

DATED 29 JULY 1987

(1) THE CHANNEL TUNNEL GROUP LIMITED

(2) FRANCE-MANCHE S.A.

(3) THE BRITISH RAILWAYS BOARD

(4) LA SOCIETE NATIONALE DES CHEMINS DE FER FRANCAIS

USAGE CONTRACT

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USAGE CONTRACT

THIS AGREEMENT is made

BETWEEN:—

- (1) THE CHANNEL TUNNEL GROUP LIMITED of Portland House, Stag Place, London, SW1E 5BT ("CTG"),
- (2) FRANCE MANCHE SOCIETE ANONYME of Tour Franklin, 100 Terrasse Boieldieu, Puteaux Cedex 11, 92081 Paris-la-Défense ("FM"),
- (3) THE BRITISH RAILWAYS BOARD of Euston House, 24 Eversholt Street, London NW1 1DZ ("BR") and
- (4) LA SOCIETE NATIONALE DES CHEMINS DE FER FRANCAIS of 88 rue St-Lazare, 75009 Paris ("SNCF").

WHEREAS:—

A. CTG and FM (together the "Concessionaires") have entered into an agreement with the Secretary of State for Transport of the United Kingdom of Great Britain and Northern Ireland and Le Ministre de l'Urbanisme du Logement et des Transports of France dated as of 14 March 1986 (the "Concession") whereby the Concessionaires have jointly and severally been granted the right to carry out the development, financing, construction and operation of a fixed link (the "Fixed Link") under the English Channel between the Departement of Pas-de-Calais in France and the County of Kent in England on the terms and conditions therein contained.

B. The Concessionaires, BR and SNCF (BR and SNCF being together called the "Railways") agreed, by heads of agreement dated 24 September 1986 (the "Heads of Agreement"), the principles and conditions upon which the Concessionaires would permit Trains of the Railways to pass through the Fixed Link from the Commencement Date until the expiry of the Concession Period and the conditions upon which the Railways would provide certain railway infrastructure.

C. This Usage Contract is the agreement which the Heads of Agreement envisaged would supplement and replace those Heads.

D. The Concessionaires carry on business together as a partnership under English law and as a "société en participation" under French law for the construction and operation of the Fixed Link.

IT IS HEREBY AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, including the Recitals and the Schedules, the following words and expressions shall, except where the context otherwise requires, have the following meanings:—

"Agreed Traffic Forecast" the meaning given in Clause 5.2;

"AIM" the "Accord concernant le Transport International Ferroviaire des Marchandises" (the Agreement concerning the International Carriage of goods by Rail), as in force from time to time;

"AIV" the "Accord concernant le Transport International Ferroviaire des Voyageurs et Bagages" (the Agreement concerning the International Carriage of Passengers and Luggage by Rail), as in force from time to time;

"Bulk Freight" goods such as those listed below when carried in bulk:
- domestic and industrial coal and coke, patent fuels

- raw materials: ores, scrap, fluxes
- construction materials: aggregates, cements, timber, building materials and refuse
- petroleum, oil, gas products
- edible products: cereals and animal foodstuffs
- china clay
- industrial minerals: chemicals, fertiliser, salt, agricultural lime, potash
- metallurgical and steel industry products;

“Business Day” a day on which banks are open for business in both London and Paris;

“CEH” the European Passenger Timetable Conference, through which European railways agree and co-ordinate their timetables for cross-frontier passenger train services;

“CEM” the European Freight Train Timetable Conference, through which European railways agree and co-ordinate their timetables for cross-frontier freight train services;

“CIM” the uniform rules established pursuant to COTIF concerning contracts for international carriage of goods by rail, as in force from time to time;

“CIT” the Comité International des Transports Ferroviaires (International Rail Transport Committee);

“CIV” the uniform rules established pursuant to COTIF concerning contracts for international carriage of passengers and luggage by rail, as in force from time to time;

“Commencement Date” the date from which the IGC authorises the Fixed Link to be brought into commercial operation for any category of Train under Clause 11 of the Concession;

“Common Section” those lines forming part of the Fixed Link which are normally to be used both by all categories of Trains and by Shuttles;

“Concession” the Concession referred to in Recital A hereto, as it may be modified or supplemented;

“Concessionaires” CTG and FM or, during any period of substitution under Clause 32.1(1) of the Concession, the Substituted Entities;

“Concession Period” the meaning given in Clause 1 of the Concession;

“COTIF” the Convention concerning International Carriage by Rail dated 9 May 1980, as in force from time to time;

“Default Rate” as to any period, IBOR plus three per cent (3%);

“Effective Date” the date on which this Agreement comes into operation under Clause 31;

“Fixed Link” the fixed link referred to in Recital A and in Article 1 of the Treaty;

“Freight Trains” trains solely carrying or intended solely to carry freight;

“Heads of Agreement” the meaning given in Recital B;

“Headway” the minimum time (as determined by the signalling system installed in the Common Section) between the passage of two Shuttles, each following a Standard Path, travelling consecutively over the determinant signalling section of the Common Section without receiving any restrictive signal, plus margins fixed by the Concessionaires after consultation with the Railways and calculated in accordance with UIC regulations;

“High Speed Trains” trains principally carrying or intended to carry passengers and capable of maintaining speeds of 250 kph or more on infrastructure specially constructed for those speeds;

“Hour” a clock hour or other cycle of 60 minutes used for preparation of a particular Timetable or for calculating the capacity of the Common Section;

“IBOR” (i) in relation to any amount in pounds sterling or French francs, the arithmetic mean, rounded upwards if necessary to the nearest whole multiple of one sixteenth of one per cent (1/16%), of the rates per annum at which the Reference Banks (or two of them if one of the Reference Banks does not state the rate) offer to prime banks one (1) month deposits, in amounts comparable with the relevant amount and in the relevant currency, in the London (for an amount in pounds sterling) interbank market, or the Paris (for an amount in French francs) interbank market, as the case may be, at or about 11:00 a.m. local time on the normal quotation day for the first day of the period for which such rate is to be determined, or

(ii) if it is not possible for any reason to determine the applicable rate in accordance with the above procedure, such other interest rate determined according to an alternative method of fixing agreed between the parties with the intention of reflecting as closely as possible the interest rate that would have been fixed in accordance with the above procedure, or in default of agreement in respect of any particular period, the rate of interest last established in accordance with the previous provisions of this definition;

(iii) IBOR for any relevant period shall be calculated by the Concessionaires and shall be notified by them to the Railways together with the elements of the calculation; each rate so notified shall be prima facie conclusive;

"IGC" the Intergovernmental Commission established pursuant to Article 10 of the Treaty;

"IMP" the "Indice Mensuel des Prix la Consommation, des ménages urbains, dont le chef est employé ou ouvrier, série France entière, ensemble" (the monthly index for consumer prices for all France for urban households whose head is at work maintained by the Institut National des Statistiques et des Etudes Economiques);

"Interest Rate" as to any period, IBOR for that period plus one per cent (1%);

"Non Bulk Freight" freight other than Bulk Freight;

"Operating Costs" the meaning given in Clause 10.1;

"Passenger" any person travelling on a Train through the Fixed Link, other than an employee or agent of any railway or any public authority performing in each case duties in relation to the passage of Trains, except as agreed between the parties;

"Prudent and Diligent Operator" (i) when used in relation to an obligation of the Concessionaires, that degree of prudence and diligence reasonably to be expected of an experienced international railway operator, operating the Fixed Link, and

(ii) when used in relation to an obligation of BR, SNCF or the Railways, that degree of prudence and diligence reasonably to be expected of an experienced international railway operator, operating BR's and/or SNCF's railway network, as the case may be;

"Railways" the meaning given in Recital B;

"Railway Infrastructure" the new infrastructure of, without limitation, railway lines and terminals to be provided by BR or SNCF, as the case may be, under this Agreement;

"Railways' Rolling Stock" rolling stock, including traction units, used or to be used by the Railways for passage through the Fixed Link;

"Reference Banks" National Westminster Bank Plc, Midland Bank Plc and Barclays Bank Plc in relation to any amount in pounds sterling and Crédit Lyonnais, Banque Nationale de Paris and Banque Indosuez in relation to any amount in French francs and their respective successors, or such other banks that may be agreed by the parties;

"Reference Path" for any particular type of Train or Shuttle, the meaning given in Schedule VIII Part A;

"RPI" the U.K. Index of Retail Prices (all items) maintained by the Department of Employment;

"Safety Authority" the Safety Authority established pursuant to Article 11 of the Treaty;

"Six Year Traffic Forecast" the meaning given in Clause 5.1 (i);

"Shuttles" the shuttle trains to be operated by the Concessionaires within the Fixed Link;

"Special Agreement" any supplemental written agreement, so designated, between the Concessionaires and the Railways envisaged in this Agreement;

"Standard Path" the meaning given in Clause 6.1(i);

"Substituted Entities" the meaning given in Clause 32.1(1) of the Concession;

"Target Commencement Date" the later of:—

- (A) (i) such date, specified by the Concessionaires by written notice to the Railways, given after the Effective Date but no later than 31 December 1988, which is neither earlier than 15 May 1993 nor less than 60 months after the date of that notice, or
- (ii) if no such notice is given, the date which is 60 months after 31 December 1988;
- and
- (B) if the designs and design details referred to in Clause 4.3(ii) are not provided to the Railways by 31 January 1988, such date as is 63 months and two weeks from the date on which such designs and design details are provided to the Railways.

