATIONS OF THE PARTIES FOLLOWING TERMINATION

25.1 Payment on termination

25.1.1 Where this Agreement is terminated by the Concessionaire as a result of the Operator Default, or where the Concession Agreement has been terminated (and as a consequence this Agreement has been terminated) as a result of Operator Default or in accordance with Clauses 24.1.1(a) or 24.1.3:-

- (a) the Concessionaire shall be entitled to appoint a new operator to operate the Tramlink System on its behalf, and shall subject to Clause 27 be entitled to recover from the Operator damages suffered by the Concessionaire as a result of such termination less any sums owed to the Operator by the Concessionaire under this Agreement; and
- (b) the Concessionaire shall not be required to make any further payment to the Operator after the date of termination of this Agreement until any sum due to the Concessionaire under Clause 25.1.1(a) has been agreed or established in accordance with Clause 38. Thereafter the Operator shall be entitled to recover any sum due to it in excess of any sums owed to the Concessionaire in accordance with Clause 25.1.1(a), (if any).

25.1.2 Where this Agreement is terminated as a result of a Concessionaire Default or as a result of the termination of the Concession Agreement for a reason other than Operator Default or the default of the Corporation:-

- (a) the Operator shall be entitled to recover from the Concessionaire damages suffered by the Operator as a result of such termination less any sums owed to the Concessionaire by the Operator under this Agreement; and

- (b) the Operator shall not be required to make any further payment to the Concessionaire after the date of termination of this Agreement until any sum due to the Operator under Clause 25.1.2(a) has been agreed or established in accordance with Clause 38. Thereafter the Concessionaire shall be entitled to recover any sum due to it in excess of any sums owed to the Operator in accordance with Clause 25.1.2(a), (if any).

25.1.3 Where this Agreement is terminated in accordance with Clause 24.1.1(b) or as a result of a Corporation Default terminating the Concession Agreement, the Concessionaire shall reimburse to the Operator its mitigated termination costs.

25.2 Provision of documents

Save as otherwise provided in this Agreement, upon termination of any of the Services or of this Agreement (howsoever caused), the Operator shall forthwith comply with its obligations which arise on termination under Clause 24 and further provide to the Concessionaire free of charge one copy of all documents, databases, records and other information necessary for the operation and maintenance of the Tramlink System (to the extent that such documents have not been previously supplied to the Concessionaire) including a complete record of the activities relating to safety matters and the Safety Management System undertaken by the Operator throughout the Term and all other information in the Operator's possession or to which it has access and which is required to enable the Concessionaire to continue to operate and maintain the Infrastructure and the Trams. Such documentation can be, in the form of computer databases, microfilm or CAD data compatible with the software for which licences are provided to the Concessionaire in accordance with Clause 18. The records of maintenance referred to in this Clause 25.2 cover the maintenance of Infrastructure items for which the Operator is responsible.

25.3 Condition of records and systems

The Operator shall ensure that all such records, documentation, drawings and manuals are complete, up-to-date, properly catalogued and in a tidy condition for hand-back to the Concessionaire. The Operator shall also ensure that the maintenance management systems and procedures 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.

25.4 Continuance of activities

The Operator and the Concessionaire shall continue to perform their respective activities under this Agreement until the date of expiry or termination of this Agreement unless other phased handover procedures are agreed between the Parties. The Operator shall also give all reasonable cooperation to the Concessionaire to ensure a smooth and trouble free transition of such activities with no degradation of the standard thereof.

25.5 TUPE Regulations

25.5.1 In this Clause 25.5 and Schedule 19 the following definitions shall apply:-

“Operator Employees”	any employee of the Operator or any Affiliate of the Operator;
“TUPE Employees”	any person whose contract of employment may be transferred to a successor operator of the Tramlink System by virtue of the operation of Law (including the Regulations as amended, replaced or substituted from time to time) or in respect of whom liabilities arising from the contract of employment or employment relationship may be transferred;
“TUPE Information”	the information in relation to the TUPE Employees specified in Schedule 19;
“the Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 1981.

25.5.2 Where reference is made in this Clause 25.5 to the last twelve months of the Term, such period shall be deemed to commence on the following dates (except and until the actual date of expiry of the Term is known):-

- (a) the date which is twelve months, as the case may be, prior to the date of expiry of the Term assuming that the parties do not agree to extend the Term in accordance with Clause 4;
- (b) the date on which notice is given to the Operator under Clause 24.1.1(a);
- (c) the date on which the Concessionaire becomes aware of an Operator Default and notifies the Operator that such period of twelve months shall be deemed to commence.

Any such period (which may be longer or shorter than twelve months, as the case may be) shall expire on the date of termination of this Agreement or, if earlier, in the case of periods commencing under sub-clause (c) of this Clause 25.5.2, the date falling twelve months after the date of any notice under sub-clause (c) of this Clause 25.5.2 or, in each case, such earlier date as the Concessionaire may determine.

25.5.3 The Operator shall not, without the prior consent of the Concessionaire (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions (as amended from time to time) of employment of any Operator Employee (including any promise to make any additional payment or provide any additional benefit) where such variation or addition:-

- (a) takes effect in the last twelve months of the Term unless it is in the ordinary course of business; or
- (b) results in any such employment not being terminable by the employer within six months of the expiry of the Term; or
- (c) relates to a payment or the provision of a benefit triggered by termination of employment; or
- (d) relates to the provision of a benefit (but excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Term save insofar as such provision is in the ordinary course of business; or
- (e) prevents, restricts or hinders any such employee from working for a successor operator or from performing the duties such employee performed for the Operator.

25.5.4 The Operator shall not, without the prior consent of the Concessionaire (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Operator Employee where such employment may commence during the last twelve months of the Term if and to the extent that:-

- (a) such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent Operator Employees at the date of commencement of employment of such new Operator Employee; and
- (b) if such terms or conditions were granted to such equivalent Operator Employees already employed by the Operator by way of variation to their terms or conditions of employment, the Operator would be in breach of Clause 25.5.3.

25.5.5 Subject to Clause 25.5.6 the Operator shall at the request of the Concessionaire in the last twelve months of the Term provide the TUPE Information within 28 days of such request and thereafter until termination of this Agreement update such information in accordance with the reasonable requests of the Operator subject to the Operator's common law duties to its employees or under the Data Protection Act 1984.

25.5.6 The Operator shall use its reasonable endeavours to ensure that it will be in a position to provide TUPE Information pursuant to Clause 25.5.5 in respect of the TUPE Employees who are not also Operator Employees but, subject to the Operator having used such reasonable endeavours, the Operator's obligation to provide TUPE Information pursuant to Clause 25.5.5 in respect of such TUPE Employees shall be limited to the TUPE Information covering such TUPE Employees actually in the possession of or reasonably obtainable by the Operator.

25.6 Establishment of hand-over procedure

On termination or expiry of this Agreement the Operator and the Concessionaire shall establish appropriate handover procedures.

25.7 Training and technical support

Commencing 6 months prior to termination of any of the Services or of this Agreement the Operator shall conduct an appropriate training programme for various categories of the Concessionaire staff and third party staff nominated by the Concessionaire who will be responsible for the relevant Services following the termination to ensure the successful continuation of operational activities. The content and style of and programme for the training shall be submitted to the Concessionaire by the Operator for review 9 months prior to termination and the Operator shall comply with the Concessionaire'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. The provision of such training shall for the purposes of this Agreement be an Additional Service.

25.8 Saving provisions

25.8.1 Termination 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 rights and remedies arising out of Clauses 24 and 25.

25.8.2 Clauses 22.2, 22.3, 22.4, 22.5, 26 and 33 and of this Agreement shall remain in full force and effect notwithstanding the termination of this Agreement.

25.8.3 Save as aforesaid this Agreement shall be of no further force and effect following termination of this Agreement.

26. INDEMNITIES

26.1 Indemnity by Operator

26.1.1 The Operator shall be responsible for and shall release and indemnify the Concessionaire from and against all liability, loss, damage, claims, costs and expenses whatsoever:-

- (a) incurred by the Concessionaire as a result of death or personal injury to persons or loss of or damage to property (including property belonging to the Concessionaire or for which it is responsible); or
- (b) incurred by the Concessionaire as a result of the indemnity given by the Concessionaire under Clause 48.1(b) of the Concession Agreement (as originally entered into); or
- (c) incurred by the Concessionaire as a result of a breach by the Operator of the undertakings set out in Part 2 of Schedule 16,

but only to the extent such liability, loss, damage, claim, cost or expense arises out of or in consequence of the negligence to third parties of the Operator or a breach by the Operator of its obligations under this Agreement or, in the case of paragraph (c) above only, a breach by the Operator of its obligations under Part 2 of Schedule 16 provided always that the Operator shall not be responsible for or be obliged to indemnify the Concessionaire for any liability, loss, damage claims, costs and expenses to the extent caused by the negligence of the Concessionaire, or a breach by the Concessionaire of its obligations hereunder or in respect of any matter for which the Operator is not responsible or liable pursuant to Clause 6.4.1 or the design and construction of the Tramlink System.

26.2 Indemnity by Concessionaire

26.2.1 The Concessionaire shall be responsible for and shall release and indemnify the Operator from and against all liability, loss, damage, claims, costs and expenses whatsoever incurred by the Operator as a result of death or personal injury to persons or loss of or damage to property (including property belonging to the Operator or for which it is responsible) but only to the extent such liability, loss, damage, claim, cost or expense arises out of or in consequence of the breach by the Concessionaire of its obligations under this Agreement or the negligence to third parties of the Concessionaire, provided always that the Concessionaire shall not be responsible for or be obliged to indemnify the Operator for any liability, loss, damage, liability cost or expense to the extent caused by the negligence of the Operator or a breach by the Operator of its obligations hereunder.

26.3.1 If either Party (“the Recipient”) becomes aware of any third party claim against the Recipient which may result in a claim 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:

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

- (ii) 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
- (iii) 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.

26.3.2 The Recipient shall give the Covenantor all reasonable cooperation, access and assistance, technical or otherwise, for the purpose of resisting such a claim subject as provided in sub-clause 26.3.1(c).

26.3.3 If the Covenantor does not request the Recipient to take any action to resist such third party claim in accordance with this Clause 26 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 21 day period the Recipient shall make no admission prejudicial to the resistance of such claim.

27. LIMITATIONS ON LIABILITY

27.1 Liability of the Parties

27.1.1 The rights, powers and remedies provided in this Agreement are not cumulative and exclude all substantive (but not procedural) rights, powers and remedies express or implied provided by common law, statute or custom or howsoever otherwise including (without limitation) any rights, powers or remedies any Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly each of the Parties hereby waives to the fullest extent possible all such rights, powers and remedies provided by common law, statute or custom or howsoever otherwise and releases the other its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law, statute or custom or howsoever otherwise in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein and in respect of death or personal injury caused by negligence.

27.1.2 Save for the Tram Maintenance Direct Agreement and the Deed of Undertaking between the Corporation, the Concessionaire and the Operator of even date (to which this Agreement is subject) this Agreement constitutes the whole and only agreement between the Parties and between the Concessionaire and CentreWest Limited relating to (and supersedes and extinguishes any prior drafts, previous agreements, undertakings representations, warranties and arrangements of any nature whatsoever, whether or not in writing between the Parties, in connection with) the subject matter hereof. The Operator shall hold the benefit of this Clause on trust for CentreWest Limited.

27.1.3 Each of the Parties acknowledges that in entering into this Agreement on the terms set out in this Agreement it has not relied on or been induced to enter into this Agreement by any representation, warranty, undertaking, promise or assurance made or given or action taken in respect of the subject matter hereof by any other Party or any other person, whether or not in writing, at any time prior to the execution of this Agreement other than those expressly set out in this Agreement and neither party nor CentreWest Limited owes to the other any obligation or duty in respect of representation, warranty, undertaking, promise, assurance or advice made or given or action taken in respect of the subject matter hereof prior to the date hereof which is not expressly set out herein. The Operator shall hold the benefit of this clause on trust for CentreWest Limited.

27.2 Criminal Liability

27.2.1 Where the act or default of a Party or of its agents or contractors causes the other Party or the Corporation to commit an offence the first Party shall immediately take all reasonable steps necessary to ensure that act or default no longer causes the other Party or the Corporation to commit that offence.

27.2.2 Where a Party reasonably suspects that such an act or default is about to take place and it reasonably believes that this will result in the other Party or the Corporation committing an offence the first Party may issue an instruction to the other Party to remedy the act or default forthwith and the other Party shall take all reasonable steps to comply with the said instruction.

27.3 Consequential Losses

Save as otherwise expressly set out in this Agreement, neither Party shall be responsible to the other Party for consequential loss or damage resulting from the performance of obligations or the exercise of rights under or pursuant to this Agreement and for the purposes of this Clause “consequential loss or damage” shall mean loss of profit, loss of use, loss of contract or any other economic loss or any indirect and/or consequential damage or loss

27.4 Generally

27.4.1.1.1 Subject to Clauses 27.4.1.1.2 and 27.4.1.1.3 below, the amount payable by the Concessionaire in respect of any liability under this Agreement shall be reduced to the extent that all or part of any such liability is recovered pursuant to the insurances required to be effected in accordance with the terms of this Agreement.

27.4.1.1.2 Should any act or omission of the Operator entitle the insurers to avoid the policy, or otherwise to reduce the amount that would have been recoverable under these insurance policies, then the liability of the Concessionaire to the Operator shall be reduced by the amount of insurance recovery foregone because of the Operator's act or omission. For the purposes of this Clause 27.4.1, knowledge of the

terms of the insurances referred to in Schedule 6 shall be imputed where the Operator is named as insured.

- 27.4.1.1.3 In the event of the Concessionaire seeking to rely on Clause 27.4.1.1.2 above, it shall be assumed that the total excess or deductible in respect of any of the insurance policies involved shall be limited to £■■■■, regardless of the actual amount of that excess or deductible. Should the excess or deductible exceed £■■■■, then the Operator's liability for that excess or deductible shall be limited to the sum of £■■■■
- 27.4.1.2.1 Subject to Clauses 27.4.1.2.2 and 27.4.1.2.3 below, the amount payable by the Operator in respect of any liability under this Agreement shall be reduced to the extent that all or part of any such liability is recovered pursuant to the insurances required to be effected in accordance with the terms of this Agreement.
- 27.4.1.2.2 Should any act or omission of the Concessionaire entitle the insurers to avoid the policy, or otherwise to reduce the amount that would have been recoverable under these insurance policies, then the liability of the Operator to the Concessionaire shall be reduced by the amount of insurance recovery foregone because of the Concessionaire's act or omission. For the purposes of this Clause 27.4.1, knowledge of the terms of the insurances referred to in Schedule 6 shall be imputed where the Concessionaire is named as insured.
- 27.4.1.2.3 In the event of the Operator seeking to rely on Clause 27.4.1.2.2 above, it shall be assumed that the total excess or deductible in respect of any of the insurance policies involved shall be limited to £■■■■, regardless of the actual amount of that excess or deductible. Should the excess or deductible exceed £■■■■, then the Concessionaire's liability for that excess or deductible shall be limited to the sum of £■■■■
- 27.4.2 Subject to Clause 27.4.3 the liability of the Operator in respect of any claim under this Agreement shall not (when aggregated with the amount of all other claims in any one Operating Year) exceed £■■■■ including the Operator's liability referred to in Clause 16.1.2 in that Operating Year. To the extent that any liability of the Operator under this agreement is reduced pursuant to Clause 27.4.1 such amount shall not be included for the purpose of calculating the limit of the Operator's liability under this Clause.
- 27.4.3 The limits on the Operator's liability as set out in Clause 27.4.2 shall apply in respect of termination of this Agreement save that where the Operator constructively abandons the performance of this Agreement and the Agreement is terminated by the Concessionaire, the Operator's maximum liability shall be the amount of the total remuneration paid to the Operator in the previous Operating Year in respect of Part 3 and 5 of Schedule 2. For the purpose of this Clause 27.4.3, "constructive abandonment" shall

mean the Operator acting through the Operator's Representative or a director of the Operator:-

- (a) clearly and absolutely refusing to perform its obligations under this Agreement; or
- (b) deliberately engaging in a course of conduct which is designed to, or the Operator's Representative or such director is reckless as to whether it will disable the Operator from performing its obligations under this Agreement.

27.4.4 If the Concessionaire terminates this Agreement as a result of the termination of the Tram Maintenance Contract arising from default thereunder by the Tram Maintenance Contractor the limit of the liability of the Operator to the Concessionaire under this Agreement shall be equivalent to the limit of the liability of the Tram Maintenance Contractor to the Operator under the Tram Maintenance Contract.

28. ASSIGNMENT AND SECURITY

28.1 Assignment by Concessionaire

The Concessionaire shall be entitled to assign or charge the benefit of any of this Agreement (or any part thereof) to any person assuming responsibility for the operation and/or maintenance of any part of the Tramlink System or to any Lender subject to such person assuming responsibility for the performance of the obligations of the Concessionaire hereunder save in the case of Lenders.

28.2 Assignment

Neither Party shall be entitled to assign without the written consent of the other Party any right or interest under this Agreement save as provided under Clause 28.1. The liabilities of either Party under this Agreement shall not be increased by the assignment or charging by the other Party of any right or interest under this Agreement pursuant to this Clause 28.2.

29. SUB-CONTRACTS

29.1 Sub-contracting

29.1.1 The Operator may sub-contract any part of its obligations under this Agreement (but not the whole) with the consent of the Concessionaire such consent not to be unreasonably withheld or delayed. Such consent will not be required for sub-contracts where:-

- (i) the contract is not material in the context of this Agreement; or
- (ii) the contract is not for a total consideration in excess of £250,000 (Indexed).

save always, and notwithstanding the provisions of this Clause 29.1 the consent of the Concessionaire (not to be unreasonably withheld) shall be

required in the event that the Operator proposes to subcontract any or all of its obligations in respect of the collection of revenue on the Tramlink System.

29.2 Operator to remain responsible

29.2.1 The Operator shall retain full responsibility and liability for the work of its employees contractors and sub-contractors and any breach of this Agreement caused by such employee, contractor or subcontractor in the course of performing obligations under this Agreement on behalf of the Operator shall be a breach by the Operator.

29.2.2 The Concessionaire shall retain full responsibility and liability for the work of its employees contractors and sub-contractors (save for the Operator) and any breach of this Agreement caused by such employee, contractor or subcontractor in the course of performing obligations under this Agreement on behalf of the Concessionaire shall be a breach by the Concessionaire.

29.3 Sub-contracting requirements

29.3.1 The Operator shall ensure with respect to each contract or sub-contract for the procurement of goods and services hereunder which has a value in excess of £250,000 or is material in the context of this Agreement:-

- (a) the benefit of the contract or sub-contract can be freely assigned to the Concessionaire or any successor operator save for an obligation on the part of the assignee to assume the obligation on the part of the Operator under such contract or sub-contract;
- (b) the contract or sub-contract is entered into by the Operator as principal and the Concessionaire has no obligations pursuant thereto;

unless the Operator has previously notified the Concessionaire that any particular contract or sub-contract which falls within this Clause 29.3.1 does not satisfy the requirements of paragraph (a) above and the Concessionaire has not objected within 10 Business Days.

29.3.2 If the Operator enters into a contract or sub-contract to which Clause 29.3 would otherwise apply with any person for the supply of goods or services to or for the Tramlink System and such person is an Affiliate of the Operator, the terms of any such contract or sub-contract shall be in accordance with normal commercial practice and at arm's length and on such terms as would be appropriate if the contract or sub-contract had been entered into by a person other than an Affiliate of the Operator.

30. REPORTS, MEETINGS AND RECORDS

30.1 Reports

With effect from the Actual Opening Date, the Operator shall provide the Concessionaire within 21 days following the end of each quarter a report on the activities of the Operator during that quarter. The report shall include:-

- 30.1.1 details of all major maintenance performed by the Maintenance Contractors appointed by the Operator 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;
- 30.1.2 details of any other matter which is likely to affect the Operating Services during such following quarter;
- 30.1.3 copies of any notices received by the Operator during the quarter to which the report relates pursuant to any Applicable Requirement or from any competent authority and a statement of the action taken by the Operator in respect of such notices;
- 30.1.4 details of any special investigations carried out in relation to the state and condition of any element of the Tramlink System together with copies of all associated reports where the Concessionaire requires the same;
- 30.1.5 such other information as the Concessionaire shall have reasonably requested the Operator to provide during such quarter.

30.2 Meetings

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

- 30.2.1 quarterly progress and performance review meetings at which the parties shall review the Operator's quarterly reports; and
- 30.2.2 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).

30.3 Records and Reports

The Operator shall maintain, regularly update and make available to the Concessionaire records and reports of all Tram Services provided on the Tramlink System in accordance with a procedure to be agreed between the Parties taking account of the Concessionaire's obligations under Clause 69.4 of the Concession Agreement.

30.4 Provision of documents

The Operator shall make available to the Concessionaire one copy without charge of all documents and data of any nature acquired or brought into existence in any manner whatsoever by or on behalf of the Operator (but not documents containing information of a confidential or proprietary nature) and which might reasonably be required by the Concessionaire for the purposes of exercising its rights or carrying out its duties and obligations under the Project Agreements

31. COMPENSATION EVENTS

31.1 Change in Law

31.1.1 Where either Party becomes aware of any Compensation Event it shall notify the other Party as soon as practicable. The Parties shall assess the actual and potential financial effect of such Compensation Event on the Operator of performing this Agreement (the "Increased Costs") and shall agree the amount of Increased Costs as shall form part of the Concessionaire's claim under Clause 41 of the Concession Agreement (if any) and shall attribute such Increased Costs as relate to Tram Maintenance Services and the Operator shall assist the Concessionaire to comply with its obligations with regard to mitigation under Clause 40 of the Concession Agreement. Where the Parties cannot agree the amount of the Increased Costs to be included as part of the Concessionaire's claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement.

31.1.2 Where in any negotiation with the Corporation as to the appropriate amount of Increased Costs to be taken into account in determining the Concessionaire's entitlement to compensation under Clause 41 of the Concession Agreement the Corporation rejects the level of Increased Costs so proposed solely on the grounds such changes are not properly substantiated then either:

31.1.2.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Increased Costs with the Corporation; or

31.1.2.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

31.1.3 The Operator shall be entitled to recover from the Concessionaire the Increased Costs determined in accordance with Clause 31.1.1 in respect of any Compensation Event save where such amount is rejected by the Corporation in accordance with Clause 31.1.2 in which event it shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 31.1.2 or determined by the Expert less (where a deductible applies under the Concession Agreement) the lesser of such deductible or the amount deductible in accordance with Clause 31.1.6.

- 31.1.4.1 In the event that as a result of the requirements of HMRI the costs and expenses of the Operator in performing its obligations under this Agreement are increased then the Operator shall bear and pay such increased costs and expenses up to the amount of £200,000 in any one Operating Year. If such costs and expenses of the Operator are increased in excess of £200,000 in any Operating Year, after meeting such costs up to the amount of £200,000, the Operator at its discretion may terminate this Agreement without prejudice to the Concessionaire's other accrued rights hereunder. Subject to Clause 6.6.2, each Party shall meet its own costs and expenses resulting from such termination.
- 31.1.4.2 If the Operator decides to terminate this Agreement in accordance with Clause 31.1.4.1, it shall give the Concessionaire written notice of its intention to terminate. Within 28 Business days of receipt by the Concessionaire of such notice, the Concessionaire shall send a written response to the Operator either:
- (a) acknowledging the Operator's intention to terminate this Agreement; or
 - (b) confirming that the Concessionaire will bear the increased costs of the Operator as a result of the requirements of HMRI in excess of £200,000 in any one Operating Year.
- 31.1.4.3 If the Concessionaire responds to the Operator in accordance with Clause 31.2.4.2(a) then the Operator shall be entitled to terminate this Agreement after the expiry of 6 months from the date of the written response provided to the Operator pursuant to Clause 31.1.4.2(a) save always that during such six month period the Operator should not be obliged to incur additional costs in providing Services due to any failure on the part of the Concessionaire in implementing the requirements of HMRI pursuant to Clause 31.1.4.1 in excess of £200,000.
- 31.1.4.4 If the Concessionaire responds to the Operator in accordance with Clause 31.1.4.2(b) then the Operator shall not be entitled to terminate this Agreement and the Parties shall continue to perform their respective obligations hereunder on the terms of the Concessionaire's confirmation given under Clause 31.1.4.2(b).

- 31.1.5 The Concessionaire shall consult with the Operator in the event that it is proposed by either Party that any Bye-Law be amended or altered but only to the extent that such amendment or alteration would affect the Operator in the provision of the Operating Services pursuant to this Agreement. If the Concessionaire, without legal requirement, amends or alters any Bye-Law and as a direct result of such amendment or alteration the costs of the Operator in performing its obligations under this Agreement are increased and such increase is substantiated to the Concessionaire, then the Concessionaire shall reimburse to the Operator such amount being the equivalent of such increase in costs.
- 31.1.6 If at any time after the date hereof any Change of Safety Law or General Discriminatory Legislation occurs and the Concessionaire is unable to reclaim the Operator's Increased Costs in respect thereof then the Operator shall bear without recourse to the Concessionaire and without prejudice to the provisions of paragraph (c) of Schedule 2 the lowest of the first £■■■■ of any Increased Costs arising out of the same or the deductible applicable in the circumstances under the Concession Agreement or the amount it is unable to recover in respect of the same.
- 31.1.7 The Operator shall continue to be entitled to compensation for a Compensation Event in accordance with this Clause 31.1 notwithstanding the end of the "First and Second Protection Periods" (each as defined in the Concession Agreement) as if the compensation were still available to the Concessionaire under Clause 41 of the Concession Agreement save that the Concessionaire and the Operator shall agree the level of Increased Costs and in the event that no agreement can be reached shall refer the dispute to the Expert.
- 31.1.8.1 Notwithstanding any the provisions of this Agreement where a Change of Law requires any modification to the Trams and (if relevant) any changes to the nature or extent of the Tram Maintenance Services as a result of such modification to the Trams the Operator, when required by the Concessionaire, shall implement such works as are necessary to ensure that the Trams comply with the relevant Change of Law. Such works and any such changes to the Tram Maintenance services shall be Additional Services in accordance with Clause 6.7.
- 31.1.8.2 The Operator shall not be nor be deemed to be in breach of its obligations under this Agreement to comply with all Applicable Requirements or other Law to the extent that it is not required to carry out the Additional Services referred to above in accordance with the terms of this Agreement.

31.2 Construction Change

31.2.1 Where the Corporation or the Concessionaire issues a Concessionaire Change Order the Concessionaire shall notify the Operator as soon as practical. Where required by the Operator the Concessionaire shall make a claim under Clause 27 of the Concession Agreement. The Parties shall assess the potential effects of such Concessionaire Change Order to the Operator of performing this Agreement (the "Increased Costs") and shall agree the amount of Increased Costs as shall form part of the Concessionaire's claim under Clause 27 of the Concession Agreement (if any) and the Operator shall assist the Concessionaire to comply with its obligations under Clause 27 of the Concession Agreement. Where the Parties cannot agree the amount of the Increased Costs to be included as part of the Concessionaire's claim, there shall be included a sum which the Operator reasonably believes it can justify to the Expert in any dispute as to the amount payable under the Concession Agreement.

31.1.2 Where in any negotiation with the Corporation as to the appropriate amount of Increased Costs to be taken into account in determining the value of the Corporation Change Order in accordance with Clause 29.3 of the Concession Agreement the Corporation rejects the level of Increased Costs so proposed solely on the grounds such changes are not properly substantiated then either:

31.2.2.1 the Concessionaire shall, subject to the approval of the Operator agree a different level of Increased Costs with the Corporation; or

31.2.2 in the event that such agreement or approval cannot be obtained refer such dispute to the Expert for determination.

31.2.3 The Operator shall be entitled to recover from the Concessionaire the Increased Costs determined in accordance with Clause 31.2.2 in respect of any Concessionaire Change Order save where such amount is rejected by the Corporation in accordance with Clause 31.2.2 in which event it shall be entitled to recover the amount otherwise agreed with the Corporation in accordance with Clause 31.2.2 or determined by the Expert.

31.3 Where a Compensation Event or a Construction Change occurs the Parties shall assess the actual and potential financial effect of the same on the Operator and shall agree an appropriate reduction to the Fees or other sums due to the Operator under the Agreement as appropriate.

31.4 In respect of any Concessionaire Change Order required by the Concessionaire the Operator shall be entitled to recover in accordance with Clause 6.7.1 any Increased Costs.

32. DEREGULATION

If at any time Deregulation occurs:

- 32.1 the Fees shall be rebased in accordance with paragraph (c) of Schedule 2, and subsequently at five yearly intervals from that date and Clause 21.2.2 shall be adjusted accordingly; and
- 32.2 the Parties shall agree any further amendments that they wish to make to this Agreement as a result of Deregulation and if the Parties are unable to reach agreement as to any such amendments then the Operator shall be entitled to recover its "Change in Costs" or "Increased Costs" (as appropriate) under Clauses 16, 31.1 and 31.2 from the Concessionaire as it would have been entitled to if compensation were still payable to the Concessionaire under the Concession Agreement.

33. CONFIDENTIAL INFORMATION

33.1 Obligations as to Confidentiality

The Parties to this Agreement shall keep confidential all matters relating to this Agreement and the Concession Agreement and will not make any disclosure, and will use best endeavours to prevent their employees, agents and servants from making any disclosure, to any person of any information, data, documents, secrets, dealings, transactions or affairs of or relating to this Agreement or the Concession Agreement.

33.2 Permitted disclosure

The confidentiality obligation of the Parties shall not apply to the following:-

- 33.2.1 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 33;
- 33.2.2 any disclosure which may reasonably be required for the performance of that Party's obligations under this Agreement;
- 33.2.3 disclosure of information which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto);
- 33.2.4 disclosure of any information which is already lawfully in the possession of the receiving party prior to its disclosure by the disclosing party;
- 33.2.5 the provision of information to suppliers or subcontractors provided similar obligations of confidentiality to those contained in this Agreement are imposed upon them before information is disclosed;

- 33.2.6 provision of information to any Party to any of the Financing Documents or their professional advisers or insurance advisers;
- 33.2.7 compliance by the Operator with its obligations set out in Clause 30;
- 33.2.8 provision of information by the Concessionaire pursuant to the terms of the Concession Agreement or any of the Project Agreements;
- 33.2.9 provision of information to its professional advisers and financiers.

33.3 Continuing obligations

The provisions and obligations set out in this Clause shall survive and remain in force upon and following the termination of this Agreement.

34. DOCUMENTS, DUTIES AND FEES

34.1 Supply of documents

The following provisions shall apply where one Party is obliged under this Agreement to supply documents and drawings to the other Party:-

- 34.1.1 all paper based documents and drawings shall be of a suitable quality for reproduction, microfilming or scanning into electronic databases;
- 34.1.2 documents and drawings may be supplied on suitable electronic media provided such media is in a format which is compatible with the relevant Party's systems; and
- 34.1.3 each Party shall ensure that secure back-ups or archive copies of originals and revisions are maintained in respect of data supplied on electronic media.

35. PAYMENTS

35.1 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 provisions or written agreement to the contrary:-

- 35.1.1 the person entitled to payment ("the payee") shall deliver an invoice setting out adequate details for 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;
- 35.1.2 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;

35.1.3 without prejudice to the payee's right to receive payment on the due date, 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 35.1.1 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

35.1.4 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.

36. NOTICES

36.1 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:-

Concessionaire

Address Tramlink Depot
 Coomber Way
 Croydon
 CR0 4TQ

Facsimile No: 020 8683 0991
Attention: Company Secretary

Operator

Address Tramlink Depot
 Coomber Way
 Croydon
 CR0 4TQ

Facsimile No: 020 8665 7347
Attention: Company Secretary

36.2 Time of service

A notice shall be deemed to have been received:-

36.2.1 if delivered by hand, at the time when the notice is left at the address of the Party to be served;

36.2.2 if sent by post on the working day next following the day of posting or, if the day of posting was not a working day, the working day next following the first working day after the day of posting;

36.2.3 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.

37. GENERAL PROVISIONS

37.1 Waivers

None of the terms, provisions or conditions of this Agreement shall be considered waived by any Party to this Agreement unless a waiver is given in writing by that Party. No such waiver shall be a waiver of any past or future default or breach nor shall it create any amendment or addition to or deletion from any of the terms, provisions or conditions of this Agreement unless (and then only to the extent) expressly stipulated in the waiver.

37.2 Partial invalidity

The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining part of provisions of this Agreement.

37.3 No liability for review or approval by the Concessionaire

Save where this Agreement provides for the Operator to respond to a direction or instruction given by or on behalf of the Concessionaire or for the Operator to seek the consent or approval of the Concessionaire and the Operator responds in the manner directed or instructed or acts in the manner for which consent or approval was sought or save as is agreed otherwise by the Operator and the Concessionaire, the obligations of the Operator hereunder shall not be affected by any instruction, direction, consent, approval, comment, acknowledgement or advice made or given by or on behalf of the Concessionaire and the Operator shall not be entitled to make any claim against the Concessionaire or to seek any relief or remedy of any nature by reason of any such action by or on behalf of the Concessionaire.

37.4 No liability for review or approval by the Operator

Save where this Agreement provides for the Concessionaire to respond to a direction or instruction given by or on behalf of the Operator or for the Concessionaire to seek the consent or approval of the Operator and the Concessionaire responds in the manner directed or instructed or acts in the manner for which consent or approval was sought or save as is agreed otherwise by the Concessionaire and the Operator, the obligations of the Concessionaire hereunder shall not be affected by any instruction, direction, consent, approval, comment, acknowledgement or advice made or given by or on behalf of the Operator and the Concessionaire shall not be entitled to make any claim against the Operator or to seek any relief or remedy of any nature by reason of any such action by or on behalf of the Operator.

37.5 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. Save as expressly authorised in this Agreement, neither Party shall be deemed to be the agent of the other and shall not hold itself out as having authority or power to bind the other in any way.

37.6 Further assurance

Each Party agrees, upon the request of the other, to execute any documents and take any further steps as may be reasonably necessary in order to implement and give full effect to this Agreement.

37.7 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 or arrangement of which this Agreement forms part and which is registrable or by virtue of which this Agreement is registrable.

37.8 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.

37.9 Language of Agreement

The language of this Agreement is the English language.

37.10 Announcements

Save as required by law or regulation the Parties shall not make any announcements in connection with this Agreement without the prior written consent of the other Party such consent not to be unreasonably withheld.

37.11 Costs

Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Agreement.

38. DISPUTE RESOLUTION

Any dispute arising between the Parties hereunder shall be resolved in accordance with the provisions of Schedule 9.

