

SCHEDULE 1

Grant of Franchise

Part 1 - [NOT USED]

Part 2 - DLR Contracts/Undertaking

1. DLR CONTRACTS

- A. Ticketing Schemes
- B. DLR Project Contracts
- C. Property Related Contracts
- D. LT Contracts

2. DLR UNDERTAKINGS

- A. Undertaking as part of Lewisham parliamentary process not to make routine public address announcements on surface stations on the Lewisham Extension.

Part 3 – Direct Agreement

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DIRECT AGREEMENT

DOCKLANDS LIGHT RAILWAY LIMITED

and

SERCO LIMITED

and

[]

BETWEEN

- (1) **DOCKLANDS LIGHT RAILWAY LIMITED** (Company No: 2052677) with its registered office at Operations and Maintenance Centre, PO Box 154, Castor Lane, Poplar, London E14 0DX ("**DLR Limited**");
- (2) **SERCO LIMITED** (Company No: 00242246) with its registered office at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9UY (the "**Franchisee**"); and
- (3) [_____] of [_____] ("**the Contractor**").

WHEREAS

- (A) DLR Limited is the owner and operator of the Docklands Light Railway ("**the Railway**").
- (B) Pursuant to the Franchise Agreement between DLR Limited and the Franchisee dated _____ and various ancillary agreements, DLR Limited has agreed to grant a Franchise to the Franchisee under which it will, inter alia, operate the Railway.
- (C) The Contractor currently supplies/wishes to become a supplier to the Railway.
- (D) DLR Limited wishes to ensure continuity of supply in relation to the Railway.
- (E) Pursuant to the Franchise Agreement, the Franchisee is required to obtain the prior consent of DLR Limited prior to entering into certain contracts and DLR Limited must enter into a direct agreement with the counterparty to such contract.

NOW IT IS HEREBY AGREED as follows:

1. **DLR Consent**

Subject to the obligations set out in this Agreement, DLR Limited hereby consents to the Franchisee entering into a contract with the Contractor in the form attached at schedule 1 ("**the Contract**");

2. **Variation**

The Franchisee and the Contractor undertake to DLR Limited that they will not make or agree to any material amendment to, or variation of, the Contract without the prior written consent of DLR Limited, such consent not to be unreasonably withheld.

3. **Franchisee Default**

- 3.1 The Contractor undertakes not to take any step or to exercise any right whether under the Contract, under common law or otherwise to cancel, terminate, suspend or revoke the Contract or any of its obligations thereunder or to take any action analogous thereto howsoever arising without first giving to DLR Limited and the Franchisee not less than 28 days prior written notice ("**the Notice Period**") specifying the grounds upon which the Contractor proposes to take such action (such notice to be referred to as the "**Termination Notice**").

3.2 The Contractor undertakes not to take any action in respect of any grounds set out in any Termination Notice if:-

- (a) such breach or default is capable of remedy and is remedied or cured prior to the expiry of the Notice Period; or
- (b) such breach or default is incapable of remedy but all costs, damages and expenses due and payable to the Contractor have been paid prior to the expiry of the Notice Period; or
- (c) a Novation Notice is issued pursuant to Clause 5.2 below and the Confirmatory Notice is served by DLR Limited on the Contractor pursuant to Clause 9 below.

4. **Provision of Information**

Upon receipt of the Termination Notice the Contractor shall supply DLR Limited with such information as it shall reasonably request concerning the Contract and its operation and in particular as to the circumstances and events causing the Contractor to issue the Termination Notice. Such information shall be supplied by the Contractor to DLR Limited as soon as practicable but in any event not less than 21 days prior to the expiry of the Notice Period. If the information requested is supplied less than 21 days prior to the expiry of the Notice Period the Notice Period shall automatically be extended to terminate 21 days after the date the last of the information requested by DLR Limited is supplied to it.

5. **Novation**

At any time:

- 5.1 within 28 days of the termination of the Franchise Agreement howsoever caused; or
- 5.2 prior to the expiry of the Notice Period where a Termination Notice has been served; or
- 5.3 where the Franchisee consents in writing,

DLR Limited may give notice ("**a Novation Notice**") to the Contractor and the Franchisee to the effect that:

- (a) DLR Limited; or
- (b) another person approved by DLR Limited ("**Transferee**"),

(either such person to be hereinafter referred to as the "**Novatee**") intends to assume the rights and obligations of the Franchisee under the Contract and specifying a day (the "**Novation Date**"), being not later than 28 days after the date of service of the Novation Notice, on which such assumption is to be effective, subject to:

- (a) the Contractor's consent pursuant to Clause 8 in the case of a Transferee; and
- (b) receipt by the Contractor of a Confirmatory Notice from DLR Limited in accordance with Clause 9.

6. Termination of the Contract

- 6.1 Neither the Franchisee nor the Contractor may cancel, terminate, suspend or revoke the Contract nor shall the Contract be automatically terminated on the happening of any particular event unless and until:

either

- (i) a Novation Notice is not served within 28 days of the termination of the Franchise Agreement; or
- (ii) prior to the expiry of the Notice Period where a Termination Notice has been served;

or

- (b) a Novation Notice is served as above but the Confirmatory Notice is not served in accordance with Clause 9.

- 6.2 The Franchisee and the Contractor shall procure that the provisions set out at sub-clause 6.1 are incorporated into the Contract.

7. Interim Period

- 7.1 The Contractor shall during the period between the termination of the Franchise Agreement and the Novation Date or, (where Clause 3 applies), between the date of the Termination Notice and the Novation Date, continue to perform its obligations under the Contract in accordance with the terms of the Contract.