"Timetable" the meaning given in Clause 6.5(iii);

"Tonnes" for the purpose of the calculation of Usage Charges, gross tonnes of freight, including packaging other than the container or wagon or any other equivalent transport unit;

"Trains" trains presented or to be presented by the Railways for passage through the Fixed Link, whether owned by the Railways or treated as owned by the Railways under Clause 18.2(i);

"Treaty" the Treaty dated 12 February 1986 between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the construction and operation by private concessionaires of the Channel fixed link;

"Type" when used in relation to traffic, any type of traffic carried on Trains for which a Toll (as defined in Clause 7.4 (i)) is provided in Schedule VI;

"UIC" the International Union of Railways;

"Unit of Account" the meaning given in Clause 9.1;

"Unit of Traffic" any Passenger or Tonne of freight carried on a Train;

"year" a calendar year.

1.2 The obligations referred to in this Agreement as the "Clause 1.2 Obligations" are;

- in relation to the Concessionaires, their obligations under Clauses 2.1, 2.3 (i), 2.4 (i) and 2.5 (in the case of Clause 2.5 insofar as the Concessionaires' obligations thereunder fall to be performed on the Target Commencement Date);
- in relation to the Railways, their obligations under Clause 3.1(i);

1.3 References to Clauses and Schedules are references to Clauses and Schedules of this Agreement. Clause and sub-clause headings are inserted for convenience only and shall not affect the interpretation of this Agreement.

1.4 This Agreement regulates the relationship between the Concessionaires on the one hand and the Railways on the other. It is envisaged that the mutual rights and obligations of the Railways will be regulated by a separate agreement.

1.5 The obligations of BR and SNCF under this Agreement are joint and several ("solidaires") except that their obligations under Clauses 3.2, 13.1(iii) and 22 are several ("conjointes") only.

1.6 The obligations of the Concessionaires under this Agreement are joint and several ("solidaires").

1.7 Any reference to a "party" to this Agreement is, unless the context otherwise requires, either to the Railways together, as one party, or to the Concessionaires together as another party.

2. THE CONCESSIONAIRES' OBLIGATIONS

2.1 The Concessionaires shall make the Fixed Link available to pass Trains in accordance with this Agreement on the earlier of:

- (i) the Target Commencement Date, and
- (ii) the date on which it is available to pass Shuttles, or, if later, the date on which the Railways are ready to start services with Trains of any category.

2.2 (i) The Concessionaires shall submit to the IGC, in relation to the initial construction of the Fixed Link, all drawings and documentation referred to in Clause 7.2 of the Concession and, in relation to any proposal for modification after initial construction, the corresponding drawings and documentation, and shall in each such case submit them to the IGC in accordance with the procedure described in Clause 7.2 of the Concession.

(ii) The drawings and documentation (the "Design Documents") submitted by the Concessionaires under paragraph (i) of this Clause 2.2 shall conform with the specifications set out in Schedule III Part A and (subject to any modification proposed in accordance with Clause 2.4 (ii) and (iii) and considered to have been accepted in accordance with Clause 7.1 of the Concession) with the description in Schedule I. The parties shall attempt, before submission of Design Documents to the IGC, to reach agreement on specifications with regard to the matters in Schedule III Part B, and Design Documents submitted to the IGC shall comply with any specifications so agreed. If the IGC makes it known that it rejects or will reject Design Documents, this Clause shall apply with respect to alternative Design Documents.

2.3 (i) The Concessionaires shall, as to the initial construction of the Fixed Link, comply with Design Documents produced in accordance with Clause 2.2.

(ii) The Concessionaires shall not make any modification to the Fixed Link inconsistent with Design Documents produced in accordance with Clause 2.2.

2.4 (i) The Concessionaires shall ensure that, on the date on which, under Clause 2.1, they are obliged to make the Fixed Link available to pass Trains, the Fixed Link:

- (a) insofar as concerns matters relating to the passage of Trains through the Fixed Link, complies (subject to paragraph (ii) of this Clause 2.4) with the description contained in Clauses 2.2 and

2.4 of the Concession and Annex I to the Concession (as modified in accordance with Clause 7.1 of the Concession), and (subject as aforesaid) with the description contained in Schedule I of this Agreement, and

- (b) is ready to be brought into operation under Clause 11 of the Concession for the passage of all categories of Train.

(ii) The Concessionaires shall inform the Railways of any modification which they intend to propose to the IGC under Clause 7.1 of the Concession (whether or not inconsistent with Schedule I) insofar as concerns matters relating directly or indirectly to the passage of Trains through the Fixed Link. They shall give the Railways reasonable time to consider and comment upon such modifications before (subject to paragraph (iii)) they are submitted to the IGC.

(iii) The proposed modification shall, as far as practicable, take account of the comments of the Railways, and the Concessionaires shall not make any such proposal to the IGC if it would have a materially adverse effect upon the Railways (and if the Railways allege that a proposed modification would have such effect, they shall provide to the Concessionaires their reasons for saying so) unless:

- (a) the proposed modification is necessary to meet requirements of the IGC, or
- (b) failure to make the modification would have a materially adverse effect upon the Concessionaires (and if the Concessionaires allege that such failure would have such effect, they shall provide to the Railways their reasons for saying so).

(iv) The Concessionaires may implement any modification, a proposal for which is within Clause 2.4(ii), if the proposal is made in accordance with the procedure in Clause 2.4(ii) and (iii) and it is considered to have been accepted by the IGC in accordance with Clause 7.1 of the Concession, but not otherwise.

2.5 So far as directly or indirectly relevant to the passage of Trains, the Concessionaires shall apply UIC regulations to their fixed railway installations and the Shuttles, except where derogations are agreed between the Concessionaires and the UIC with the agreement of the Railways, the agreement of the Railways not to be unreasonably withheld, or where such regulations are inconsistent with Annex I to the Concession (as modified in accordance with this Clause 2) or the requirements of the IGC.

2.6 (i) The Concessionaires shall grant the Railways reasonable access to the relevant parts of the Fixed Link and to relevant test documentation to enable the Railways to be satisfied, during construction and commissioning of the Fixed Link, that the specifications required by this Agreement are met.

(ii) The parties shall conclude a Special Agreement containing appropriate arrangements (including proving tests and financial matters) as to commissioning the Fixed Link for the passage of Trains.

2.7 (i) Subject as otherwise provided by this Agreement, the Concessionaires shall take all those steps that would be taken by a Prudent and Diligent Operator to permit the steady flow and continuity of traffic carried by Trains through the Common Section 24 hours a day every day from the Commencement Date until the expiry of the Concession Period. Notwithstanding the previous sentence, the Concessionaires shall ensure during the period mentioned therein that whenever the Common Section is available for the passage of Shuttles it shall also be available for the passage of Trains.

(ii) The obligations mentioned in Clause 2.7 (i) shall not apply during any period of a day or more when the Railways do not intend to pass Trains as indicated by the Timetable then in force or by the Railways so notifying the Concessionaires. If the Railways wish Trains to be passed during such periods they shall give 14 days prior notice in writing to the Concessionaires who shall pass such Trains so far as practicable.