39. PROPER LAW

This Agreement is subject to the Law of England and Wales and 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

Executed as a Deed)
for and on behalf of)
Tramtrack Croydon Limited)
acting by:

Director

Director

OR

Executed as a Deed)
for and on behalf of)
Tramtrack Croydon Limited)
acting by:

Director

Witnessed by

AND

Executed as a Deed)
for and on behalf of)
Tram Operations Limited)
acting by:

Director

Director

OR

Executed as a Deed)
for and on behalf of)
Tram Operations Limited)
acting by:

Director

Witnessed by

DATED 25 November 1996

AMENDED AND RE-STATED

2008

(1) TRAMTRACK CROYDON LIMITED

- and -

(2) TRAM OPERATIONS LIMITED

SCHEDULES AND ANNEXURE
relating to the
Croydon Tramlink System Operating Agreement

ASHURST MORRIS CRISP

Broadwalk House
5 Appold Street
London EC2A 2HA
Tel : 0171 638 1111
Fax : 0171 972 7990

Amended and Re-Stated
Burgess Salmon LLP
Narrow Quay House
Narrow Quay
Bristol BS1 4AH
Tel: 0117 939 2000
Ref: CF02/20225.2/FLETC

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SCHEDULE 1

THE SERVICES

PART 1: PRELIMINARY SERVICES

From the date of this Agreement until the start of the Mobilisation Period, the Operator shall:-

- liaise with the Contractor during the detail design process;
- review and, where applicable, comment on construction designs, timescales and proposals;
- review and, where applicable, comment on proposed and actual changes to the Specification, the Performance Specification and the Operator Specification;
- review and, where applicable, comment on proposed and actual Construction Changes, Change Orders, Service Changes, Service Parameter Changes, Indicative Change Orders (as defined in Clause 29.1 of the Concession Agreement);
- review and, where applicable, comment on any Change of Law, anticipated Change of Law or Compensation Event which may impact future operations of the Tramlink System;
- review any change in the Tramlink System and the Project Agreements and, where applicable, comment;
- attend meetings with HMRI and have input into Safety Case discussions;
- commence preparation of the safety cases relating to operation of the Tramlink System and to the stations;
- assist with discussions with the Corporation and with the Council, where an Operator input is applicable; and
- develop recruitment and training plans.

But not with respect to the Trams.

PART 2: MOBILISATION SERVICES

From the start of the Mobilisation Period until the Actual Opening Date the Operator shall:-

- review, and where applicable, comment on construction designs, timescales and proposals;
- review, and where applicable, comment proposed and actual changes to the Specification, the Performance Specification and the Operator Specification;
- review, and where applicable, comment proposed and actual Construction Changes, Change Orders, Service Changes, Service Parameter Changes and Indicative Change Orders (as defined in Clause 29.1 of the Concession Agreement);

- review, and where applicable, comment any Change of Law, anticipated Change of Law or Compensation Event which may impact future operations of the Tramlink System;
- review any change in the Tramlink System and the Project Agreements and, where applicable, comment;
- prepare the safety cases relating to operation of the Tramlink System and to the stations;
- assist with discussions with the Corporation and with the Council, where an Operator input is applicable;
- liaise with the Contractor in respect of arranging the training of Operator staff required for commissioning and listing and operating of the Tramlink System;
- develop recruitment and training plans;
- recruit and employ staff;
- train staff to the required standard (except in relation to training given by external suppliers referred to below);
- receive training in the operation of the Tramlink System both at the Site and at other sites (to be determined). Most of this training will be in respect of equipment suppliers;
- attend at meetings with HMRI regarding the Safety Case;
- develop a safety plan;
- develop Quality Plans;
- develop administration and management procedures and systems;
- arrange for the opening in Croydon town centre of a small office to handle marketing, lost property and ticket sales;
- tender and arrange contracts with sub-contractors;
- assist with obtaining the required Bye-laws;
- assist with the development of the Customer Charter;
- assist the Concessionaire and the Contractor with the required testing of the Tramlink System and comment to the Concessionaire and the Contractor (as relevant) on the findings of those tests.

But not with respect to the Trams.

PART 3: OPERATIONAL SERVICES

1. Assumptions

The Parties acknowledge that the provision of the Services by the Operator assumes and is dependant on:-

- the supply of electricity free of charge save for that expressly assumed by the Operator hereunder;
- the payment by the Concessionaire of all rates and property related charges except those related to the Operator's offices in Croydon and gas, water and telephone at the Depot consumed by the Operator or its sub-contractors;
- the Trams can be operated using one man as is current Good Industry Practice;
- that tram operating speed, tram acceleration and tram braking are permitted at the levels contained in the Specification;
- the cleaning of graffiti and rectification of vandalism and other handling of crime remain at levels which can reasonably be expected with a tram system in that area;
- marketing to a level to be reasonably expected with a controlled fare regime operating in a regulated environment;
- that any change in livery is at the Concessionaire's cost;
- that the Tramlink System will be provided in accordance with Clause 9.1;
- the Off-tram Revenue Agreement does not impose survey requirements on the Operator in addition to standard revenue protection personnel;
- the level of training and visits required by the Concessionaire are reasonable;
- no additional policing or other staff requirements for special events;

and in the event of any change in such assumptions except where expressly addressed in this Agreement, such change will be treated as Additional Services and dealt with in accordance with Clause 6.7.

2. General

During the Operating Period, the Operator shall provide to the Concessionaire:-

- (a) tram drivers to meet the requirement of the Timetable;
- (b) tram drivers to provide, as required, shunting service within the Depot;
- (c) controllers on a 24 hour shift basis. The controllers' role is to man the Control Room, ensure the smooth operation of the Tramlink system and deal with all emergencies and incidents (with back-up support where necessary);

- (d) management of the drivers and controllers, including an on-call system outside of normal office hours;
- (e) a travel information service. During office hours, this would be provided by staff based at the Croydon office. Outside office hours, the telephone inquiry number would be linked to the control room at Therapia Lane. The Operator will provide information to LT for it to update its 24 hour London Travel Information service;
- (f) a marketing service. This will provide a range of publicity timetables, fare charts and general marketing information referred to above;
- (g) a lost property service in line with LT's current standard of lost property. It will be located in the Croydon office and be open during most normal office hours;
- (h) personnel and training resources suitable for the size of the operation;
- (i) contract management resource to cover tram maintenance and the Operator's sub-contractors;
- (j) control of stores and inventory management for the Operator and the Tram Maintenance Contractor stock;
- (k) interface between infrastructure maintenance requirements on the Tramlink System and operational requirements;
- (l) organising, where applicable replacement bus services;
- (m) updating of O & M Procedures relating to the Services;
- (n) updating of Health and Safety Procedures and safety plans relating to the Services;
- (o) updating of Quality Plans relating to the Services;
- (p) evaluation of technical innovations and new products in the tram industry, save those such evaluations relating to Infrastructure items maintained by the Concessionaire shall be carried out jointly with and led by the Concessionaire;
- (q) evaluation of technical problems impacting the operations, save that such evaluations arising from technical problems relating to Infrastructure items maintained by the Concessionaire shall be carried out jointly with and led by the Concessionaire;
- (r) monitoring of auditing and reporting on all aspects of safety relating to the Tramlink System. Working with the Concessionaire's Health and Safety Manager to provide a safe system for the Operator's undertaking working within the Operator's Safety Management System;
- (s) revenue related services as more particularly detailed in Schedule 11;

- (t) provision of cleaning services as more particularly detailed in section 11 of the Operator Specification.
- (u) mobile van to attend breakdowns or emergencies;
- (v) liaison with emergency services and planning for response to emergencies;
- (w) liaison and, where applicable, use of an appropriate Police force to carry out both its statutory duties and to provide a level of surveillance. The use of a contractor to carry out some security work is envisaged;
- (x) liaison with the Tram Maintenance Contractor, and identification of interface issues between the Tram Maintenance Contractor and the Operator;
- (y) departure charges but only to the extent of the Timetable as at the date of this Agreement;
- (z) management of breakdown and/or emergency response;
- (aa) assist the Concessionaire and the Contractor with the required commissioning and testing of the Tramlink System from SAT 2 up to and including SAT 3 and comment to the Concessionaire and the Contractor (as relevant) on the finding of those texts;
- (bb) wheel turning in accordance with Good Industry Practice.

In the event of any conflict between the provisions of this Part of the Schedule and the other provisions of this Agreement (including the Operator Specification) the other provisions of this Agreement shall prevail.

PART 4: INFRASTRUCTURE MAINTENANCE MANAGEMENT SERVICES

1. In relation to the Infrastructure items for which it is responsible the Operator shall:-
 - (a) prepare and submit to the Concessionaire, maintenance budgets split between routine maintenance, irregular and heavy maintenance, capital expenditure and project expenditure. The Operator will state which elements are fixed price or are provision sums. The Operator will also state the level of technical expertise required to evaluate the work;
 - (b) prepare, issue and evaluate maintenance agreements;
 - (c) employ on behalf of the Operator technical expertise to advise on infrastructure maintenance. This advice shall include, but shall not be limited to architects, design consultants, surveyors, quality surveyors and environmental consultants;
 - (d) place orders for maintenance work;
 - (e) manage the relationship between the maintenance contractors, other contractors and the Operator;

- (f) ensure that safety aspects of maintenance work are reviewed and minimise any resultant risk to the operations and users of the System;
 - (g) ensure that impacts on the passenger service are minimised, adequate notice to passengers are given and that substitute bus services are organised;
 - (h) assess the effect of the Infrastructure Maintenance Plans on the Operator Specification;
 - (i) ensure that, on completion of any maintenance work, that clearance is given for passenger services to commence.
2. For clarity the fee for Infrastructure Maintenance Management Services does not include amongst other things the following costs:
- any external costs including the use of consultants, advisors, surveyors, technical advisors, etc;
 - the cost of infrastructure maintenance;
 - the cost of spares, storage and losses associated with infrastructure maintenance;
 - any costs associated with defect rectification and latent defects;
 - insurance of infrastructure maintenance, contractors and property and equipment subject to infrastructure maintenance
- all of which, if incurred, would be treated as Additional Services and dealt with in accordance with Clause 6.7.
3. In relation to Infrastructure items for which it is responsible the Concessionaire shall:-
- (a) Consult the Operator in managing the relationship between the maintenance contractors, other contractors and the Operator;
 - (b) Consult the Operator to ensure that safety aspects of maintenance work are reviewed and that any resultant risk to the operations and users of the System are minimised, complying with the Operator's reasonable requests in relation to these safety aspects;
 - (c) Ensure that impacts on the passenger service are minimised, adequate notice is given to passengers and that substitute bus services are requested;
 - (d) Assess the effect of the Infrastructure Maintenance Plans on the Operator's Specification;
 - (e) Ensure that, on completion of any maintenance work, clearance is given for passenger services to commence.

PART 5: TRAM MAINTENANCE SERVICES

A. GENERAL

1. Repair of the Trams and Routine Maintenance

For the purposes of this Part 5 of Schedule 1, the following definitions shall apply:-

“Tram Management Services”: the contracting for and management of the provision of Tram Spares Services under the Tram Maintenance Contract;

“Tram Spares Services”: the provision of spare parts for trams by the Tram Maintenance Contractor.

Tram Maintenance

1.1 The Operator shall procure the provision of Tram Maintenance Services and Tram Spares Services by the Tram Maintenance Contractor in accordance with the Tram Maintenance Contract and shall be liable for the failure of the Tram Maintenance Contractor properly to perform such services as if such failure were a breach of this Agreement provided that notwithstanding anything else in this Agreement:-

1.1.1 the rights of the Concessionaire and liability (including any consequential liability) of the Operator under this Agreement where the Operator fails to procure the provision of Tram Maintenance Services in accordance with the Tram Maintenance Contract shall not exceed the rights of the Operator and the liability of the Tram Maintenance Contractor under the Tram Maintenance Contract where the Tram Maintenance Contractor fails properly to perform Tram Maintenance Services under that agreement;-

(a) assuming enforcement thereof by the Operator; and

(b) ignoring for these purposes any right to relief, right of set-off, counterclaim or any similar such right which the Tram Maintenance Contractor may enjoy under the Tram Maintenance Contract to the extent arising from a breach by the Operator of the terms of that agreement which breach was not caused by the Concessionaire under this Agreement, by either party to the Concession Agreement or by any party to any of the other Project Agreements, in which case the Operator’s obligations and liability hereunder shall not exceed the obligations and liability of the Tram Maintenance Contractor had it not enjoyed such right or such relief;

1.1.2 the obligations upon the Operator to procure Tram Spares Services is limited to the provision of Tram Management Services by the Operator and any failure on the part of the Tram Maintenance Contractor to provide Tram Spares Services shall not constitute a default on the part of the Operator hereunder except to the extent that such failure is attributable to a breach by the Operator in the provision of Tram Management Services hereunder. In such circumstances the obligation of the Operator shall be to work with the Concessionaire to source Tram Spares from another party and to use its best endeavours in doing so but without being required to expend excessive management time or to incur external costs in so doing;

- 1.1.3 if the Operator is prevented from providing any other Services as a result of a breach by the Tram Maintenance Contractor of the Tram Maintenance Contract then the total liability of the Operator hereunder in respect of any such breach shall not exceed the amount payable under the Tram Maintenance Contract.
- 1.2 The Operator shall provide Tram Management Services.
- 1.3 The obligation on the Operator to provide Tram Maintenance Services hereunder shall continue until the provision of Tram Maintenance Services under the Tram Maintenance Contract is terminated or expires whereupon it shall end and the Operator shall not be obliged to provide any Services hereunder to the extent it is unable to do so because of the termination or expiry of the Tram Maintenance Contract.
- 1.4 The obligation on the Operator to provide Tram Management Services hereunder shall continue until the Tram Maintenance Contract is terminated or expires whereupon it shall end.
- 1.5 The Operator shall not terminate the Tram Maintenance Contract or the provision of any services thereunder without the prior consent of the Concessionaire such consent not to be unreasonably withheld or delayed.
- 1.6 Where the Tram Maintenance Contract expires or is terminated the Concessionaire and the Operator shall consult together in order to recruit a new Tram Maintenance Contractor. No new appointment shall be made without the prior written consent of both Parties (such consent not to be unreasonably withheld) and any additional costs or expenses determined in accordance with Clause 6.7 arising from the appointment of a new Tram Maintenance Contractor shall be met by the Concessionaire. If any amendments to the Operating Agreement are necessary as a result of such appointment the Parties shall negotiate in good faith and using all reasonable endeavours to reach agreement on the terms of such amendments.
- 1.7 The obligation on the Operator to provide Tram Maintenance Services shall revive upon any successor Tram Maintenance Contractor being appointed and such appointment coming into effect, whereupon the obligation on the Operator shall revive on the same basis mutatis mutandis as if the Tram Maintenance Contract had not expired or terminated but taking into account the changes made to this Agreement pursuant to paragraph 1.6.
- 1.8 Where the termination or expiry of the Tram Maintenance Contract is anticipated or predictable the Operator and the Concessionaire shall co-operate in advance of such termination or expiry in accordance with paragraph 1.6 in order to appoint a successor Tram Maintenance Contractor.
- 1.9 The provisions of Clause 29 “Sub-Contracts” shall not apply to the provisions of the Tram Maintenance Contract.
- 1.10 The Operator undertakes to the Concessionaire that it will not make or agree to any material amendment to, or variation to, the Tram Maintenance Contract without the prior written consent of the Concessionaire, such consent not to be unreasonably withheld.

- 1.11 No part may be removed from any Tram by the Operator except in compliance with the terms and conditions of the Tram Maintenance Contract. The Operator may not make modifications to any Tram save as permitted or required by the Tram Maintenance Contract.
- 1.12.1 If the Operator wishes to amend or modify the trams in a way which is outside the provisions of the Tram Specification (as defined in the Tram Maintenance Contract) then the Operator shall consult with the Concessionaire as to the acceptability of such amendment or modification, the potential cost savings, the effect on Tram Service Levels, the Timetable and other requirements of the Specification and its implementation. If the Concessionaire consents to any such amendment or modification then the Operator will carry out such amendment or modification in accordance with the requirements of the Concessionaire and shall take such further action as the Concessionaire shall reasonably require as a result of the same (including amending the Tram Maintenance Manuals and Tram Maintenance Plan and any other handbooks or manuals used in connection with the Trams and providing replacement equipment). All costs and expenses reasonably and properly incurred by the Concessionaire in connection with such amendment or modification (including the costs of amending the Driver Manuals) shall be met by the Operator unless otherwise expressed.
- 1.12.2 If the Concessionaire wishes to amend or modify the Tramlink System or any of the Concessionaire Tram Spares then the Concessionaire shall consult with the Operator as to such amendment or modification, the potential cost savings, the effect on Tram Service Levels, the Timetable and other requirements of the Operator Specification and the implementation of such amendment or modification. Following such consultation, the Operator shall provide to the Concessionaire its assessment of the financial effects to it, if any, of such amendment or modification which shall be reviewed by the Concessionaire and a cost agreed between the Concessionaire and Operator. The Operator shall provide all reasonable assistance in implementing such modification or amendment if required by the Concessionaire. Any modification or amendment carried out pursuant to this paragraph 1.12.2 shall be treated as an Additional Service.
- 1.13 The Operator shall not be liable for any failure by the Operator to make Trams available in accordance with this Agreement to the extent such failure was due to the Trams not being available to the Operator for the provision of the Services (save where caused by a breach by the Operator hereunder).
- 1.14 The Concessionaire's right to receive Tram Maintenance Services pursuant to paragraph 1.1 shall not be affected by any failure to enforce rights on the part of the Operator under the Tram Maintenance Contract or any grant of waiver or other relief by the Operator thereunder except where such failure or grant is approved in writing by the Concessionaire such approval not to be unreasonably withheld or delayed.
- 1.15 The Operator shall not admit liability in any dispute with the Tram Maintenance Contractor under the Tram Maintenance Contract in a way which may affect adversely the Concessionaire without the approval in writing of the Concessionaire such approval not to be unreasonably withheld or delayed.
- 1.16 The Operator shall review and comment on the Tram Maintenance Plan in accordance with the provisions of Clause 20 of this Agreement.

2. Other Requirements

The Operator shall, notwithstanding any term of the Tram Maintenance Contract comply with the following:

2.1 Removals, Substitutions and Replacements

- (a) Save as referred to in Clause 17.9 of the Tram Maintenance Contract all substitutions, replacements and renewals of parts of any Tram must become the unencumbered property of the owner of the Tram free of all liens and claims whatsoever within thirty (30) days of being attached to such Tram and such substitutions, replacements and renewals shall immediately become part of such Tram and subject to this Agreement. The Operator may not make modifications to any Tram (or any part thereof) save as permitted or required by the terms of this Agreement.
- (b) The Operator shall ensure that any Concessionaire Tram Spare which is not installed in the Tram to which it relates is properly and safely stored in accordance with paragraph 4(b) below and kept free from liens.

2.2 Additions

- (a) Subject to compliance at all times by the Operator with the terms of this Agreement, the Operator may, at no cost or expense to the Concessionaire, make additions to any of the Trams so long as the making of such additions does not detrimentally affect the safety, saleability, utility or value of such Tram or Trams. Following the making of any material addition to any of the Trams, the Operator shall notify the Concessionaire in writing thereof and provide reasonable details of the addition in question so as to enable the Lessor to identify the same and where it is attached with reasonable precision.
- (b) The Operator shall be entitled to remove any addition to any Tram so long as the removal of such addition does not detrimentally affect the safety, saleability, utility or value of such Tram.

Provided always that the Trams continue to comply with the Tram Specification (as defined in the Tram Maintenance Contract).

2.3 Notification of Events

The Operator shall:-

- (a) inform the Concessionaire immediately upon becoming aware thereof, of the loss, damage or destruction of any of the Trams;
- (b) as soon as reasonably practicable, but in any event within ten (10) Business Days of becoming aware thereof, of any loss, damage or destruction to any of the Trams, provide the Concessionaire with a preliminary estimate of likely cost of repair, reinstatement or replacement of the Trams and, no later than thirty (30) Business Days after becoming aware thereof, of a final estimate;

- (c) inform the Concessionaire as soon as reasonably practicable, but in any event within thirty (30) Business Days of becoming aware thereof, of any lien having become or being alleged to have become, attached to any of the Trams, or the enforcement or attempted enforcement of any lien against any of the Trams;
- (d) inform the Concessionaire immediately upon becoming aware thereof but in any event within ten (10) Business Days of becoming aware thereof, of any injury or damage to any person or any property caused by, or in connection with, any of the Trams;
- (e) inform the Concessionaire as soon as reasonably practicable, but in any event within ten (10) Business Days of becoming aware thereof, of any other event in respect of any of the Trams which might reasonably be expected to involve the Concessionaire in a loss, liability or claim;

3. **Reconditioning**

The Parties are to agree if and on what basis a midlife reconditioning of the Trams sufficient to restore to the Trams a remaining service life of 15 years is to be carried out.

4. **Spares**

- (a) The Concessionaire shall, as soon as practicable after the date hereof agree with the Operator and the Tram Maintenance Contractor a list of spare parts for the Trams to a value of £1,030,000 to be provided by the Contractor under the Construction Contract.
- (b) The Concessionaire shall supply to the Operator, no later than the Actual Opening Date, the Concessionaire Tram Spares. The Operator shall be responsible for storing and maintaining the Concessionaire Tram Spares in accordance with Good Industry Practice and shall be responsible for replacing any lost or damaged Concessionaire Tram Spares. Title to the Concessionaire Tram Spares shall at no time vest in the Operator.
- (c) The Operator shall, on termination of this Agreement deliver to the Concessionaire the Concessionaire Tram Spares in a condition commensurate with the Operator's obligations in relation to storage and reconditioning of such Spares required by this paragraph 4 (save where any Concessionaire Tram Spare is in the course of reconditioning).
- (d) The Parties shall agree a basis for making changes to the content of the Concessionaire Tram Spares and in relation to the reconditioning of such Spares in accordance with Clause 17.6 of the Tram Maintenance Contract.
- (e) The Operator shall be permitted to use Concessionaire Tram Spares in the course of Tram Maintenance Services. Any such Concessionaire Tram Spares shall be replaced when so used or, if appropriate, the replaced part shall be sent for repair or reconditioning to be carried out in accordance with Good Industry Practice.

5. Funding of Repair Pending Insurance Recovery

- (a) If damage is caused to any Tram not as a result of the default of the Operator or the Tram Maintenance Contractor hereunder, then the Concessionaire shall bear the necessary costs of repairing such damage until amounts are recovered under the relevant policies of insurance required to be taken out by the Concessionaire pursuant to Clause 22. Upon such recovery the Concessionaire shall be entitled to be reimbursed from the proceeds of the relevant insurance such costs it has expended in effecting such repairs.

- (b) If damage is caused to any Tram as a result of the default of the Operator or the Tram Maintenance Contractor hereunder, then the Operator shall subject to the other terms and conditions of this Agreement bear the necessary costs of repairing such damages until amounts are recovered under the relevant policies of insurance required to be taken out by the Concessionaire pursuant to Clause 22. Upon such recovery the Operator shall be entitled to be re-imbursed from the proceeds of the relevant insurance such costs it has expended in effecting such repairs.

PART 6: SITE AVAILABILITY

[NOT USED]

SCHEDULE 2

FEES

Generally:

- (a) Where reference is made in this Agreement to a sum of money “Indexed” that sum shall be deemed to be altered with effect from each anniversary of this Agreement in accordance with the Retail Price Index for the month in which such anniversary falls but if for any reason the Retail Price Index shall be otherwise altered or shall be abolished or replaced, there shall be substituted for the purposes of the Retail Price Index such index of retail price costs as may from time to time be published by or under the authority of any Ministry or Department of Her Majesty’s Government, save in respect of that element of the Tram Maintenance Fee relating to materials (which shall be deemed to be 50% of such Fee) when it shall be deemed to be a sum altered in accordance with the following formula:-

$$M = \frac{1}{100 R} \times \frac{R_0}{N_0} \times (+30 \times \frac{N}{N_0} + 70 \times \frac{Q}{Q_0})$$

Where:

-) N = price index at such anniversary for “Maschinebauerzeugnisse, Fachserie 17, Reihe 2, GP-systematick 32” issued by the German Federal Statistics Institute of Wiesbaden.
-) No = price index at the date of this Agreement for “Machinebauerzeugnisse, Fachserie 17, Reihe 2, GP-Systematik 32” issued by the German Federal Statistics Institute of Wiesbaden.
-) Q = last issued price indices at such anniversary for “Facharbeiter-Ecklohn der Eisen-metall und Elektronindustrie, Tarifgebeit Nordrhein-Westfalen, Tariflohngruppe, ber 21 Jahre”, issued by the German Authorities.
-) Qo = price indices at the date of this Agreement for “Facharbeiter-Ecklohn der Eisen, Metall-, und Elektronindustrie, Tarifgebeit Nordrhein-Westfalen, Tariflohngruppe, ber 21 Jahre”, issued by the German Authorities.
-) R = average at such anniversary of the 120 last official conversion rate (middle rate) of the DEM to the GBP issued daily by the Deutsche Bank in Frankfurt.
-) Ro = average on the date of this Agreement of the 120 last official conversion rate (middle rate) of the DEM to the GBP issued daily by the Deutsche Bank in Frankfurt.
- (b) The Concessionaire shall not be responsible for paying the salaries, pension entitlements or other benefits of staff of the Operator required for the purposes of the Operating Services save indirectly through the payment of fees and other amounts under this Agreement.

- (c) (i) The Concessionaire and the Operator each acknowledge that changes in the Operator's costs may occur during the Term which changes will not be reflected in the indexation arrangements provided for in this Agreement and are not otherwise recoverable in whole or in part by the Operator pursuant to the other provisions of this Agreement.
- (ii) The Concessionaire and the Operator accordingly agree that prior to every fifth anniversary of the date of Actual Opening Date (a "Quinquennium") they shall jointly review the Operator's entire costs in providing the Services at that time in each of the categories of costs set out below which have been used by the Operator in estimating its costs for the purpose of arriving at its fees at the commencement of this Agreement:-
- Staff costs (by major category of staff)
 - Maintenance costs, if applicable
 - Electricity costs
 - Station departure charges
 - Contractors costs
 - Utilities (other than electricity)
 - Vandalism and other Uninsured Losses
 - Insurance
 - Policing
 - Training
 - Rates, if applicable
 - Croydon office costs
 - Hire of buses (but not in respect of operational problems caused by the Operator defaulting under its obligations hereunder)
 - Marketing
 - Posters, publicity, timetables
 - Projects, e.g. where the costs of replacing capital assets including managerial systems increase disproportionately
 - Other overheads, e.g. uniforms, postage, entertainment expenses
 - Profit

The review shall be carried out in accordance with the subsequent provisions of this paragraph (c).

- (iii) The joint review referred to above shall not change the level of the profit margin percentage at the date of this Agreement. It shall however seek to identify factors external to the Operator which have increased and/or decreased costs and the extent to which such costs are not otherwise recoverable in full hereunder.
- (iv) At least six months prior to each Quinquennium the Operator shall prepare and send to the Concessionaire a review of costs in the categories identified above comprising each original cost used at the date of this Agreement or when last rebased (Indexed to the relevant Quinquennium) with the actual cost for such category at the date of such Quinquennium. The review shall also address those external factors which in the opinion of the Operator are relevant to any increase and/or decrease in costs shown by the review.

- (v) Within one month of receipt of such review the Concessionaire shall submit to the Operator its proposal for meeting any cost changes addressed in the review which are not otherwise recoverable in full under the Agreement. The Operator shall within two weeks of receipt of such proposals, submit its own proposals (if different) in relation to such increases in costs.
 - (vi) Within two weeks of receipt of the Operator's proposals by the Concessionaire, both Parties shall meet to resolve any outstanding issues between them in relation to funding the changes in the Operator's costs which are not otherwise recoverable pursuant to the terms of this Agreement.
 - (vii) In the event that the Parties are unable to agree as to how changes in the Operator's costs which are not otherwise recoverable under this Agreement are to be funded such dispute shall be referred to the Expert for a decision. The Expert shall be required to decide as between the two sets of proposals how the Operator can best be compensated for increases in the categories of costs referred to above which are not recoverable in full already under this Agreement. Such sum shall bear interest at the Prescribed Rate from the date of the relevant Quinquennium.
 - (viii) In the event that the Parties agree that the aggregate annual value of increases in costs which are not otherwise recoverable under this Agreement is less than £■■■ (Indexed) then the Operator shall not be entitled to recover such costs.
 - (ix) In the event that increases in costs arise during the negotiation period referred to above then the Operator shall be permitted to include such costs in its review by a supplemental review which should be dealt within the same way as the original review subject to necessary changes in the time periods.
- (d) In respect of the rebasing by the Tram Maintenance Contractor under the Tram Maintenance Contract:-
1. The Tram Maintenance Contractor and the Operator each acknowledge that changes in the Tram Maintenance Contractor's costs may occur during the Term which will not be reflected in the Indexation arrangements provided for in this Agreement and are not otherwise recoverable in whole or in part by the Tram Maintenance Contractor pursuant to the other provisions of the Tram Maintenance Contract.
 2. The Tram Maintenance Contractor and the Operator accordingly agree that prior to each fifth anniversary of Actual Opening Date (a "Quinquennium") they shall jointly review:-
 - (i) those costs of the Tram Maintenance Contractor in providing the Services which are Indexed in accordance with Schedule 2 Part 2 of the Tram Maintenance Contract (being the costs of labour and materials) with a view to determining whether the actual increase in such costs has been accurately reimbursed by such indexation; and

- (ii) any additional costs incurred by the Tram Maintenance Contractor in the preceding 5 years (or, in respect of the first Quinquennium, since the date of this Agreement) due to any Change of Law which affects the extent or performance of the Services hereunder (save for any Change of Law referred to in Clause 32) of the Tram Maintenance Contractor.

The review shall be carried out in accordance with the subsequent provisions of this Part.

3. The joint review referred to in paragraph 2 above shall not change the level of the profit margin percentage at the date of the Tram Maintenance Contract or the level of internal management charges. It shall however seek to identify factors external to the Tram Maintenance Contractor, which have increased and/or decreased costs and the extent to which such costs are not otherwise recoverable in full hereunder.
4. At least seven months prior to each Quinquennium the Tram Maintenance Contractor shall prepare and send to the Operator details of any element of its costs to be incurred during the next five year period which it believes has increased, as allowed under Clause 2 above, and which will not be recovered pursuant to the other provisions of this Agreement together with supporting evidence of such increase.
5. Within two months of receipt of such review the Operator shall submit to the Tram Maintenance Contractor its proposal for meeting any costs changes. The Tram Maintenance Contractor shall within two weeks of receipt of such proposals, submit its own proposals (if different) in relation to such change in costs.
6. Within four weeks of receipt of the Tram Maintenance Contractor's proposals by the Operator, both parties shall meet to resolve any outstanding issues between them in relation to changes in the Tram Maintenance Contractor's costs which are not otherwise recoverable pursuant to the terms of this Agreement.
7. In the event that the parties are unable to agree as to how changes in the Tram Maintenance Contractor's costs which are not otherwise recoverable under the Tram Maintenance Contract are to be funded such dispute shall be referred to the Expert for a decision. The Expert shall be required to decide as between the two sets of proposals how the Tram Maintenance Contractor can best be compensated for changed costs referred to above which are not recoverable in full already under the Tram Maintenance Contract. Such sum shall bear interest at the Prescribed Rate (as defined in the Tram Maintenance Contract) from the date of the relevant Quinquennium.
8. In the event that increases in costs arise during the negotiation period referred to above then the Tram Maintenance Contractor shall be permitted to include such costs in its review by a supplemental review which should be dealt within the same way as the original review subject to necessary changes in the time periods.

9. All increases in costs pursuant to this part of this Schedule are Reimbursable Costs for the purposes of the Tram Maintenance Contract.
10. The agreed sums to be paid to the Tram Maintenance Contractor over each of the following 5 years will be indexed with escalation factors re-set as at the date of the Quinquennium.

PART 1: PRELIMINARY PERIOD

The fees from the date of signing of the Agreement to the commencement of the Mobilisation Period will be:-

	£
First Month	21,000
Second Month	21,000
Subsequent Months	14,750

Part of a month will be charged at a daily Business Day rate of one twentieth of the monthly charge.

PART 2: MOBILISATION PERIOD

The fees from commencement of the Mobilisation Period to Actual Opening Date will be:-

<u>Month</u>	<u>£,000</u>
1	18
2	18
3	28
4	37
5	38
6	59
7	65
8	76
9	78
10	80
11	83
12	87
13	109
14	163
15	173
16	173
17	173
18	173
19	173

Further periods shall be charged at the same rate as for period 19. Part of a month will be charged proportionately.

Drivers and controllers

The minimum Mobilisation Period shall be 18 months.

The minimum fees payable during the Mobilisation Period shall be £1,804,000.

PART 3: OPERATING PERIOD

The fees from Actual Operating Date until the first Quinquennium rebasing will be:-

<u>Financial Period</u>	<u>£</u>
1	497,000
2 and subsequent periods	456,154

(as adjusted by Additional Services)

Any period which is less than 4 weeks at the commencement of the Operating Period shall be charged at a daily rate based upon the charges for Financial Period 2.

PART 4 : INFRASTRUCTURE MAINTENANCE FEE

1. Calculation of fee

The Infrastructure Maintenance Management Fee is incorporated within the Operating Fee. However if Infrastructure Maintenance Management Services are terminated then the Operating Fee shall be reduced by £40,000 per annum. By virtue of the agreement between the Concessionaire and the Operator of September 2002 that the Concessionaire should take responsibility for Infrastructure Maintenance Management Services in respect of the items listed in Schedule 5, the Operating Fee was reduced by £30,000 per annum.

PART 5: TRAM MAINTENANCE FEE

Fees and other amounts payable under the Tram Maintenance Contract (assuming for these purposes of that contract they have been received by the Operator) other than Operator costs.

PART 6: ROUTINE MAINTENANCE FEE

The fee payable in accordance with the Clause 6.5.2(b) of the Agreement.

PART 7: ADDITIONAL MOBILISATION COSTS FROM DELAY

In the event that the Mobilisation Period continues for longer than 19 months the Operator shall be entitled to all costs and expenses incurred by the Operator during that extended period in accordance with Clause 6.2.3 but subject to the following:-

- (a) subject to (b) and (c) such costs and expenses shall not exceed £173,000 per month save only that where there is a period of time between "Completion" (as defined in the Construction Contract) and Actual Opening Date such costs and expenses shall not exceed £293,000 per month; and
- (b) where and to the extent that the Mobilisation Period continues for longer than 19 months which continuation is caused by a "Delay Event" as defined in the

Construction Contract, such costs and expenses shall not exceed £293,000 per month, subject to the provisions relating to Force Majeure in Clause 6.2.3; and

- (c) the Concessionaire is not required in any circumstances to pay the Operator more than £1.56m in respect of any extension of the Mobilisation Period; and
- (d) the Operator shall provide to the Concessionaire such information as it may reasonably request to substantiate such expenses.

SCHEDULE 3

AGREEMENTS

PART 1 : CONTRACTS

Maintenance Contract
Infrastructure Maintenance Contract

PART 2: PROJECT AGREEMENTS

Concession Agreement
Construction Contract
Tramlink General Agreement
Off-Tram Revenue Agreement

PART 3: FINANCING AGREEMENTS

1. Senior Facility Agreement entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited, Bayerische Landesbank and Royal Bank of Scotland.
2. Intercreditor Agreement entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited and Others.
3. Senior Debenture entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited and Dai-Ichi Kangyo Bank Limited.
4. Subordinated Facility Agreement entered into on or about the date hereof between Concessionaire, Tramtrack Leasing Limited and 3i Group plc.
5. Subordinated Debenture entered into on or about the date hereof between the Concessionaire, Tramtrack Leasing Limited and 3i Group plc.
6. Insurance Agreement entered into or about the date hereof between the Concessionaire, Tramtrack Leasing Limited, Dai-Ichi Kangyo Bank Limited, the Lessor and Others.
7. Shareholders Funding Agreement entered into on or about the date hereof between the Concessionaire, the Shareholders (Amey Tramlink Limited, Bombardier Prorail Limited, CentreWest, Sir Robert McAlpine (Holdings) Limited, Royal Bank Project Investments Limited and 3i Group plc and Bombardier Eurorail SA).