- 7.2 The Franchisee shall be responsible for meeting all its obligations under the Contract incurred prior to the Novation Date or, as applicable, termination of the Contract.

- 7.3 On the Novation Date, the Franchisee shall be released from all obligations under the Contract, except that the Franchisee shall be liable for all losses, liabilities, damages, costs or expenses (including legal fees) arising from any antecedent breach of the Contract by the Franchisee.

8. Novation to Transferee

- 8.1 A novation to a Transferee in accordance with any Novation Notice shall only be effective if the Contractor consents to that Novation in writing (such consent not to be unreasonably withheld or delayed) and shall be deemed to be granted if notice in writing withholding such consent is not received by DLR Limited within 10 days of the issue of such Novation Notice.

- 8.2 Notwithstanding the foregoing, the Contractor shall not be entitled to withhold consent if it is reasonably likely that the Transferee will have sufficient financial resources available to it in order to be able to meet its obligations under the Contract as and when these fall due, save that the Contractor shall be entitled to withhold consent if the Transferee is, or is an affiliate of, a company which is a direct competitor of the Contractor in relation to the primary business of the Contractor.

- 8.3 If the Contractor refuses consent in accordance with Clause 8.1, DLR shall be entitled to issue a Novation Notice in respect of a third party succeeding, either directly or indirectly, the Franchisee in the provision of all or any of the services it is required to supply to DLR Limited in respect of the Railway under the Franchise

Agreement and the Contractor shall be deemed to consent to novation of the Contract to such third party.

- 8.4 DLR Limited shall supply the Contractor with such information as the Contractor reasonably requires to enable it to decide whether to grant a consent pursuant to Clause 8.1.

9. **Confirmation**

Not later than 5 days prior to the Novation Date DLR Limited shall be entitled, but not obliged, to serve a Confirmatory Notice on the Contractor whereupon the novation of the Contract shall, subject as provided in Clause 7.3, become effective on the Novation Date in accordance with Clause 5.4.

10. **Rights on Novation**

On the Novation Date:

- (a) the Novatee shall become a party to the Contract in place of the Franchisee and thereafter shall be treated as if it had originally been named as a party thereto in place of the Franchisee, subject to Clause 7.2;
- (b) the Novatee shall assume and enjoy the rights and perform the obligations of the Franchisee under the Contract arising on or after the Novation Date and the Franchisee shall no longer enjoy any rights and shall be released from all obligations under the Contract arising on or after the Novation Date under the Contract; and
- (c) the Contractor shall owe its obligations under the Contract to the Novatee in place of the Franchisee to the extent that they have not been discharged on or prior to the Novation Date.

11. **Waiver and Variation**

- 11.1 There shall be no waiver of any term, provision or condition of this Agreement unless such waiver is evidenced in writing and signed by the waiving party.
- 11.2 No omission or delay on the part of either party in exercising any right power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege. The rights and remedies in this Agreement, are cumulative with and, except as expressly provided to the contrary in the Franchise Agreements, not exclusive of any rights or remedies provided by law.
- 11.3 No variation to this Agreement shall be effective unless made in writing and signed by all parties.

12. **Partial Invalidity**

If at any time any provision of this Agreement (or part thereof) is or becomes illegal or invalid or unenforceable in any respect under the law of any relevant jurisdiction, such illegality, invalidity or unenforceability shall not affect or impair the legality validity or enforceability in that jurisdiction of any part of that provision or any other provision of this Agreement or, in any other jurisdiction, of any provision of this Agreement.

13. Time of the Essence

Any time, date or period referred to in any provision of this Agreement may be extended by agreement among the parties but as regards any time, date or period originally fixed, or any time, date or period so extended, time shall be of the essence.

14. Further Assurance

Each party agrees that it shall now or at any time during the subsistence of this Agreement do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the other party as the other party may reasonably require for giving full effect to and obtaining the full benefit of the rights powers and remedies conferred upon such other party by this Agreement.

15. Restrictions

- (a) Each party to the Franchise Agreements will use its respective reasonable endeavours in co-operating with the other parties in assessing whether the relevant Franchise Agreements infringe or may infringe any applicable competition law provisions, and in particular the Chapter I Prohibition contained in the Competition Act 1998 and/or Article 81(1) of the EC Treaty. In the event that the parties are unable to reach agreement on such an assessment, such co-operation may take the form of independent legal advice, the costs and expenses of which will be jointly funded by each party to the relevant agreement.
- (b) If any provision of the Franchise Agreements is deemed unenforceable by operation of Article 81(1) of the EC Treaty or Chapter I of the Competition Act 1998 or any other applicable competition law prohibition, then the parties shall in good faith consult with each other to agree an alternative provision which achieves a result as similar as possible to the result which would have been achieved by the provision deemed unenforceable.

16. Costs

Save as expressly otherwise provided in this Agreement each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other agreement incidental to or referred to in this Agreement.

17. 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 counterparts shall together constitute one and the same instrument.

18. Language of Agreement

The language of this Agreement is the English language.

19. Proper Law

This Agreement is governed by English law and each of the parties to this Agreement irrevocably agrees that the courts of England have exclusive jurisdiction to hear and decide any suits, actions or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement and, for

these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

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 **DOCKLANDS**)
LIGHT RAILWAY)
acting by:)
)

Director

Secretary

Executed as a deed by **SERCO LIMITED**)
acting by:)
)
)

Director

Secretary

Executed as a deed by **[CONTRACTOR]**)
acting by:)
)
)

Director

Secretary

SCHEDULE 1

The Contract