3. THE RAILWAYS' OBLIGATIONS

3.1 Commencement of services

(i) The Railways undertake on the Target Commencement Date to commence regular commercial services through the Fixed Link of Trains carrying Passengers.

(ii) The Railways undertake on the Target Commencement Date to commence regular commercial services through the Fixed Link of Freight Trains.

(iii) (a) The Railways shall use their best endeavours to ensure that from the date on which they commence regular commercial services of Trains carrying Passengers through the Fixed Link, the normal scheduled journey time for non-stop High Speed Trains travelling between London and Paris will be within the time band of 2 hours 55 minutes to 3 hours 05 minutes.

(b) The Railways undertake that from the date which is twenty four (24) months from the date referred to in paragraph (a), the normal scheduled journey time for non-stop High Speed Trains travelling between London and Paris will be within the time band of 2 hours 55 minutes to 3 hours 05 minutes.

(iv) If and so long as the Standard Path is longer than is prescribed by Clause 6.1(ii) (or (iv) where applicable), the limits of the time band mentioned in paragraph (iii) of this Clause shall be adjusted upwards by a period of time equal to the excess, without prejudice to Clause 18.

3.2 Railway Infrastructure

3.2.1 (i) (a) BR shall ensure that, on the first date on which the Railways operate regular commercial services through the Fixed Link both of Trains carrying Passengers and of Freight Trains, BR has available Railway Infrastructure in the United Kingdom which is sufficient in accordance with good railway practice to permit, together with the railway network available for use by BR, the carriage through the Fixed Link during the twelve (12) month period commencing on that date of 17,400,000 Passengers, 5,200,000 Tonnes of Non-Bulk Freight and 2,900,000 Tonnes of Bulk Freight.

(b) The infrastructure which BR currently envisages having available so as to satisfy its obligation under paragraph (a) of this Clause 3.2.1(i) is described in outline in Part B1 of Schedule II.

(c) If, at any time before the Target Commencement Date, BR intends to satisfy its obligation under paragraph (a) of this Clause 3.2.1(i) by having available infrastructure different from that mentioned in Part B1 of Schedule II (or from that previously notified under this paragraph (c)), it shall so notify the Concessionaires in writing, with an appropriate explanation of the change and of the adequacy of the infrastructure then envisaged to satisfy BR's obligations under Clause 3.2.1(i)(a).

(ii) (a) BR shall, subject to its normal investment appraisal criteria being satisfied, use its best endeavours to have available by the commencement of each year specified in paragraph (b) of this Clause 3.2.1(ii) such additional Railway Infrastructure (if any) in the United Kingdom as is sufficient, in accordance with good railway practice, together with the railway network available for use by BR, to permit the carriage through the Fixed Link during that year of the level of each Type of traffic envisaged in the forecast referred to in paragraph (c) of this Clause 3.2.1 (ii).

(b) The years referred to in paragraph (a) of this Clause 3.2.1 (ii) are all the years which commence during the term of this Agreement but after the end of the year in which the Railways operate for the first time both services referred to in Clause 3.1.

(c) The forecast for a particular Type of traffic referred to in paragraph (a) of this Clause 3.2.1 (ii) is, for any particular year:

- (1) the Agreed Traffic Forecast established for that year when it last fell to be included in a Six Year Traffic Forecast, or
- (2) if any Agreed Traffic Forecast previously established for that year was lower, that lower Agreed Traffic Forecast (or, if more than one, the lowest of those lower Agreed Traffic Forecasts).

(iii) Without prejudice to paragraph (ii) of this Clause 3.2.1, in the event that, by application of BR's normal investment appraisal criteria or as a result of BR's best endeavours proving unsuccessful, the result intended in paragraph (ii) cannot be achieved, then, subject to BR's normal investment appraisal criteria being satisfied, BR shall complete, by the time specified in Clause 3.2.1 (ii)(a) or as soon thereafter as possible, such additional Railway Infrastructure as it is able to complete most nearly corresponding to that envisaged in paragraph (ii).

(iv) BR shall keep available such parts of its infrastructure as a Prudent and Diligent Operator would keep available to carry at least the traffic forecast by the most recent Six Year Traffic Forecast.

3.2.2 (i) (a) SNCF shall ensure that, on the first date on which the Railways operate regular commercial services through the Fixed Link both of Trains carrying Passengers and of Freight Trains, SNCF has available Railway Infrastructure in France which is sufficient in accordance with good railway practice to permit, together with the railway network available for use by SNCF, the carriage through the Fixed Link during the twelve (12) month period commencing on that date of 17,400,000 Passengers, 5,200,000 Tonnes of Non-Bulk Freight and 2,900,000 Tonnes of Bulk Freight.

(b) The infrastructure which SNCF currently envisages having available so as to satisfy its obligation under paragraph (a) of this Clause 3.2.2 (i) is described in outline in Part C1 of Schedule II.

(c) If, at any time before the Target Commencement Date, SNCF intends to satisfy its obligation under paragraph (a) of this Clause 3.2.2(i) by having available infrastructure different from that mentioned in Part C1 of Schedule II (or from that previously notified under this paragraph (c)), it shall so notify the Concessionaires in writing, with an appropriate explanation of the change and of the adequacy of the infrastructure then envisaged to satisfy SNCF's obligations under Clause 3.2.2(i)(a).

(ii) (a) SNCF shall, subject to its normal investment appraisal criteria being satisfied, use its best endeavours to have available by the commencement of each year specified in paragraph (b) of this Clause 3.2.2 (ii) such additional Railway Infrastructure (if any) in France as is sufficient, in accordance with good railway practice, together with the railway network available for use by SNCF, to permit the carriage

through the Fixed Link during that year of the level of each Type of traffic envisaged in the forecast referred to in paragraph (c) of this Clause 3.2.2 (ii).

(b) The years referred to in paragraph (a) of this Clause 3.2.2(ii) are all the years which commence during the term of this Agreement but after the end of the year in which the Railways operate for the first time both services referred to in Clause 3.1.

(c) The forecast for a particular Type of traffic referred to in paragraph (a) of this Clause 3.2.2(ii) is, for any particular year:

- (1) the Agreed Traffic Forecast established for that year when it last fell to be included in a Six Year Traffic Forecast, or
- (2) if any Agreed Traffic Forecast previously established for that year was lower, that lower Agreed Traffic Forecast (or, if more than one, the lowest of those lower Agreed Traffic Forecasts).

(iii) Without prejudice to paragraph (ii) of this Clause 3.2.2, in the event that, by application of SNCF's normal investment appraisal criteria or as a result of SNCF's best endeavours proving unsuccessful, the result intended in paragraph (ii) cannot be achieved, then, subject to SNCF's normal investment appraisal criteria being satisfied, SNCF shall complete by the time specified in Clause 3.2.2 (ii)(a) or as soon thereafter as possible, such additional Railway Infrastructure as it is able to complete most nearly corresponding to that envisaged in paragraph (ii).

(iv) SNCF shall keep available such parts of its infrastructure as a Prudent and Diligent Operator would keep available to carry at least the traffic forecast by the most recent Six Year Traffic Forecast.

3.3 Railways' Rolling Stock

3.3.1 (i) The Railways shall ensure that, on the first date on which the Railways operate regular commercial services through the Fixed Link both of Trains carrying Passengers and of Freight Trains, they have available that appropriate Railways' Rolling Stock which is sufficient in accordance with good railway practice to permit carriage through the Fixed Link of that annual level of each Type of traffic which is envisaged in the forecast referred to in paragraph (ii) or (iii) of this Clause 3.3.1.

(ii) Subject to paragraph (iii) of this Clause 3.3.1, the relevant forecast for a particular Type of traffic is the highest Agreed Traffic Forecast for that Type of traffic (for any year in the three year period mentioned below), contained in the last Six Year Traffic Forecast to include the three year period comprising the year in which the Railways operate for the first time both the services referred to in Clause 3.1 and the two subsequent years (the "Base Forecast" for the relevant Type of traffic).

(iii) If the highest Agreed Traffic Forecast for that Type of traffic previously established for each of those three years was lower than the Base Forecast for that Type of traffic, that lower forecast shall instead apply.