SCHEDULE 4

PERFORMANCE REQUIREMENTS

Part 1

1. The Operator shall maintain a record of:-

Actual Kilometrage – showing separately replacement bus kilometrage;

Lost Kilometrage;

Scheduled Kilometrage.

The Operator shall by the fourth Business Day of each Financial Period report in writing to the Concessionaire on such matters for each day in the immediately preceding Financial Period.

2. For the purposes of this Schedule 4 reference to 2% of Scheduled Kilometrage shall be treated as 5% of Scheduled Kilometrage during the period between the commencement of the Operating Period and the successful achievement of the Final Acceptance Tests.
3. Where Actual Kilometrage falls below 98% of Scheduled Kilometrage such report shall give the Operator's opinion of the reasons for Actual Kilometrage falling below 98% of Scheduled Kilometrage during such period apportioned in accordance with the categorisation in Part 2 of Schedule 4 and indicating in each case whether it is Operator Controlled Lost Kilometrage or other Lost Kilometrage.
4. Where Operator Controlled Lost Kilometrage in any Financial Period is greater than 2% of Schedule Kilometrage for such Financial Period then the Operator shall pay to the Concessionaire £■ per kilometre in respect of Operator Controlled Lost Kilometrage which is greater than 2% of Scheduled Kilometrage in such Financial Period provided that no amount shall be payable under this provision:-
- (i) due to a failure to provide Tram Maintenance Services, if Operator Controlled Lost Kilometrage attributable to such failure does not exceed 2% of Lost Kilometrage; or
 - (ii) due to a failure to provide Operating Services, if Operator Controlled Lost Kilometrage attributable to such failure does not exceed 1% of Lost Kilometrage; or
 - (iii) due to a failure to provide Routine Maintenance Services and Infrastructure Maintenance Management Services, if Operator Controlled Lost Kilometrage attributable to such failure does not exceed 0.5% of Lost Kilometrage.

5. The Operator and the Concessionaire shall use all reasonable endeavours to mitigate the effect of factors leading to Lost Kilometrage.
6. For the avoidance of doubt no payment is required to be made by the Operator if Actual Kilometrage does not fall below 98% of Scheduled Kilometrage or to the extent that Actual Kilometrage does fall below 98% of Scheduled Kilometrage where there is no Operator Controlled Lost Kilometrage.
7. Any payments required to be made pursuant to this Clause shall be shown in the next invoice issued pursuant to Clause 21.4 and in the event of a dispute in relation to any such report the amount in dispute shall be withheld pending the outcome of such dispute and the balance shall be settled forthwith.
8. The maximum amount payable by the Operator pursuant to this Part of this Schedule in any one Operating Year shall not exceed £■■■ taking into account all other amounts paid or payable by the Operator to the Concessionaire under this Agreement in such Operating Year.
9. The maximum amount payable by the Operator pursuant to this Part of this Schedule in any one Operating Year in respect of Operator Controlled Lost Kilometrage attributable to a default on the part of the Tram Maintenance Contractor under the Tram Maintenance Contract shall not exceed the limit set out in Clause 28.6.4 of the Tram Maintenance Contract.
10. The Concessionaire shall have the right to audit any reports made by the Operator to the Concessionaire pursuant to paragraph 1 by reviewing the underlying reports and logs maintained by drivers and controllers.

Part 2

Categorisation of Lost Kilometrage

The provisions of this Part 2 are illustrative only and are without prejudice to the definitions of the various categories of Lost Kilometrage.

1. Operator Controlled
 - Driver shortage
 - Tram not available
 - Tram failure due to Tram Maintenance Contractor
 - Control Room staff shortage
 - Failure to carry out Routine Maintenance, or Defective Routine Maintenance, of items in Schedule 5 for which the Operator is responsible.
2. Infrastructure Maintenance Controlled - Signal failure

- Tram System maintenance failure
 - Infrastructure routine maintenance
 - Control room maintenance failure
 - Infrastructure non-routine maintenance
 - Failure to carry out Routine Maintenance, or Defective Routine Maintenance, of items in Schedule 5 for which the Concessionaire is responsible.
3. Other supplier controlled
- Power failure
 - Power supply adequacy
 - Utilities failure
4. Major infrastructure maintenance
- Planned system closure to undertake planned infrastructure maintenance
 - Emergency infrastructure maintenance due to defect in system
5. TCL action
- Agreed temporary changes to service pattern
6. External factors
- Bomb scares
 - Special events
 - Accident
 - Adverse weather
 - Passenger fraud
 - Passenger sickness
 - Policy or emergency service instructions
 - Road closure
 - Vandalism whilst in service
 - Assault on staff or passenger
 - Traffic congestion
 - Traffic signal failure
 - Utility service work

SCHEDULE 5

MAINTENANCE RESPONSIBILITIES AND ROUTINE MAINTENANCE SPECIFICATIONS

Part 1

Allocation of Responsibilities for Infrastructure Maintenance between the Concessionaire and the Operator

1. This Part 1 of Schedule 5 allocates responsibility for the maintenance of Infrastructure items between the Concessionaire and the Operator.

All references to Infrastructure or Infrastructure Maintenance throughout this Agreement or its Schedules shall be interpreted as referring to the Concessionaire in respect of responsibilities allocated to it in this Part, and to the Operator in respect of the responsibilities allocated to it in this Part.

2. **The Operator has maintenance management responsibility for the following plant and equipment**

- a) Underfloor Wheel Lathe
- b) Workshop Lathe, Hacksaw, Grindstone & Drill
- c) Substation Entry Alarm System
- d) Slings & Chains
- e) Depot Fire Alarm System
- f) Depot Fire Detection System
- g) Substation Fire Extinguishers
- h) Main Depot Entry Gate Only (No contracts for any other gates)
- i) Tram Wash Plant
- j) Tram Wash Reclaim Unit
- k) Fork Lift
- l) Compressors
- m) Air Dryers
- n) Office/ Equipment Air Conditioning (with the exception of TCL Office)
- o) Depot Heating
- p) Depot Emergency Lighting
- q) Depot RCD Outlets
- r) Workshop Doors
- s) Workshop Turntable
- t) Turbex De-greaser
- u) Depot Water Quality Testing
- v) Depot Legionella Sampling
- w) Tram Lifting Jacks
- x) Workshop Overhead Hoists
- y) Workshop Goliath Crane
- z) Sand Silo Pumps

- aa) Depot Passenger Lift
- bb) Depot Main Switchboard
- cc) Depot Pest Control
- dd) Depot Lightning Protection System
- ee) UPS Power Supply
- ff) Wimbledon Metric Machine Maintenance
- gg) Foul Water Pumping System
- hh) See also clause 8.4.5(b)

*excluding annual certification for pressure vessels and lifting equipment which are arranged by TCL and carried out by the project insurers.

3. Maintenance Management Responsibilities Allocated to the Concessionaire

The Concessionaire is responsible for maintenance of any Infrastructure item not listed above. This includes (without limitation) the following items:

- 3.1 Supply of all utilities to the Depot Building.
- 3.2 Maintenance of the Depot landscape. The Depot main building structural fabric, interior and exterior lighting and all approach paths, roadways, track and ballast.

Part 2

Routine Maintenance Specifications

- (a) The Parties shall, within 12 months of the date hereof, agree the scope of the Routine Maintenance to be performed by the Operator in accordance with Clause 6.5.2 and this Schedule taking into account the Infrastructure Maintenance Plans. Such scope shall include the following:
 - (i) all aspects of Routine Maintenance to be performed by the Operator including the undertaking of an annual acceptance of each Tram;
 - (ii) the scope of the individual elements of such Routine Maintenance to be included in each Routine Maintenance sub-contract;
 - (iii) one or more standard sets of terms and conditions for the performance of the Routine Maintenance sub-contracts (the “Standard Conditions”);
 - (iv) the minimum performance requirements and specifications for each Routine Maintenance sub-contract;
 - (v) a Routine Maintenance Plan which shall be updated annually in accordance with Clause 20.4
- (b) Routine Maintenance sub-contracts.

The Routine Maintenance sub-contracts shall be awarded, unless agreed otherwise, by competitive tender, in accordance with the following procedure for each Routine Maintenance sub-contract;

- (i) the Parties shall agree a list of no less than 3 contractors to be included on the tender list;
 - (ii) the tender documents shall inter alia include the appropriate set of Standard Conditions and the agreed minimum performance requirements and specifications for the Routine Maintenance sub-contract;
 - (iii) the contract shall be awarded to the lowest bidder from the agreed tender list which complies in all respects with the tender requirements specified in (ii) above unless agreed otherwise by the Operator and the Concessionaire.
- (c) For clarity the fee for Routine Maintenance does not include amongst other things any external costs including the use of consultants, advisers, surveyors, technical advisors, etc.

Notwithstanding any of the above the Routine Maintenance Specification must require the Routine Maintenance Services to be carried out in accordance with Good Industry Practice.

- contractual liability
- court attendance costs
- unsatisfied court judgements clause
- indemnity to parent/subsidiary/associated companies including Tram Drivers
- contingent and retroactive indemnity
- cross liabilities clause

2. **CONTRACTORS ALL RISKS, EXISTING STRUCTURES INSURANCE**

Insured:

1. The Concessionaire
Tramtrack Croydon Limited and/or Tramtrack Leasing Limited
2. (a) The Principals
London Regional Transport and/or The Secretary of State for Transport and/or their servants and agents
- (b) The Financiers
The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents
3. (a) The Construction Joint Venture
Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies
- (b) The Tram Suppliers and Maintainers
Bombardier Eurorail S.A.
- (c) The Operator
Tram Operations Limited
- (d) General Subcontractors
Subcontractors of any tier together with all other supplies and/or others engaged to provide goods or services at any Insured Location in connection with the Project.
- (e) Consultants

Consultants (including *inter alia* Sir Alexander Gibb and Partners and/or Merz and McLellan and/or Parsons Brinckerhoff and/or Booz Allen and Hamilton and/or London Borough of Croydon) in respect of their site activities only

Project: All work in connection with the design, construction, maintenance and operation of the Croydon Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley including performance testing, commissioning and tram trial running and all ancillary and associated works in connection therewith.

Insured Property: To indemnify the Insured against “all risks” of loss, destruction or damage to the Insured Property arising from any cause whatsoever whilst on or about the site of the Project and elsewhere in the British Isles including whilst in transit (other than by sea) or during any transshipment, storage, or deviations en route and including loading and unloading.

Item (a) The permanent and/or temporary works, materials and supplies, plant, equipment, trams and supplies (including free issue materials) and any other property, for which the Insured is responsible, intended for use or incorporation in the Contract undertaken by the Insured

Item (b) Contract’s plant, tools and equipment including spare parts, temporary buildings and their contents owned or hired in by the Insured (1) and (3) (a) or for which they are responsible

Item (c) Personal effects, clothing, tools and other belongings of the Insured’s (1) or (3)(a) Employees

Item (d) The Existing Structures for which the Insured’s (1) and (3)(a) are responsible or is required or has agreed to insure

Item (e) Property on or adjacent to the Contract temporarily occupied for the purpose of the Contract

Period of Insurance: 36 months with effect from 20 November 1996 comprising 6 months site establishment works and 30 months full construction works (including testing and commissioning as per schedule supplied) plus 24 months Defects Rectification Period thereafter

Sums Insured: Item (a) Estimated at £■■■ (inclusive of £■■■ tram cost)

- Item (b) £■■■
- Item (c) £■■■ any one employee any one occurrence
- Item (d) Estimated at £■■■
- Item (e) £■■■ in all in the Period of Insurance

Situation: Anywhere in the Great Britain, Northern Ireland, Channel Islands and Isle of Man in connection with the Contract as more fully defined in the Policy Wording.

Excess: Item (a) (i) £■■■ each and every loss in respect of loss or damage to the permanent works caused by fault, error or omission in design, plan, specification or workmanship of the permanent works. This excess will apply only to reinstatement, making good and the like of that part which is itself defective

(ii) £■■■ each and every loss in respect of testing, commissioning, trial runs and maintenance

(iii) £■■■ each and every loss in respect of storm, tempest, flood, water damage, subsidence, collapse

(iv) £■■■ each and every other loss

Item (b) 15% each and every loss subject to a minimum of £■■■ each and every loss and a maximum of £■■■ each and every loss

Item (c) £■■■ each and every loss

Item (d) £■■■ each and every loss

Item (e) £■■■ each and every loss

In the event of a loss whereby more than one Excess applies, the aggregate amount to be deducted shall not exceed the highest applicable Excess.

Extensions: Professional Fees – as per scale

Plans & Documents

Debris Removal - £■■■ any one occurrence

Expediting Expenses - £■■ any one occurrence

Property Hired in/out

Loss Minimization

Local Authorities Reinstatement

Additional Costs Clause – Limit £■■ any one occurrence

Increased Costs of Constructing Incomplete and Unbuilt Works –
Limits £■■ any one occurrence

Temporary Repairs Clause

Plant Recovery

Price Increase Clause – 125%

72 Hour Clause

Payments on Account

Munitions of War

Composite Insured Clause

Buildings due for demolition Clause (if applicable)

Automatic Reinstatement Clause. Additional Premium to be agreed
for any one loss exceeding £■■

Ongoing maintenance works within the Construction period are
included hereon

Joint Fire Code of Practice to apply to Depot/Trams whilst on site in
UK in storage only

Full Terrorism Cover

Exclusions: Penalties and consequential loss

Motor, Craft etc

DE5 (1995) Design Materials and Workmanship Clause (permanent
works only)

Wear and Tear and Corrosion

Inventory losses

Excluding inherent/pre existing defects in existing structures

3. **Type:** **THIRD PARTY LIABILITY INSURANCE**

Insured:

1. The Concessionaire

Tramtrack Croydon Limited and/or Tramtrack Leasing Limited

2.(a) The Principals

London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents

(b) The Financiers

The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents

3.(a) The Construction Joint Venture

Amey Construction Limited and Sir Robert McAlpine Limited trading as the Construction Joint Venture and/or their respective Parent companies and/or subsidiary and/or associated companies

(b) The Tram Suppliers and Maintainers

Bombardier Eurorail S.A.

(c) The Operator

Tram Operations Limited

(d) General Subcontractors

Subcontractors of any tier together with all other suppliers and/or others engaged to provide goods or services at any Insured Location in connection with the Project.

(e) Consultants

Consultants (including *inter alia* Sir Alexander Gibb and Partners and/or Merz and McLellan and/or Parsons Brinkerhoff and/or Booz Allen and Hamilton and/or London Borough of Croydon and/or Finance Parties Technical Consultant).

Project: The contract for the Croydon Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley. Works to include design, procurement, construction, operation, maintenance, performance testing, commissioning and tram trial running and all ancillary and associated works in connection therewith

Period of Insurance: 36 months with effect from 20 November 1996 comprising 6 site establishment works and 30 months full construction works (including testing and commissioning as per schedule supplied) plus 24 months Defects Rectification Period thereafter.

Indemnity: All sums which the Insured shall become legally liable to pay (whether contractual or otherwise) in respect of or consequent upon

- (a) death or injury suffered by any person
- (b) loss of or damage to Material Property
- (c) obstruction, loss of amenities, trespass, nuisance, interference, denial of access or any like cause

arising in connection with the Project.

Limit of Indemnity:	£■■ any one occurrence or series of occurrences arising out of one event and unlimited as to the number of occurrences during the Period of Insurance (other than in relation to pollution and contamination where the Limit of Indemnity will be £■■ for all claim in aggregate during the Period of Insurance.)
Territorial Limits:	Worldwide
Excess:	£■■ each and every occurrence in respect of property damage only
Extensions:	<p>sudden and intended pollution wording disclosure of information Data Protection legislation infringement of privacy social functions/activities Consumer Protection Act 1987 Health and Safety at Work legislation Defective Premises Act 1972 Clause claims brought in USA/Canada subject to</p> <p>(a) punitive and exemplary damages exclusion (b) costs inclusive (c) NMA 1668</p> <p>contingent motor liability leased or rented property not excluded and property owned by London Regional Transport and London Borough of Croydon to be treated as Third Party Property financial loss cover for Officers/Members of Clubs & Organisations and of fire and first aid teams munitions of war clause including Maintenance activities public relations clause cross liabilities clause composite Insured</p>
Exclusions:	Employers Liability Motor Aircraft/Waterborne Craft Own property, custody or control Contract Works Liquidated Damages War

Radioactivity
Deliberate Acts
Gradual Pollution
Fines

B. OPERATIONAL PHASE

1. **Type:** **EMPLOYERS LIABILITY INSURANCE**
- Insured:** 1. The Concessionaire
Tramtrack Croydon Limited and/or Tramlink Leasing Limited
- Period of Insurance:** 12 months from a date to be advised – renewable annually thereafter
- Interest:** To indemnify the Insured in respect of its legal liabilities consequent upon death of or bodily injury, illness or disease to employees arising out of or in the course of operating and maintaining the Tramlink System within the London Boroughs of Merton, Sutton, Croydon and Bromley, England.
- Limit of Indemnity:** £■■ any one occurrence or series of occurrences arising out of any one event and unlimited in the Period of Insurance
- Excess:** Nil Excess
- Extensions:** The policy wording will include (but not be limited to):
- liabilities assumed under contract
 - the waiver of subrogation rights where required by contract
 - a note of the financiers interests
2. **Type:** **THIRD PARTY LIABILITY INSURANCE**
- Insured:** 1. The Concessionaire
Tramtrack Croydon Limited and/or Tramlink Leasing Limited
- 2.(a) The Principals
London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents
- (b) The Financiers

The Banks, Financial Institutions, Lessors and their respective permitted successors, assigns, directors, employees, servants and agents

3. The Operator
Tram Operations Limited

**Period of
Insurance:**

12 months from date to be advised – renewable annually thereafter.

Interest: To indemnify the Insured against all sums which the Insured shall become legally liable to pay (whether contractual or otherwise) (including claimants costs and expenses) as damages in respect of:

- death or bodily injury, illness or disease contracted by any person
- loss of or damage to property
- interference to property or the enjoyment of use thereof by obstruction, trespass, nuisance, loss of amenities or any like cause

arising out of or in the course of operating and maintaining the Tramlink System.

Limit of Indemnity: Third Party Liability

£■■ any one occurrence or series of occurrences arising out of one event and unlimited as to the number of occurrences during the Period of Insurance other than in relation to pollution and contamination where the Limit of Indemnity will be £■■ for all claims in aggregate during the Period of Insurance.

Deductibles: £■■ each and every occurrence in respect of property damage only

Extensions: The policy wording will include (but not limited to):

- Waiver of subrogation rights where required by contract
- Cross Liability Clause
- Legal Defence Costs in respect of Health and Safety at Work Act
- Vehicle risk arising out of the use of trams
- World-wide Jurisdiction (ex USA/Canada)

2. **Type:** **MATERIAL DAMAGE INSURANCE**

Insurance: 1. The Concessionaire
Tramtrack Croydon Limited and/or Tramlink Leasing Ltd

2.(a) The Principals
London Regional Transport, and/or The Secretary of State for Transport and/or their servants and agents

(b) The Financiers

The Banks, Financial Institutions, Lessors and The Security Trustee and their respective permitted successors, assigns, directors, employees, servants and agents

3. The Operator

Tram Operations Limited

Period of Insurance:	12 months from a date to be advised – renewable annually thereafter
Interest:	To reinstate the Insured’s property following physical loss destruction or damage to buildings, machinery, plant, trams, stock and miscellaneous items all forming part of the Croydon Tramlink System including spares.
Limit of Indemnity:	To be the maximum likely value of the assets at risk during the Period of Insurance after inflation
Deductible:	£■
Extensions:	The policy wording to include (but not limited to): <ul style="list-style-type: none">- Full Theft, Subsidence, Money and Computer Breakdown- Public Authorities Clause- Costs of Professional Fees and Debris Removal- Terrorism cover – first loss limit £■ (subject to availability of such coverage on commercially acceptable terms)

SCHEDULE 7

OBLIGATIONS IN OTHER PROJECT AGREEMENTS

To extent that the Concessionaire requires relevant information relating to the operation and maintenance of the Tramlink System:-

1. the obligation of the Concessionaire to provide information to the Corporation contained in Clause 4.3 of the Off-Tram Revenue Agreement being the obligation to provide the following information:-
 - (a) On-Tram Revenue Data;
 - (b) amount of Stored Value Revenue (if any) collected by the Concessionaire;
 - (c) Kilometre Data; and
 - (d) details of any temporary unscheduled change in the service on the Tramlink System (including without limitation Service Interruptions) (all terms as defined in the Off-Tram Revenue Agreement).
2. the obligation of the Concessionaire to provide the Corporation with such other information as the Corporation shall reasonably require for the purpose of determining the Off-Tram Revenue in respect of a particular Payment Period and the obligation to provide to the Corporation such On-Tram Revenue Data and other information as may be required by the Corporation to assist in the performance of the Corporation's obligations under the Off-Tram Revenue Agreement (all terms as defined in the Off-Tram Revenue Agreement).
3. the obligation of the Concessionaire to co-operate with the consultants appointed from time to time by the Concessionaire and the Corporation to carry out the Tramlink Survey.
4. the obligation in respect of all data and other information which the Concessionaire is required to notify to the Corporation under the Off-Tram Revenue Agreement that such data and other information is complete and accurate in all respects.
5. the obligation that the Concessionaire shall allow the Corporation on it giving reasonable notice during normal business hours to inspect all records relating to any of the information provided to the Corporation by the Concessionaire pursuant to the Off-Tram Revenue Agreement; and
6. the obligation of the Concessionaire to permit the Auditor for the proper performance of his functions the same rights of access to the property as are afforded to the Corporation under Clause 4.7 of the Off-Tram Revenue Agreement.

SCHEDULE 8

OPERATOR SPECIFICATION

The obligations of the Operator under this Operator Specification shall be those which specifically allocate obligations to it.

STATUS

1.1 This document is the Operator Specification for the purposes of the Operating Agreement of which it forms part. Pursuant to the Concession Agreement the Contractor is obliged to design, construct and commission the Tramlink System as required by the Performance Specification. The Operator is obliged to operate the Tramlink System as required by the Operating Agreement.

The provisions of this Operator Specification shall apply as amended or varied by the Appendices to the Operator Specification attached hereto.

1.2 References herein to the Operator Specification includes references to all relevant Parts and Sections of the Operator Specification and any of them.

1.3 The Corporation's Performance Specification from which this document evolved comprises:

- (a) Part 1 which describes preliminary matters in relation to the Concession, certain cardinal requirements, design principles and requirements in respect of safety management;
- (b) Part II which describes pre-operational obligations;
- (c) Part III which describes the Performance Requirements in relation to undertaking the Project Works and generally in relation to the Construction Phase;
- (d) Part IV which describes operational and maintenance obligations;
- (e) Part V which contains a glossary of terms and abbreviations and rules for interpretation for use in conjunction with the Performance Specification;
- (f) the documents, plans, drawings and appendices which are referred to in the Performance Specification (one set of which is held by the Concessionaire (identified as such and initialled on behalf of the Concessionaire and the Contractor) and one set (similarly identified and initialled) is held by the Contractor); and
- (g) the Construction Practice Specification.

CARDINAL REQUIREMENTS

- 2.1 The Contractor and the Operator (subject to the terms and conditions of the Operating Agreement) will each undertake the Project so as to comply with the relevant detailed requirements of the Operator Specification that apply to each of them and comply with and satisfy the cardinal requirements set out below:
- (a) the Tramlink System shall be constructed (Contractor) and operated (Operator) so that it is safe, reliable, efficient and environmentally friendly and accessible to all irrespective of mobility impairments, as far is reasonably practicable;
 - (b) the Contractor shall take account of the need to react safely and quickly to emergencies in all aspects of its design and construction of the Tramlink System;
 - (c) the operation of the Tramlink System shall reflect a high standard of presentation and public image. The Tramlink System shall be operated efficiently with minimum disturbance to the public and minimum delay to passengers.
- 2.2 The Tramlink System will operate as an integral part of the public transport network in Greater London. The Corporation is subject to a statutory duty to co-ordinate public transport services and their operations which includes the Tramlink System. The Operator shall co-operate with Concessionaire in this respect and shall comply with the Concessionaire's reasonable requirements in relation to ensuring co-ordination of public transport services in those areas affected by the Tramlink System.
- 2.3 The Operator shall take all necessary measures to prevent its employees, agents and sub-contractors from consuming or being under the influence of alcohol or drugs whilst carrying out any duties in connection with the Operation and maintenance of the Tramlink System. For the purposes of this Alcohol and Drugs clause, 'drug' means any intoxicant other than alcohol.

The Operator shall submit its alcohol and drugs policy to the Concessionaire for its approval within two and a half months from the date of the Operating Agreement. The policy statement shall, as a minimum provide:

- (a) procedures to detect and prevent any person from reporting to or being at work in connection with the Project who is under the influence of alcohol or drugs;

- (b) at least in the case of staff covered by the Transport and Works Act 1992, procedures to subject persons at work in connection with the Project, randomly, periodically, before starting work or after an incident (as necessary) to alcohol and drug tests;
- (c) initiatives for making persons aware of its policy on alcohol and drugs; and
- (d) procedures and monitoring to demonstrate compliance with its policy.

The Operator shall ensure that all its contracts with sub-contractors which might ultimately affect operational safety, require the sub-contractors to comply with the first paragraph of this clause and co-operate with the Operator in implementing its alcohol and drugs policy. The Operator shall ensure that it has the right under those contracts to remove any person or sub-contractor from work on the Tramlink System who is suspected of being under the influence of drink or drugs whilst at work and to submit any person to the alcohol and drugs testing under the policy.

The Operator shall provide an annual written update on compliance with the above alcohol and drugs policy to the Concessionaire. The Concessionaire may make recommendations to the Operator in respect of the policy at any time. The Operator shall take those recommendations into account in implementing its policy.

2.4 **Quality Assurance**

The Contractor shall develop, implement and monitor an effective quality system which shall ensure that the requirements of the Performance Specification are satisfied. The quality system shall:

-) ensure that quality requirements are determined and satisfied for all process throughout the Construction Phase for the Tramlink System including design, development, purchasing, fabrication, processing, assembly, inspection, testing, packaging, delivery, storage, site works, installation, training, commissioning, operations and maintenance;
-) provide for early and prompt detection of actual or potential deficiencies, trends or conditions which shall result in unsatisfactory quality, and for timely and effective corrective actions;
-) include the establishment and implementation of procedures, work instructions and method statements, which clearly identify organisational structure, roles and responsibilities (named personnel), and processes to ensure the satisfactory integration and interfacing of all elements comprising the Tramlink System;

- J) include a quality plan which is in accordance with the Quality System Model for Quality Assurance and Design Development Production Installation and Servicing (1994) ISO 9001.

The Contractor shall allow the Employer access to documentation and other management systems developed for implementing and audit of the Contractor's quality system.

- 2.5 The Contractor and the Operator shall each send an appropriate delegate to represent its interests at regular co-ordination and liaison meetings to be held with the Concessionaire. Such meetings, at which other parties may also be invited to attend as appropriate, shall be convened to discuss the following issues:-

- (a) Project Review (monthly)
- (b) Milestones (monthly)
- (c) Technical Reviews (monthly)
- (d) Additional meetings identified from time to time

The Concessionaire shall also instigate regular review meetings with HMRI to which the Operator shall be invited to attend.

Route

- 2.6 The Tramlink System shall be built along the route identified by, and in accordance with, the Context Study Drawings (the **Route**). The Drawings identifying the Route will together comprise the **Route Plan**. (Contractor)
- 2.7 The Tramlink System will replace existing conventional rail services from Wimbledon to West Croydon and between Blackhorse Lane and Elmers End. The Tramlink System will utilise former railway alignment between Blackhorse Lane and Fairfield Path. New tramway will be constructed to New Addington and across South Norwood Country Park as far as Beckenham to Crystal Palace railway alignment from where the remainder of the route to Beckenham Junction shall consist of a tramway running adjacent to an existing Railtrack line. The three routes are to be linked by new sections of tramway built in or adjacent to the highway from Sandilands in the east to Waddon New Road in the west. Stops shall be provided at frequent intervals at the locations shown by the Route Plan.

COMPLIANCE WITH LAW AND APPROVALS

- 3.1 The Contractor shall obtain and comply with the terms of all approvals, consents and licences required by law and the Performance Specification.

Various approvals shall be obtained by the Contractor from the Council or other appropriate authority in its capacity as local planning authority (including works requiring planning permission, advertisement consent, listed building consent, and conservation area consent), and as Highway Authority and under other statutory functions.

3.2 The Contractor shall obtain planning permission for the works detailed below:

-) stops, their layout, access arrangements and equipment
-) other buildings including the Depot and sub-stations
-) new and altered vehicular access points to public highways
-) bridges
-) car parking areas
-) stream diversion works

3.3 Further approvals shall be obtained from the relevant local authorities under the following provisions: (Contractor)

(a) sections 20, 40 (the Council only), 42 and 57 of the Act;

(b) an extension of the powers in section 40 of the Act set out in the Tramlink General Agreement, for Project Works which do not require planning consent for the following parts of the route:

-) that part of Work No. 1 lying between Waddon New Road (chainage 9200 as defined in the Parliamentary Plans) and its junction with Work No. 3
-) Work No. 7 – between Work No. 3 and the junction with work No. 9 and at South Norwood Country Park and Love Lane (between chainage 2800 and 4150 as defined on the Parliamentary Plans)
-) Works No. 9 – from Fairfield Path (approximate chainage 1050 as defined on the Parliamentary Plans) to its junction with Work No. 10
-) Works No. 10, 11, 12 – all; and

(c) approvals as set out in the Tramlink General Agreement.

3.4 Without prejudice to the Contractor general obligation under paragraph 3.1 of this Section 1 the Contractor shall obtain and comply with:

(a) all necessary approvals from RT and the Train Operating Companies required by the Law (including the Act); and

- (b) the terms of the planning consent given in favour of the Corporation by the London Borough of Bromley in respect of Project Works located at Beckenham Junction, which fall outside the limits of deviation, so far as the detailed design of the Project Works supports such consent and if not the Contractor shall be responsible for seeking amendments to such consent notifying the Corporation in accordance with the Construction Change provision.

3.5 The Contractor agrees that, at Wimbledon Station, where Project Works fall outside the limits of deviation, the provisions of part 17 of Schedule 2 to the GPDO shall apply. Plans are shown on drawing Ref. No. 95401/300/020 (Rev. A).

GENERAL REQUIREMENTS – CONSTRUCTION

4. In connection with the provision of the Tramlink System the Contractor shall comply with the following general requirements:

- (a) the details of hard and soft landscaping, and grassed track set out in Document Ref. Nos. AG0022 and the relevant provisions of the Tramlink General Agreement unless otherwise agreed in writing by the Council;
- (b) prior to commencing the Project Works the Contractor shall appoint a professional archaeological body of recognised standing to carry out the archaeological tasks identified in the Construction Practice Specification.
- (c) ensure that electric power is supplied to the Trams at a DC voltage of nominally 750v with a maximum acceptable deviation of plus 20% or minus 30%, and that the requirements of Section 6 of the Performance Specification are satisfied;
- (d) ensure that adequate standards of lighting which comply with BS5489 are provided for Stops, footpaths between each Stop and public highways, pedestrian crossings at Stops and for the Depot, as further described in Section 8 of the Performance Specification. Lighting at Stops shall be to a minimum level of 30 lux at floor level including the area within shelters. Lighting shall be provided for the alignment in tunnels and underpasses in order to maintain visibility to levels acceptable to HMRI. Street lighting which has to be removed as a result of the Project Works must be replaced in a manner to maintain at least the existing standard of street lighting, in accordance with details to be agreed with the relevant authority; and
- (e) reinstate, move or replace as necessary (subject to any necessary approvals) equipment in the highway which is affected by Project Works: this will include, but may not be limited to, traffic signals, monitoring equipment for signals, equipment boxes, telephone boxes, post boxes, sign-posts, and surface water drainage system.

DESIGN

5.1 The Contractor shall design the Tramlink System so that once built it satisfies all of the Performance Requirements and shall also comply with the following principles:

- (a) to ensure that unless otherwise required by relevant standards, the design of the Tramlink system accommodates the reasonably predictable extremes of the local climatic conditions;
- (b) the design and construction of the Tramlink System shall ensure that the appearance of both equipment and infrastructure is attractive and reduces visual intrusiveness as far as is reasonably practicable. The Tramlink System shall be landscaped in order to maintain the character of the areas through which it passes and to mitigate any adverse visual impact, (some of which landscaping is to be done by the Council in accordance with the provision of the Tramlink General Agreement);
- (c) the vehicles operated on the Tramlink System are to be designed to a high modern standard in terms of passenger comfort and ride quality. In addition, the vehicles shall be configured using modular construction allowing components to be used which are well proven and reliable. The Contractor shall provide a safe, reliable, attractive, energy efficient and environmentally friendly vehicle;
- (d) the Tramlink System is to be designed as an integrated system to provide the level of safety and reliability required by the Performance Specification;
- (e) The Tramlink System shall be capable, without the need to make *Significant Changes* to the fixed infrastructure, including the power supply and signalling system, of providing for a further 33% increase in passenger carrying capacity above that initially required by paragraph 1.2 of Section 9 of the Operator Specification and paragraph 3.11 of Section 5 of the Performance Specification. The increase in passenger carrying capacity shall be calculated by applying 33% to the product of:
 - (i) the passenger carrying capacity (at 5pax/m²) of the largest type of Tram initially introduced to operate on the Tramlink System; and
 - (ii) the number of journeys that are scheduled to pass East Croydon Station in both directions during the busiest hour of the week as set out in the table in paragraph 1.2 of Section 9 of the Operator Specification.

This increase in passenger carrying capacity may be achieved either by operating more services (subject to the limits set out in paragraph 1.4 of Section 9 of the Operator Specification) and/or by employing longer Trams (subject to the limits set out in Section 5 of the Performance Specification).

- 5.2 The Tramlink System shall be designed, built (Contractor) and maintained (Concessionaire and Operator), including the renewal of subsystems and components as necessary, to a standard that will ensure that it will be capable of continued operation for a period of at least forty years without the need for a Significant Change more frequently than once every five years.
- 5.3 The Contractor agrees to comply with the minimum design lives specified below for the various component parts.

<i>Element</i>	<i>Design Life (in years)</i>
New Structures	120
New Track	15
Track Bed	50
Switches and Crossings	10
Overhead line equipment	30
Power distribution cables	30

The Contractor shall refurbish existing structures and track so as to ensure safe and reliable operation of the Tramlink System.

- 5.4 The Concessionaire shall amend the Specification so as to reflect material and relevant changes which are made to the Tramlink System in accordance with Good Industry Practice.

ELECTROMAGNETIC COMPATIBILITY

- 6.1 The Contractor shall be responsible for (and shall demonstrate to the Corporation when required to do so) ensuring that all aspects of electromagnetic compatibility of the Tramlink System are dealt with as far as is reasonably practicable in the detailed design and implementation. The Contractor shall comply with the provisions of this paragraph 6 relating to electromagnetic compatibility.

The level of electro-magnetic emissions and their effects shall be compliant with the requirements of the law, European pre-standard ENV 50121, CCI II, CCIR, UIC and BSI.