3.3.2 (i) (a) Subject to their normal investment appraisal criteria being satisfied, the Railways shall use their best endeavours to ensure that, by the commencement of the third year following that in which the Railways operate for the first time both the services referred to in Clause 3.1 and of each subsequent year, they have available that appropriate Railways' Rolling Stock which is sufficient in accordance with good railway practice to permit carriage through the Fixed Link during that year of that level of each Type of traffic which is envisaged in the forecast referred to in paragraph (b) or (c) of this clause 3.3.2 (i).

(b) Subject to paragraph (c) of this Clause 3.3.2 (i), the relevant forecast for a particular Type of traffic is the Agreed Traffic Forecast established for the relevant year in the immediately preceding year ("the Forecasting Year").

(c) If any Agreed Traffic Forecast established for that Type of traffic for that year within the three years preceding the Forecasting Year was lower, that lower Agreed Traffic Forecast (or, if several, the lowest of them) shall instead apply.

(ii) Without prejudice to paragraph (i) of this Clause 3.3.2, in the event that, by application of the Railways' respective normal investment appraisal criteria or as a result of the Railways' best endeavours proving unsuccessful, the result intended in paragraph (i) cannot be achieved, then, subject to the Railways' respective normal investment appraisal criteria being satisfied, the Railways shall use their best endeavours to ensure that they have available such additional Railways' Rolling Stock as they are able to complete most nearly corresponding to that envisaged under paragraph (i).

3.3.3 The Railways shall ensure that the Railways' Rolling Stock is compatible with the Fixed Link as it is to be constructed under Clause 2.

3.3.4 The Railways shall ensure that the Railways' Rolling Stock complies (as to design and condition where appropriate) with applicable UIC regulations (except where derogations are agreed between the Railways and UIC or between the parties), any additional requirements of the IGC and the Safety Authority and the reasonable technical requirements of the Concessionaires.

3.4 Other

3.4.1 In determining whether any infrastructure or Railways' Rolling Stock is "sufficient" to permit the carriage of any particular level of traffic, regard shall be had to anticipated variations in levels of traffic and loading factors.

3.4.2 The Railways shall use their best endeavours to pass through the Fixed Link the highest level of each Type of traffic which is consistent with their normal commercial policies:

- (i) as concerns Freight Trains, from whichever is the later of the Commencement Date and the Target Commencement Date;
- (ii) as concerns Trains carrying Passengers, from the date on which the Railways commence regular commercial services through the Fixed Link of such Trains;

and in each case thereafter throughout the remainder of the Concession Period. In particular, the Railways shall, within the usual international inter-railway arrangements, act jointly with the other European railways, particularly Société Nationale des Chemins de Fer Belges, to achieve this objective.

3.4.3 The Railways shall comply with those instructions of the IGC and the Safety Authority which are applicable to them.

3.4.4 The Railways shall maintain Railways' Rolling Stock in accordance with good railway practice.

3.4.5 The Railways shall ensure that the quality of comfort and general atmosphere on board Trains carrying Passengers will be comparable with that presently available on the high speed passenger services operated by SNCF on the Paris South-East line and by BR on its InterCity services.

4. TECHNICAL LIAISON

4.1 The Concessionaires shall:

- (i) on request provide to the Railways when available outline designs of those parts of the Fixed Link that are required for the passage of Trains, and
- (ii) provide to the Railways such additional design details as the Railways may reasonably request.

4.2 The Railways shall:

- (i) on request, provide to the Concessionaires when available outline designs of the Railways' Rolling Stock; and
- (ii) provide to the Concessionaires such additional design details of the Railways' Rolling Stock as the Concessionaires may reasonably request.

4.3 (i) The Concessionaires and the Railways shall keep one another regularly informed as to the progress of design and construction of those parts of the Fixed Link that are required for the passage of Trains (in the case of the Concessionaires) and the Railway Infrastructure and Railways' Rolling Stock (in the case of the Railways) together with the dates on which the various design details referred to in Clause 4.1 and 4.2 are to be available and shall provide as and when practicable, an anticipated timetable (revised whenever appropriate) of major stages of work.

(ii) The Railways shall, no later than 30 September 1987, specify to the Concessionaires in writing those designs and design details which are necessary to allow them to determine their own design specifications required to ensure compatibility between the Railways' Rolling Stock and the Fixed Link, as provided by Clause 3.3.3.

(iii) The Concessionaires shall use their best endeavours to provide to the Railways no later than 31 January 1988 the designs and design details referred to in paragraph (ii) of this Clause.

4.4 For so long as the Concessionaires have not specified the Target Commencement Date (but only until 31 December 1988), they shall, by written notice given to the Railways at the end of each calendar month after the date of this Agreement, specify their latest best estimate of the Target Commencement Date.

5. TRAFFIC FORECASTS

5.1 (i) (a) The parties shall regularly exchange information relating to the preparation of traffic forecasts. They shall meet for the first time no later than fifty-four (54) months before the Target Commencement Date with a view to agreeing within six (6) months, (and thereafter no later than 15 September in each year, to endeavour to reach agreement by 15 December in that year) on traffic forecasts for each Type of traffic to be carried by Trains for each of the succeeding six (6) years. Each such forecast so agreed for a six (6) year period is a "Six Year Traffic Forecast".

(b) In the absence of agreement on a Six Year Traffic Forecast, the provisions of Clause 30.2 as to conciliation shall apply. Those engaged in the conciliation may jointly appoint an expert to assist them and any traffic forecasts so agreed will thereupon be treated as having been made on the last date specified for agreement as to that Six Year Traffic Forecast in paragraph (a) of this clause 5.1(i) (the "due date"). In the event of failure to reach agreement on a Six Year Traffic Forecast within three (3) months of the due date for agreement as to such traffic forecast, the Railways shall for those years which that Six Year Traffic Forecast was intended to cover, apply, for the purposes for which Agreed Traffic Forecasts are relevant, the traffic forecasts which a Prudent and Diligent Operator would have made in the circumstances (and the traffic forecasts so made will be thereupon treated as having been made on that due date). The Railways shall promptly inform the Concessionaires of each such forecast as to each year and each Type of traffic and explain it to them, and such forecasts shall (until other forecasts are agreed) be treated as a Six Year Traffic Forecast.

(ii) The traffic forecasts referred to in paragraph (i) shall in each case be such forecast as has a fifty per cent. (50%) probability of being exceeded.

5.2 (i) Each traffic forecast established under Clause 5.1 for any particular year is the "Agreed Traffic Forecast" for the year.

(ii) A Six Year Traffic Forecast (and the Agreed Traffic Forecasts for the six (6) years to which it relates) shall only remain valid until 15 December of the year following the year in which it was made, or, if earlier, until replaced.

6. USE OF THE FIXED LINK

6.1 (i) In this Agreement, the "Standard Path" means the path established in accordance with this Clause 6.1 as being required for a Shuttle designed as mentioned in Schedule I paragraph 3 to proceed over the Common Section in normal operating conditions, calculated separately for each of the two directions on the basis of the information set out in Schedule I so far as relevant and in accordance with the factors and principles set out in Schedule VIII.

(ii) In respect of the first Timetable, the Standard Path will be the path predicted by the Concessionaires during the preparation of the relevant provisional timetable in accordance with Clause 6.5(i). In making such prediction the Concessionaires shall not fix a total time for the Standard Path longer than twenty seven (27) minutes, subject to paragraph (iv) of this Clause 6.1.

(iii) In order that the Railways be involved in the decision-making process concerning the Standard Path, the Concessionaires shall make available to the Railways and discuss with them the information taken into account and the methods of calculation employed and shall explain and discuss with the Railways the technical, financial, commercial and other factors leading to their decision as to the prediction of the Standard Path. After the Railways have been involved in the decision-making process as described above, the Concessionaires shall be entitled to take the final decision.

(iv) The Concessionaires shall take such measures as would be taken by a Prudent and Diligent Operator when developing the design of the Fixed Link and of the Shuttle to make the Common Section as short as practicable and generally to minimise the transit time of a Shuttle over the Common Section (and thereby make the Standard Path as short as practicable), taking into account the factors and principles set out in Schedule VIII. For that purpose, the Concessionaires shall position the junction between the Common Section and the continental mainline in France as close as practicable to the tunnel portals, and if the king point of that junction is located within three hundred (300) metres of the tunnel portals, the time predicted under paragraph (ii) shall not be longer than twenty six (26) minutes.

(v) The procedures described in Clauses 6.1(iii) and (iv) shall take place each within appropriate time constraints notified to the Railways by the Concessionaires.

(vi) The Standard Path for Timetables after that mentioned in Clause 6.1(ii) shall be fixed by the Concessionaires during the preparation of the provisional timetable serving as a basis for the Timetable concerned in accordance with Clause 6.5(i) and after discussion with the Railways, as follows:

- (a) as to the first and, if need be, the second Timetable after that mentioned in Clause 6.1(ii), in the light of commissioning tests and acquired operating experience, and
- (b) as to any subsequent Timetable, the same as that fixed for the previous Timetable unless there has been a change in the characteristics of the Fixed Link or Shuttles, but so that the total length of the Standard Path so fixed for any Timetable mentioned in this paragraph (b) shall not be longer than for the previous Timetable, except if so agreed between the parties.

(vii) The capacity of the Common Section is measured in Standard Paths per Hour in each direction. The Concessionaires shall use their best endeavours to ensure that on the Commencement Date the Fixed Link will have a capacity of at least twenty (20) Standard Paths and shall use those endeavours which a Prudent and Diligent Operator would use to maintain such capacity throughout the term of this Agreement.

(viii) The capacity of the Common Section as measured in Standard Paths will be established on the basis of the Headway.

6.2 (i) The Railways shall at all times during the term of this Agreement be entitled to fifty per cent. (50 %) of the capacity, per Hour in each direction, of the Fixed Link, calculated in accordance with Clause 6.3, unless at the request of the Concessionaires they agree to surrender part of their entitlement, such agreement not to be unreasonably withheld.

(ii) If the capacity of the Fixed Link to be allocated under this Clause 6.2 is not an even number of Standard Paths per Hour in each direction, the allocation shall be based on the nearest smaller even number of such Standard Paths, and the remainder shall be allocated between the parties as evenly as possible throughout the Timetable having regard to their entitlement under Clause 6.2(i).

6.3 (i) The number of Standard Paths used by the Railways in any Hour shall be calculated on the basis of the Timetable for the time being (taking into account any modification). It is acknowledged that more than one Standard Path is used by a Train whose path over the Common Section diverges from the Standard Path. The number of Standard Paths and fractions thereof used by each Train is calculated in accordance with Schedule IX.

(ii) Where the proposed Timetable (taking account of any modification to it) would produce a gap between the passage of Trains or between the passage of a Train and a preceding Shuttle which is greater (at entry to or exit from the Common Section, whichever is the less) than the Headway, then the Railways shall be entitled to reduce the gap so as to reduce it to the Headway or increase it (subject to time being available in the Timetable) so as to create a gap usable by a Train or Shuttle following a Standard Path. If the Railways do not reduce the gap to equal the Headway or do not leave a usable Standard Path, then the remaining gap, to the extent it exceeds the Headway, shall be counted as if used by a Train (on the basis set out in Schedule IX) unless the Concessionaires use the remaining gap for a Shuttle.

(iii) The total number of Standard Paths (including fractions) used by the Railways in each Hour in each direction is equal to the sum of the Standard Paths and fractions thereof calculated for each Train entering the Common Section during that Hour, determined in accordance with Clause 6.3(i) and (ii).

(iv) If, during the preparation of the Timetable or modifications to it (excluding modifications which are not planned modifications according to paragraph 13 of Schedule VIII Part B), the Concessionaires do not allocate to Trains as many Standard Paths in any Hour as the Railways request, the Concessionaires shall on request in writing from the Railways demonstrate that the Concessionaires have allocated to Trains in that Hour at least the number of Standard Paths to which the Railways are entitled.

(v) Unused rights to Standard Paths may not be carried from one Hour to another.

6.4 (i) Subject to timetabling in accordance with the factors and principles set out in Schedule VIII (and in particular, without limitation, the Concessionaires' need to provide a frequent and efficient Shuttle service), the Concessionaires will accept for passage Trains travelling at speeds of up to 160 kph from one end of the Common Section to the other.

(ii) The Concessionaires shall co-operate with the Railways in investigating the feasibility of passing Trains through the Fixed Link at speeds of up to 200 kph from one end of the Common Section to the other. The investigations will, in particular, be directed to establishing an estimate of additional maintenance time, ascertaining operational implications, and the estimated amount of consequential capital, operating and maintenance costs.

(iii) Subject to feasibility being established by those investigations, and subject always to timetabling in accordance with the factors and principles set out in Schedule VIII (and in particular, without limitation, the Concessionaires' need to provide a frequent and efficient Shuttle service), the Concessionaires will not without reasonable grounds refuse consent to the passage of Trains at speeds of up to 200 kph from one end of the Common Section to the other. The Railways will pay all additional consequential capital, operating and maintenance costs.

(iv) Except as provided for by Clauses 11.6.3, 16.2 and Schedule VIII Part B, paragraph 6, the Concessionaires shall be entitled to refuse to accept for passage through the Fixed Link:

- (a) any Train that is not to travel over the greater part of the Common Section at a speed of at least 100 kph, and
- (b) any Train that is to travel in the Common Section faster than the Trains mentioned in Clause 6.4 (i) or (when Clause 6.4 (ii) has been complied with and Clause 6.4 (iii) applies) the Trains mentioned in Clause 6.4 (iii).

6.5 (i) The parties shall cooperate each year in the preparation of a provisional timetable for use of the Fixed Link on the basis of the factors and principles set out in Part B of Schedule VIII, to be used as a basis for negotiations in CEH and CEM.

(ii) The parties shall use their best endeavours to ensure that the timetables (as adopted at CEH and CEM for any particular year) are consistent with the provisional timetable (referred to in (i) above) for that year, and shall (except where the other party hereto agrees) ensure that they are not inconsistent with the terms of this Agreement, including, in particular, without limitation, the relevant principles in Part B of Schedule VIII.

(iii) The timetable for each year for the passage of Trains and Shuttles through the Fixed Link (the "Timetable") shall be based on the timetables referred to in paragraph (ii) above and be consistent with the factors and principles set out in Part B of Schedule VIII. Its format and content shall be determined by the Concessionaires after consulting with the Railways.

6.6 (i) The Concessionaires and the Railways shall use their best endeavours to agree a transit path (a "Night Transit Path") in respect of specified periods of the night. The Night Transit Path shall be longer than the Standard Path and be established with a view to enabling the parties to make the best use of the Fixed Link during the period to which it applies.

(ii) The Night Transit Path shall, for each period for which it applies, replace the Standard Path as a measure of capacity available to the parties. For each such period, references in this Agreement to the Standard Path shall be read, *mutatis mutandis* and unless the context otherwise requires, as if they were references to a Night Transit Path.

(iii) In a period when a Night Transit Path applies, a 100 kph Freight Train shall be regarded as using a maximum of two Night Transit Paths and two such Freight Trains passing consecutively and observing the Headway as using a maximum of three Night Transit Paths.

(iv) A path corresponding to a Night Transit Path can be agreed between the parties for other agreed periods. For each such period, references in this Agreement to the Standard Path shall be read, *mutatis mutandis* and unless the context otherwise requires, as if they were references to the path so agreed.

6.7 The Railways shall be entitled to use the paths allocated to them by passing whatever Train they wish, subject to the provisions of this Agreement and in particular, without limitation, those of Schedule VIII.

7. PAYMENT FOR USAGE

7.1 The Railways shall, in respect of each Accounting Period defined in Clause 7.2, pay charges ("Usage Charges") for passing Trains through the Fixed Link.

7.2 (i) The first Accounting Period is the period from the date on which the Railways commence commercial services through the Fixed Link with any category of Train until 31 December of the year in which that date falls (both dates inclusive).

(ii) Each subsequent Accounting Period shall extend from 1 January in each year until 31 December or, if earlier, the date on which this Agreement terminates (both dates inclusive).

7.3 (i) Each Accounting Period is divided into "Reference Periods".

(ii) The first Reference Period extends from the start (French time) of the first day of the first Accounting Period to midnight (French time) on the last day of the calendar month in which that Accounting Period begins.

(iii) Each subsequent Reference Period commences on the expiry of the immediately preceding one and extends until midnight (French time) on the last day of the calendar month in which it commences, save that the last Reference Period shall end at midnight (French time) on the last day of the last Accounting Period.