- 6.2 The Contractor shall produce a detailed EMC Plan, as part of its detailed design, which shall:
- (a) incorporate Appendix 5.1 to Section 5 of this Performance Specification which sets out the vehicle's compliance with the European standard EN 50121:-
 - (b) demonstrate that the EMI which may be produced by equipment proposed to comprise the Tramlink System is calculated to be within the limits specified by the Performance Specification and also that such equipment is not susceptible to interference produced by other equipment (not comprising the Tramlink System) of which the Contractor knew or should reasonably have been aware at the Actual Opening Date.
 - (c) Incorporate the preventative measures agreed with RT in accordance with the provisions of the RT General Works Agreement or any other third party; and
 - (d) Incorporate a full EMC analysis on all equipment being procured for the Tramlink System for immunity to EMT and emission of EMI. Where areas of

particular concern are identified within the analysis, simulation studies shall be instigated and reports made available.

- 6.3 The Contractor's EMC Plan shall set out measures to be taken during implementation processes for the Tramlink System so as to prevent:
- (a) electromagnetic interference to RT equipment with particular attention to signalling safety and control systems, telecommunications and track circuits;
 - (b) EMI affecting the public telecommunications, public broadcast and private radio communications networks and other third parties/communications equipment;
 - (c) interference which corrupts or distorts signals and processes within information technology, data handling, data processing systems and other computer equipment;
 - (d) interference with radio and television reception;
 - (e) electromagnetic induction from traction power supply current into electronic equipment on the Trains, along the track, at Stops and in the Control Centre; and
 - (f) outside interference with electronic equipment of the Tramlink System from high voltage power lines and cables paralleling or crossing the track;
 - (g) emissions generated within systems in the control of, or associated with the infrastructure and assets of Railtrack, its client operating companies and interfering with control, communications and data handling and processing systems applicable to the Tramlink System.
- 6.4 The Contractor undertakes that in the event of EMI being caused by or to the equipment comprising the Tramlink System, the Contractor shall effect such changes to the Tramlink System (and the EMC Plan) as are necessary to ensure that EMI is reduced to acceptable limits as soon as is reasonably practical and/or that such EMI has been eliminated pursuant to the provision of the RT General Works Agreement.
- 6.5 The Contractor undertakes to comply with the EMC Plan.

STRAY CURRENT

- 7.1 The Contractor shall agree with the Corporation through the Employer and subsequently comply with the Code of Practice for Stray Current Corrosion Protection and the new draft EN standard on this matter, prEN 50122-2: 1995. The Contractor shall ensure that once built the Tramlink System possesses the following characteristics:
- (a) track to earth resistance shall be as high as reasonably practicable, with no deliberate earthing. (Figures are given in the prEN);
 - (b) along track resistance shall be as low as reasonably practicable, through high quality bonding and frequent cross bonding between rails and tracks;

- (c) Depot workshop tracks shall be isolated from the main line tracks and fed from a separate rectifier with its negative pole earthed;
 - (d) recognised track voltage limits (CCITT recommendations) shall be 60V continuous and 430V instantaneous;
 - (e) wherever earthed metalwork is closer than 2m to “negative” metalwork, (including a vehicle body) a self-restoring spark gap shall be installed to limit the touch/step potential to about 120V; and
 - (f) under-track reinforcing shall be made electrically continuous within sections, each section being brought out to a test point.
- 7.2 The monitoring and control of, and the analysis of the effects of stray traction current shall be the subject of separate dedicated studies, the results of which shall be made available to RT.

ENVIRONMENTAL IMPACT AND CONSTRUCTION PRACTICE

- 8.1 The Contractor shall undertake the Project Works in a manner which, insofar as is reasonably practicable, minimises disturbances to the public and road users as well as to affected third parties such as statutory undertakers, local retailers and householders.
- 8.2 The Contractor shall:
- (a) undertake the Project Works in accordance with the requirements of the Construction Practice Specification;
 - (b) comply with all safety laws and regulations (including the HSWA) for the benefit of employees and all other affected parties;
 - (c) conform to the Corporation’s environmental policy the current version of which is at Annex 1 to this Section 1. (The Corporation will send a copy of any revised version of Annex 1 to the Contractor through the Employer);
 - (d) build and design the Tramlink System in a manner which minimises its impact on the built and natural environment, and which protects, as far as is reasonably practicable, the existing flora and fauna and minimises energy consumption and ecological damage and, in particular, complies with BS 5837 in relation to trees;
 - (e) reinstate and landscape the area affected by the Project Works following construction and maintenance of the Permanent Way in accordance with the Council’s landscaping requirements as set out in paragraph 4 of this Section 1;
 - (f) incorporate the mitigation measures identified in the Environmental Statement submitted with the Act (Document Ref. No. AG0026) and additional studies required therein to assess further likely impacts on the Tramlink System. Relevant mitigation measures shall be incorporated by the Contractor into the detailed design and construction work;

- (g) prior to commencing the relevant design process produce an environmental action plan to ensure that all the identified mitigation measures and additional surveys are incorporated into the detailed design and the programming of the works; and
- (h) design all new structures having regard to operational noise and visual intrusion requirements each as specified in this paragraph 8 and Section 6.

Visual Intrusion

- 8.3 The overall visual intrusion of the Tramlink System shall be minimised by the Contractor (or the Council where the Council is under an obligation to provide landscaping under the provisions of the Tramlink General Agreement) using appropriate landscaping, the design of the Stops, power supply system and major structures. Visual assessments of the structural designs shall be undertaken by a specialist in this field and reasonably recommended mitigation measures incorporated.
- 8.4 In designing the OHLE the Contractor shall adopt the design criteria stated in Section 6 of the Performance Specification.

Operational Noise

- 8.5 Without prejudice to the specific requirements set out herein, the Contractor shall take all steps which are reasonably practicable so as to reduce the operating noise of the Tramlink System. The Contractor shall, whenever possible, reduce noise at source. All structures shall be designed and constructed (in particular the viaducts at Waddon New Road and Mitcham Junction) to mitigate operational noise and vibration propagation where appropriate and as far as is practicable by:
- (a) containment of the track in a concrete well;
 - (b) use of sound barriers; and
 - (c) use of resilient bearing materials.
- 8.6 The Contractor's specific obligations shall be to:
- (a) design the Tramlink System such that at existing noise sensitive properties, upon commencement of Tramlink Operations:
 - 1) for areas with Existing Noise levels less than or equal to 59 dB(A), the System Noise shall not exceed 59 dB(A).
 - 2) for areas where the Existing Noise levels are greater than 59 dB(A), the increase in noise due to Tramlink operations shall not be greater than 3 dB(A).
 - (b) demonstrate to the satisfaction of the Corporation, as part of its detailed design, its ability to comply with the requirements in paragraph 8.6 (a) of this Section 1.

- (c) agree with the Employer, within 3 months of the date of the Concession Award and as part of its detailed design, a method (including locations), and programme of noise measurements at existing properties, to establish Existing Noise levels and subsequent changes to noise levels, throughout the Concession Period, as a result of the Tramlink Operations;
- (d) operate and maintain the Tramlink System throughout the Concession Period, such that System Noise levels at existing properties are increased by no more than 4 dB(A) ($24 L_{a(eq \text{ façade})}$), above the predicted design value, as a result of the Tramlink Operations;
- (e) comply with the Operational Noise and Vibration Requirements contained in Annex 2 of Schedule 1, throughout the Concession Period;
- (f) comply with the requirements for airborne noise from the Depot which shall be demonstrated by the use of predicted noise levels and the measurement of existing noise levels at affected dwellings. This estimated shall be undertaken during the design stage. Predicted levels shall be based on assumed activities and their duration and shall be undertaken during the design stage. The Contractor shall ensure that any mitigation measures necessary are incorporated at the design stage; and
- (g) arrange for measurements to be undertaken at residential properties in the vicinity of the Depot to establish ambient (L_{Aeq}) and background (L_{A90}) noise levels. The Contractor shall design the Depot so far as practicable to minimise the likely generation of airborne noise from the Depot and will take all reasonable steps to reduce noise at source, thus ensuring that the difference between the rating of level of Depot noise as it affects dwellings or other buildings lawfully used or residential buildings, occupied prior to the date on which the Depot is first brought into operation, and the background L_{A90} noise levels does not exceed 5dB. The rating level shall be determined or assessed and the existing background noise level measured, in accordance with BS4142:1990, the difference between them will be as defined in Section 8.2 of BS4142:1990.

8.7 The Contractor shall use suitable qualified staff to undertake the calculation of noise levels attributable to the operation of the Tramlink System to determine eligibility for noise insulation of dwellings, as indicated in Operational Noise and Vibration Requirements (Document Ref. No. AG0020).

Ease of Access at Stops

8.8 The Contractor shall ensure that:

- (a) platforms and all passenger operated equipment are accessible by wheelchair users without the need for assistance;
- (b) at Tram doors designated for access by passengers the horizontal gap between the Tram and the edge of the trackside platforms never exceeds 100mm (for doors designated for passengers with disabilities, see Section 5);

- (c) passengers board the Tram at a maximum level of 350mm above the top of the rail;
- (d) the Trams shall be level with the platform whilst boarding (plus or minus a maximum 50mm at all conditions of Tram loading unless otherwise required by HMRI). (For doors designated for passengers with disabilities see Section 5);
- (e) the needs of passengers who are disabled or partially sighted shall be taken into account when providing passenger information facilities;
- (f) all emergency alarm buttons, intercom facilities and ticket machines shall have at least a simplified set of operating instructions in Braille mounted on or near the equipment;
- (g) the use of bridge plates between the platform and the Tram is avoided; and
- (h) during the design stage and the Construction Phase, the Contractor shall consult with the Corporation's Unit for Disabled Passengers (or its equivalent from time to time).

Protection of Badgers

8.9 The Contractor is aware that parts of the Project Works may affect or cause disturbance to badgers. Badgers are a protected species under the Protection of Badgers Act 1992 and the Contractor is obliged to comply with the requirements of that legislation.

The Contractor shall appoint an appropriately qualified specialist to advise it in connection with badgers and to assist in complying with its obligations under the Protection of Badgers Act 1992 and the other requirements of this paragraph 8. In particular the Contractor shall obtain a licence from English Nature in accordance with Section 10 of the Protection of Badgers Act 1992 before carrying out any of the Project Works affecting setts or likely to cause disturbance to badgers occupying them.

8.10 In addition to the requirements imposed by English Nature as a condition of issue of the licence, the Corporation has agreed in principle to provide a licence to a local badger protection society – the Joseph Firbank Society – to occupy the cutting sides for the purposes of protection and management of the badger population. The Contractor shall grant such licence to the Joseph Firbank Society.

8.11 Before commencing any Project Works in the Bingham Road to Coombe Road area, the Contractor shall consult with the Joseph Firbank Society on the works required and shall take account of their comments acting reasonably.

8.12 The Contractor shall agree the precise details of protective works required with English Nature. These are likely to include:

¹ The Concessionaire should note that English Nature advise that any operations within 20 metres of a sett have the potential to disturb badgers, whilst, certain operations (e.g. pile driving) can be potentially disturbing over a greater distance.

- (a) provision of badger-proof fencing adjacent to the alignment on either side;
- (b) provision of under-track crossings;
- (c) repair where necessary of perimeter fencing, allowing where required for the retention of badger paths; and
- (d) provision of gated access points to the cutting sides at the locations specified in the draft licence which forms part of the Parliamentary Undertaking given to the Joseph Firbank Society.

COMPLIANCE WITH STANDARDS

- 9.1 A performance requirement specifying that a system, structure, material or article comply with a particular standard or procedure whether a BS or other named standard or procedure or otherwise, shall be satisfied by compliance with any relevant national or governmental standard of any member state of the EU, or any relevant international standard or procedure recognised in a member state of the EU, provided that in any case the standard or procedure in question establishes levels of safety, suitability and fitness for purpose equivalent to those established by the standard specified in the Performance Specification.
- 9.2 A performance requirement requiring the use of any system, structure, material or article which is defined by reference to a named supplier or manufacturer or a specified quality assurance system or Agrément Board Certificate, or which is registered with or has otherwise received the approval of an appropriate supervisory authority shall be satisfied by using systems, structures, materials and articles which have received equivalent approval in another member state of the EU, provided that the system, structure, material or article in question is as safe, suitable and fit for the relevant purpose as the system, structure, material or article specified by the Performance Requirements.
- 9.3 Applicable standards or procedures required by this Operator Specification shall be determined by reference to the current edition of the relevant standards or other publications as amended or at the Concession Award Date. An Agrément Board Certificate will be deemed to demonstrate acceptable quality where no suitable standard exists.
- 9.4 Although all standards and applicable requirements, whether under the Operator Specification or required by law shall be met or satisfied, if a conflict arises as between the requirements of this Operator Specification, the following order of priority shall apply:
- 1. Operator Specification requirements.
 - 2. BS or equivalent EU member state or equivalent ISO standards.
 - 3. Design guidance and other non-mandatory information referenced herein.

ANNEX 1

Corporation's Environmental Policy

[to be supplied by LT]

SECTION 2

TRAMLINK SYSTEM SAFETY

Introduction

- 1.1 The Contractor has primary responsibility for the safety of the Tramlink System during the Construction Phase. The Operator has responsibility for the operational safety aspects of the Tramlink System during the Operating Period as set out in Clause 12 of the Operating Agreement. Without prejudice to such responsibility, as stated herein, the Corporation retains a statutory duty to have due regard for the safety of the public transport system operating in London, which includes the Tramlink System.

General

2. Without prejudice to the Contractor's obligation under paragraph 1.1 and the other provisions of this Section 2 and without prejudice to the Operator's general obligation under paragraph 1.1, the Contractor, Concessionaire and Operator (where noted) shall:
- (a) comply with Safety Acts and all other applicable Laws (Contractor, Concessionaire and Operator);
 - (b) comply with the requirements of HSE, ORR/HMRI and RAIB in relation to the Services (Operator) and Infrastructure Maintenance (Concessionaire and Operator respectively as set out in Schedule 5), including the general and specific requirements of HMRI;
 - (c) comply with the Corporation's general policy on health and safety as amended from time to time (Contractor, Concessionaire and Operator);
 - (d) provide all appropriate measures in relation to the Services (Operator) and Infrastructure Maintenance (Concessionaire and Operator respectively as set out in Schedule 5) to ensure, so far as reasonably practicable, the safety of all passengers (including the mobility impaired), contractors, staff and the general public;
 - (e) consult with and adopt all requirements of the emergency services throughout the Construction Phase (Contractor) and the Operating Period in relation to the Services (Operator) and Infrastructure Maintenance which is the responsibility of the Concessionaire (Concessionaire);
 - (f) as part of the design of Stops, Trams and equipment relating to the Tramlink System, take particular care to ensure safety at accesses and exits, while waiting, boarding or alighting and when moving along the Trams (Contractor); and
 - (g) have due regard for the safety of third parties, in particular pedestrians and other road users, in the design and construction (Contractor), operation and maintenance (Concessionaire and Operator) of the Tramlink System.

SECTION 2

TRAMLINK SYSTEM SAFETY

Construction Phase

- 3.1 The Contractor shall bear full responsibility for all safety requirements and shall observe all regulations regarding safety applicable during the Construction Phase.
- 3.2 Prior to commencement of the Project Works, the Contractor shall prepare and issue, with a copy to the Corporation through the Employer, a statement of its safety policy and method of implementation for the Construction Phase (called the **Construction Safety Plan**). The Construction Safety Plan shall comply with the requirements of the Construction (Design and Management) Regulations 1994 (the **CDM Regulations**), and all applicable Laws and Safety Acts.

Operation and Maintenance Phase

- 4.1 No later than 3 months prior to the Actual Opening Date, the Contractor shall issue to the Employer its contribution to the proposed Safety Case. The Employer shall respond with its comments no later than 30 days after receipt of the proposed Safety Case.
- 4.2 With effect from the date on which this amended Agreement comes into effect the Concessionaire's Safety Management System and the Operator's Safety Management System shall be maintained in accordance with Clause 12 of this Agreement.
- 4.3 As part of the Safety Management System (with effect from 2005) the Contractor and/or Concessionaire and/or Operator (as noted) shall:
- (a) provide appropriate facilities and proper training of staff to ensure safe and efficient evacuation from the Trams in case of emergency (Contractor and Operator);
 - (b) provide suitable warning signs for the public and differentiate where required by HMRI or the Highway Authority between the Swept Path and other areas of the highway along street Tramway sections (Contractor);
 - (c) provide warning signs and appropriate means of demarcation as required by the Act and by HMRI along segregated sections of Tramway. Where physical barriers are used to segregate the Tramway, adequate clearances shall be provided to minimise hazards to staff working on the track, trespassers, or straying animals (Contractor); and

SECTION 2

TRAMLINK SYSTEM SAFETY

- (d) formulate a health and safety policy, which shall be reflected in a comprehensive safety management system applicable to the operation of the Tramlink System and which shall in respect of the Construction Phase, form part of the Construction Safety Plan and in respect of the Operating Period form part of the Safety Management System. The policy shall include the following aspects (without limitation) (Contractor, Concessionaire and Operator as noted in relation to their respective obligations):
-) safety monitoring (Contractor and Operator);
 -) passenger safety and security (Contractor and Operator);
 -) staff safety and security (Contractor, Concessionaire and Operator);
 -) third party safety (Contractor, Concessionaire and Operator);
 -) site safety (Contractor);
 -) emergency conditions, including lines of communication to RT, BR and its successors, emergency services, the relevant local authorities and Highway Authorities (Contractor and Operator);
 -) technical/design safety procedures (Contractor); and
 -) maintenance (Concessionaire and Operator).

The health and safety policy shall incorporate:

- (i) a statement that it is to be observed by Tramlink System (and sub-contractors') personnel in the following situations:
-) accidents and emergencies;
 -) normal operation;
 -) predetermined failure conditions including staff shortages, power supply shortages and equipment failures (Contractor, Concessionaire and Operator);
- (ii) a description of the method of recovery of a failed Tram or Train and the lifting of a Tram involved in an accident (an associated activities) (Contractor, Concessionaire and Operator).

- 4.4 Copies of the Safety Management System (or those extracts of it which relate to operations on the highway) shall be supplied for information to each relevant Highway Authority by the Concessionaire.

SECTION 2

TRAMLINK SYSTEM SAFETY

Safety Demonstrations, Tests and Monitoring

- 5.1 As part of safety management the Contractor shall identify all equipment and other devices critical to safety. For such devices it will use, where practicable, items which are certified by official standards or those which have been proved by safe and successful operation on a comparable public transport system.
- 5.2 The Contractor shall prepare plans, procedures and requirements for certification, contracts and testing, including design reviews, review of sub-contractor submittals, change requests and audits.
- 5.3 The Contractor and the Operator shall, in consultation with HMRI, through the Concessionaire, the Corporation and the Highways Authority, identify the activities they propose to monitor to measure its safety performance, including the procedures necessary for the notification of accidents where reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

Safety Training

6. The Contractor, Concessionaire and the Operator (where relevant under their respective obligations in Clause 12 of the Operating Agreement) shall:
 - (a) provide safety criteria and information on approved methods and procedures for inclusion in the instructions and associated publications for the training of Tramlink System operating and maintenance personnel. Protective devices and emergency equipment shall be identified and included in the training programme; and
 - (b) be responsible for producing safety training material and publicity for the general public. The Contractor and the Operator shall participate in training programmes with road safety officers of the London Boroughs traversed by the Tramlink System.

Railtrack Requirements

7. The Contractor shall comply with all the requirements of Network Rail as set out in the RT General Works Agreement.

SECTION 2

TRAMLINK SYSTEM SAFETY

Safety Audit

8. The Contractor shall carry out and document internal safety audits. The Corporation shall have the right to inspect the Contractor's safety audit documentation and to carry out safety audits of its own at any time during the Concession Period. The Contractor agrees that it will inform the Employer promptly of any remedial work or any changes in operating practices, management or other safety critical aspects of operations, which may be necessary for the safe operation of the Tramlink System, of which the Contractor becomes aware, as a result of a safety audit or otherwise.

London Transport

**Statement of general policy
with regard to Health and Safety dated 14 November 1994**

See Original

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

DEPOT FACILITIES

1. The Contractor shall design and construct a Depot for the servicing and maintenance of Trams at Therapia Lane, in the London Borough of Sutton as detailed in the Act and the undertaking given to London Boroughs of Sutton, designed to meet the Performance Requirements in Section 9 and 11 of this Performance Specification and incorporating the requirements of this Section 8.

The layout of the Depot shall be designed to cater for an initial fleet of no less than 24 Trams, each 30.2m in length, together with such additional rail, road/rail and road vehicles as are required for operation and maintenance of the Tramlink System. The layout shall be capable of expansion, without material disruption to the facilities provided at the Depot and to operation of the Tramlink System, to cater for a fleet of Trams, each 43.3m in length, together with such additional rail, road/rail and road vehicles as are required for operation and maintenance of the expanded fleet on the Tramlink System.

The general layout of the facility, including tracks and buildings, shall be in accordance with the following drawings supplied by the Contractor:

-) overall layout drawing 95401/300/003 Rev B
-) building plan drawing No. 95401/A/101B and 95401/A/102A
-) building elevation drawings No. 95401/A/103A and 95401/A/104A

The detailed layout will be developed during detailed design to suit operational and construction requirements within the constraints imposed by site boundaries.

2. DEPOT ACTIVITIES

The following activities shall be undertaken within and from the Depot:

2.1 Tram Stabling

All Trams shall be securely stabled at the Depot overnight, between peaks and at any other times when not required for service. However, outstabling, on a temporary basis only, will be permitted in order to accommodate pre-planned engineering works, special traffic requirements of an exceptional nature or an emergency requiring outstabling.

2.2 Breakdown and Maintenance Vehicle Stabling

The Contractor shall stable and make available at the Depot a road/rail breakdown and maintenance vehicle, and such other rail, road/rail and road vehicles as are required for operation and maintenance of the Tramlink System.

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

2.3 Tram Maintenance

Routine and preventative maintenance of Trams shall, where practicable, be undertaken at the Depot, as described in Section 11 of this Operator Specification.

2.4 Stores

The Contractor shall provide stores within the depot building. The Operator shall ensure that an associated inventory management service for itself and for Tram maintenance activities is provided.

2.5 System Monitoring and Control

The Operator shall ensure that the Control Centre is continually staffed 24 hours per day in order to monitor and control the Tramlink System, control Tram driver availability, respond to operational staff issues, contact with emergency services and other third parties when necessary and organise out of hours infrastructure, Operator's equipment and Tram maintenance. The Contractor shall ensure that the Control Centre shall be at the Depot and shall incorporate the requirements of Section 7 of the Performance Specification.

2.6 Driver Management

Drivers will sign on duty at the Depot, in the presence of an authorised supervisor.

3. PROTECTION OF RESIDENTIAL AMENITIES

3.1 Noise

The Contractor shall design the Depot so far as practicable to minimise the likely generation of noise or vibration from the Depot. The Contractor shall liaise with any relevant Authority through the Employer in respect of any mitigation measures which may be required to be incorporated in the design.

The Operator shall take all reasonably practicable steps by management of its activities undertaken at the Depot and in accordance with the Environmental Protection Act 1990 (as amended) to minimise noise and vibration as required by Clause A2.6 and A2.8 of the Operational Noise and Vibration Requirements.

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

3.2 Depot Lighting

The Contractor shall secure adequate disposition and intensity of the Depot lighting to enable essential maintenance and operations to be conducted safely. Lighting of the Depot shall be provided to a level of between 10 and 30 lux external to the Depot buildings and between 100 and 500 lux within the Depot buildings.

Spillage of light from the Depot towards adjoining residential properties shall be minimised through careful design and siting by the Contractor.

SECTION 9

OPERATION OF TRAMLINK SYSTEM

SERVICE PARAMETERS

- 1.1 At least four months before the Actual Opening Date the Operator shall submit to the Concessionaire for its approval the detailed level, frequency, and pattern of service and the Timetable (as described in paragraph 1.7 of this Section 9) it proposes to operate within the parameters set out in this Section 9 and providing that these services parameters are met the Concessionaire shall not unreasonably withhold its approval of the same and shall submit it to the Corporation. The Concessionaire agrees to notify the Operator of its approval or otherwise within fourteen (14) days of receipt of the Timetable. The Operator shall operate the Tramlink Service in accordance with the Timetable approved by the Concessionaire.

The Operator shall ensure that the service provided continues to comply with the accommodation limits and standards defined in Clause 5.1(e) of Section 1 in accordance with the provisions of Clause 16 of the Operating Agreement.

Frequency of Services

- 1.2 Throughout each operating day, the timetabled frequency of service provided on each section of route shall be as set out in the table below and in any event not less than two Trams per hour in each direction of travel. At certain times of the week, as specified in the table below, the minimum level of service to be provided shall be set at the higher level set out therein. Headways shall be evenly spaced wherever practicable.

Minimum number of Trams per hour in each direction on each section of route for the specified time periods: (tph = trams per hour)

Section of route	Mondays to Fridays (7am-7pm)	Saturdays (8am-7pm)	Sundays, Public Holidays & Other Operating Times
Central Croydon – Beckenham Junction	6 tph	6 tph	2 tph
East Croydon – Wimbledon Station	6 tph	6 tph	2 tph
Central Croydon – Elmers End Station	4 tph	4 tph	2tph
Central Croydon – New Addington (Central Parade)	8 tph	8tph	4tph

The Concessionaire and Operator acknowledge that it will be acceptable for the Wimbledon service to be linked to other services beyond East Croydon.

SECTION 9

OPERATION OF TRAMLINK SYSTEM

The Concessionaire and the Operator acknowledge that, in the event of the agreed Timetable allowing sufficient total running time plus stand time to provide the minimum 8 tph service it will be acceptable to adjust the frequency to enable a reliable service to be operated using seven (7) Trams.

- 1.3 The Operator shall provide a public Tram service throughout the Tramlink System in accordance with the Public Timetable. The Operator shall ensure that the first Tram departures shall be no later than the times shown below and that the last Tram departures shall be no earlier than the times shown below.

1. Mondays to Fridays and Saturdays:

	First Tram Departure	Last Tram Departure
From Wimbledon to E Croydon	0600	0000
From New Addington to E Croydon	0500	0035
From Beckenham Junction to E Croydon	0600	0000
From Elmers End to E Croydon	0530	0000
From E Croydon to Wimbledon	0600	0000
From E Croydon to New Addington	0440	0015
From E Croydon to Beckenham Junction	0600	0000
From E Croydon to Elmers End	0600	0010

2. Sundays

From Wimbledon to E Croydon	0735	0000
From New Addington to E Croydon	0645	0035
From Beckenham Junction to E Croydon	0730	0000
From Elmers End to E Croydon	0730	0000
From E Croydon to Wimbledon	0730	0000
From E Croydon to New Addington	0625	0015
From E Croydon to Beckenham Junction	0730	0000
From E Croydon to Elmers End	0730	0000

SECTION 9

OPERATION OF TRAMLINK SYSTEM

The Operator shall ensure that scheduled first and last journeys on each section of route operate as per the Public Timetable and as a priority over other timetabled journeys.

On Public Holidays (except Christmas Day and Boxing Day), the Operator shall as a minimum provide services as specified for Sundays, although the Operator shall be free to provide an enhanced service. A restricted half hourly service shall be provided on all sections of routes on Boxing Day, and the Operator shall not be obliged to provide a service on Christmas Day.

- 1.4 The Operator may provide a higher frequency than the minimum stipulated up to the upper limits specified in the table below. The Operator acknowledges that changes to the level of service may affect the priorities available to Trams at junctions and that this is a matter for the Concessionaire to resolve with the relevant Highway Authority.

Upper limitation on Trams in each hour per direction passing along critical sections of route below:

Section of route	Maxima (at any time)
Addiscombe Road, Croydon	26 tph
Crossing Kingston Road, Merton Park	8 tph

Without prejudice to the procedure for varying the upper limitation in the Operating Agreement, this ceiling may be exceeded temporarily in exceptional circumstances, where possible to be agreed in advance with the Concessionaire and the relevant Highway Authority through the Concessionaire. In any event should the exceptional circumstances continue for more than one week the Operator shall follow the procedures set out in the Operating Agreement to vary this parameter.

Journey times

- 1.5 The Operator shall ensure that the journey times scheduled in the Public Timetable in either direction between East Croydon and the Terminus Stops listed below are not more than the following maxima, even if the trams are required to serve each Stop:

East Croydon to/from Wimbledon	27 minutes
East Croydon to/from Beckenham Junction	22 minutes
East Croydon to/from New Addington	21 minutes
East Croydon to/from Elmers End	14 minutes

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OPERATION OF TRAMLINK SYSTEM

Upon application from the Operator made in accordance with the Operating Agreement, the Concessionaire may vary these times if it considers the traffic conditions to be creating unreliability.

Service Stops

- 1.6 Stops shall be provided at the locations listed below. Stops marked with an asterisk will be Compulsory Stops. Trams must therefore stop at these points on all journeys. Stops not marked with an asterisk are Request Stops. Trams must stop at Request Stops if a passenger at the Request Stop hails the Tram or if a passenger inside the Tram rings any signalling bell.

Wimbledon Station*
Dundonald Road
Merton Park
Morden Road
Phipps Bridge
Belgrave Walk
Mitcham
Mitcham Junction*
Beddington Lane
Therapia Lane
IKEA/Ampere Way
Waddon Marsh
Wandle Park
Centrale
West Croydon Station*
Wellesley Road*
George Street*
Reeves Corner/Church Street*
East Croydon Station*
Lebanon Road
Sandilands*
Bingham Road*
Blackhorse Lane
Woodside
Arena*
Elmers End*
Harrington Road
Birkbeck
Avenue Road
Beckenham Road
Beckenham Junction*

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Lloyd Park
Coombe Lane/Shirley Hills
Gravel Hill
Addington Village*
Fieldway*
King Henry's Drive
New Addington*

Service Timetable

- 1.7 The Operator shall make available a Working Timetable which is consistent with the Timetable approved in accordance with paragraph 1.1 of this Section 9 to the Concessionaire, the Council and the London Regional Passengers' Committee through the Concessionaire at least three calendar months before commencement of each such timetabled service, and thereafter not less than three months prior to any Timetable revision. This shall fully detail all scheduled public journeys on each type of operating day stating departure times from all Compulsory Stops. For Terminus Stops arrival times shall be quoted.

The Operator shall make a derivative abbreviated Public Timetable available to the public not less than six weeks before commencement of each service, or six weeks before any change to an existing Timetable, and otherwise at intervals of not more than one year. For each type of operating day this shall indicate departure times from each Terminus Stop and Compulsory Stop, or service frequency where this is more frequent than once every ten (10) minutes. At Terminus Stops, arrival times shall also be shown. The Public Timetable shall be in a form and style to be agreed by the Corporation through the Concessionaire. The Operator shall display the Public Timetable appropriate to the service and direction of travel on all platforms, and inside all passenger carrying units of the Trams.

The Working Timetable and Public Timetable together shall constitute the *Timetable*.

SERVICE PERFORMANCE

- 2.1 The Operator shall operate the Tramlink System in accordance with the Timetable currently approved by the Concessionaire as varied from time to time in accordance with the Operating Agreement. The Operator shall correctly display appropriate service number designations as agreed with the Concessionaire and correct destination displays on all Trams operating in service.

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Service disruptions

- 2.2 The Operator shall give, subject to paragraph 2.5 below, wherever practicable a minimum of five (5) days notice to the public if Stop closures or service disruptions (whether of part or all of the Tramlink System) are necessary for any reason including exceptional maintenance or repair activities.
- 2.3 The Operator shall, in the case of Stop closures, or in the case of pre-planned disruptions for engineering works affecting track, Trams, power supply, or otherwise, which impair the Operator's ability to provide Tramlink Services or in the case of Stop closures, post notices on all Stops and in all passenger carrying units of the Trams at least five (5) days in advance of such works detailing these events and giving details of alternative means of transport.
- 2.4 On the days on which a closure occurs announcement shall be made on Trams which continue to operate, and special messages shall be provided on Stop real-time displays.
- 2.5 Where it is not possible to operate all or part of the Tramlink System in accordance with the Operator Specification because of a temporary emergency, the Operator shall use its reasonable endeavours to minimise disruption and delay to the public caused by the emergency and to restore the service specified in the Public Timetable as soon as possible. The Operator shall liaise with the Concessionaire and inform the public as soon as practicable as to the nature of the emergency, its likely duration and the proposals for arrangements to deal with the same.

SERVICE RELIABILITY AND MONITORING

3. The Concessionaire shall from time to time agree with the Operator targets for service performance and for system maintenance and presentation with which the Operator will comply. The Concessionaire will monitor quality and quantity of service provided, particularly in respect of the adherence to the Timetable and excess waiting time for passengers.

The Corporation intends to undertake surveys to monitor performance by the Operator of its obligations under the Operating Agreement at a frequency not exceeding two occasions during any Financial Period unless otherwise agreed in advance with the Operator and in a manner which does not prejudice the Operator's performance of its obligations in accordance with the Operating Agreement. The Concessionaire will provide the Operator with a schedule of items to be monitored and a description of the method of monitoring. The results of this monitoring will be issued to the Operator, which will have the opportunity to comment. The Concessionaire will consider the Operator's written comments and pass them to the Corporation for consideration before determining whether written notice specifying the nature of any default is issued in accordance with the relevant provisions of applicable clauses of the Operating Agreement.

The Concessionaire and the Operator agree that the initial service performance

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OPERATION OF TRAMLINK SYSTEM

standards with which the Operator shall comply shall be as follows:

Quality of Operated Service

-) % of in-service scheduled timetabled kilometrage operated – 98%
-) outside the section between Reeves Corner and Sandilands less than 4.5% occurrence of a gap in service of twice the timetabled interval.

For the purpose of this clause 3, the Concessionaire will not issue a warning notice under clause 16.6 of the Operating Agreement solely in relation to a failure to achieve the 98% in-service requirement during the 9 months immediately following the successful completion of SAT3.

The Concessionaire will not ordinarily consider any de-minimis failure to achieve the 98% in-service requirement as constituting grounds for the issue of a warning notice under clause 16.6 of the Operating Agreement.

In respect of the following three annual special events, the Concessionaire shall take into account the impact of such events on the ability of the Operator to achieve Scheduled Kilometrage in calculating the overall service quality statistics for the relevant Financial Period:

- (i) Croydon Carnival
- (ii) Remembrance Day Parade
- (iii) London to Brighton Vintage Vehicle Rally

Performance of Passenger Infrastructure

-) at least 97% reliability of real-time information in service indicators during hours when the Tramlink System is in service.
-) ticket machine availability 97% of system opening time (noting that the Operator has only partial control over this parameter);
-) 100% of Stops to be cleaned daily;

Presentation of Vehicles

-) 100% of Trams operated to be cleaned daily externally and internally before use the following day.
-) 100% of Trams operated to be cleared of litter every 3 hours between 0930 hours and 1830 hours on Mondays to Saturdays.

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The Operator shall adhere to maintenance standards so as to meet the above targets, and the requirements of Section 11 of this Operator Specification. The Operator shall ensure that adequate systems are in place to record the above information, and shall provide such information to the Concessionaire at the Operator's expense as reasonably requested by the Concessionaire.

FEEDER BUSES

4. The Concessionaire shall secure the provision of Bus Feeder Services in accordance with the terms of clause 24 of the Concession Agreement, and as detailed in Schedule 8 of the Concession Agreement.