7.4 (i) Usage Charges comprise a fixed element (the "Fixed Annual Usage Charge") and a variable element ("Tolls").

(ii) The Fixed Annual Usage Charge in respect of any Reference Period, shall be calculated in accordance with Schedule VI, *pro rata temporis* on the basis (subject to Clause 7.5(vi)) of the number of days comprised in that Reference Period and a year of 365 days.

(iii) Usage Charges shall be calculated in accordance with Clause 7.7(v).

(iv) Usage Charges are subject to reduction in accordance with Schedule VII.

(v) The parties shall, as and when necessary, agree in advance on special fees for Trains whose passage through the Fixed Link requires special operating provisions and the terms on which they are to be paid. The amount of such fees shall be fixed having regard to disruption caused to operations in the Fixed Link, any special measures required and the risk to the Fixed Link.

(vi) For the purpose of calculating Tolls, passengers and drivers travelling on Shuttles with combined Motorail/Shuttle Tickets issued pursuant to arrangements between the Concessionaires and the Railways shall be treated as Passengers.

7.5 (i) The Railways shall, for each Reference Period, calculate a provisional amount in respect of Usage Charges (the "Provisional Usage Payment" for that Reference Period) and notify the amount so calculated (together with the appropriate details of the calculation) to the Concessionaires no later than three (3) Business Days after the end of the relevant Reference Period.

(ii) Provisional Usage Payments shall be calculated in accordance with paragraph (iii) of this Clause 7.5, save that if, as so calculated, the Provisional Usage Payment for those Reference Periods for which a "Minimum Usage Charge" is specified in paragraph (v) of this Clause 7.5 would be less than, it shall instead be equal to, that Minimum Usage Charge.

(iii) Subject to paragraph (ii) of this Clause 7.5, the Provisional Usage Payment for any particular Reference Period shall be equal, before indexation, to the total of:

(a) the sum of the amounts obtained, for each Type of traffic, by multiplying:

- (1) the number of Units of Traffic of that Type estimated to have been carried through the Fixed Link on Trains during that Reference Period (as specified in the certificate of the Railways delivered with respect to that Reference Period under Clause 8.1 (ii)), by
- (2) the Provisional Average Unit Toll for that Type of traffic (as defined in paragraph (iv) of this Clause 7.5),

plus

(b) the amount of Fixed Annual Usage Charge in respect of that Reference Period (before indexation).

(iv) (a) The Provisional Average Unit Toll for all Reference Periods comprised in a particular Accounting Period is, for a particular Type of traffic, the average Toll per Unit of Traffic of that Type, calculated on the basis of Schedule VI, disregarding indexation, and on the assumption that the total number of Units of Traffic of that Type to be carried through the Fixed Link during that Accounting Period will be the number forecast for the year corresponding to (or including) that Accounting Period by agreement between the parties in the preceding year (adjusted, if that Accounting Period is less than a year, in the manner described in (1) below) or, if the parties fail to reach agreement on a traffic forecast and do not otherwise agree:

- (1) for the first Accounting Period, the relevant figure in Schedule IV (adjusted, if the first Accounting Period is less than a year, by multiplying that figure by $n/365$ where "n" is the number of days in the first Accounting Period) ;
- (2) for the second Accounting Period, $(100 + x \%)$ of the number of Units of Traffic of the relevant Type carried through the Fixed Link during the first Accounting Period (adjusted to a yearly figure, if the first Accounting Period was less than a year, by multiplying that number by $365/n$, where "n" is the number of days in the first Accounting Period) and where "x" is 2.7 % for Passengers, 4.3 % for Non-Bulk Freight and 2.2 % for Bulk Freight;
- (3) for the third and subsequent Accounting Periods, $(100 + y \%)$ of the number of units of the relevant Type of traffic carried through the Fixed Link during the immediately preceding Accounting Period ("AP-1") where "y" is the percentage increase in the volume of that Type of traffic carried during AP-1 over the volume carried during the Accounting Period immediately preceding AP-1 (adjusted to a yearly figure as described in paragraph (2) above, if that immediately preceding Accounting Period was less than a year).

(b) For the purpose of paragraphs (a)(2) and (3) of this Clause 7.5(iv), the number of Units of Traffic of any particular Type carried through the Fixed Link during any particular Accounting Period (the "previous" Accounting Period) shall be the figure agreed between the parties or determined by the Expert under Clause 8.3 or (if neither of these is available on the last day of the first Reference Period of the current Accounting Period):

- (1) if the Railways' certificate under Clause 8.1(iii) with respect to the previous Accounting Period is available on the last day of the first Reference Period in the current Accounting Period, the number of Units of Traffic of the relevant Type specified in that certificate;
- (2) in any other case, the aggregate of the number of Units of Traffic of that Type specified in the certificates delivered by the Railways under Clause 8.1(ii) with respect to Reference Periods in the previous Accounting Period, multiplied by a/n , where "a" is the number of Reference Periods in the previous Accounting Period and "n" is the number of Reference Periods for which certificates have been so delivered by the last day of the first Reference Period of the current Accounting Period (or, if fewer than $a \times 3/4$ such certificates have been so delivered by that date, such number of Units of Traffic of the relevant Type as the Concessionaires may reasonably estimate to have been carried through the Fixed Link during the previous Accounting Period).

(v) The Usage Charge for each of the first Reference Periods (up to and including one hundred and forty four (144) such Reference Periods) which both (i) commence on or after the first date on which the Railways operate regular services through the Fixed Link both of Trains carrying Passengers and Freight

Trains and (II) are a full calendar month shall be a minimum amount of 4,167,000 Units of Account (the "Minimum Usage Charge", which expression includes any lower amount resulting from adjustment in accordance with the following provisions of this paragraph (v)), provided that:

(a) if, for any reason whatsoever (other than an act or omission of the Railways) the Fixed Link is not fully available for use by the Railways for a period (a "relevant period") exceeding one calendar day (the portion of the relevant period exceeding one calendar day being in this paragraph called the "period of unavailability"), the Minimum Usage Charge in respect of each Reference Period which includes the period of unavailability (or part of it) shall be adjusted by reducing that portion of it which is referable to the period of unavailability (or relevant part of it) in proportion to the number of scheduled Trains (as defined in Schedule VIII) cancelled in consequence of the Fixed Link not being fully available as aforesaid;

(b) if, in consequence of any particular event or series of connected events, the Railways are unable for a continuous period exceeding twenty two (22) calendar days (a "relevant period") (the portion of the relevant period exceeding twenty two (22) days being in this paragraph called the "period of non-usage") to pass all scheduled Trains (as defined in Schedule VIII) through the Fixed Link, the Minimum Usage Charge in respect of each Reference Period which includes the period of non-usage (or part of it) shall be adjusted by reducing that portion of it which is referable to the period of non-usage (or relevant part of it) in proportion to the number of scheduled Trains cancelled by reason of the Railways' inability to pass them through the Fixed Link in consequence of the event or series of connected events aforesaid;

(c) if the operation of the Fixed Link is interrupted under Clause 25 of the Concession or otherwise by the "Principals" during a Reference Period, the Minimum Usage Charge in respect of that Reference Period shall be calculated pro rata temporis, on the basis of the number of days contained in it which are not also days contained in the period of interruption.

(d) more than one of paragraphs (a), (b) or (c) of this Clause 7.5(v) may apply in respect of the same Reference Period, but:

- (1) the "relevant period" respectively referred to in paragraphs (a) and (b) shall not run during any period of interruption referred to in paragraph (c), and
- (2) the "relevant period" referred to in paragraph (b) shall not run at any time during the currency of the "relevant period" referred to in paragraph (a).

(vi) (a) If, for any reason whatsoever, other than an act or omission of the Railways, the Fixed Link is not fully available for use by the Railways for a period (a "relevant period") exceeding one calendar day (the portion of the relevant period exceeding one calendar day being in this paragraph called the "period of unavailability"), the Fixed Annual Usage Charge in respect of each Reference Period which includes the period of unavailability (or part of it) shall be adjusted by reducing that portion of it which is referable to the period of unavailability (or relevant part of it) in proportion to the number of scheduled Trains (as defined in Schedule VIII) cancelled in consequence of the Fixed Link not being fully available as aforesaid.