CUSTOMER CHARTER AND PUBLIC ENQUIRIES

5. On or before the Actual Opening Date, the Operator shall publish a customer charter, which shall be subject to the approval of the Concessionaire, such approval not to be unreasonably withheld. The customer charter shall substantially be in the form of Annex 1 to this Section 9. Any valid claims under the Customer Charter shall be paid by the Operator and shall be agreed with the Concessionaire as to the liabilities between the Concessionaire and the Operator as detailed in Schedule 11 of the Operating Agreement. The Operator acknowledges that the Corporation will be concerned to ensure consistency in the customer charters applicable across its network. The Operator shall use its reasonable endeavours to ensure that its employees, servants and agents comply with the provisions of the charter relating to their conduct.

REPORTING OF INCIDENTS

6. The Operator shall comply with all statutory obligations relating to the reporting of accidents, injuries, diseases and dangerous occurrences. The Operator shall record details of all reportable occurrences on a register which shall normally be kept at a location to be agreed with the Concessionaire, and shall be available for inspection by the Concessionaire and the relevant Highway Authority at any time during normal office hours. For those incidents cited in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, and for all accidents involving fatalities or serious injuries details shall be sent to the Concessionaire within 24 hours of their occurrence. For those accidents which occur on the highway, a second copy of the information sent to the Concessionaire shall be supplied direct to the relevant Highway Authority. In addition, the Operator shall supply the Concessionaire with information concerning all accidents and assaults in accordance with the Concessionaire's procedure as notified to the Operator and amended from time to time. If required by the Concessionaire the Operator shall liaise with the Concessionaire about the occurrence of any incident and the future measures to be taken to prevent the recurrence thereof.

LOST PROPERTY

8. The Operator shall by the Actual Opening Date appoint a day on which any lost

SECTION 9

OPERATION OF TRAMLINK SYSTEM

property regulations made under Section 60 of the Public Passenger Vehicles Act 1981 will apply to Tramlink. The Operator shall by notice inform the Concessionaire of the date appointed. From that date the Operator shall administer a system for dealing with lost property found in the Tramlink System in accordance with such regulations.

SMOKING

9. The Operator shall maintain all Trams in use on the Tramlink System such that notices therein stating that smoking is prohibited are conspicuous and shall use reasonable endeavours to ensure that the Trams are no smoking zones.

BYELAWS

10. Byelaws shall be as defined in Clause 31.1.5 of the Operating Agreement.

CONDITIONS OF CARRIAGE

11. The Operator shall consult with the Concessionaire about the terms and conditions on which the Operator issues tickets to passengers in order to ensure that, so far as is reasonably practicable, there is consistency between the terms and conditions on which tickets are issued on different modes of transport. The Operator shall ensure that any tickets are issued and fares are collected on behalf of the Concessionaire and that the terms and conditions on which tickets are issued are in the name of the Concessionaire.

DISPLAY OF NOTICES

12. The Operator shall ensure that route maps, safety notices, bylaws (if any) and any other notices which the Concessionaire may reasonably require are displayed in the interior of each of the main seating areas of the Tram.

SECTION 9

OPERATION OF TRAMLINK SYSTEM

A Charter for Tramlink Passengers

Welcome to your charter.

At Tramlink we aim to give you the best possible service.

This booklet sets out exactly what you can expect from us and explains how to make the most of the Tramlink service.

Trams on time

We know that reliability is what passengers want most from our service. Our target is to keep your waiting time as short as possible by keeping to the timetables we display.

-) We display regular reports about our tram service at our stations.
-) Where we have to change the service because of engineering works, we advertise the fact well in advance and make alternative arrangements if necessary.
-) If we are unable to run the timetabled last tram for any reason we will do our best to get you to your destination station. The times of the last trams each day are displayed at stations and in our free Service Guides.
-) If, because of our failure, your journey is seriously delayed, we will refund your fare with a voucher.

Helpful Staff

Our aim is to do all we can to make your journey as smooth and comfortable as possible and for every member of staff the needs of our customers come first.

-) If you need help with your journey you can talk to us at any time. We have an Information Office conveniently situated in Croydon at (what is the address) and you can telephone us day or night on (what is the telephone number).
-) All our trams have public address systems and next stop information is announced and displayed. If for any reason your journey is delayed the driver will tell you what the problem is and keep you updated.
-) All our front line staff wear our Tramlink uniform and have name badges. If you telephone us we will give our names.
-) We want you to enjoy travelling by Tramlink. Our service exists to serve your needs and we aim to make every journey a pleasant experience.

Safe, Clean Trams, Safe Clean Stations

SECTION 9

OPERATION OF TRAMLINK SYSTEM

Our trams and stations are brand new and designed with your safety as a priority. We aim to keep them sparkling clean.

-) All our trams are thoroughly cleaned inside and out every day. After every return trip the tram is checked and any litter removed. The driver will ensure that lost property is safely collected.
-) Our Trams incorporate features designed to make travel safer and more comfortable for everyone. These include a flat entrance from the platform, brightly coloured grab-poles and easy to use and reachable bell pushes. Safe positions are marked for passengers in wheelchairs.
-) All tram-cars have alarms so that if you need to contact the driver in an emergency you can. Drivers have two-way radios to call for help if necessary.
-) We provide shelter, light and seating at our stations wherever there is space to do so. At all stations there are screens showing the time of the next tram. We clean our stations at least once a day and we will normally repair any damage within 24 hours.

Clear Information about our Service

We want to make sure that you never have a problem finding out when Tramlink runs, where it stops or what it costs.

-) We deliver Tramlink Service Guides to everyone living within easy range of a Tramlink stop.
-) At all our stations there are real-time dot-matrix screens showing when the next tram will leave. There are also posters with full details of the service and fares. We will ensure that these are kept up to date and in good condition.
-) On board the trams there are route diagrams showing where Tramlink goes with its links to buses and trains. Station names are announced automatically on arrival.
-) If you prefer to ring us for information we have a recorded message available giving service details. If you would like to speak to someone about your journey you can telephone Travel Information number 24 hours a day.

Fares and Tickets

We want to make paying your fare on Tramlink as quick and easy as possible.

-) At every station we have machines which sell a full range of tickets and can give change.

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OPERATION OF TRAMLINK SYSTEM

-) You can buy Tramlink tickets in advance from [] outlets all over London, including rail stations, underground stations, bus garages and newsagents. You can also use your credit card to buy weekly, monthly or annual tickets.
-) Our stations have no entrance barriers but if you board one of our trams you must always be in possession of a valid ticket. Anyone on the system without a valid ticket will be liable to pay £xx on the spot. Purchasing a ticket before travelling will ensure that we can identify the real fare dodgers and make sure that they are not subsidised by honest customers.

Making it Better for Everyone

Travelling together makes it important to think of others.

Please

-) Don't smoke
-) Don't leave litter behind
-) Don't bring sticky or smelly food on board
-) Don't play your personal stereo at a volume which will disturb others
-) Don't put your feet on the seats

When travelling on Tramlink please remember that because trams are very quiet you may not hear them approach. Please be vigilant and, except in pedestrian areas, **NEVER STEP ON THE TRACKS**. If you need to cross over always use the marked crossing or footbridge.

Getting in Touch with us

We want to hear from you and we treat all suggestions, comments and complaints very seriously. Please write to us at the address below or telephone us on XXX. Alternatively you can call in and speak to us at our office in XXX.

We will try to reply to you within seven working days. If we cannot give a full answer within this time we will send you an acknowledgement within two days and reply to you in full within three weeks.

If you are not happy with our reply you can contact the independent passengers watchdog:

London Regional Passengers Committee
Clements House
14-18 Gresham Street
London
EC2V 7PR

SECTION 10

FARES AND FARE COLLECTION

FARES AND TICKETS

- 1.1 The Concessionaire shall conform with London-wide zonal ticketing systems, Travelcard (or its equivalent) and concessionary fares (as described in the Concession Agreement). The Operator shall co-operate with the Concessionaire in this regard. The Corporation, through the Concessionaire shall determine the level and structure of fares to be charged on the Tramlink System, in accordance with Clause 23 of the Concession Agreement. The Operator shall accept Travelcards, LT Cards, Concessionary Permits (acceptance on Mondays to Fridays shall be only after 0900 hours), LT Staff Passes and Police Passes and any other multi modal tickets whose format and nature are determined by the Corporation through the Concessionaire . In addition, the Operator shall accept for travel, between Wimbledon and East Croydon only, those passes held by railway employees which allowed free travel between West Croydon and Wimbledon prior to the withdrawal of the conventional railway service over that section.
- 1.2 The Contractor shall design its ticketing equipment, as far as is reasonably practicable, to permit future implementation of smartcards or stored value ticketing systems on the same basis as other London area public transport operators. The Operator shall agree to the installation by the Concessionaire, at the cost of the Concessionaire, of any equipment required on Trams or on platforms for the purpose of electronic pass recognition or for other purposes related to the future allocation of Off-Tram Revenue or Stored Value Revenue provided that the Concessionaire, gives the Operator reasonable written notice of when such equipment is to be installed and after consultation with the Operator, installs the same at such times as (as far as is reasonably practicable) do not prejudice the ability of the Operator to provide the Services. The Operator shall bear its costs of making the Trams available at the Depot to the Concessionaire for the purposes of installing such equipment.

The Operator shall determine the size and material characteristics of other tickets provided by them, other than multi-modal tickets, but their design shall be subject to the approval of the Concessionaire, which shall not be unreasonably withheld or delayed.

- 1.3 The Operator shall adopt and charge fares as required by the provisions of the Concession Agreement. The first Fares Table shall be as set out in Schedule 6 of the Concession Agreement. The fare levels to be charged on the Tramlink System may be varied from time to time in accordance with the provision of the Concession Agreement.

Ticket Vending

- 2.1 The Contractor shall ensure that whatever system of automatic fare collection is employed minimises dwell times of Trams at Stops. The Contractor shall ensure that any ticket vending facilities shall as far as is reasonably practicable be easy to use by all passengers, including unassisted wheelchair users.

SECTION 10

FARES AND FARE COLLECTION

The Contractor agrees to install multi-fare ticket vending machines at all Stops, at least one per platform. In addition, tickets may also be sold from the Operator's Central Croydon office and from other agencies.

Tickets shall not be sold nor validated by drivers and shall not normally be sold on Trams. However, portable ticket issuing machines may be used by roving Revenue Inspectors for the purpose of checking passengers' tickets and passes; issuing penalty fares and issuing tickets to passengers who have boarded at a Tramstop without a working ticket vending machine.

Tickets issued by the Operator or its agents shall be stated to be on the Concessionaire's terms and conditions of carriage and the Concessionaire's name shall appear on them.

Automatic Ticket Vending Machines

2.2 Automatic ticket vending machines, where installed by the Contractor, shall:

- give correct change either through the ticket vending machine or via a separate facility;
- be weatherproof and vandal resistant;
- be capable of operating effectively under weather conditions as specified in paragraph 4 of Section 4;
- register the operations and transactions for statistical purposes (and the machine shall be able to produce data to meet the obligations under the Off-Tram Revenue Agreement);
- have sufficient ticket, money box and change capacity to carry out all normal transactions between routine servicing.

The Contractor shall supply and install multi-fare ticket vending machines which accept a reasonable range of UK coins and notes and will issue correct change. The machines shall also be capable of upgrade or modification to accept contactless smartcards and/or common stored value tickets at a later date.

Ticket Machine Failure

2.3 The Operator shall ensure, so far as it is able, that ticket machine availability shall be in accordance with the requirements of Section 9. The Contractor shall provide a system for reporting ticket machines requiring attention to the Control Centre which shall monitor the operational status of the remote ticket vending machines. Any equipment malfunction or tampering with automatic fare collection equipment shall immediately initiate appropriate alarms to alert controllers in the central Control Room. All system transactions and alarms shall be logged and time tagged.

SECTION 10

FARES AND FARE COLLECTION

Revenue Protection

- 3.1 The Operator shall ensure that a system, in accordance with Schedule 11 of the Operating Agreement, is in place to check that passengers are in possession of a valid ticket or tickets for journeys that are taken, and that ticketless and other travel without a valid ticket is deterred. The Operator shall secure that the system complies with Good Industry Practice and shall only utilise suitably trained staff.

Penalty Fares

- 3.2 The Operator shall, at his own expense, activate and operate a penalty fare scheme by means of the necessary secondary legislation. The Operator shall ensure that the scheme employed ensures that Penalty Fares are not imposed on passengers unable to purchase the correct ticket because the normal ticket selling facilities were not available at their point of joining the Tramlink System.

SECTION 11

MAINTENANCE OF TRAMLINK SYSTEM

1. GENERAL

1.1. Preventative Maintenance Schedule

Ten months after the signing of the Concession Agreement, the Concessionaire shall issue to the Operator the Draft PMS (Infrastructure). At most, three months after the commencement of the Mobilisation Period, the Operator shall prepare and submit to the Concessionaire an operations related Draft Preventative Maintenance Schedule (PMS) (Operations) which will reflect the needs of the users of the Tramlink System and of the general public (including all third parties, e.g. pedestrians, road users, bus operators, owners of adjoining properties, shop lease holders etc.) in a safe, secure, comfortable and efficient way. The Draft PMS (Operations) shall take into account the Draft PMS (Infrastructure) that shall be prepared by the Contractor and issued to the Operator. The Draft PMS (Operations) shall take into account the Draft PMS (Infrastructure) that shall be prepared by the Contractor and issued to the Operator. The Draft PMS (Operations) shall be subject to the approval of the Concessionaire. The Operator shall ensure that subsequent revisions are submitted to the Concessionaire and such revisions shall be subject to the approval of the Concessionaire.

At least six months before the Actual Opening Date, the Operator shall prepare and submit to the Concessionaire, the final PMS (Operator). The Concessionaire shall forward to the Operator the Final PMS (Infrastructure) 8 months before the Actual Opening Date.

1.2 Responsibility

The Operator shall procure Tram Maintenance Services as required by Schedule 1 Part 5 of the Operating Agreement.

The Operator shall ensure that all Tram Maintenance Services are carried out so as not to cause adverse or detrimental effects to the Concessionaire's infrastructure maintenance cost.

The Operator shall liaise with the Contractor during the Commissioning Period, System Acceptance Testing Period and Defects Rectification Period for the purpose of enabling the Contractor to review his PMS by reference to operational characteristics of actual in-service experience of operational and maintenance staff during the periods stated.

The Operator shall ensure that all Tram Maintenance Services are carried out with the exercise of that degree of skill, diligence, prudence, foresight and practice as would reasonably and ordinarily be expected from a skilled and experienced Tram Maintenance Contractor.

1.3 Stored Value Ticketing Equipment

The Operator shall allow reasonable access to the Concessionaire or the Corporation of any contractor for the purpose of maintaining any equipment relating to Stored Value Ticketing.

SECTION 11

MAINTENANCE OF TRAMLINK SYSTEM

2. TRAM MAINTENANCE REQUIREMENTS

2.1 Tram Cleaning

2.1.1 General

The Operator shall ensure that the Tram cleaning arrangements provide for a high specification of Tram presentation for service and include effective methods of cleaning and graffiti removal.

Any change in the cleaning sub-contractor shall be approved by the Concessionaire having due regard to Clause 29.1 of the Operating Agreement.

2.1.2 Exterior Cleaning of Trams

The Operator shall utilise the vehicle exterior washing facility at the Depot and ensure a thorough wash of the Tram exterior.

Under normal circumstances, all Trams in service shall pass through the vehicle exterior washing facility each day in service.

Each Tram shall be given a deep clean at intervals which shall include no more than 30 days in service and as specified in the PMS.

2.1.3 Interior Cleaning of Trams

The Operator shall ensure that each Tram, when it has been in service, has the interior cleaned daily. The Operator shall ensure the Tram is thoroughly swept and mopped and that the windows are cleaned.

Additionally, the Operator shall litter pick each Tram in service at least every 3 hours between the hours of 0930 and 1830 on Mondays to Saturdays.

Each Tram shall be given a deep clean internally at intervals which shall include no more than 30 days in service, and as specified in the PMS.

2.1.4 Graffiti

The Operator shall use all reasonable endeavours to ensure that Trams do not enter service with significant and/or offensive graffiti in place. The Operator shall ensure that significant and/or offensive graffiti is removed within 24 hours of first being reported. All other graffiti is to be removed by no later than the next scheduled deep clean.

SECTION 11

MAINTENANCE OF TRAMLINK SYSTEM

2.2. Tram Maintenance

2.2.1 Maintenance Regime

The Operator shall ensure that the Tram Maintenance Contactor operates a Tram Maintenance regime in accordance with the PMS. The Operator agrees that the PMS shall include the extract from Volume C1, Part 6, TC-95-3572 “Description of the Vehicle Maintenance Programme of Bombardier Eurorail”, incorporated in Annex 1 of this Section 9.

The Operator shall ensure that Tram drivers note regularly the performance and general condition of Trams on which they are working and report any problems or damage that require, or are thought likely to require, particular attention.

2.2.2 Maintenance Scheduling and Staffing

The Operator shall ensure that all normal servicing, light scheduled and unscheduled maintenance and routine repairs is undertaken at the Depot provided at Therapia Lane in accordance with Section 8 of the Specification. Any damage which seriously affects the structure of a Tram may need to be repaired off-site, and the Operator shall use its best endeavours to minimise the period during which the Tram is removed from service on the Tramlink System.

The Operator shall ensure that the tram Maintenance Contractor complies with the Tram maintenance schedules incorporated in document TC-95-3572 which is incorporated as Annex 1 of this Section 9. The Operator shall ensure that the Tram downtime for planned activities stated below is not exceeded:

<u>Exam</u>	<u>Interval</u>	<u>Downtime</u>
Safety check	Daily	½ hour by Tram driver/fitters
L	20,000kms	1 shift
B	80,000kms/annually	2 shifts
C	160,000kms	1 shift
C2	5 years	2 shifts
C3	7-8 years	3 shifts
C4	9-11 years	4-5 shifts (+5 shifts for bogies)
Mid-life	15 years	5 weeks

In this case, a shift shall not exceed 12 hours.

The Operator will ensure that the Tram Maintenance Contractor shall provide sufficient staff and devise rosters to meet or reduce the above quoted downtimes in practice.

SECTION 11

MAINTENANCE OF TRAMLINK SYSTEM

2.2.3 Fleet Size Provision For Maintenance

The Operator shall ensure that its Tram maintenance activities ensure that operational fleet size is optimised to ensure compliance with operation requirements detailed in Section 9 of the Operator Specification.

The Operator shall ensure that one standby Tram is normally available to replace any Tram which, by nature of the incident, must be withdrawn from service.

3. CIVIL WORKS, BUILDINGS AND TRACKWORK

3.1 Cleaning

The Operator shall manage cleaning arrangements for the infrastructure in accordance with the PMS.

3.2 Stop Cleaning

The Operator shall ensure that Stops are maintained in a clean condition. The Operator shall draw up, submit to the Concessionaire and implement a detailed specification in accordance with the PMS for cleaning of each Stop, depending on the level of usage and any particular locational and environmental circumstances pertaining, against which the level of expected cleaning work required will be declared.

A Stop exhibiting relatively low usage and not subject to particular soiling shall be cleaned daily, including seat cleaning, thorough litter picking of the Stop, emptying of waste bins and checking of the general state of cleanliness. Typically, all surrounding areas, including car parking, and notices, advertising, ticketing equipment and other surfaces shall be cleaned three times per week and, all lighting shall be cleaned and any grassed areas generally tidied on a weekly basis.

At busier Stops, the cleaning shall be more extensive as is required, achieved by both increased cleaning time and shorter intervals between cleaning visits. Where litter levels are high, the daily clean may require at least two visits per day.

3.3 Railway Corridor

The Operator shall ensure that where forming part of the Tramlink System, platforms and walkways linking to public rights of way or the highway shall be cleaned in accordance with Category 1 zones as defined by the Environmental Protection Act Code of Practice on Litter and Refuse, January 1991 (EPA 1991)

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MAINTENANCE OF TRAMLINK SYSTEM

Where the alignment crosses park and open spaces, litter shall be cleared in accordance with Category 3 zones as required by EPA 1991. Where the alignment runs on the verges of the highways, or adjacent to highways, litter shall be cleared in accordance with Category 7 zone (local roads), elsewhere the alignment shall be cleared of litter in accordance with Category 9 zone (railway embankments in urban areas) except within 100 metres of the Stops where Category 8 zone shall be applicable.

3.4 Graffiti

The Operator shall ensure that graffiti on Stops is removed promptly, with significant and/or offensive graffiti removed within 24 hours of first being reported.

4. DOCUMENT CONTROL AND MANAGEMENT

4.1 Technical Documentation

The Operator shall obtain from the Contractor, retain, maintain and safeguard all technical documentation relating to the Tramlink System.

The Operator shall record the results of all relevant inspections and details of all repairs or maintenance work carried out to satisfy Quality System Model for Quality Assurance in Design Development Production Installation and Servicing (1994), ISO 9001, and the Safety Case Regulations.

All reports and documentation shall be made available to the Concessionaire on request.

4.2 Operating equipment manuals in escrow

The Contractor shall provide to the Operator who shall safeguard and maintain operating and maintenance manuals for all systems and equipment supplied. The manuals shall apply to both hardware and software systems. These shall include, but need not be restricted to the following:

- (a) System manuals: a comprehensive description of all system principles at block diagram level.
- (b) User/Operation manuals: to enable non-technical staff to operate and fully exploit the facilities incorporated into the equipment provided.
- (c) First line maintenance manuals: to convey sufficient information on equipment principles and practice to enable first line fault diagnosis and rectification by technical staff.
- (d) Maintenance manuals: maintenance schedules, activities, key electrical and mechanical diagrams and data to enable all planned maintenance, fault rectification and setting-up to be accomplished.

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MAINTENANCE OF TRAMLINK SYSTEM

- (e) Building manuals: operation and maintenance manuals for the civil, building and building services works, including details of all routine inspection and maintenance work proposed or recommended.

All manuals shall be updated regularly when equipment and procedures are changed. A clean set of current manuals shall be maintained, and shall be transferred to the Concessionaire upon termination of the Concession.

4.3 Training and training manuals and operational publications

The Operator shall also produce Operating and Maintenance procedures in accordance with clause 8.2.2, clause 8.2.3 and clause 8.2.4 of the Operating Agreement. These shall describe the obligations placed on all staff and specific instructions for the proper performance of their duties. The manuals of instruction and the rule book shall be approved by the HMRI before the trial running commences.

The rule book and training manuals shall be available for inspection by the Concessionaire at any time. A clean set of current rule books and training manuals shall be maintained and shall be transferred, including the intellectual property rights in these documents, to the Concessionaire upon termination of the Concession.

The Operator shall also transfer to the Corporation through the Concessionaire, upon termination of the Concession Agreement, a copy of the staff records of any persons employed on the Tramlink System whose contracts of employment are to be transferred to the Corporation or the Concessionaire, together with access to the staff records of any employee who has a claim against the Corporation or the Concessionaire by reason of the liabilities being transferred.

TCL SPECIFICATION REQUIREMENTS

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 1

GENERAL

Paragraph numbers in this section have been established from previous Appendix documentation. Consequently it may appear that some paragraphs are missing, but this is based on the previous document.

The Operator shall develop recruitment and training plans and shall issue a copy of such plans to the Concessionaire. Any subsequent revision shall be issued to the Concessionaire.

The Operator shall assist the Concessionaire in relevant discussions with the Corporation and the Council, where an Operator input is applicable.

2.4 Quality Assurance

The Operator shall develop, implement and monitor an effective quality system which shall ensure that the requirements of the Operator Specification are satisfied. The Quality system shall:

-) ensure that quality requirements are determined and satisfied for all processes throughout the Operating Period for the Tramlink System.
-) provide for early and prompt detection of actual or potential deficiencies, trends or conditions which shall result in unsatisfactory quality, and or timely and effective corrective actions.
-) include the establishment and implementation of administration and management procedures and systems, work instructions and method statements, which clearly identify organisation structure, roles and responsibilities (named personnel) and processes to ensure the satisfactory operation of all elements comprising the Tramlink System.
-) include a quality plan which is in accordance with the Quality System Model for Quality Assurance (1994) ISO 9001. The Operator shall update the Quality plan throughout the life of the Concession.

The Operator shall allow the Concessionaire access to documentation and other management systems developed for implementing and audit of the Operator's quality system.

5.0 Provision for Future Growth

The Operator shall note the limitation upon maximum frequency of services as specified in Section 9 of the Operator Specification but in light of experience gained in operating the Tramlink System and upon the Concessionaire having obtained all the necessary approvals and in the event that it may prove both feasible and beneficial to operate Trams at a greater frequency the Operator shall revise these limits in accordance with the detailed provisions of the Operating Agreement.

5.1 Design

The Contractor shall provide the Operator with a programme indicating its information requirement from the Operator to facilitate design work. The Operator shall comply with this programme and shall provide such information in the format reasonably requested by the Contractor.

The Operator shall liaise with the Contractor by means of fortnightly (or other intervals as agreed with the Concessionaire) meetings to ensure that operational requirements of the Tramlink System are taken into account during the detail design process.

The Operator shall review, and where applicable comment on construction designs, timescales and proposals.

The Contractor shall provide the Operator with a programme to be agreed, such agreement not to be unreasonably withheld, indicating its proposed Operator staff equipment training regime to facilitate revenue generation by Actual Opening Date. The Operator shall comply with this programme and provide the necessary staff to be trained and liaise with the Contractor to organise relevant training of Operator staff required for Commissioning, Testing and Operation of the Tramlink System.

8.6(d) Operational Noise

Subject to the Operator's obligations to meet Tram Service Levels, the Operator shall operate and maintain those aspects of the Tramlink System for which it is responsible throughout the Operating Period such that noise levels at existing properties as a result of Tramlink operation are reasonably minimised. The Contractor's Infrastructure Maintenance Plan was required to reflect the need to minimise System Noise levels. The Infrastructure Maintenance Plans shall also reflect this need. The Operator shall manage those maintenance activities for which it is responsible in accordance with the sections of the Infrastructure Maintenance Plans relating to noise levels.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 2

SAFETY

INTRODUCTION

- 5.1 As part of safety management, the Operator shall ensure that all equipment and other devices within its control which are critical to safety are identified.

The Operator shall ensure that the Health and Safety policy as well as the safety plan is updated throughout the life of the Concession.

8. **Safety Audit**

The Operator agrees that it will inform the Concessionaire promptly of any remedial work or any change in operating practices, management or other safety critical aspects of operations, which may be necessary for the safe operation of the Tramlink System, of which the Operator becomes aware, as a result of a safety audit or otherwise.

7. **Tramlink Operations on Network Rail Land**

The Operator shall comply with all relevant Safety Acts as it affects the operations on or adjacent to Network Rail land.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 3

PRE-OPERATIONAL REQUIREMENTS

GENERAL

The Operator shall co-operate with and assist the Concessionaire and the Contractor with the required testing of the Tramlink System. Such testing shall include those necessary for the successful achievement of SAT 1, SAT 2 and SAT 3 tests.

The Operator shall comment to the Concessionaire and the Contractor (as relevant) on the findings of such tests.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 6

POWER SUPPLIES

Electrical Safety

The Operator shall be made aware by the Contractor, of the mechanism for achieving emergency de-energisation. The Operator shall inform the emergency services of any changes to this mechanism.

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 8

OPERATIONS AND MAINTENANCE CENTRE AND DEPOT

1. Depot Facilities

The Operator shall liaise with the Contractor to agree the internal layout of the Depot building.

The Operator shall give its approval to the final Depot internal layout 28 days after submission by the Contractor. Failure to respond within 28 days will be deemed as approval of the final Depot layout.

2.2 Breakdown and Maintenance Vehicle Stabling

The Operator shall stable at the Depot a road/rail breakdown and maintenance vehicle, and other rail, road/rail and road vehicles as are required for the operation and maintenance of the Tramlink System. The Operator shall provide a mobile van to attend breakdowns or emergencies.

2.5 System Monitoring and Control

The Operator shall ensure that his Operating Procedures detail procedures for management of drivers and Control Room controllers, including an on-call system outside of normal office hours.

The Operator shall ensure that the controller's role includes, but not limited to manning the Control Room, ensure the smooth operation of the Tramlink System and deal with all emergencies and incidents (with back-up support where necessary).

TCL SPECIFICATION REQUIREMENT

APPENDIX TO THE OPERATOR SPECIFICATION

SECTION 9

OPERATION OF THE TRAMLINK SYSTEM

1.2 The Operator shall operate the following pattern of services:-

- (a) Wimbledon – Elmers End
- (b) New Addington – Croydon Town Centre
- (c) Beckenham Junction – Croydon Town Centre (extended to Beddington Lane during evenings and on Sundays).

The following frequencies (trams per hour) shall be provided by the Operator:-

Terminals	Monday-Friday		Saturday		Sunday
	Day	Evening	Day	Evening	All Day
Wimbledon – Elmers End	6	2	6	2	2
New Addington – East Croydon	9	4	9	4	4
Beckenham Junction – East Croydon	6	-	6	-	-
Beckenham Junction – Beddington Lane	-	2	-	2	2

The Operator shall comply with the line speed requirements specified by the Concessionaire as determined by the Contractor's design. Such line speeds shall not adversely affect the Operator's ability to operate a reliable service.

5.0 Customer Charter and Public Enquiries

The Operator shall develop the Customer Charter of the Tramlink System which shall be subject to the approvals of the Concessionaire, such approval not to be unreasonably withheld.

The Operator shall provide a travel information service for the general public. During office hours, this shall be provided by Operator's staff based at the Central Croydon shop and outside office hours, telephone enquiries shall be directed to the Control Room at Therapia Lane. The Operator shall provide information to the Corporation for it to update the Corporation's 24-hour London Travel Information Service.

The Operator shall provide a marketing service which shall provide a wide range of publicity timetables, fare charts and general marketing information relating to the above.

8.0 **Lost Property**

The Operator shall ensure that the lost property service is located in the Central Croydon office and shall be open during business days.

10.0 **Byelaws**

The Operator shall assist the Concessionaire in obtaining required bye-laws.

SECTION 12

GLOSSARY

1. Defined Terms

Agrément Board Certificate means Certificate issued by the British Board of Agrément;

Bus Feeder Services means the bus service routes edged in black, blue and green on the Tramlink Feeder Bus Services Plan in Schedule 7 of the Commission Agreement;

Compulsory Stop means a Stop at which it is compulsory for a service Tram to halt;

Concession means the rights and obligations in relation to the Tramlink System acquired and assumed by the Concessionaire under the Concession Agreement.

Concessionaire means Tramtrack Croydon Limited

Concessionary Permits means travel permits issued by the London Boroughs, to those persons specified in section 50(7) (a)-(c) of the London Regional Transport Act 1984;

Concession Period means the period specified in clause 7.1 of the Concession Agreement;

Construction Phase means the period of time commencing on the Concession Award Date and ending on the Actual Opening Date;

Context Study Drawings means the set of drawing “Context Studies November 1995 issue, as amended on 5th November 1996” with the cover signed and the contents initialled by London Transport, London Borough of Croydon and Tramtrack Croydon Limited;

Contractor means the joint venture of Amey Construction Limited and Sir Robert McAlpine Limited which has been appointed by the Concessionaire with the approval of the Corporation to carry out the Project Works pursuant to the SPC or any replacement approved by the Corporation pursuant to clause 15.1 of the Concession Agreement.

Control Centre means the central control room and associated facilities as described in Section 7 of the Performance Specification;

Depot means the site at which Trams can be stabled, cleaned and maintained as described in Section 8 of this Operator Specification;

Developed Kinematic Envelope (DKE) means the Kinematic Envelope (KE) enlarged to allow for all of the effects resulting from horizontal and vertical curvature of track including end-throw and centre-throw of Trams and super elevation.

Certain Tram displacements, other than those due to end-throw and centre-throw, are greater on curved track than on straight track. These must be taken into account when deriving the

DKE for the determination of clearances on curved track;

Electrical Safety Rules means those rules to be prepared by the Contractor in accordance with Section 6 of the Performance Specification to cover the Construction and Operation and Maintenance Phases of the Tramlink System;

Existing Noise means the level of noise, at a particular location, measured as 24 hour $L_{A(eq)}$ at relevant façade, existing before commencing of Tramlink Operations and also before the removal of train services existing on the Concession Award Date;

Existing Noise Sensitive Resource means:

- (a) residential resources, existing at the Concession Award Date, where annoyance and disturbance will result from noise impacts from Tramlink System operations. This includes dwellings and other residential properties including sites of residential development with planning permission; and
- (b) non-residential resources, existing at the Concession Award Date, where the utility of the resource is dependent on the quality of the acoustic environment, and where the primary effect of noise impact would be a deterioration in that quality;

Fares Table means the fares table as described in Section 10;

Highway Authority means as defined in the Highways Act 1980;

Identified Utilities means the Undertakers' apparatus designed by the Corporation in the utilities Diversions Programme as requiring diversion so as to accommodate the construction and/or operations of the Tramlink System;

Immovable Property means the Project Works (including, without limitation, the Track) other than Moveable Property;

Kinematic Envelope (KE) means the static load gauge enlarges to allow for the maximum possible displacement of the Trams, when at rest or in motion, with respect to the nominal position of the rails, taking account of their suspension characteristics, including arrangements for body tilting if provided, making allowance for maximum permitted tolerances in the manufacture and maintenance of the Trams, including wear and of the maximum permitted tolerances in the gauge, alignment, top and cross-level of the track including the effects of wear;

LT Card means a card identified as such and sold by, or with the agreement of, the Corporation with validity of travel on inter alia services to be operated by the Operator;

LT Staff Passes means the passes issued to Eligible Employees, their spouses, dependents and children, evidencing their eligibility for discretionary facilities primarily on rail and / or bus services operated or procured by the Corporation and, for these purposes **Eligible Employees** means eligible current and former staff of the Corporation and any of its current or former subsidiaries;

Office of Rail Regulation means the person for the time being holding the office Rail Regulator appointed by the Secretary of State pursuant to section 1 of the Railways Act 1993;

Operational Noise and Vibration Requirements means Document Ref No. AG 0020 previously issued to the Operator;

Parliamentary Undertakings means any undertaking given to a Parliamentary committee during the passage through Parliament of the Bill for the Croydon Tramlink Act 1994 and any

undertaking or agreement given to a person in consideration of his/her refraining from opposition of that Bill;

Passengers Committee means the London Regional Passengers Committee;

Permanent Way means the track formation, bed and tracks comprised in the Tramlink System;

Police Passes means the passes, identification card or warrant card issued to any constable of any of Her Majesty's Police Forces;

Project means the overall activity of developing, financing, designing, constructing, installing, commissioning, operating and maintaining the Tramlink System;

Public Holidays means all bank holidays in any year (currently Easter Monday, first Monday in May, last Monday in May, Last Monday in August and 27th December in any year where 25th or 26th December is a Sunday) but excluding Boxing Day or any bank holiday in replacement for Boxing Day should it or Christmas Day fall on a Sunday, together with the common lay holidays of Christmas Day, Good Friday and New Year's Day (or the replacement bank holiday Monday where New Year's Day fall on a Saturday or a Sunday);

Public Timetable means the information provided to the public which summarises all individual scheduled journeys for Trams on the Tramlink System as set out in Section 9 of this Operator Specification;

Rail Vehicle means any rail-bound vehicle running on the Tramlink System, including, but not limited to, Trams;

Request Stops means all Stops on the Tramlink System which are not Compulsory Stops;

Roundel means the Corporation's registered trademark being a bar and circle device;

Route means the route determined in accordance with the requirements of the Act and by the Context Study Drawings November 1995;

RT General Works Agreement means the agreement entered on or about the date hereof between the Corporation and Railtrack Plc and to be vested in the Concessionaire relating to the construction and supply of parts of the Tramlink System;

Safety Acts means, inter alia, any legislation relating to safety including, without limitation, the Health & Safety at Work etc. Act 1974; Fire Precautions Act 1971; Control of Pollution Act 1974; Office, Shops and Railways Premises Act 1963; Level Crossing Act 1983; Road and Railway Traffic Act 1933; Transport Act 1968; Transport and Works Act 1992; Regulation of Railways Act 1840 to 1989, less sections excluded by the Act; Railway Employment (Prevention of Accidents) Act 1900; and any amendment, alteration or modification to or repeal of any existing safety legislation which takes effect after 25 November 2006, thereof or any subordinate legislation enacted thereunder, and any new safety legislation which comes into effect after 25 November 2006, and any requirement of any regulatory body for safety (including without limitation HSE, ORR/HMRI, RAIB and the Highway Authority);

Safety Management Systems means the Safety Management Systems prepared in respect of the Tramlink System in accordance with all applicable Safety Acts and/or the terms of this Agreement;

Scheduled Opening Date means the date on which the Actual Opening Date is scheduled to occur as shown in the Outline Construction Programme;

Secretary of State means the Secretary of State for Transport (or other government department responsible for public transport in London for the time being);

Significant Change means a change which would require the interruption of the Services for longer than one operating day;

SPC means the System Procurement Contract between the Concessionaire and the Contractor;

Statutory Undertaker means each of the following:

- (a) a licence holder under Part I of the Electricity Act 1989;
- (b) a public gas supplier within the meaning of Part I of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991;
- (d) Thames Water Utilities Limited;
- (e) a telecommunications operator within the meaning of the Telecommunications Act 1984; and
- (f) the National Rivers Authority;

Stop means a point on the Tramlink System at which passengers may enter or leave the Tram;

Stored Value Tickets means a ticket or pass which enables passengers to buy, subject to conditions, a right to travel on the Tramlink System and/or other modes of transport up to the value stored on such ticket or pass (as the case may be), in respect of which the usage by the passenger is measured electronically such that the value stored on such ticket or pass decreases with passenger usage and expires when the value stored is exhausted unless the value of cash stored on such ticket or pass is recharged;

Swept Path means the projection on the plan of the Developed Kinematic Envelope plus the clearances, which are specified in the DoT provisional guidance note on the highway and vehicle engineering aspects of street running light rail systems.

System Noise means that level of noise, at a particular location, expressed as 24 hour $L_{A(eq)}$ at relevant façade, due to the operation of the Tramlink System. This shall be calculated using SELs measured for individual Trams at the particular location. All Trams that are scheduled to pass the particular location, shall be included in the calculation;

Terminus Stop means a stop at the end of a section of route at which the Train completes its journey or terminates its service;

Timetable means the Working Timetable and Public Timetable;

Train means one or more coupled Trams operating under the control of a single driver;

Train Operating Company means any person appointed by the Franchising Director pursuant to section 23 of the Railways Act 1993 to operate passenger services and Franchising Director means the Director of Passenger Rail Franchising appointed under section 1 of the Railways Act 1993;

Tramlink Agreement means;

- (a) the Project Agreements;
- (b) the Tramlink General Agreement;
- (c) the Incentive Sharing Agreement; and
- (d) the Direct Agreements.

Tram Supplier means Bombardier Eurorail Limited;

Tramway means any railway, or any part of a railway, authorised by the Act and thereby designated as a Tramway;

Undertaker's apparatus means apparatus (as defined in Part III of the New Roads and Street Works Act 1991) belonging to any of the Statutory Undertakers;

Unidentified Utilities means any Undertakers' apparatus not constituting an Identified Utility but which is required to be diverted so as to accommodate the construction and/or operations of the Tramlink System;

Utilities Diversions means moving the Identified Utilities and the Unidentified Utilities from their current location to a new location as required to accommodate the construction and/or operations of the Tramlink System;

Working Timetable means a document including details of all scheduled in service journeys made on the Tramlink System, together with all positioning journeys, showing timing of all scheduled in service journeys, and all associated vehicle workings;

Works means the authorised works as described in Schedule 1 of the Act.

2. Abbreviations

The abbreviations used in this Performance Specification shall bear the meanings set out below:-

AC	Alternating current
AVIAM	Automatic Vehicle Identification and Monitoring System
BD	Department of Transport technical memorandum
BR	British Rail
BRB	British Railways Board
BS	British Standard
BSI	British Standards Institute
CAD	Computer Aided Design/Drafting
CCICS	Central Control Integrated Computer System
CCIR	International Radio Consultative Committee
CCITT	International Telegraph and Telephone Consultative
CCTV	Closed Circuit Television
CIBS	Chartered Institute of Building Surveyors
DC	Direct current
DKE	Developed Kinematic Envelope
DIN	Deutsche Industrie-Norm
DoT	Department of Transport
DTI	Department of Trade and Industry
EMC	Electromagnetic compatibility
EMI	Electromagnetic interference
EU	European Union
FOC	Fire Officers Committee
FRP	Fire Resistance Period
FTI	Flammability Temperature Index
GPDO	Town and Country Planning (General Permitted Development) Order 1995
HA	Highway loading formula representing normal traffic (as defined within BS5400 Part 2: 1978)
HB	Highway loading formula representing abnormal vehicle unit loading (as defined within BS 5400 Part 2: 1978)
HMSO	Her Majesty's Stationery Office
HMRI	Her Majesty's Railway Inspectorate
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc., Act 1974
HV	High Voltage
IP	Index of Protection
IEC	International Electrotechnical Commission
IEE	Institution of Electrical Engineers
ISO	International Standard Organisation
KEL	Knife Edge Loads Highway design loads, as defined in BS5400
KE	International Standard Organisation ?

LAN	Local Area Network
LBC	London Borough of Croydon
LFH	Limited Fire Hazard
LFCDA	London Fire and Civil Defence Authority
LRT	London Regional Transport
LUL	London Underground Limited
LV	Low Voltage
M1, M2 etc	Vehicle loading (See Section 5)
MRM	Modified Rational Method
MTB(S) F	Mean Time Between (Service) Failure
MTTR	Mean Time to Restore
MV	Medium voltage
N	Newton
NF	Norme Francaise
NRSWA	New Road and Street Works Act 1991
OHLE	Overhead Line Equipment
PA	Depot Public Announcements System
PABX	Private Automated Branch Exchange
pax	Passengers
pax/H	Passengers/hour
PCAS	Passenger Communication and Assistance System
pH	a measure of acidity/alkalinity
REC	Regional Electricity Company
PIDS	Passenger Information and Display System
PMS	Preventative Maintenance Schedule
REC	Regional Electricity Company
RL	Reduced Loading Railway loading – as defined within BS5400 Part 2: 1978
RMU	Ring Main Unit
RT	Railtrack PLC
SCADA	Supervision, Control and Data Acquisition
TCC	Traffic Control and Communications Diversion of the DoT
TCSU	Traffic Control Systems Unit
TIS	Train Identification System
UIC	Union Internationale Chemin de Fer
UDL	Uniformly distributed load
UTC	Urban Traffic Controller
VCR	Video Cassette Recorder
VDU	Visual Display Unit
VDV	Verband Deutscher Verkehrsunternehmen

SCHEDULE 9

EXPERT DETERMINATION AND DISPUTES RESOLUTION

Associated Contract Dispute

Means

- (1) any dispute between the Concessionaire or the Operator and:
 - (a) the Corporation; or
 - (b) the Tram Maintenance Contractor; or
 - (c) the Contractor; or
 - (d) the Council; or
- (2) any dispute between the Operator and any sub-contractor of the Operator

which arises out of substantially the same circumstances as or is in any way connected with any Dispute or which raises issues which are substantially the same as or connected with issues raised in any Dispute and in respect of which:-

- (i) a notice is given requiring reference of the dispute to the Expert or to arbitration in accordance with this Schedule 9 no later than 14 days after the giving of the Notice of Dispute or in the case of a notice requiring reference to arbitration the Notice of Arbitration in relation to the Dispute with which it is to be determined, and
- (ii) any Third Party who is a party to the Associated Contract Dispute has signed a confidentiality and handback undertaking in the form attached at Annex 3.

Dispute

means any dispute between the Concessionaire and the Operator in connection with or arising out of this Agreement whether before or after repudiation or termination of this Agreement.

Expert

means any expert in Annex 2 or otherwise appointed in accordance with this Schedule 9.

List

means the list attached at Annex 2 and such other

experts as are subsequently agreed by the Parties.

Nominating Authority

means the London Court of International Arbitration or any other Nominating Authority agreed by the Parties from time to time.

Notice of Arbitration

means a notice given by either the Concessionaire or the Operator to the other party requiring arbitration by an Official Referee (or other arbitrator) in accordance with this Schedule 9.

Notice or notice

means notice in writing.

Notice of Dispute

means a notice given by either the Concessionaire or the Operator to the other party requiring reference of a Dispute to the Expert in accordance with this Schedule 9.

Notice of Dissatisfaction

means a notice given by either the Concessionaire or the Operator to the other party that it is dissatisfied with a decision of the Expert in accordance with this Schedule 9.

Third Party

means any party or prospective party to an Associated Contract Dispute other than the Concessionaire and the Operator.

1. Where a Dispute arises the Operator and the Concessionaire shall endeavour in good faith and with due expedition to agree the identity of a person willing and suitable to act as Expert; and if they fail to agree the Expert will be appointed in accordance with paragraph 2 below.
2. In the event that the Concessionaire and the Operator are unable to agree, the identity of a person willing and suitable to act as the Expert within 14 days after Notice of Dispute is given, either party may apply to the Nominating Authority to appoint an Expert. The application to the Nominating Authority shall attach a copy of the Notice of Dispute together with a list of those persons who have been considered by the parties under paragraph 1 above and who have been thought by either party not to be suitable. In the absence of agreement by both parties, the Nominating Authority shall not appoint any person who:
 - (a) is not:
 - (i) professionally qualified in the field in which the Dispute arises; and
 - (ii) a practitioner with at least ten years experience in the field in which the Dispute arises and who continues to practice professionally in that field; and
 - (b) has been included on the list of persons thought by either party not to be suitable.

3. Either the Concessionaire or the Operator may at any time give the other Party a Notice of Dispute and immediately thereafter the Concessionaire and the Operator shall appoint an Expert in accordance with paragraph 1 and 2 above. Clause 36 of this Agreement shall apply to all notices and communications given or made under this Schedule 9.
4. The appointment of the Expert shall be deemed to take place when having been agreed between the parties or appointed by the Nominating Authority he signifies in writing his willingness to act whether or not his terms of remuneration shall then have been agreed.
5. The terms of the remuneration of the Expert including the remuneration of any specialist from whom the Expert may require to seek advice shall be mutually agreed upon by the Concessionaire the Operator and the Expert or in the absence of agreement between the Concessionaire and the Operator, shall be mutually agreed between the Nominating Authority and the Expert. The Concessionaire and the Operator shall each pay one half of the Expert's remuneration in accordance with such terms.
6. The Concessionaire and the Operator may terminate the Expert's appointment at any time by mutual agreement. In such a case or if at any time the Expert declines to act or is unable to act as a result of his death, disability, resignation or otherwise a suitably qualified person shall be appointed to replace the Expert in accordance with the provisions of paragraphs 1 to 4 of this Schedule 9.
7. Forthwith upon the appointment of the Expert the party who gave Notice of Dispute shall send a copy thereof to the Expert. The Expert shall conduct the reference in accordance with Annex 1 to this Schedule 9 and no later than the 49th day (or if later agreed between the Concessionaire and the Operator) after his appointment, the Expert, acting as Expert and not as arbitrator shall give notice of his decision to the parties. Such notice shall include his reasons and shall state that it is given under this paragraph 7 of this Schedule 9.
8. Unless this Agreement has already been repudiated or terminated, the Concessionaire and the Operator shall continue to observe and perform all the obligations contained in this Agreement, notwithstanding any reference to the Expert and shall give effect forthwith to every decision of the Expert, unless and until the same shall be revised, as hereinafter provided, by an amicable settlement, an arbitral award or by an order of the Court.
9. If either party is dissatisfied with the Expert's decision, then either party, on or before the 28th day after the day on which it is received notice of such decision, may give Notice of Dissatisfaction to the other party. If the Expert fails to give notice of his decision on or before 49th day after his appointment, then either party, on or before the 28th day after the day on which the said period of 49 days has expired may give the other party Notice of Dissatisfaction. In either event, the Notice of Dissatisfaction shall state that it is given under this paragraph 9 of this Schedule 9 and shall set out the matters in dispute and the reason(s) for dissatisfaction.

10. If the Expert has given notice of his decision to the Concessionaire and the Operator and no Notice of Dissatisfaction has been given on or before the 28th day after the day on which the parties received the Expert's decision shall become final and binding upon the Concessionaire and the Operator.
11. Where Notice of Dissatisfaction has been given, the parties shall attempt to settle such dispute amicably before the commencement of arbitration. Provided that unless the parties agree otherwise, arbitration may be commenced by Notice of Arbitration on or after the 49th day after the day on which Notice of Dissatisfaction was given, even if no attempt at amicable settlement has been made.
12. Any dispute in which:
 - (a) Notice of Dissatisfaction has been given within the time limited by paragraph 9 of this Schedule 9; and
 - (b) amicable settlement has not been reached,may be referred to the arbitration of an Official Referee pursuant to Section 11 of the Arbitration Act 1950.
13. Any such arbitration shall be commenced by Notice of Arbitration given by either the Concessionaire and the Operator to the other party. The arbitration shall be held in London and the award of the Official Referee shall be final and binding upon the Concessionaire and the Operator. In relation to any such reference:
 - (a) the Official Referee sitting as an arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction or valuation of the Expert;
 - (b) neither party shall be limited in the proceedings before the Official Referee to the evidence or arguments put before the Expert;
 - (c) the Expert shall not be called as a witness nor required to give evidence before the Official Referee on any matter whatsoever.
14. If for any reason no Official Referee is willing to accept the appointment as arbitrator, either party may refer the dispute to a judge sitting in London dealing with Official Referees' Business. Either party may commence proceedings in the High Court by writ or originating summons (as the case may be) issued out of the Official Referees' Registry of the Queen's Bench Division of the High Court.

In relation to any such proceedings:

- (a) the Official Referee shall have and the parties hereby agree pursuant to Section 43A of the Supreme Court Act 1981 that he shall be vested with the same full power given to the arbitrator under this Agreement including (without limitation) the powers to open up, review and revise any decision, opinion, instruction, direction or valuation of the Expert;
- (b) neither party shall be limited in the proceedings before the Official Referee to the evidence or arguments put before the Expert;

- (c) the Expert shall not be called as a witness nor required to give evidence before the Official Referee on any matter whatsoever.
- 15. If for any reason the Official Referee shall not accept or not have all of the powers referred to in paragraph 13(a) of this Schedule 9 the Dispute shall be deemed to have been referred by the Notice of Arbitration and shall be referred to the arbitration of a person to be agreed between the parties or failing agreement within 14 days to be appointed on the application of either party by the Nominating Authority. Any such arbitrator shall be governed by the rules of the Nominating Authority.
- 16. An Associated Contract Dispute may be determined in the same proceedings as the Dispute and the provisions of this Schedule 9 shall be modified accordingly and the Expert or arbitrator appointed in accordance with this Schedule 9 shall have the same powers in relation to the Associated Contract Dispute as he has in relation to the Dispute under this Schedule 9 and as if the procedure of the High Court in relation to co-defendants and third parties was available to the parties and to the Expert or the arbitrator.
- 17. Where a Dispute and an Associated Contract Dispute have been determined in the same proceedings before the Expert, a notice of arbitration given in the Associated Contract Dispute shall be of no effect in relation to the Dispute and the Concessionaire and the Operator shall not be bound by the outcome of the arbitration of the Associated Contract Dispute unless the Dispute is also the subject of a Notice of Arbitration and is determined in the same proceedings.
- 18. The Operator and the Concessionaire agree that, for the purposes of Section 5 of the Limitation Act 1980 time shall cease to run in respect of any Dispute on the date of service of the relevant Notice of Dispute for the purpose of the reference to the Expert of that Dispute and for any other subsequent arbitration or proceedings in respect of that Dispute.

ANNEX 1

1. Forthwith upon his appointment the Expert shall notify the parties of the address and the facsimile and telex numbers, if any, at which notices or other communications should be addressed to him and the provisions of Clause 36 of this Agreement shall apply to notices or other communications between the parties and the Expert.
2. Each Party shall make one written submission to the Expert, copied to the other party, within fourteen days of the Expert's appointment. The Expert shall consider such written submissions.
3. Where a Third Party becomes a party to the reference in accordance with paragraph 16 of Schedule 9 at any time after appointment of the Experts:-
 - (a) the Concessionaire , the Operator and the Third Party may within fourteen days make one written submission to the Expert in relation to the Associated Contract Dispute:
 - (b) all parties to the reference shall be deemed to have agreed that the time limit for issue of the Expert's decision shall be extended to expire 35 days after the making of the last of submissions referred to in paragraph 3(a) of this Annex 1.
 - (c) each of the parties to the reference shall pay an equal share of the Expert's remuneration and paragraph 5 of Schedule 9 shall be deemed to be amended accordingly.

The Expert may, in his discretion, but shall not be obliged to:

- (a) convene meetings at which all parties to the reference shall be entitled to be present upon reasonable notice to the parties;
- (b) submit lists of questions to the parties to be answered in such meetings or in writing within such reasonable time as he may require;
- (c) require the parties to provide him with such information, access to the site and other facilities as he may reasonably require for the determination of the Dispute or any Associated Contract Dispute;
- (d) seek such technical or legal advice as he may reasonably require for the determination of the Dispute or any Associated Contract Dispute;
- (e) otherwise take such action and adopt such procedures as shall be reasonable and proper for the just, expeditious and economical determination of the Dispute or any Associated Contract Dispute (including, for the avoidance of doubt extending the period allowed for written submissions in paragraphs 2 and 3(a) of this Annex 1) and, otherwise than in the event of an Associated Contract Dispute, the Expert shall have the power to extend the 49 day period referred to in paragraph 7 of this Schedule 9 subject to a maximum further period of 30 days;

Provided that:

- (i) the Expert shall adopt any procedures which may be agreed between the parties for determination of the Dispute or any Associated Contract Dispute;
- (ii) all information of whatever nature provided to the Expert by any party shall be copied to all other parties or (where copying is not practicable) the other parties shall be entitled to inspect it;
- (iii) all meetings shall be private and save as expressly provided in this Schedule 9 or as required by law the Expert shall keep confidential the Dispute, any Associated Contract Disputes, all information of whatever nature provided to him by or on behalf of either party and his determination of the Dispute or any Associated Contract Dispute.

ANNEX 2

List of Experts

LAWYERS

██████████
1 Atkin Building
Grays Inn
London WC1R 5BQ

██████████
2 Crown Office Row
Temple
London EC4Y 7HJ

██████████
Keating Chambers
Essex Street
Outer Temple
London WC2R 3AA

██████████
1 Paper Buildings
Temple
London EC4

██████████
2 Temple Gardens
Temple
London EC4Y 9AY

██████████
Keating Chambers
10 Essex Street
Outer Temple
London WC2R 3AA

CHARTERED ENGINEERS

██████████
Brunel House
Muriel Road
Norwich NR2 3NZ

[REDACTED]
Somersby House
Stokesheath Road
Oxshott
Surrey KT22 OPS

[REDACTED]
White Young Consulting Engineers
Arndale Court
Headingley
Leeds LS6 2UJ

[REDACTED]
JMP Consultants Ltd
Stewart House
123 Elderslie Street
Glasgow
Scotland G3 7AR

[REDACTED]
North Yorkshire County Council
Environmental Services
North Yorkshire Consultancy

[REDACTED]
Thornburn Colouhoun Holdings plc
243 West George Street
Glasgow G24 QE

QUANTITY SURVEYORS

[REDACTED]
Beard Dove Ltd
Linton House
7-12 Tavistock Square
London WC1H 9LT

[REDACTED]
Frankling and Andrews
Sea Containers House
20 Upper Ground
London SE1 9LZ

██████████
W T Partnership
Laion House
233 High Street
Croydon
Surrey CR9 1YY

██████████
Widnell
Davis House
129 Wilson Road
London

██████████████████
Fairway Construction Consultants
Dragon Court
27-29 Macklin Street
London WC2B 5LZ

- (ii) shall treat any Expert's determination of the Proceedings and any arbitrator's award (including the reasons) and any other decision of the arbitrator during the Proceedings as confidential and shall not disclose any of them to any other person at any time unless:-
- (a) you have given your prior written consent:
 - (b) disclosure is required in order to enforce or challenge an Expert's determination, an arbitrator's award or a decision of a court made in the Proceedings; or
 - (c) disclosure is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority whether or not having the force of law (but, if not having the force of law compliance with which is in accordance with the general practice of persons subject thereto); or
 - (d) such disclosure is to our professional advisers or auditors provided that any such person either enters into a confidentiality undertaking on the same terms mutatis mutandis as those of this letter or is already bound by reason of their professional rules to keep such matters confidential; or
 - (e) the information disclosed has come into public domain through no fault of ours.
- (iii) shall on written request by you at any time after the conclusion of the Proceedings or of any proceedings for the challenge or the enforcement of any arbitrator's award or judgment given in the Proceedings (whichever shall be the later) deliver to you the originals and all copies (in whatsoever form or medium) of any written statements, documents and other evidence produced in the Proceedings by you and shall in good faith identify and destroy (and confirm to you in writing that we have so destroyed) all notes, documents or other records made by ourselves recording, summarising or referring to the Proceedings) and shall thereafter have no right to keep or use the same for any purpose whatsoever. This paragraph (iii) shall not apply to:
- (a) documents which were in existence and in our possession prior to the commencement of the Proceedings and were not prepared for use in the Proceedings; or
 - (b) (without prejudice to the undertakings given at paragraph (i) and (ii) above) notes, documents or other records to which litigation privilege or legal professional privilege attach.

Yours faithfully

[to be signed by the prospective Third Party]

SCHEDULE 10

[NOT USED]

SCHEDULE 11

TICKETING SYSTEM AND REVENUE COLLECTION

1. Management of Ticket Machines

1.1 Management

The Operator shall manage the Ticket Machines in accordance with the terms of this Agreement. The Operator shall be required to:-

- (a) perform on a daily basis visual inspections, and carry out daily automatic readings, of the Ticket Machines;
- (b) carry out on-line monitoring of the Ticket Machines from the Control Centre and log and time tag any alarms indicating malfunction, illegal tampering or vandalism of the Ticket Machines;
- (c) refill and clean the Ticket Machines daily.

The Concessionaire shall manage on a day to day basis the contractor duly appointed to repair, maintain and programme the Ticket Machines pursuant to a contract entered into by or on behalf of the Concessionaire, the performance of which shall remain the sole responsibilities of the Concessionaire and such contractor.

1.2 Electricity

The cost of supplying electricity to the Ticket Machines shall be borne by the Concessionaire in accordance with the general provisions relating to utilities.

1.3 Insurance

It shall be the responsibility of the Concessionaire to insure or otherwise be responsible for the Ticket Machines and their contents in respect of loss, damage or theft. The Concessionaire shall take out and maintain adequate insurance cover in respect of the cost of repairing or replacing the Ticket Machines and their contents in respect of loss, damage or theft (including loss resulting from fraud or theft by the security contractor appointed pursuant to paragraph 3.2) and to claim under such policies with all speed to ensure that damaged Ticket Machines are repaired or replaced as soon as possible or that the cost of so doing is reimbursed to the Operator as soon as possible.

1.4 Changes

Any proposed alteration by the Concessionaire to the number and/or the Specification in respect of the Ticket Machines shall be agreed in advance with the Operator who shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7.

2. Ticket Fares

2.1 Fares

The Operator shall charge passengers fares in accordance with Clause 16.

2.2 Cards and passes

The Operator shall accept Travelcards, LT Cards, Concessionary Permits (acceptance of which shall be only after 9 a.m. on any Business Day), LT Staff Passes, Police Passes, Railway Staff Passes and any other multi-modal tickets whose format and nature are reasonably required by the Concessionaire . The Operator shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7 arising from any alteration in the type of tickets required to be accepted from the date of this Agreement.

2.3 Installation of new equipment

The Operator shall agree to the installation by the Concessionaire, at the cost of the Concessionaire, of any equipment required on Trams or on platforms for the purpose of electronic pass recognition or for other purposes related to the future allocation of Off-Tram Revenue or Stored Value Revenue provided that the Concessionaire gives the Operator reasonable written notice of when such equipment is to be installed and, after consultation with the Operator, installs the same at such times as (as far as is reasonably practicable) do not prejudice the ability of the Operator to provide the Services. The Operator shall bear all its costs in making the Trams available at the Depot to the Concessionaire for the purposes of installing such equipment.

2.4 Issue

Tickets shall be sold in accordance with the Bye-laws.

3. Revenue Collection

3.1 Management

The Operator shall manage revenue collection in accordance with this Agreement.

3.2 Security contractor

The Operator shall appoint a security contractor subject to the approval of the Concessionaire, such approval not to be unreasonably withheld or delayed, to organise collections from each of the Ticket Machines. Such collections will take place on each Business Day between 9 a.m. and 5 p.m. Any additional collections required by the Concessionaire shall be performed by the security contractor at the expense of the Concessionaire. Any collections from the Central Croydon Ticket Office in respect of revenue due to the Concessionaire shall take place on a basis to be agreed between the Concessionaire and the Operator.

3.3 Deposit of revenue

The Operator shall arrange for the security contractor to deliver all revenue collected from each Ticket Machine on each Business Day to the Croydon branch of a bank nominated by the Concessionaire. The Concessionaire shall be responsible for all bank charges arising from the deposit of the revenue with such banks. The deposit of revenue from the Central Croydon Ticket Office in respect of revenue due to the Concessionaire shall take place on a basis to be agreed between the Concessionaire and the Operator.

3.4 Reconciliation

The Operator shall prepare and submit to the Concessionaire a daily reconciliation breakdown in respect of each revenue collection and analysis thereon setting out details of any discrepancies between the data produced by the Ticket Machines and the actual amount collected and delivered to the bank by the security contractor. With the exception of any discrepancies resulting from fraud or theft on the part of the security contractor and in the event of which the Operator's sole responsibility under this Agreement shall be to use its reasonable endeavours to recover any losses from the security contractor, the Concessionaire shall be responsible at its risk for all other discrepancies including without limitation those caused by the malfunction of any of the Ticket Machines, the use of illegal tender, any unaccepted credit card sales, any illegal tampering, theft, other cash losses and other discrepancies caused by the nominated bank of the Concessionaire.

3.5 Revenue information

The Operator shall on a regular basis prepare and submit to the Concessionaire management information summarising receipts, in particular details of the types of tickets sold by the Operator and such other general revenue statistics as the Concessionaire may reasonably require.

4. Revenue inspectors

4.1 Number

The Operator shall employ, at its own expense, a sufficient number of revenue inspectors so as to have the capability to check approximately 5% of the actual passenger journeys on the Tramlink System.

4.2 Responsibilities

The revenue inspectors shall be required to:

- (a) carry portable ticket issuing machines
- (b) check the validity of tickets to a level of 5% of passenger journeys and passes in accordance with guidance notes drawn up by the Operator with the co-operation and approval of the Concessionaire (such approval not to be unreasonably withheld or delayed) and deter ticketless travel on the Tramlink System throughout each operating day;
- (c) where relevant, issue penalty fares to passengers in accordance with the Bye-Laws;
- (d) perform visual inspections, and obtain readings, of the Ticket Machines and report any failure or damage to the Control Centre;
- (e) carry out appropriate investigations where there is reasonable suspicion of fraud in the use of any ticket or pass;
- (f) perform passenger surveys of 0.1% of duties of tram drivers on a basis agreed with the Concessionaire for the purposes of the Off-Tram Revenue Agreement;
- (g) provide all reasonable assistance to passengers;
- (h) administer the Customer Charter and any legitimate refund claims under the Customer Charter. Where due to the Operator's default hereunder, the refund claim shall be met by the Operator. In all other circumstances such refund shall be reimbursed to the Operator by the Concessionaire. Where a refund is due for a passenger journey not taken the Concessionaire shall reimburse the Operator for such refund.
- (i) operate, as far as is practicable, a ticket checking presence on the Tramlink System on each operating day;
- (j) back-up ticket checking operations with activities including Penalty Fares and assist and participate as reasonably required with prosecutions, official cautions, Police liaison, anti-fraud publicity and close liaison with LT Buses and Train Operating Companies revenue protection operations.

5. Penalty Fares

5.1 Operation

The Operator shall operate a penalty fares system on behalf of the Concessionaire in accordance with the Bye-Laws. Any receipts recovered under this system will be retained by the Operator to the extent necessary to cover the cost of administering and enforcing the system and the balance, if any, shall be paid to the Concessionaire by the Operator.

5.2 Legal action

Each decision as to whether to prosecute a defaulter shall be at the sole discretion of the Operator and will be based on a realistic assessment of the chance of success in enforcing and recovering the penalty fare in such case.

6. Off-Tram Revenue Agreement

6.1 Assistance

The Operator shall provide reasonable assistance to the Concessionaire in the negotiation of the Off-tram Revenue Agreement with the Corporation. For the avoidance of doubt any analysis by the Operator of survey information pursuant to the Off-tram Revenue Agreement shall be carried out at the expense of the Concessionaire.

7. Central Croydon ticket office

7.1 Tickets

The Operator shall be entitled to sell Travelcards and other tickets from the Croydon Central ticket office and is entitled to receive commission on such sales for its own account. For the purposes of this paragraph 7.1 the Central Croydon ticket office shall be regarded as a PASS outlet of the Corporation.

7.2 Other items

The Operator shall be entitled to sell miscellaneous items approved by the Concessionaire such approval not to be unreasonably withheld from the Central Croydon ticket office and any profit made from such sales shall be for the Operator's account save in respect of Tramlink merchandise which shall be sold on behalf of the Concessionaire in accordance with paragraphs 8.2 to 8.4 below.

8. Responsibilities of the Concessionaire

8.1 Areas of responsibility

For the avoidance of doubt and without limitation the Concessionaire shall have responsibility for paying the following costs:

- (a) commission generated by ticket sales by other ticket agencies and any commission payable to the Corporation under the Off-tram Revenue Agreement;
- (b) commission generated by credit card sales;
- (c) any costs arising from the negotiation of, and subsequent amendment to, the Off-tram Revenue Agreement with the Corporation;

- (d) all bank charges (including sorting charges) incurred at the bank nominated by the Concessionaire pursuant to Clause 3.3 of this Schedule 11.

9. Increase in costs

9.1 Change

Any increase in the costs of the Operator resulting from amendment, alteration or modification by the Concessionaire to the ticketing and revenue collection systems referred to in this Agreement shall be recoverable in accordance with Clause 6.7.

SCHEDULE 12

[NOT USED]

SCHEDULE 13

[NOT USED]

SCHEDULE 14

OPERATOR'S EQUIPMENT

The Operator will be responsible for providing the following equipment and works:

- fitting out of Central Croydon ticket office;
- the Operator's systems for payroll, allocation, scheduling, finance, inventory control, purchasing, engineering and plant records, and administration;
- locker room equipment for the Operator's staff;
- racking and signage within the Operator's and the Tram Maintenance Contractor's storage area;
- furniture and ancillary items within the Operator's offices.

SCHEDULE 15

[NOT USED]

SCHEDULE 16

PART 1

HEADS OF TERMS

**SUB-LEASE OF DEPOT FORMING PART OF THE
CROYDON TRAMLINK**

1. PARTIES

The Concessionaire as Landlord and the Operator as Tenant.

2. PROPERTY

The tram depot at Therapia Lane shown edged red on the attached drawing.

3. TERM

Subject to paragraph 11.1 30 years commencing on the Actual Opening Date.

4. EXCLUSION ORDER

The Sub-Lease will be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.

5. RENT

£10 per annum payable annually on the anniversary of the date of completion of the Sub-Lease.

6. RIGHTS GRANTED

As set out in the Land Lease to the extent they are appurtenant to the Property, but excluding those encompassed within the Superior Lease and Deed of Grant, Running Rights Agreement and BR Property Agreement which are not relevant to the Property. Note: The Concessionaire shall grant in addition such further rights as it is able to grant and which are required for the provision of the Services and/or the occupation of the Property in accordance with the Sub-Lease.

7. RIGHTS RESERVED

As set out in the Land Lease (but excluding those referred to in paragraph 7 of the Third Schedule to the Land Lease and in the BR Property Agreement) together with the right at all times in case of emergency and otherwise at all reasonable times on reasonable prior written notice to enter onto the Property with or without vehicles in order to perform obligations on the part of the Concessionaire in the Operating Agreement Concession Agreement and Project Agreements (but subject to the same provisions as set out in the final paragraph of paragraph 4 of the Third Schedule to the Land Lease).

8. PROPERTY SUBJECT TO

The Property will be demised subject to the documents referred to in paragraph 2, 6 and 7 of the Fourth Schedule to the Land Lease.

9. TENANT'S COVENANTS

These will be consistent with those in the Land Lease save as mentioned below. The covenants are (save for paragraph 9.5 and 9.6) referred to by the same headings which appear in the Land Lease.

9.1 Outgoings

The Operator will be responsible for the service charges in respect of the following services:-

- low voltage electricity;
- gas;
- telecommunications;
- water and sewerage

The Concessionaire will be responsible for all other outgoings in respect of the Property.

9.2 Common Expenses

The Concessionaire will be responsible for all common expenses relating to the Property.

9.3 Yield Up

The Operator will be obliged to yield up the Property so far as applicable, in accordance with the covenants and conditions contained in the Sub-Lease, but together with all fixtures and fittings on or forming part of the Property at the relevant time that are required for the performance of the Services in accordance with the Operating Agreement save for the Operator's Equipment (as defined in the Operating Agreement).

9.4 Notices

The covenant will be qualified so as not to override the provisions of the Operating Agreement.

9.5 Maintenance

The Operator will be responsible for:-

- cleaning the office premises at the Property internally and externally (including the windows thereof);

- cleaning the remainder of the Property (including the service roads and car park);
- de-icing and snow clearance at the Property

9.6 **Alterations**

The Operator will not be permitted to carry out any alterations to the Property (structural or otherwise) without the Concessionaire's approval (such approval not to be unreasonably withheld or delayed). The Operator will be responsible for obtaining any planning permission or other consents required in respect of such alterations.

9.7 **Statutory Requirements**

To the extent only that the Operator is not obliged to comply with such requirements under the Operating Agreement or otherwise, under the terms of the Sub-Lease the Concessionaire will ensure that all statutory requirements affecting the Property and the provisions of paragraphs 7.1 to 7.3 of the Fifth Schedule to the Land Lease are complied with.

9.8 **Planning**

The Operator will comply with all planning requirements so far only as they relate to the provision of the Services in accordance with the Operating Agreement (and save that any such requirements which involve expenditure or work on or to the Property will be for the Concessionaire to comply with at its own cost). The Concessionaire will ensure that all other such requirements which relate to the Property are complied with and will be responsible for complying with paragraph 8(b) of the Fifth Schedule to the Land Lease in respect of the Property (save as provided for in paragraph 9.6 above).