(b) If, in consequence of any event or circumstance referred to in Clause 21, the Railways are unable for a period (a "relevant period") exceeding one calendar day (the portion of that period exceeding one calendar day being in this paragraph called the "period of non-usage") to pass all scheduled Trains (as defined in Schedule VIII) through the Fixed Link, the Fixed Annual Usage Charge in respect of each Reference Period which includes the period of non-usage (or part of it) shall be adjusted by reducing that portion of it which is referable to the period of non-usage (or relevant part of it) in proportion to the number of scheduled Trains cancelled by reason of the Railways' inability to pass them through the Fixed Link in consequence of the event or circumstance aforesaid.

(c) If the operation of the Fixed Link is interrupted under Clause 25 of the Concession or otherwise by the "Principals" during a Reference Period, the Fixed Annual Usage Charge in respect of that Reference Period shall be calculated pro rata temporis, on the basis of the number of days contained in it which are not also days contained in the period of interruption.

(d) More than one of paragraphs (a), (b) and (c) of this Clause 7.5(vi) may apply in respect of the same Reference Period, but

- (1) the "relevant period", respectively referred to in paragraphs (a) and (b) shall not run during any period of interruption referred to in paragraph (c), and
- (2) those "relevant periods" may not run concurrently.

7.6 (i) The Usage Charge in respect of any particular Reference Period shall first be calculated in accordance with the remaining provisions of this Clause 7.6 (as so calculated, it is the "Unadjusted Usage Charge" for that Reference Period) and then adjusted in accordance with Clause 7.7.

(ii) The Unadjusted Usage Charge for a particular Reference Period shall be equal to the total of:

(a) the sum of the amounts obtained, for each Type of traffic, by multiplying:

- (1) the number of Units of Traffic of that Type carried through the Fixed Link on Trains during that Reference Period (as specified, subject to Clause 8.3, in the certificate of the

Railways delivered under Clause 8.1(iii) with respect to the Accounting Period within which that Reference Period falls), by

- (2) the average Toll per Unit of Traffic of that Type, calculated on the basis of Schedule VI (disregarding indexation) and the number of Units of Traffic of that Type carried through the Fixed Link during the Accounting Period within which that Reference Period falls (as specified, subject to Clause 8.3, in the certificate referred to in (1)),

plus

- (b) the amount of Fixed Annual Usage Charge in respect of that Reference Period (before indexation).

7.7 (i) If the Minimum Usage Charge for a particular Reference Period exceeds the Unadjusted Usage Charge for that Reference Period, an amount equal to the excess shall be credited to a memorandum account kept in Units of Account (the "Excess Usage Charge Account").

(ii) The amount credited to the Excess Usage Charge Account in respect of a particular Reference Period shall be available, in accordance with the following provisions of this Clause, for adjusting (in accordance with paragraph (iv) below) Usage Charges payable in respect of all subsequent Reference Periods up to and including the thirty-sixth (36th) such subsequent Reference Period. The amounts so credited which are available to adjust Usage Charges payable in respect of a particular Reference Period are "available" Excess Usage Charges.

(iii) Such deductions shall be made from Excess Usage Charges credited to the Excess Usage Charge Account (taking them in the chronological order in which they were so credited) as may be necessary so that the aggregate amount credited to the Excess Usage Charge Account at no time exceeds 25,000,000 Units of Account.

(iv) Available Excess Usage Charges shall be applied, taking them in the chronological order in which they were credited to the Excess Usage Charge Account, so as to reduce or, if sufficient, eliminate the excess of the Unadjusted Usage Charge payable in respect of any Reference Period over the Minimum Usage Charge payable in respect of that Reference Period, and the Excess Usage Charge Account shall be reduced by the amount so applied. The amount to which the Unadjusted Usage Charge for any particular Reference Period is so reduced is the "Adjusted Usage Charge" for that Reference Period.

- (v) The Usage Charge in respect of any particular Reference Period is:

- (a) the Adjusted Usage Charge for that Reference Period, or
- (b) if no adjustment falls to be made under paragraph (iv) of this Clause 7.7, the Unadjusted Usage Charge for that Reference Period (or, in the case of each of those Reference Periods for which the Minimum Usage Charge is specified in Clause 7.5(v), the Minimum Usage Charge, if greater)

indexed in each case in accordance with Clause 9.7, by reference to the index figures applicable to that Reference Period.

7.8 (i) The Railways shall, on the third Business Day following the end of each Reference Period (the "Provisional Payment Date") pay the amount of the Provisional Usage Payment, indexed in accordance with Clause 9.7 by reference to the index figures most recently published on the last day of that Reference Period.

(ii) In respect of each Accounting Period, the Railways shall pay to the Concessionaires or the Concessionaires shall pay to the Railways, as the case may be, an adjusting payment (the "Usage Charge Adjustment"), calculated in accordance with the following provisions of this Clause 7.8.

(iii) The Usage Charge Adjustment shall become payable on the third Business Day of the fourth month following the end of the Accounting Period to which it relates, or, if any information necessary for its calculation is not then available, on the fifth Business Day after all such information has become available or would have become available but for the fault of the party liable to pay the Usage Charge Adjustment.

(iv) If the amount of the Provisional Usage Payment for any Reference Period exceeds the Usage Charge payable in respect of that Reference Period, the difference shall be credited to the Railways as from the Provisional Payment Date for that Reference Period.

(v) If the amount of the Usage Charge payable in respect of any Reference Period, exceeds the Provisional Usage Payment for that Reference Period, the difference shall be credited to the Concessionaires as from the Provisional Payment Date for that Reference Period.

(vi) The amounts credited under paragraphs (iv) and (v) shall be entered as items of a running account ("compte courant") between the parties, the net balance of which shall bear interest for each successive period from one Provisional Payment Date to the next (or, if earlier, the due date for the Usage Charge Adjustment) at the Interest Rate for that period, interest being carried to the account as and when it accrues.

(vii) The Usage Charge Adjustment is the balance remaining of the running account referred to in

paragraph (vi) of this Clause 7.8 at the due date for payment thereof and shall be paid by the other to whichever of the Railways or the Concessionaires is the creditor.

7.9 (i) The Railways shall have the right subject to paragraph (ii) below and to the consent of the shareholders of the Concessionaires in a general meeting (if they are affected) and of third parties who may be affected by such proposal, to make payments giving a right to a discount in respect of subsequent Usage Charges, but on condition that the advance payments together with the discounts shall be neutral to the Concessionaires, their shareholders and third parties who may be affected by such proposal, taking into account the tax consequences of those payments and discounts.

(ii) If the Railways propose to the Concessionaires a method of exercising the right referred to in paragraph (i) above, the Concessionaires will consider the proposal and will be entitled to refuse it if, but only if, the criteria set out in paragraph (i) above are not satisfied, or the consents referred to in that paragraph are not given.

(iii) The Railways may assign their rights under this Clause 7.9 to any third party accepted by the Concessionaires, such acceptance not to be unreasonably withheld.

(iv) References in this Clause to the shareholders of the Concessionaires shall include a reference to the shareholders of:

- (a) as to CTG, a company chosen by CTG among the companies which are its holding companies as defined in section 736 of the United Kingdom Companies Act 1985, and
- (b) as to FM, a company chosen by FM among the companies of which it is the "filiale" as defined in Article 354 of the French law No. 66-537 dated 24 July 1966.

8. VERIFICATION

8.1 (i) The Railways shall, no later than the Target Commencement Date, or, if later, the Commencement Date, ensure that they have available to them a properly functioning system appropriate to record the number of Units of Traffic carried through the Fixed Link by Trains and the number of Passengers (the "Attributed Passengers") travelling through the Fixed Link with the combined Motorail/Shuttle tickets referred to in Clause 7.4 (vi). The Railways shall keep available and use such a system throughout the term of this Agreement and an appropriate period thereafter.

(ii) Within three (3) Business Days after the end of each Reference Period, the Railways shall certify in writing to the Concessionaires, on the basis of the information produced by the system referred to in Clause 8.1 (i):

- (a) the number of Attributed Passengers, and
- (b) the number of Units of Traffic of each Type,

estimated by them to have been carried through the Fixed Link during that Reference Period.

(iii) The Railways shall, no later than sixty (60) days after the end of each Accounting Period, certify in writing to the Concessionaires, on the basis of the information produced by the system referred to in Clause 8.1 (i):

- (a) the number of Attributed Passengers, and
- (b) the number of Units of Traffic of each Type,

carried through the Fixed Link during that Accounting Period and during each Reference Period comprised in it.