9.9 **User**

The Property shall not be used other than for the operation of a depot for the garaging, servicing, cleaning and maintenance of Trams and other vehicles together with offices, workshops, control rooms, storage, staff facilities and all other facilities and uses required for or in connection with the provision of the Services in accordance with the Operating Agreement, insofar as permitted by the Land Lease.

9.10 **Prevent encroachment**

Any action to be taken will be at the cost of the Concessionaire.

9.11 **Alienation**

- (a) not to assign or charge part of the Property;
- (b) not to underlet the whole of the Property other than to a company forming part of the same Group and subject to obtaining the Concessionaire's and the Corporation's prior consent (such consent not to be unreasonably withheld);
- (c) not to assign or charge the whole of the Property other than to a person to whom the Operating Agreement has simultaneously been assigned or charged;

- (d) not to underlet the whole or part of the Property without ensuring that the underlease is contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954; and
- (e) save as provided in paragraphs 9.11.2 and 9.11.4 not to part with possession or share occupation of the whole or part of the Property in a manner which creates a relationship of landlord or tenant or any right of security

9.12 Indemnify Landlord

This covenant to reflect the indemnity provisions in the Operating Agreement (so that the Operator will only indemnify the Concessionaire in respect of losses etc. incurred by the Concessionaire as a result of breach by the Operator of the covenants on its part contained in the Sub-Lease).

9.13 Comply with title matters and other obligations

The Operator shall be required to covenant to comply with the documents/matters referred to in paragraph 8 above (save for the Railtrack Property Agreement), but the cost of compliance shall be treated as Additional Services pursuant to the provisions of the Operating Agreement save for the first £■■■ of the Operator's costs for complying with any documents referred to in paragraph 2 of the Fourth Schedule to the Land Lease (excepting the Railtrack Property Agreement).

9.14 Costs

The Operator will only be required to pay Value Added Tax on or included in any amounts re-imbursable by the Operator to the Concessionaire subject to receiving a valid Value Added Tax invoice from the Concessionaire.

10. LANDLORD'S COVENANTS

10.1 Quiet enjoyment

10.2 To pay the rent reserved by the Land Lease and to comply with the covenants on its part contained in the Land Lease save to the extent that these are to be observed by the Operator in relation to the Property by virtue of the terms of the Sub-Lease.

10.3 To use all reasonable endeavours to procure that the Corporation (and its successors) comply with the covenants on the part of the Superior Landlord contained in the Land Lease.

10.4 To the extent that the consent of the Corporation (or its successors as Superior Landlord) is required by virtue of the provisions of the Sub-Lease, to use all reasonable endeavours to obtain such consent when requested by the Operator.

10.5 The Concessionaire shall decorate, repair, maintain and renew the Property in accordance with its obligations in that regard contained or referred to in the Operating Agreement.

10.6 To comply with the obligations on the part of the Concessionaire identified in paragraph 9 above.

11. PROVISOS AGREEMENTS AND DECLARATIONS

These shall follow the form of those set out in the Seventh Schedule to the Land Lease save that (adopting the same headings as in that Schedule):-

11.1 Termination

The term shall determine upon the earlier of the termination of the Concessionaire Agreement or the Operating Agreement. Paragraph I(b) of the Seventh Schedule to the Land Lease shall not apply.

11.2 Exclusion of Liability

Paragraph 5 of the Seventh Schedule to the Land Lease shall not be included in the Sub-Lease.

11.3 Expert Determination and Dispute

The provisions of Schedule 9 to the Operating Agreement shall apply.

Note: Words and expressions used in these Heads of Terms shall where appropriate have the same meanings as are ascribed to them in the Operating Agreement or the Concessionaire Agreement (as the case may be).

SCHEDULE 16

PART 2: OPERATOR SITE UNDERTAKINGS

The Operator agrees and undertakes to the Concessionaire in accordance with its obligations pursuant to Clause 8.3.1 and Clause 8.4.1 that during the Licence Period it will:-

- (a) carry out the Services with minimum disruption to neighbouring properties in accordance with this Agreement;
- (b) use the Site only for the purposes of carrying out and performing the Services and other obligations assumed by the Operator under and in accordance with this Agreement;
- (c) keep the Site as clean and tidy as is practicable;
- (d) not display any signs or notices at the Site without the prior written consent of the Concessionaire (such consent not to be unreasonably withheld or delayed);
- (e) observe such reasonable rules and regulations as the Concessionaire may make and of which the Concessionaire shall notify the Operator from time to time governing the use of the Site (being rules and regulations which are intended to be and are applied to all parties using the Site save during the Mobilisation Period when such rules and regulations may be specific);
- (f) not impede in any way the Corporation or the Concessionaire or its officers servants or agents in the exercise of any supervision rights the Corporation or the Concessionaire may have over the Site and will not prevent the Concessionaire the Contractor or any other person authorised by the Concessionaire from having access to the Tramlink System at all times in case of emergency and otherwise at all reasonable times on reasonable prior written notice in order to comply with the obligations and/or to exercise the rights on its part and/or in its favour contained in this Agreement or the Concession Agreement or the Project Agreements subject to the Concessionaire the Contractor and/or the other relevant person complying with all relevant safety requirements and the Operator's reasonable rules and regulations relating to the operation of the Tramlink System and provided that the operation of the Tramlink System shall not be prevented or materially interrupted or otherwise affected by such access by the Concessionaire the Contractor or any other person authorised by the Concessionaire;
- (g) subject to the provisions of Clause 8.3.3(c) and Clause 8.4.3(c) not assign, charge or otherwise transfer the benefit of its licence to use the Site (excluding the Depot) and occupy the Depot

Provided that (as regards the Depot) if there shall be any conflict between provisions of this Part of Schedule 16 and the Sub-Lease terms which apply during the Licence Period by virtue of Clause 8.4 then the Sub-Lease terms shall prevail

SCHEDULE 17

[NOT USED]

SCHEDULE 18

[NOT USED]

SCHEDULE 19

TUPE INFORMATION

1. The number of staff who are TUPE Employees
2. In relation to each employee who falls within the scope of paragraph 1 above:-
 - (a) the employee's age and gender (so that pension entitlements can be calculated and provided for); and
 - (b) the employee's salary, length of service, contractual period of notice, any pay settlement covering future dates which has already been agreed by the Operator and any redundancy entitlement;
3. Information relating to or connected with the other terms and conditions of the contracts of employment with employees falling within the scope of paragraph 1 above including details of:-
 - (a) terms incorporated from any collective agreement;
 - (b) so far as the Operator should reasonably be aware any outstanding liability for past breaches of such contracts;
 - (c) so far as the Operator should reasonably be aware any outstanding statutory liability (for example, any claim under non-discrimination legislation); and
 - (d) so far as the Operator should reasonably be aware any other outstanding liability required to be met by the successor Operator if its tender is accepted; and
4. Such other information as the Concessionaire may reasonably require in relation to TUPE Employees.

ANNEXURE

BYE-LAWS

**APPENDIX D8
to Vol. III, 3.1.15**

TRAMTRACK CROYDON LIMITED

PROPOSED BYELAWS

-
1. In these byelaws unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them:-

“the company” means TRAMTRACK CROYDON LIMITED “the tramway” means the tram and station premises of the company, including stations, platforms and the approaches to stations; “authorised person” means any officer, employee or agent of the company, or any operator of the tramway on behalf of the company, and any constable, acting in the execution of his or her duty upon or in connection with the tram;

“ticket” means any ticket or document issued for the conveyance of any passenger, animal or article on the railway, or any platform ticket, or car or bicycle parking ticket, and includes in particular but without prejudice to the generality of the foregoing any season ticket, free pass, privilege ticket, or any warrant, identity card, voucher or other similar authority in exchange for or on production of which any ticket for the conveyance of any passenger may be issued;

“vehicle” means any tram vehicle on the tramway and includes any compartment of any such vehicle.

2. (1) Any person offending against any of the following Byelaws numbered 5, 6, 7, 11, 12, 15, 17, 19, 20(2), and 22 shall be liable for every such offence to a penalty not exceeding level 3 on the standard scale of Section 37 Criminal Justice Act 1982.

(2) Any person offending against any other of these Byelaws, except Byelaw 3, shall be liable for every such offence to a penalty not exceeding level 2 on the standard scale of Section 37 Criminal Justice Act 1982.

(3) Any person offending against any of the following Byelaws numbered 3, 5, 8, 9, 10, 14, 15, 18, 20, 21, 23, 24, 25, 26, 27, 28 and 29, and failing to desist or quit, or failing to comply with the Byelaw, as the case may be, when requested to do so by an authorised person may be removed from the tramway or any part thereof or any vehicle by an authorised person without prejudice where any penalty is described as aforesaid for the contravention of any such Byelaw to such penalty.

3. No person other than an authorised person shall enter any vehicle unless and until he or she or someone on his or her behalf shall have obtained from the company or from an authorised person, a ticket or other authority entitling the holder to travel

thereon and such ticket or other authority shall be produced on demand to any authorised person.

4. When the fare to an intermediate station exceeds the fare to a more distant station, no person shall, for the purpose of travelling to such intermediate station, take or use or attempt to use a ticket for the more distant station with intent to avoid payment of the additional fare to such intermediate station. The liability to or infliction or any penalty incurred by the contravention of this Byelaw shall not prejudice any right of the company to treat such ticket as forfeited and to recover the full fare for the distance actually travelled by the Company.
5. No person with the intent that the Company shall be defrauded or prejudiced shall
 - (1) alter, deface, mutilate or destroy any ticket; or
 - (2) knowingly and wilfully use or attempt to use any ticket which shall have been in any respect materially altered, defaced or mutilated.
6. (1) Subject to paragraph (3) of this Byelaw no person shall, with intent that any person shall use the same for the purpose of travelling or conveyance upon the tramway
 - (a) sell or buy any ticket; or
 - (b) transfer or receive (i) any partly used ticket or (ii) any season ticket, free pass, privilege ticket, warrant, identity card, voucher or other similar authority or ticket issued in exchange for or on production of any warrant, identity card, voucher or other similar authority.
 - (2) No person shall knowingly and wilfully use or attempt to use any ticket which has been sold, bought, transferred or received in contravention of subparagraph (1)(a) or (1)(b) of this Byelaw.
 - (3) The sale or transfer or attempted transfer by, or the purchase or receipt or attempted purchase or receipt from, an authorised person is excepted from the provisions of this Byelaw.
7. No person with the intent that the company shall be defrauded or prejudiced, shall
 - (1) tender or deliver up to an authorised person a ticket or money on behalf of another person with intent to enable the person on whose behalf the ticket or money is tendered or delivered up to travel without having previously paid his or her fare;
 - (2) transfer, tender or deliver up a ticket to another person with intent to enable any person to travel on the tramway without having previously paid his or her fare.
8. No person shall enter or attempt to enter any vehicle through any door thereof until all persons who are leaving or are on the way to leave such vehicle through such door shall have passed out of such door.

9. When a vehicle contains the full numbers of passengers which it is constructed to carry no additional person shall enter or remain therein if requested by an authorised person not to do so.

10. No person except an authorised person shall mount or attempt to mount on any vehicle except on such part or parts as are provided for the carriage of passengers.

11. No person except an authorised person shall
 - (1) operate, move, work, or tamper with any mechanical or electrical appliance upon the tramway or any switch lever or other device operating or controlling any mechanical or electrical appliance upon the tramway except
 - (a) in cases of emergency, any switch lever or other device or mechanical or electrical appliance upon or near which is displayed a notice that it is intended to be operated in cases of emergency; or
 - (b) in the case of an automatic door in any vehicle (when such door is immediately adjacent to and given immediate access to, and such vehicle is stationary at, a platform or place appointed for passengers to enter or leave the vehicle) any switch lever or other device or mechanical or electrical appliance upon or near which is displayed a notice that it is intended to be operated by passengers to open or close such doors; or
 - (c) any switch lever or other device or mechanical or electrical appliance provided in a compartment of any vehicle for the operation or control of heating, ventilating or lighting apparatus by passengers therein.

12. No person; except an authorised person shall
 - (1) open the door, or stand, or attempt to stand on the step or foot-board of any vehicle whilst it is in motion or (except in the case of accident or other emergency) between stations; or
 - (2) open the door of any vehicle at a station other than at the side of the vehicle adjoining the platform or place appointed for passengers to enter or leave the vehicle; or
 - (3) enter or leave or attempt to enter or leave any such vehicle whilst it is in motion or (except in case of accident or other emergency) between stations or otherwise than at the side of the vehicle adjoining the platform or place appointed for passengers to enter or leave the vehicle; or
 - (4) attempt to enter or leave the vehicle after the doors have commenced to close; or
 - (5) where notices are exhibited in a vehicle indicating that a door shall be used for entrance thereto and another door for exit therefrom (except in case of

accident or other emergency) enter or attempt to enter by the door indicated for the exit or leave or attempt to leave by the door indicated for entrance.

13. Except by permission in writing of an authorised person no person suffering from an infectious or contagious disease or disorder shall enter or remain and no person having the custody charge or care of any such person shall cause or permit such person to enter or remain upon the tramway and the Company may refuse to receive or carry any such person or to permit any such person to enter, remain or be upon the tramway or to travel on the tramway. Any person suffering as aforesaid and any person having the custody, charge or care of any such person may be removed from the tramway by, or under the direction of, an authorised person and shall be liable to the tramway for the cost of disinfecting the tramway's premises and any vehicle in which such person shall have been, and to make good any other damage to the property of the tramway through the contravention of this Byelaw without prejudice to any penalty incurred by such contravention.
14. No person in a state of intoxication shall enter or remain upon the tramway and no person who is in an unfit or improper condition to travel by tram or whose dress or clothing is in a condition liable to soil or injure the linings or cushions of any carriage, or the dress or clothing of any passenger, shall enter or remain in any vehicle. Provided that no person shall be prevented from entering or remaining in or on any vehicle under the provisions of this Byelaw on the ground of the condition of his or her dress or clothing, when he or she so enters or remains in or on the vehicle with the permission of an authorised person, or when the vehicle is specially provided or set apart for workmen.
15. No person shall at any time upon the tramway
 - (1) use any threatening abusive obscene or offensive language; or
 - (2) behave in a riotous disorderly indecent or offensive manner; or
 - (3) write, draw or affix any abusive, obscene or offensive word, representation or character upon, or wilfully soil or defile, the railway or any vehicle; or
 - (4) molest or wilfully interfere with the comfort or convenience of any passenger or person in or upon the tramway
16. No person shall take or cause to be taken on to, or cause to allow to remain on the tramway, if requested not to do so by an authorised person, any animal, article or thing which by reason of its nature, is in the opinion of such authorised person likely to cause or in fact does cause annoyance or damage to any passenger or damage to any property. If any person in charge of such animal, article, or thing fails when requested by an authorised person immediately to remove the same from the tramway, then the same may be removed therefrom by or under the direction of such authorised person, without prejudice to any penalty incurred by the contravention of this Byelaw.

17. No person shall take or cause to be taken upon, or place or cause to be placed upon the tramway or, while upon the tramway, have in his or her possession or discharge, as the case may be, any loaded weapon of any kind, or any cinematograph film or any inflammable, explosive or corrosive gas, spirit, liquid, substance of matter, or any article or thing which is or may become dangerous to any person or property. Provided that nothing in this Byelaw shall apply to (a) small quantities of spirit or liquid carried for the personal use of such person and not the purpose of trade or business, provided that all due precautions are taken for the prevention of accident or injury therefrom; (b) cinematograph film formed on a cellulose acetate base that is so called “safety” “slow burning” or similar types; (c) the carriage of explosives in accordance with any Byelaws in force at the time of such carriage and made by the Company or their predecessors and sanctioned by the Minister of Transport under and in pursuance of the Explosives Act of 1875, or any Act amending the same, or (d) the carriage of dangerous goods (other than explosives) in accordance with the conditions and regulations for the time being applicable to the carriage of such goods on the tramway. If any person offending against this Byelaw fails to remove from the tramway immediately upon request by an authorised person, any article or thing to which this Byelaw relates, the same may be removed therefrom by or under the direction of an authorised person without prejudice to any penalty incurred by the contravention of this Byelaw.
18. No person shall smoke or carry a lighted pipe, cigar, or cigarette in any vehicle or elsewhere upon the tramway where smoking is expressly prohibited by the Company by a notice exhibited in a conspicuous position in such vehicle or upon or near such other part of the tramway or if requested by an authorised person not to do so in or upon any part of the tramway where smoking or carrying a lighted pipe, cigar or cigarette may be dangerous.
19. No person shall wilfully, wantonly or maliciously
- (1) move or set in motion or stop or attempt to stop, any vehicle or automatic door except:
- (a) in cases of emergency by means of a switch or appliance upon or near which is displayed a notice that is intended to be operated in cases of emergency; or
- (b) in the case of an automatic door, when the vehicle of which the door forms part is stationary at and the door is immediately adjacent to and gives immediate access to a platform or place appointed for passengers to leave or enter such vehicle, by means of a switch or appliance upon or which is displayed a notice that is intended to be operated by passengers to open or close such door; or
- (2) break, cut, scratch, soil, deface, or damage any vehicle or any other of the fittings, furniture, decorations, or equipment thereof, or any notice, advertisement, number plate, number, figure or letter therein or thereupon, or remove therefrom or detach any such article or thing; or

(3) deface or damage any part of the tramway or any property upon the tramway.

Any person offending against this Byelaw shall be liable to the Company for the amount of damage done to any property of the Company, without prejudice to any penalty incurred by the contravention of this Byelaw.

(4) remove, displace or alter any notice board, fare table, route indicator or destination board, or any printed or other notice or advertisement in or on the premises.

20. (1) No person, while upon the tramway shall, to the annoyance of any other person, sing, perform on any musical or other instrument or use any gramophone, record player, tape recorder, portable telephone or portable wireless apparatus.

(2) No person, while upon the tramway shall, except by permission of an authorised person:-

(a) display or exhibit any printed, written or pictorial matter or any article for the purpose of advertising or publicity, or distribute any book, leaflet or other printed matter or any sample or other article; or

(b) sell or expose or offer for sale any article or goods whatsoever; or

(c) tout, ply for, or solicit alms, reward or custom or employment of any description.

21. (1) No person shall enter or remain upon the tramway for the purpose of bookmaking or betting or wagering or agreeing to bet or wager or paying or receiving or settling bets with any other person.

(2) No person playing for money or moneys worth at any game or pretended game of chance or skill upon the tramway shall continue to do so after having been requested by an authorised person to desist there from.

(3) No person shall loiter or remain upon the tramway after having been requested by an authorised person to depart unless such person is lawfully entitled so to do.

22. No person shall throw or wilfully drop on or from any vehicle or any conveyance on the tramway any article or thing whatsoever capable of injuring, damaging or endangering any person or property.

23. No driver, conductor, or person in charge of any public service vehicle, motor car, cab, carriage, wagon, bicycle, or other conveyance or of any animal in or upon the tramway shall

(1) leave or place any such conveyance or animal in or upon the tramway

(a) in any manner or place so as to cause an obstruction or hindrance to the Company or to persons using the tramway; or

(b) otherwise than in accordance with any reasonable direction of any authorised person; or

(c) where parking is prohibited; or

(2) leave or place any such conveyance or animal in or upon the tramway (otherwise than in a carpark or other place expressly authorised by the Company) for a period longer than necessary for such person to transact any lawful business upon the tramway at or adjacent to the place at which such conveyance or animal has been left or placed; or

(3) leave or place any animal in or upon the tramway (other than a place expressly appointed by the Company) unattended; or

(4) conduct himself or herself in a disorderly manner.

Any conveyance or animal so left or placed in breach of this Byelaw may be removed by or under the direction of an authorised person, and the cost thereof shall be paid to the Company by the said driver, conductor or person in charge of the conveyance or animal without prejudice to any penalty incurred by the contravention of this Byelaw.

24. No person in charge of any public service vehicle, motor car, cab, carriage, wagon, bicycle, or other conveyance which is parked at a place on the tramway for the use of which parking charges are levied by the Company shall remove or attempt to remove such conveyance from such place without previously having paid the appropriate charge and with intent to evade payment thereof. Provided that no person shall be subject to any penalty under this Byelaw unless it be proved to the satisfaction of the Court before whom complaint is laid that a public notice was exhibited at that place specifying the charges payable for parking thereat.

25. No person shall

(1) spit upon the floor or in upon or against any part of any vehicle upon the tramway or upon the platform or the permanent way at any station of the Company, or in upon or against any hall, office, waiting room, public room, or public passage at any station of the Company; or

(2) place or throw any litter upon the tramway except in receptacles expressly provided for that purpose.

26. The Company may establish queues on the tramway for the purpose of regulating the access to services and facilities provided on or in the immediate vicinity of the tramway, and every person desirous of availing himself or herself of any such service or facility shall, upon notice or request by the Company or an authorised person take up position in the rear of one of such queues and move forward in an orderly and regular manner, and obey the reasonable instructions of an authorised person regulating such queues.

27. No person shall by means of any machine provided by the Company upon the tramway change or procure to be changed any coin or coins or any currency note or notes otherwise than for the purpose of obtaining immediately a ticket or tickets from the Company or from an authorised person at the station where such machine is provided.
28. No person other than an authorised person shall ride a bicycle, tricycle, motorcycle or other similar machine or bring any handcart barrow or similar conveyance upon any footbridge, footpath, causeway or subway on the tramway and made or set apart for the use of accommodation of pedestrians only. Provided that no person shall be subject to any penalty under this Byelaw unless it shall be proved to the satisfaction of the court before whom the complaint is laid that public warning has been given that the footbridge, footpath, causeway or subway in respect of which the complaint is made has been set apart for the use or accommodation of pedestrians only by notice clearly exhibited at the footbridge, footpath, causeway, or subway where and at the time at which any offence under this Byelaw is alleged to have been committed.
29. Any person who is reasonably suspected or committing or attempting to commit any offence against these Byelaws shall give his or her name and address to any authorised person when requested to do so.
30. These Byelaws will come into operation in accordance with the provisions of Section --- of the ---- Act and shall, in so far as they apply to the tramway be and the same are hereby revoked without prejudice, however, to the validity of anything done thereunder or to any liability incurred in respect of any act or omission before the date of the coming into operation of these Byelaws.

PART 3

SCHEDULE OF AGREED AMENDMENTS TO THE 2008 AGREEMENT

1. With effect on and from 1 September 2008, the 2008 Agreement was amended as set out in this paragraph 1:
 - 1.1 a new definition of Operator's Safety Plan was inserted as follows:-

“Operator's Safety Plan” the Operator's safety plan developed in accordance with Part 2 of Schedule 1 and as revised from time to time in accordance with Clause 12.3.3;
 - 1.2 a new definition of Safety Plan was inserted as follows:-

“Safety Plan” means, as applicable, a Safety Plan as described in Clause 12.3.3;
2. With effect on and from 1 April 2012, the 2008 Agreement was amended as set out in this paragraph 2:
 - 2.1 the existing definition of “Annual Schedule to the Maintenance Plans” in Clause 1.1 was deleted in its entirety;
 - 2.2 the existing definition of “Concessionaire Tram Spares” in Clause 1.1 was deleted in its entirety;
 - 2.3 a new definition of “Financial Year(s)” was inserted into Clause 1.1 after the definition of “Financial Period Payment Date” as follows:

“Financial Year(s)” the twelve (12) month period(s) running between 1 April and 31 March;”
 - 2.4 the existing definition of “Good Industry Practice” in Clause 1.1 was amended by the deletion of the words “tram maintenance and”;
 - 2.5 the existing definition of “Infrastructure Maintenance Management Fees” in Clause 1.1 was deleted in its entirety;
 - 2.6 the existing definition of “Infrastructure Maintenance Management Services” in Clause 1.1 was amended to read:-

“Infrastructure Maintenance Services” the services referred to in Clause 6.5;
 - 2.7 the existing definition of “Infrastructure Maintainer” in Clause 1.1 was amended to read:-

- “Infrastructure Maintainer”** the Concessionaire and/or its servants, agents and/or contractors engaged from time to time in or about the Infrastructure Maintenance Services;
- 2.8 the existing definition of “Infrastructure Maintenance Plan” in Clause 1.1 was deleted in its entirety;
- 2.9 a new definition of “Infrastructure Maintainer” was inserted into Clause 1.1 after the definition of “Infrastructure Maintenance Management Services” as follows:
- ““Infrastructure Maintainer”** “Concessionaire and/or its servants, agents and/or contractors engaged from time to time in or about the Infrastructure Maintenance [Management] Services;”
- 2.10 the existing definition of “Key Staff Positions” in Clause 1.1 was amended by the deletion of the words “the engineering manager”;
- 2.11 the existing definition of “Maintenance Contracts” in Clause 1.1 was amended by the deletion of the words “or by the Operator”;
- 2.12 the existing definition of “Maintenance Contractors” in Clause 1.1 was amended by the deletion of the words “or by the Operator”;
- 2.13 the existing definition of “Maintenance Plan” in Clause 1.1 was deleted in its entirety;
- 2.14 the existing definition of “Operating Plan” in Clause 1.1 was deleted in its entirety;
- 2.15 a new definition of “Operations Review Meetings” was inserted into Clause 1.1 after the definition of “Operating Year” as follows:
- ““Operations Review Meetings”** meetings between the Concessionaire and Operator to be held at least once per Financial Period;”;
- 2.16 the existing definition of “Operator Controlled Lost Kilometrage” in Clause 1.1 was amended by:
- 2.16.1 the deletion of the words “hereunder or to the extent attributable to a default on the part of the Tram Maintenance Contractor under the Tram Maintenance Contract”; and
- 2.16.2 the deletion of the words “or the Tram Maintenance Contractor’s”;
- 2.17 the existing definition of “Plans” in Clause 1.1 was deleted in its entirety;
- 2.18 a new definition of “Plan” was inserted into Clause 1.1 after the definition of “Performance Specification” as follows:

“Plan” the Service Delivery Plan;”

- 2.19 the existing definition of “Routine Maintenance Fee” in Clause 1.1 was deleted in its entirety;
- 2.20 the existing definition of “Routine Maintenance Services” in Clause 1.1 was amended by the deletion of the words “or Operator (as appropriate)” and addition of the word “Concessionaire” before “Good Industry Practice”;
- 2.21 the existing definition of “Routine Maintenance Sub-Contract” in Clause 1.1 was deleted;
- 2.22 the existing definition of “Services” in Clause 1.1 was amended by:
- 2.22.1 the deletion of the words “Infrastructure Maintenance Management Services to be carried out by the Operator, Routine Maintenance Services to be carried out by the Operator”; and
- 2.22.2 the deletion of the words “and Tram Maintenance”;
- 2.23 a new definition of “Service Delivery Plan” was inserted into Clause 1.1 after the definition of “Financial Period Payment Date” as follows:

“Service Delivery Plan” means the plan to be produced and maintained by the Concessionaire in accordance with Clause 20 of this Agreement setting out the working arrangements envisaged as required by the Parties for the efficient delivery of the Services in each Financial Year;”;

- 2.24 the existing definition of “Tram Maintenance Contract” in Clause 1.1 was amended by adding the following words at the end of that definition:-
- “and novated to the Concessionaire on 20 September 2012 with effect from 1 April 2012;”;
- 2.25 the existing definition of “Tram Maintenance Contractor” in Clause 1.1 was amended by:-
- 2.25.1 the deletion of the words “in accordance with Clause 6.6”; and
- 2.25.2 adding the following words at the end of that definition:
- “or, where the Concessionaire undertakes Tram Maintenance Services itself, the Concessionaire”;
- 2.26 the existing definition of “Tram Maintenance Services” in Clause 1.1 was deleted in its entirety and replaced by the following:-

“Tram Maintenance Services” any services in connection with the maintenance of the Trams being the responsibility of the Concessionaire and whether undertaken directly

by the Concessionaire or through an appointed Tram Maintenance Contractor;”;

- 2.27 the existing definition of “Tramlink System” in Clause 1.1 was amended by adding the following words at the end of that definition:-
- “(and any spares for Trams held from time to time by or on behalf of the Concessionaire (including by the Tram Maintenance Contractor);”;
- 2.28 the existing definition of “Tram Maintenance Direct Agreement” in Clause 1.1 was deleted in its entirety;
- 2.29 the existing definition of “Tram Maintenance Fee” in Clause 1.1 was deleted in its entirety;
- 2.30 the existing definition of “Tram Maintenance Plan” in Clause 1.1 was deleted in its entirety;
- 2.31 the existing definition of “Tram Maintenance Services” in Clause 1.1 was deleted in its entirety;
- 2.32 the existing definition of “Trams” was amended by deleting the words “under the Construction Contract as part of the Project Works” and replacing them with “by the Concessionaire”;
- 2.33 existing Clause 1.3.2 was amended by:
- 2.33.1 the deletion of the words “by the Operator under”; and
- 2.33.2 the deletion of the words “or the Operator”;
- 2.34 existing Clause 1.4.2 was amended by the deletion of the words “including the Tram Maintenance Contractor”;
- 2.35 existing Clause 2.2.1(b) was amended by the insertion of “,where applicable to the Operating Services,” before “the Concessionaire’s Safety Management System”;
- 2.36 existing Clause 2.2.1(c) was amended by the insertion of the following words at the end of that Clause:
- “except for those in respect of the Infrastructure Maintainer and the Tram Maintenance Contractor”;
- 2.37 existing Clause 6.4.1(a) was amended by:-
- 2.37.1 the insertion of the words “and/or of the Trams” after the words “maintenance of the Infrastructure”;
- 2.37.2 the addition of the following words at the end:-
- “provided that nothing in this Clause 6.4.1 or otherwise shall relieve the Operator from liability for any failure to exercise reasonable skill and care in the use of the Trams in the performance of the Services (including where

the Concessionaire is able to evidence that additional Tram Maintenance Services and/or repairs is/are required as a consequence of any such failure);”;

- 2.38 the heading to Clause 6.5 was amended to read “**Infrastructure Maintenance Services**”;
- 2.39 existing Clause 6.5.0 was deleted in its entirety and replaced with:
“6.5.0 The Concessionaire shall have responsibility for maintenance of the Infrastructure as set out at Schedule 5, Part 1 except for the responsibilities of the Operator (if any) stated therein”;
- 2.40 existing Clause 6.5.1 was deleted in its entirety and replaced with:
“6.5.1 On receipt by the Operator of the Service Delivery Plan in accordance with Clause 20.1.2 the Concessionaire shall consult the Operator on the most efficient and economical basis for carrying out the Major Maintenance of the Infrastructure.”;
- 2.41 existing Clause 6.5.2 was deleted in its entirety and replaced with:
“6.5.2 The Concessionaire shall perform the Routine Maintenance Services in accordance with the terms and conditions of this Agreement.”;
- 2.42 existing Clause 6.5.3 was deleted in its entirety and replaced with:
“6.5.3 Clause not used”;
- 2.43 existing Clause 6.5.4 was deleted in its entirety and replaced with:
“6.5.4 Clause not used”;
- 2.44 existing Clause 6.6 was deleted in its entirety and replaced with:
“6.6 Clause not used”;
- 2.45 existing Clause 6.7.7 was amended by:
2.45.1 the deletion of the words “Infrastructure Maintenance Plan, the Tram Maintenance Plan or the Operating Plan” and the insertion of the words “Service Delivery Plan” in their place; and
2.45.2 the deletion of the words “Clause 20.6” and the insertion of the words “Clause 20.8” in their place;
- 2.46 existing Clause 8.2.3(c) was amended by the deletion of the words “Maintenance Plan” and the insertion of the words “Service Delivery Plan” in their place;
- 2.47 existing Clause 8.4.2(c) is amended by the deletion of the words “(compliance with which shall be treated as part of the Routine Maintenance Services)”;
- 2.48 existing Clause 9.1.2 was amended by the deletion of the word “is” after the words “Term the Infrastructure” and the insertion of the words “and Trams are” in its place;

- 2.49 existing Clause 9.1.3 was amended by the deletion of the word “meets” after the words “Term the Infrastructure” and the insertion of the words “and Trams meet” in its place;
- 2.50 existing Clause 9.2(c) was amended by the addition of the word “Services” at the end of the clause;
- 2.51 existing Clause 9.3.4 was amended by:
- 2.51.1 the deletion of the following words in the first sentence “, as a result of a default by the Tram Maintenance Contractor under the Tram Maintenance Contract,”;
- 2.51.2 insertion of the words “fails to make available the Trams as set out in Clause 9.1 and ”after the words “Where the Concessionaire” in the first sentence; and
- 2.51.3 the deletion of the following words:
- “Where the Operator’s costs in operating such replacement bus service are less than the amounts it recovers from the Tram Maintenance Contractor by reason of such default pursuant to Clause 22.2.2 of and Schedule 4 to the Tram Maintenance Contract then the Operator shall pay such excess amount to the Concessionaire. Where the Operator’s costs in so operating are more than the amounts it recovers from the Tram Maintenance Contractor as aforesaid then the Concessionaire shall re-imburse the Operator such shortfall amount save always that such costs shall not include any element of profit. Sums payable to the Operator under this Clause 9.3.4 shall be determined on the same basis as is set out in Clause 6.7.”;
- 2.52 existing Clause 9.6 was deleted in its entirety and was replaced by:
- “9.6 Clause not used;”;
- 2.53 existing Clause 10.6 was amended by:
- 2.53.1 the deletion of the following words:
- “having to provide assistance pursuant to Clause 10.1.1 of the Tram Maintenance Contract unless the need to provide such assistance has arisen as a result of any breach by the Operator of its obligations under this Agreement and/or by the Tram Maintenance Contractor of its obligations under the Tram Maintenance Contract”; and
- 2.53.2 the insertion of the following words at the end of the Clause:
- “failing to provide assistance in response to a Tram emergency breakdown provided nothing in this Clause shall relieve the Operator of its obligation to alert and liaise with the Control Centre for the Tramlink System in relation to any Tram emergency breakdown or to make use of its own emergency response facilities including its own incident response vehicle.”;
- 2.54 existing Clause 12.1.4 was amended by the insertion of the words “and Trams” after the words “Infrastructure items”;
- 2.55 existing Clause 12.1.7.7 was amended by:-

- 2.55.1 deleting the words “and, to an appropriate level, the Concessionaire’s directly employed personnel on all safety matters (except training of the Concessionaire’s personnel relating to the Concessionaire’s responsibility for management of infrastructure works)”;
- 2.55.2 inserting in their place the words “on all safety matters (and, to an appropriate level, the Concessionaire’s directly employed personnel in respect of track safety awareness and depot familiarisation)”;
- 2.56 existing Clause 12.2.1(a) was amended by the insertion of the words “and of Trams” after the words “maintained by the Concessionaire”;
- 2.57 existing Clause 12.2.2 was amended by inserting the words “(if any)” before the words “and shall distinguish between these separate responsibilities.”;
- 2.58 existing Clause 12.2.3 was amended by:
- 2.58.1 the insertion of the words “and Trams” after the words “(set out in Schedule 5, Part I)”;
- 2.58.2 the insertion of the words “and tram maintenance” after the words “relating to infrastructure maintenance”;
- 2.59 existing Clause 12.2.6 was amended by the insertion of the words “and Tram” after the words “in relation to Infrastructure”;
- 2.60 existing Clause 12.3.3 was amended by amending the last sentence to read:-
- “The Operator shall have a continuing duty to maintain and deliver the Operator’s Safety Plan (as may be amended from time to time including to take account of the Operator ceasing to have responsibility for maintenance of the Trams).”;
- 2.61 existing Clause 12.4.3.1 was amended by amending the last sentence to read:-
- “Each Party shall meet its own costs and expenses resulting from such termination”;
- 2.62 existing Clause 12.4.6 was amended by the insertion of the words “and tram” after the words “responsibilities for infrastructure”;
- 2.63 existing Clause 16.1.2 was amended by:
- 2.63.1 the deletion of the words “the Tram Maintenance Contract, the Operator’s liability in respect of such failure shall be limited as stated in the Tram Maintenance Contract”;
- 2.63.2 the insertion of the following words at the end of the Clause:
- “its maintenance responsibilities, the Operator shall not be liable in respect of such failure”;
- 2.64 existing Clause 18.1 was amended by the deletion of the words “in relation to Tram Maintenance Services”;
- 2.65 existing Clause 19.2.3 was amended by:-

- 2.65.1 the insertion of the words “and Trams” after the words “maintenance of the Infrastructure”; and
- 2.65.2 the replacement of each reference to “Quality Plans” by “quality plans”;
- 2.66 existing Clause 19.2.4 was amended by:-
 - 2.66.1 the insertion of the words “and Trams” after the words “elements of the Infrastructure” in the first sentence; and
 - 2.66.2 the replacement in the second sentence of “Quality Plans” by “quality plans”;
- 2.67 existing Clause 20 was deleted in its entirety and replaced with the following:
- 2.68 **“20. SERVICE DELIVERY PLAN**

20.1 Production and Maintenance of Service Delivery Plan

- 20.1.1 The Concessionaire shall produce and maintain a Service Delivery Plan provided always that the Operator shall cooperate fully with and provide the Concessionaire with all assistance and information the Concessionaire reasonably requests in this regard.
- 20.1.2 Without prejudice to each their respective obligations under clause 20.1.1 the:
 - 20.1.2.1 Concessionaire shall provide a draft of any update to the Service Delivery Plan and to the Operator for review no less than 40 Business Days before the beginning of each Financial Year;
 - 20.1.2.2 Operator shall within 21 Business Days of receipt of any draft updated Service Delivery Plan confirm in writing that it has no comments (in which case the updated Service Delivery Plan shall be deemed agreed) or provide constructive written comments on and/or suggested amendments to the draft updated Service Delivery Plan; and.
 - 20.1.2.3 if the draft updated Service Delivery Plan is returned by the Operator with written comments and/or suggested amendments the Concessionaire shall (if it considers appropriate) discuss the same with the Operator; the Parties shall work together to reach agreement on any revised content and a copy of any revised draft updated Service Delivery Plan which shall be submitted to the Operator for further review; the Operator shall within 21 Business Days (or such shorter period as is required and is reasonable in order to enable agreement of the draft updated Service Delivery Plan before the commencement of the relevant Financial Year) provide the Concessionaire with constructive written comments on the same or confirm

in writing that it has no comments (in which case the updated Service Delivery Plan shall be deemed agreed) provided always that in the event of any disagreement as to the content of the draft updated Service Delivery Plan the view of the Concessionaire shall take precedence;

20.1.2.4 once finalised in accordance with Clause 20.1.2.3 the draft updated Service Delivery Plan shall become the final Service Delivery Plan which shall apply in respect of the following Financial Year subject to any amendments agreed in accordance with the provisions of this Agreement;

20.1.2.5 the Service Delivery Plan shall so far as can be reasonably anticipated enable the Operator and Concessionaire to comply in full with their respective obligations to operate and maintain the Tramlink System in the case of the Operator under this Agreement and in the case of the Concessionaire under this Agreement and/or the Project Agreements.

20.1.3 The Service Delivery Plan shall contain:

20.1.3.1 the Concessionaire's vision and mission statement for the Services and Tramlink System;

20.1.3.2 the Concessionaire's strategic objectives for the Services and Tramlink System for the following two (2) Financial Years;

20.1.3.3 a Service improvement plan setting out details for improvements in the delivery of the Services and which shall contain (without limitation) details of improvements to be achieved in respect of:

- (a) safety;
- (b) health and welfare;
- (c) customer satisfaction;
- (d) environmental impact;
- (e) procurement;
- (f) sustainability;
- (g) financial performance; and
- (h) human resources matters;

20.1.3.4 an investment plan setting out details of specific initiatives to be delivered and by whom they are to be delivered during the following two (2) Financial Years;

- 20.1.3.5 a maintenance plan setting out details of:
 - (a) the Concessionaire’s principal planned Infrastructure and Tram Maintenance activity for the forthcoming Financial Year; and
 - (b) the Concessionaire’s principal planned service disruptions for the forthcoming Financial Year;
 - 20.1.3.6 details of the performance levels applicable to apply to the forthcoming Financial Year including (without limitation) key performance and service indicators to be used by the Concessionaire in the measurement of the achievement of such performance levels;
 - 20.1.3.7 details of risks and opportunities relating to or arising out of proposals for delivery of the Service for the forthcoming Financial Year;
 - 20.1.3.8 details of the budget for the forthcoming Financial Year; and
 - 20.1.3.9 details of the Parties’ respective duties and cooperative working arrangements for the delivery of the Service in accordance with the Service Delivery Plan.
- 20.2 The Service Delivery Plan shall describe in summary detail the achieved and planned change in the overall condition of the Infrastructure and Trams for the period of the Service Delivery Plan. The principal planned asset interventions shall be described as determined from use of the inspection and maintenance plans contained in the Concessionaire’s Management System and Asset Management Information System to evaluate the risk to the safety and performance of the Services, the Tramlink System and its operation.
- 20.3 The Service Delivery Plan shall also describe the actions the Concessionaire and the Operator are to take to achieve compliance with policies and other requirements of the Corporation from time to time.
- 20.4 Where the Operator’s actions required for compliance with the Service Delivery Plan, policies and other requirements of the Corporation would result in the variation of the Operating Services such actions shall be treated as Additional Services in accordance with Clause 6.7 of this Agreement.
- 20.5 The Operator shall support the Concessionaire in developing the Service Delivery Plan and shall proactively contribute to and comment upon the draft Service Delivery Plan. The Operator and the Concessionaire shall use all reasonable endeavours to achieve compliance with the plan and to assist one another in achieving their respective targets.
- 20.6 Where the Service Delivery Plan identifies activities, policies and targets that impact upon the Operator, the Operator shall provide written details

of such impacts and the steps it shall take to support the Concessionaire in the Parties' respective delivery of the Service Delivery Plan.

- 20.7 The Concessionaire and Operator shall review and agree progress toward and actions to be taken to achieve compliance with the Service Delivery Plan at each Operations Review Meeting.
- 20.8 If the Concessionaire or the Operator wish to make changes to the Service Delivery Plans for the current Financial Year it shall give written notice to the other of the proposed changes and the proposed date of implementation providing reasonable notice in all cases. The Parties shall then consult in respect of such proposed change and consider the implications for both Parties. Where agreement is reached in respect of the proposed change to any Service Delivery Plan it shall be implemented on that basis. The Operator shall in any event be required to implement any changes to the Service Delivery Plan required by the Concessionaire but without prejudice to the provisions of Clause 9 and unless the circumstances requiring the change are covered by any other express Clause of this Agreement (in which case such Clause shall prevail), the Operator shall be entitled to recover from the Concessionaire any additional costs or expenses incurred as a result of such change in accordance with Clause 6.7.
- 20.9 For the avoidance of doubt, the content of the Service Delivery Plan shall not prejudice the provisions contained within Clause 9.”;
- 2.69 existing Clause 21.1.4 was deleted in its entirety and was replaced with:
“21.1.4 clause not used”;
- 2.70 existing Clause 21.1.5 was deleted in its entirety and was replaced with:
“21.1.5 clause not used”;
- 2.71 existing Clause 21.1.6 was deleted in its entirety and was replaced with:
“21.1.6 clause not used”;
- 2.72 existing Clause 21.5.1.1 was amended by the deletion of the following words:
“and (b) the sum shown as due in the invoices delivered pursuant to Clause 21.4.2 in respect of the Tram Maintenance Fee, the Routine Maintenance Fee and the Infrastructure Maintenance Management Fee”;
- 2.73 existing Clause 22.4 was amended by:
- 2.73.1 the deletion of the word “from” after the words “Operator and the Concessionaire” and the insertion of the word “for” in its place; and
- 2.73.2 the deletion of the words “, save for contractors in respect of Tram Maintenance Services”;
- 2.74 existing Clause 22.9 was amended by deleting:-
- 2.74.1 “or Concessionaire Tram Spares” and

- 2.74.2 “or the Concessionaire Tram Spares”;
- 2.75 existing Clause 24.1.2 was deleted in its entirety and replaced with:
“24.1.2 clause not used.”;
- 2.76 existing Clause 24.2.1(d) was amended by the deletion of each instance of the words
“(but excluding for these purposes any Operator Controlled Lost Kilometrage attributed to the Tram Maintenance Contractor)”;
- 2.77 existing Clause 24.2.5 was deleted in its entirety and replaced with:
“24.2.5 clause not used.”;
- 2.78 existing Clause 25.2 was amended by:
- 2.78.1 deletion of the following words:
“The records of maintenance referred to in this Clause 25.2 cover the maintenance of Infrastructure items for which the Operator is responsible.”;
- 2.78.2 insertion of the following words at the end of the Clause:-
“Without prejudice to any obligation of the Operator pursuant to Clause 30 or otherwise, if requested to do so by the Concessionaire to enable the Concessionaire to comply with any legal or regulatory requirement, the Operator shall use all reasonable endeavours to locate and supply any residual records (or copies thereof) retained by or on behalf of the Operator in respect of maintenance of the Tramlink System for which the Operator has been responsible at any point since the commencement of the 1996 Agreement.”;
- 2.79 existing Clause 25.3 was amended by the deletion of the words “The Operator shall also ensure that the maintenance management systems and procedures are operating effectively”;
- 2.80 existing Clause 25.5 was amended by the deletion of the reference to “1981” in the definition of “the Regulations” and the insertion of “2006” in its place;
- 2.81 existing Clause 25.5.5 was amended by the deletion of the reference to “1984” and the insertion of “1998” in its place;
- 2.82 existing Clause 27.1.2 was amended by:-
- 2.82.1 the deletion of “the Tram Maintenance Direct Agreement and”;
- 2.82.2 the insertion of the words “and save as otherwise provided for within this Agreement” after the words “(to which this Agreement is subject)”;
- 2.83 existing Clause 27.4.3 was amended by the deletion of the reference to “and 5”;
- 2.84 existing Clause 27.4.4 was deleted in its entirety and replaced with:
“27.4.4 clause not used.”;

- 2.85 the lead-in wording to existing Clause 30.1 was amended by the insertion of the words “and the impact of the activities of the Concessionaire and or its contractors”;
- 2.86 existing Clause 30.1.1 was deleted in its entirety and replaced with:
“30.1.1 Clause not used.”;
- 2.87 existing Clause 30.1.2 was amended by:
- 2.87.1 the deletion of the word “other” after the words “details of any”;
- 2.87.2 the deletion of the words “or ought reasonably to be aware” after the words “of which the Operator is”;
- 2.87.3 the insertion of the following words at the end of that Clause:
“including (without limitation) the impact any activity by the Concessionaire or its contractors during such following quarter may have on the Operating Services during that quarter and proposals for actions and arrangements to mitigate any adverse impact for the Concessionaire’s consideration (provided always that any decision regarding such proposals shall be made in the sole discretion of the Concessionaire). In preparing its report the Operator shall consider the areas of which, as a reasonably diligent operator, it should be aware.”;
- 2.88 existing Clause 31.1.1 was amended by deleting the words “and shall attribute such Increased Costs as relate to Tram Maintenance”;
- 2.89 existing Clause 31.1.4.1 was amended by amending the last sentence to read:
“ Each Party shall meet its own costs and expenses resulting from such termination”;
- 2.90 existing Clause 31.1.8.1 was deleted in its entirety and replaced with:
“31.1.8.1 Clause not used”;
- 2.91 existing paragraph 2(i) of Part 3 to Schedule 1 (The Services) was amended by the deletion of the words “tram maintenance and”;
- 2.92 existing paragraph 2(j) of Part 3 to Schedule 1 (The Services) was amended by the deletion of the words “and the Tram Maintenance Contractor stock”;
- 2.93 existing paragraph 2(k) of Part 3 to Schedule 1 (The Services) was amended by the insertion of the words “liaison with the Concessionaire on” at the start of that paragraph;
- 2.94 existing paragraph 2(m) of Part 3 to Schedule 1 (The Services) was deleted in its entirety and replaced with:
“(m) not used.”;
- 2.95 existing paragraph 2(r) of Part 3 to Schedule 1 (The Services) was amended by the insertion of the words “for which the Operator is responsible” after the words “to the Tramlink System”;

- 2.96 existing paragraph 2(x) was amended by the addition at the end of the words “of which the Operator becomes aware”;
- 2.97 existing paragraph 2(y) of Part 3 to Schedule 1 (The Services) was deleted in its entirety and replaced with:
“(y) not used.”;
- 2.98 existing paragraph 2(bb) of Part 3 to Schedule 1 (The Services) was deleted in its entirety and replaced with:
“(bb) not used.”;
- 2.99 the heading to existing Part 4 to Schedule 1 (The Services) was amended to read
“**PART 4: INFRASTRUCTURE MAINTENANCE SERVICES**”;
- 2.100 existing paragraph 1 of Part 4 of Schedule 1 (The Services) was amended to read:
“1. The Operator shall in relation to Infrastructure items (if any) for which it is responsible (and in respect of maintenance being undertaken by or on behalf of the Concessionaire in respect of items for which the Concessionaire is responsible):-

(j) Not used

(k) Not used

(l) Not used

(m) Not used

(n) Not used

(o) Not used

(p) take reasonable steps such that impacts on the passenger service are minimised and adequate notice to passengers is given and, where requested by the Concessionaire, substitute bus services;

(q) assess the effect of the Service Delivery Plan on the Operator Specification;

(r) ensure that, on completion of any maintenance work, clearance has been given for passenger services to commence prior to their commencement.
- 2.101 existing paragraph 2 of Part 4 of Schedule 1 (The Services) was deleted in its entirety and replaced with:
“2. Not used”;
- 2.102 existing paragraph 3(d) of Part 4 of Schedule 1 (The Services) was amended by the deletion of the words “Infrastructure Maintenance Plans” and their replacement with “Service Delivery Plan”;
- 2.103 existing paragraph 1 of Part 5 of Schedule 1 (The Services) was amended by:-

- 2.103.1 the deletion of the words “For the purposes of this Part 5 of Schedule 1, the following definitions shall apply.”; and
- 2.103.2 the deletion of the “Tram Management Services” and “Tram Spares Services” definitions;
- 2.104 existing paragraph 1.1 of Part 5 of Schedule 1 (The Services) was deleted in its entirety and replaced with:
- “1.1 Not used”;
- 2.105 existing paragraph 1.2 of Part 5 of Schedule 1 (The Services) was deleted in its entirety and replaced with:
- “1.2 Not used”;
- 2.106 existing paragraph 1.3 of Part 5 of Schedule 1 (The Services) was deleted in its entirety and replaced with:
- “1.3 The Operator may not remove a part from any Tram without the prior consent of the Concessionaire (such consent not to be unreasonably withheld or delayed) save for routine removal of recording equipment for the purposes of retrieval and further storage of data.”;
- 2.107 existing paragraphs 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11 of Part 5 of Schedule 1 (The Services) were deleted in their entirety;
- 2.108 existing paragraph 1.12.1 of Part 5 of Schedule 1 (The Services) was amended by:
- 2.108.1 such paragraph being re-numbered as “1.4.1”;
- 2.108.2 deleting the first reference to “trams” and replacing it with “Trams”;
- 2.108.3 the deletion of the words:
- “If the Concessionaire consents to any such amendment or modification then the Operator will carry out such amendment or modification in accordance with the requirements of the Concessionaire and shall take such further action as the Concessionaire shall reasonably require as a result of the same (including amending the Tram Maintenance Manuals and Tram Maintenance Plan and any other handbooks or manuals used in connection with the Trams and providing replacement equipment). All costs and expenses reasonably and properly incurred by the Concessionaire in connection with such amendment or modification (including the costs of amending the Driver Manuals) shall be met by the Operator unless otherwise expressed.”; and
- 2.108.4 the insertion of the following words at the end of that paragraph:
- “If the Concessionaire consents to any such amendment or modification then the Concessionaire will procure such amendment or modification on behalf of and at the Operator’s cost, such cost equating to the costs reasonably and properly incurred by the Concessionaire in this regard. All costs and expenses reasonably and properly incurred by the Operator in connection

with such amendment or modification (including the costs of amending the Driver Manuals) shall be met by the Operator unless otherwise agreed.”;

- 2.109 existing paragraph 1.12.2 of Part 5 of Schedule 1 (The Services) was amended by:-
- 2.109.1 such paragraph being re-numbered as “1.4.2”;
 - 2.109.2 the deletion of the words “or an of the Concessionaire Tram Spares”; and
 - 2.109.3 the deletion of the reference to “paragraph 1.12.2” and its replacement by “paragraph 1.4.2”;
- 2.110 existing paragraphs 1.13, 1.14, 1.15 and 1.16 of Part 5 of Schedule 1 (The Services) were deleted in their entirety;
- 2.111 new paragraphs 1.5 and 1.6 were inserted into Part 5 of Schedule 1 (The Services) as follows:
- “1.5 Not used.
 - 1.6 Not used.”;
- 2.112 existing paragraphs 2.1 and 2.2 of Part 5 of Schedule 1 (The Services) were deleted in their entirety;
- 2.113 existing paragraph 2.3 of Part 5 of Schedule 1 (The Services) was amended by:
- 2.113.1 such paragraph being re-numbered as paragraph “2.1”;
 - 2.113.2 the deletion of existing paragraphs 2.3(b) and 2.3(c) in their entirety;
 - 2.113.3 existing paragraph 2.3 “(d)” being renumbered as 2.3 “(b)”, and the word “and” being added after the semicolon at the end of that paragraph; and
 - 2.113.4 existing paragraph 2.3 “(e)” being renumbered as 2.3 “(c)”;
- 2.114 existing paragraph 3 of Part 5 of Schedule 1 (The Services) was deleted in its entirety and replaced with:
- “3. Not used”;
- 2.115 existing paragraph 4 of Part 5 of Schedule 1 (The Services) was deleted in its entirety and replaced with:
- “3. Not used”;
- 2.116 existing paragraph 5(a) of Part 5 of Schedule 1 (The Services) was amended by the deletion of the words “or the Tram Maintenance Contractor”;
- 2.117 existing paragraph 5(b) of Part 5 of Schedule 1 (The Services) was amended by the deletion of the words “or the Tram Maintenance Contractor”;
- 2.118 existing paragraph (a) in the introductory section to Schedule 2 (Fees) was amended by the deletion of the following words:

“, save in respect of that element of the Tram Maintenance Fee relating to materials (which shall be deemed to be 50% of such Fee) when it shall be deemed to be a sum altered in accordance with the following formula:-

$$M = 100 R \times \left(\frac{Ro}{No} \right)^{+30} \times \left(\frac{Q}{Qo} \right)^{70}$$

Where:

- N = price index at such anniversary for “Maschinebauerzeugnisse, Fachserie 17, Reihe 2, GP-systematick 32” issued by the German Federal Statistics Institute of Wiesbaden.
- No = price index at the date of this Agreement for “Machinebauerzeugnisse, Fachserie 17, Reihe 2, GP-Systematik 32” issued by the German Federal Statistics Institute of Wiesbaden.
- Q = last issued price indices at such anniversary for “Facharbeiter-Ecklohn der Eisen-metall und Elektronindustrie, Tarifgebiet Nordrhein-Westfalen, Tariflohngruppe, über 21 Jahre”, issued by the German Authorities.
- Qo = price indices at the date of this Agreement for “Facharbeiter-Ecklohn der Eisen, Metall-, und Elektronindustrie, Tarifgebiet Nordrhein-Westfalen, Tariflohngruppe, über 21 Jahre”, issued by the German Authorities.
- R = average at such anniversary of the 120 last official conversion rate (middle rate) of the DEM to the GBP issued daily by the Deutsche Bank in Frankfurt.
- Ro = average on the date of this Agreement of the 120 last official conversion rate (middle rate) of the DEM to the GBP issued daily by the Deutsche Bank in Frankfurt.”;

2.119 existing paragraph (d) in the introductory section to Schedule 2 (Fees) was deleted in its entirety;

2.120 existing Part 4 of Schedule 2 (Fees) was deleted in its entirety and replaced with:

“PART 4: NOT USED”;

2.121 existing Part 5 of Schedule 2 (Fees) was deleted in its entirety and replaced with:

“PART 5: NOT USED”;

2.122 existing Part 6 of Schedule 2 (Fees) was deleted in its entirety and replaced with:

“PART 6: NOT USED”;

2.123 existing paragraph 4 of Part 1 of Schedule 4 (Performance Requirements) was amended by deleting the reference to “Schedule Kilometrage” and replacing it with “Scheduled Kilometrage”;

2.124 existing paragraph 4(i) of Part 1 of Schedule 4 (Performance Requirements) was deleted in its entirety and replaced with:

- “(i) not used”;
- 2.125 existing paragraph 4(iii) of Part 1 of Schedule 4 (Performance Requirements) was deleted in its entirety and replaced with:
- “(iii) not used”;
- 2.126 existing paragraph 9 of Part 1 of Schedule 4 (Performance Requirements) was deleted in its entirety and replaced with:
- “9. Not used”;
- 2.127 the heading of existing Part 2 of Schedule 4 (Performance Requirements) was amended by the deletion of the word “Categorisation” and the replacement of it “Categories”;
- 2.128 existing paragraph 1 of Part 2 of Schedule 4 (Performance Requirements) was amended by:-
- 2.128.1 the deletion of “Control Room” and its replacement by “Control Centre”;
- 2.128.2 the deletion of the following sub-paragraphs:
- “- Tram not available
 - Tram failure due to Tram Maintenance Contractor
 - Failure to carry out Routine Maintenance, or Defective Routine Maintenance, of items in Schedule 5 for which the Operator is responsible.”;
- 2.128.3 the addition of the following sub-paragraph :
- “- Tram non availability or failure caused by the Operator”.
- 2.129 existing paragraph 2 of Part 2 of Schedule 4 (Performance Requirements) was amended by:-
- 2.129.1 the addition of the word “Services” after “Routine Maintenance” and “Defective Routine Maintenance” in the final sub-paragraph; and
- 2.129.2 the deletion of the following words at the end of the final sub-paragraph to such paragraph 2:
- “, of items in Schedule 5 for which the Concessionaire is responsible.”;
- 2.130 Part 2 of Schedule 4 (Performance Requirements) was amended by adding a new paragraph 7 as follows:-
- “7. Tram maintenance
- Tram not available other than where caused by the Operator
 - Tram failure due to Tram Maintenance Contractor”;

- 2.131 existing numbered Paragraphs 1 and 2 of Part 1 of Schedule 5 (Maintenance Responsibilities and Routine Maintenance Specifications), including the heading “Allocation of Responsibilities for Infrastructure Maintenance between the Concessionaire and the Operator”, were deleted in their entirety;
- 2.132 existing paragraph 3 of Part 1 of Schedule 5 (Maintenance Responsibilities and Routine Maintenance Specifications) was amended by:
- 2.132.1 the deletion of the existing paragraph numbering so that the paragraph ceased to be paragraph “3” and became non-numbered;
- 2.132.2 the deletion of the existing text and its replacement with the following words:-
- “The Concessionaire is responsible for maintenance of any Infrastructure. This includes (without limitation) the following items:
-) Supply of all utilities to the Depot Building.
 -) Maintenance of the Depot landscape. The Depot main building structural fabric, interior and exterior lighting and all approach paths, roadways, track and ballast.
- but the Operator shall remain responsible for those matters which are its responsibility under the Sub-Lease (and during the Licence Period, its obligations in Part 2 of Schedule 16).”
- 2.133 existing paragraph (a) of Part 2 of Schedule 5 (Maintenance Responsibilities and Routine Maintenance Specifications) was amended by:-
- 2.133.1 the deletion of the initial paragraph and its replacement with the following:-
- “The Parties have agreed that Routine Maintenance Services shall be performed by the Concessionaire in accordance with Clause 6.5.2 and this Schedule taking into account the Service Delivery Plan.”;
- 2.133.2 the deletion of sub-paragraphs (i)- (v) inclusive;
- 2.134 existing paragraph (b) of Part 2 of Schedule 5 (Maintenance Responsibilities and Routine Maintenance Specifications) was deleted in its entirety and replaced with:
- “(b) not used;”;
- 2.135 existing paragraph (c) of Part 2 of Schedule 5 (Maintenance Responsibilities and Routine Maintenance Specifications) was deleted in its entirety and replaced with:
- “(c) not used;”;
- 2.136 existing paragraph 5.1(e) of Section 1 of Schedule 8 (Operator Specification) was amended by inserting “(as at the date of the 1996 Agreement)” in each of the following places:-
- 2.136.1 in the opening paragraph, before “by paragraph 1.2 of Section 9 of the Operator Specification”;

- 2.136.2 in paragraph 5.1(e)(ii), before “in the table in paragraph 1.2 of Section 9 of the Operator Specification”; and
- 2.136.3 in the final paragraph, before “in paragraph 1.4 of Section 9 of the Operator Specification”;
- 2.137 existing paragraph 5.2 of Section 1 of Schedule 8 (Operator Specification) was amended by the deletion of the words “and Operator”;
- 2.138 existing paragraph 2 of Annex 1 (Corporation’s Environmental Policy) to Section 1 of Schedule 8 (Operator Specification) was amended by the insertion of the word “Services” :-
- 2.138.1 after each reference to “Tram Maintenance” in subparagraphs 2(b) and 2(d); and
- 2.138.2 after each reference to “Infrastructure Maintenance” in subparagraphs 2(b), 2(d) and 2(e);
- 2.139 existing paragraph 2.2 of Section 8 of Schedule 8 (Operator Specification) was amended by:
- 2.139.1 deleting the existing paragraph:
- “The Contractor shall stable and make available at the Depot a road/rail breakdown and maintenance vehicle, and such other rail, road/rail and road vehicles as are required for operation and maintenance of the Tramlink System”; and
- 2.139.2 inserting the new paragraph:
- “The Operator shall permit the stabling at the Depot of any road/rail breakdown and maintenance vehicle(s), and such other rail, road/rail and road vehicles as are provided by the Concessionaire and required for maintenance of the Tramlink System from time to time.”;
- 2.140 existing paragraph 2.3 of Section 8 of Schedule 8 (Operator Specification) was deleted in its entirety and replaced with:
- “(i) Not used;”;
- 2.141 existing paragraph 2.4 of Section 8 of Schedule 8 (Operator Specification) was amended by the deletion of the following words at the end of that paragraph:
- “The Operator shall ensure that an associated inventory management service for itself and for Tram maintenance activities is provided.”;
- 2.142 existing paragraph 2.5 of Section 8 of Schedule 8 (Operator Specification) shall be deleted and replaced with the following:-
- “The Operator shall ensure that the Control Centre is continually staffed 24 hours per day in order to:
-) monitor and control the Tramlink System

-) control Tram driver availability
-) respond to operational staff issues
-) contact with emergency services and other third parties when necessary and
-) control access to the Tramlink System (other than the Trams) for the purpose of maintenance provision.

The Contractor shall ensure that the Control Centre shall be at the Depot and shall incorporate the requirements of Section 7 of the Performance Specification.”;

- 2.143 existing paragraph 2.2 of Section 9 of Schedule 8 (Operator Specification) was amended by the insertion of the words “directed by the Concessionaire” at the end of that paragraph;
- 2.144 existing paragraph 3 of Section 9 of Schedule 8 (Operator Specification) was amended by:
- 2.144.1 the deletion of the words “maintenance and” in the first non-numbered paragraph in such paragraph 3;
 - 2.144.2 the deletion in their entirety of the existing first two bullet points under the heading “Performance of Passenger Infrastructure”; and
 - 2.144.3 the deletion of the words “adhere to maintenance standards so as to” in the final non-numbered paragraph in such paragraph 3;
- 2.145 existing paragraph 9 of Section 9 of Schedule 8 (Operator Specification) was amended by:
- 2.145.1 the deletion of the word “Operator” and replacement of it with “Concessionaire”; and
 - 2.145.2 the insertion of the words “the Operator” after the words “are conspicuous and”;
- 2.146 existing paragraph 9 of Section 9 of Schedule 8 (Operator Specification) was amended by the deletion of the word “Operator” and replacement of it with “Concessionaire”;
- 2.147 existing paragraph 12 of Section 9 of Schedule 8 (Operator Specification) was amended by the deletion of the word “Operator” and replacement of it with “Concessionaire”;
- 2.148 existing paragraph 2.3 of Section 10 of Schedule 8 (Operator Specification) was amended by the deletion of the words “The Operator shall ensure, so far as it is able, that ticket machine availability shall be in accordance with the requirements of Section 9.”;
- 2.149 existing paragraph 1.2 of Section 11 of Schedule 8 (Operator Specification) was amended by:
- 2.149.1 the deletion of the words:

“The Operator shall procure Tram Maintenance Services as required by Schedule 1 Part 5 of the Operating Agreement.

The Operator shall ensure that all Tram Maintenance Services are carried out so as not to cause adverse or detrimental effects to the Concessionaire’s infrastructure maintenance cost.”; and

2.149.2 the deletion of the words:

“The Operator shall ensure that all Tram Maintenance Services are carried out with the exercise of that degree of skill, diligence, prudence, foresight and practice as would reasonably and ordinarily be expected from a skilled and experienced Tram Maintenance Contractor.”;

2.150 existing paragraph 2.1.2 of Section 11 of Schedule 8 (Operator Specification) was amended by the deletion of the reference to “30” and replacement of it with “36”;

2.151 existing paragraph 2.2.1 of Section 11 of Schedule 8 (Operator Specification) was deleted in its entirety and replaced with:

“2.2.1 Not used”;

2.152 existing paragraph 2.2.2 of Section 11 of Schedule 8 (Operator Specification) was deleted in its entirety and replaced with:

“The Concessionaire shall ensure that all normal servicing, light scheduled and unscheduled maintenance and routine repairs is undertaken wherever possible at the Depot at Therapia Lane but any damage which seriously affects the structure of a Tram may need to be repaired off-site, and the Operator acknowledges and agrees that it shall co-operate fully and comply with the reasonable requirements of the Concessionaire to ensure that Concessionaire may procure such maintenance and repairs while minimising the period during which the Tram is removed from service on the Tramlink System.”;

2.153 existing paragraph 2.2.3 of Section 11 of Schedule 8 (Operator Specification) was deleted in its entirety and replaced with:

“2.2.3 Not used”;

2.154 existing paragraph 4.1 of Section 11 of Schedule 8 (Operator Specification) was amended by:

2.154.1 in the first paragraph:-

2.154.1.1 deleting “Operator” and inserting “Concessionaire”;

2.154.1.2 deleting the words “from the Contractor”;

2.154.1.3 inserting at the end the words:-

“If requested to do so by the Concessionaire to enable the Concessionaire to comply with any legal or regulatory requirement, the Operator shall use all reasonable endeavours to locate and supply any residual technical records relating to

the Tramlink System (or copies thereof) retained by or on behalf of the Operators.”;

2.154.2 in the second paragraph, deleting “Operator” and inserting “Concessionaire”;

2.155 paragraph 4.2 of Section 11 of Schedule 8 (Operator Specification) was deleted and replaced with:

“The Operator and Concessionaire shall comply with the following obligations in respect of the maintenance and provision of operating and maintenance manuals:

(a) The Concessionaire shall provide to the Operator (and keep up to date) manuals and materials in respect of infrastructure, trams and their upgrades and maintenance insofar as they are relevant to the operations to be undertaken by the Operator. Examples include the user manuals for (both the Bombardier and Stadler fleets of) Trams and drawings in relation to update to the overhead line electrical arrangements; and

(b) The Operator shall prepare (and keep up to date) operating procedures and training materials for its own staff (including drivers and control room operatives) and for others to whom it provides training (including Concessionaire staff and visitors to the Depot), including operating procedures and training materials based on the user manuals and materials supplied by the Concessionaire. The operating procedures must also include procedures for operating the Depot, particularly outside the operating hours of the Concessionaire’s staff. Copies of all operating procedures and training materials required by this Clause shall be provided by the Operator to the Concessionaire.

Without limiting the other obligations of the Parties, all manuals shall be updated regularly when equipment and procedures are changed.”;

2.156 existing paragraph 4.3 of Section 11 of Schedule 8 (Operator Specification) was amended by the deletion of the words “and Maintenance”;

2.157 existing paragraph 8.6(d) of Section 1 of the “TCL Specification Requirements Appendix to the Operator Specification” to Schedule 8 (Operator Specification) was amended by:

2.157.1 the deletion of the word “and maintain” after “operate”; and

2.157.2 the deletion of the last three sentences of that paragraph in their entirety;

2.158 existing paragraph 2.2 of Section 8 of the “TCL Specification Requirements Appendix to the Operator Specification” to Schedule 8 (Operator Specification) was deleted and replaced by the following:-

“The Operator shall permit the stabling at the Depot of any road/rail maintenance vehicle(s), and such other rail, road/rail and road vehicles as are provided by the Concessionaire and required for the operation and maintenance of the Tramlink System. The Operator shall provide an incident response vehicle to attend breakdowns or emergencies.”;

- 2.159 Section 9 of the “TCL Specification Requirements Appendix to the Operator Specification” to Schedule 8 (Operator Specification) was amended by:-
- 2.159.1 deleting “**Office of Rail Regulation** means the person for the time holding the office of Rail Regulator appointed by the Secretary of State pursuant to section 1 of the Railways Act 1993”; and
 - 2.159.2 inserting “**Rail Regulator** means the Office of Rail and Road or the person for the time being holding the office of Rail Regulator appointed by the Secretary of State pursuant to section 1 of the Railways Act 1993”;
- 2.160 existing paragraph 4.2(a) of Schedule 11 (Ticketing System and Revenue Collection) was deleted and replaced by “Not Used”;
- 2.161 existing Schedule 14 was amended by:
- 2.161.1 the deletion of the words “, engineering and plant records” in the first sub-paragraph in that Schedule;
 - 2.161.2 the insertion of the word “and” after the semicolon in the third sub-paragraph in that Schedule; and
 - 2.161.3 the deletion of the existing fourth sub-paragraph of that Schedule in its entirety.
3. With effect from November 2016, the 2008 Agreement was amended as set out in this paragraph 3:
- 3.1 existing Clause 22.10 was amended by the deletion of the words “It shall be the responsibility of the Operator to pursue with all due diligence claims under such insurance policies.”.
4. All other amendments to the 2008 Agreement made in this Agreement take effect as from the date of this Agreement.

ANNEXURE

BYE-LAWS

Available on the Corporation's website:

<https://tfl.gov.uk/corporate/terms-and-conditions/byelaws#on-this-page-2>

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed the day and year first before written.

Executed as a Deed by)
affixing the Common Seal of)
Tramtrack Croydon Limited)
in the presence of:)

.....

Authorised signatory

Executed as a Deed
for and on behalf of
Tram Operations Limited
acting by:

Director

Director / Secretary