(iv) The Railways shall on request make available to the Concessionaires and/or allow the Concessionaires to inspect such documents and other information as the Concessionaires may reasonably require for the purpose of verifying the suitability of the system referred to in paragraph (i) of this Clause 8.1 and the accuracy of the certificates referred to in paragraphs (ii) and (iii) of this Clause 8.1.

(v) The Concessionaires may have the figures contained in the certificates mentioned in paragraph (iii) of this Clause 8.1 audited by an independent professional auditor (reasonably acceptable to the Railways) and the Railways shall provide reasonable facilities and assistance for such an audit. It shall be a term of the auditor's appointment, that he shall not, except as expressly agreed by the Railways, communicate to the Concessionaires or otherwise use any information obtained during or derived from his investigations, other than whether the relevant certificate is accurate and, if not, the amount of the discrepancy. The charges and expenses of the auditor shall be borne by the Concessionaires.

8.2 (i) The Concessionaires shall, no later than the Commencement Date, ensure that they have available to them a properly functioning system appropriate:

- (a) for calculating Usage Charge Reductions, as defined in Schedule VII, and
- (b) for allocating Operating Costs to Reference Periods and to the Railways in accordance with Clause 10 and Schedule V,

and shall keep available and use such a system throughout the term of this Agreement and an appropriate period thereafter.

(ii) The Concessionaires shall, no later than three (3) Business Days before the due date for payment under Clause 10.5(i) of each Operating Costs Adjustment, certify in writing to the Railways:

- (a) the total amount of Operating Costs for each Reference Period comprised in the period to which the Operating Costs Adjustment relates, analysed into the constituent elements shown in Schedule V, together with reasonable detail thereof,
- (b) for each such Reference Period, the amount of the Railways' Costs Contribution (as defined in Clause 10.1), and
- (c) that all items of Operating Costs for the relevant Reference Periods are stated on an arm's length basis (after adjustment, if appropriate).

(iii) The Concessionaires shall, no later than the due date for payment of the Usage Charge Reduction (as defined in Schedule VII) in respect of each Accounting Period, either certify in writing to the Railways the amount of the Usage Charge Reduction in respect of that Accounting Period, or, if there is no such reduction, so certify in writing. Each such certificate shall specify in reasonable detail (except any which the Concessionaires consider confidential) the calculations on which it is based and shall state that the constituent elements of those calculations have been established on an arm's length basis (after adjustment, if appropriate).

(iv) The Concessionaires shall on request make available to the Railways, and allow the Railways to inspect, such documents and other information (other than documents and information which are, in the reasonable opinion of the Concessionaires, confidential) as the Railways may reasonably require for the purpose of:

- (a) verifying the suitability of the system referred to in Clause 8.2 (i) and the accuracy of the certificates referred to in paragraphs (ii) and (iii) of this Clause 8.2, and
- (b) assessing whether Operating Costs have been properly incurred and properly allocated in accordance with Schedule V.

(v) The Railways may have any such information as is referred to in paragraph (iv) of this Clause 8.2 (including such as was withheld from them on grounds of confidentiality) audited by an independent professional auditor (reasonably acceptable to the Concessionaires) and the Concessionaires shall provide reasonable facilities and assistance for such an audit. It shall be a term of the auditor's appointment that he shall not, except as expressly agreed by the Concessionaires, communicate to the Railways or otherwise use any information obtained during or derived from his investigations other than whether the relevant certificate is accurate and, if not the amount of the discrepancy. The charges and expenses of the auditor shall be borne by the Railways.

8.3 (i) The Concessionaires or the Railways, as the case may be, may within twelve (12) months after receiving a certificate under paragraph (iii) of Clause 8.1 or under paragraphs (ii) or (iii) of Clause 8.2, by notice in writing, call on the other party to concur in appointing an expert (the "Expert") in order, on the basis of the best information available to him:

- (a) to verify the accuracy of the certificate, including the accuracy of the information on which it was based, or
- (b) if a certificate delivered under paragraph (iii) of Clause 8.1 or the system on which it is based is, in his view, inaccurate to decide the number of Attributed Passengers and the number of Units of Traffic of each Type carried through the Fixed Link during the relevant Accounting Period and the Reference Periods comprised in it, or
- (c) if a certificate delivered under paragraph (ii) of Clause 8.2 is, in his view inaccurate, to decide, for such Reference Periods to which it relates as the Railways may request, the amount of Operating Costs properly incurred by the Concessionaires (making any adjustment necessary in his view to restate Operating Costs on an arm's length basis) and the amount of the Railways' Costs Contribution, or
- (d) if a certificate delivered under paragraph (iii) of Clause 8.2 is in his view inaccurate, to decide the amount (if any) of the Usage Charge Reduction for the relevant Accounting Period, and
- (e) if appropriate, to determine what adjusting payments are required between the parties in consequence of any overpayment or underpayment of Usage Charges, Railways' Costs Contribution or Usage Charge Reduction (such adjusting payments to be made with interest at such rate or rates as may be specified by the Expert).

(ii) If the Expert is not so appointed within two (2) months after such a notice, the party sending such notice may request either the President for the time being of the Institute of Chartered Accountants in England and Wales or the President for the time being of the "Compagnie des Experts près le Comité National Français" of the International Chamber of Commerce to appoint him.

(iii) The Expert shall be entitled to carry out such investigations as he sees fit and shall take into account information supplied and representations made by the parties and/or their auditors mentioned in Clause 8.1 (v) or 8.2 (v) respectively. The parties shall for this purpose provide him with reasonable facilities and assistance. It shall be a term of his appointment that, except as expressly agreed by one party, he shall not communicate to the other party, or otherwise use any information concerning the former party obtained during or derived from his investigations, other than whether the relevant certificate is accurate and, if not, the amount of discrepancy.

(iv) The charges and expenses of the Expert and those charges and expenses of the parties which are attributable to the reference to the Expert shall be borne by the party against whom the Expert decides or, in the event of his not deciding solely in favour of one party, in such proportions as the Expert may determine.

(v) Any dispute capable of being referred to an Expert shall not be capable of being submitted to the procedures mentioned in Clause 30.

(vi) All determinations and findings of the Expert shall be in writing and be final and binding on the parties.

9. PAYMENTS AND INDEXATION

9.1 Each Unit of Account is equal to one pound sterling plus 11.7 French francs.

9.2 Payments of amounts denominated in Units of Account shall be effected by making payment of the French franc component and the pound sterling component in accordance with the provisions of this Clause.

9.3 Payments shall be made in immediately available funds to such bank accounts in London (in the case of pounds sterling) or Paris (in the case of French francs) as the party to whom the payment is to be made shall specify in writing.

9.4 If a payment would otherwise fall due on a day which is not a Business Day, it shall instead fall due on the next Business Day.

9.5 All interest calculations required by this Agreement shall be done on the basis of a year of 365 days and the number of days elapsed.

9.6 (i) The Railways shall make all Provisional Usage Payments and Provisional Costs Payments and pay all Usage Charge Adjustments and Operating Costs Adjustments without set off against amounts owing to them by the Concessionaires, unless the amounts owing by the Concessionaires are fixed and certain and due and payable ("certaines, liquides et exigibles").

(ii) If the Concessionaires so request, the Railways shall, in respect of any amount which they have failed to pay or have stated they will not pay, specify whether they deny liability to pay that amount and, if so, whether all or only part of that amount. If liability to pay is denied as to only part of the amount, the Railways shall pay the balance.

9.7 (i) Those amounts which are stated in this Agreement to be "indexed" in accordance with this Clause shall be indexed in accordance with the following provisions.

(ii) French franc amounts shall be indexed to IMP and pound sterling amounts to RPI.

(iii) Indexation shall be calculated by reference to a base index of 153.50 for IMP and 359.15 for RPI (corresponding in each case to the average of the indices for December 1984 and January 1985).

(iv) If the basis on which IMP or RPI or any substituted index is established changes, IMP, RPI or that substituted index shall nonetheless continue to apply, adjusted by any officially recommended basis of adjustment. However, if one party claims that there is a substantial change in the characteristics of either index and that the change is likely materially to increase the amounts which it is obliged to pay or reduce the amounts which it is entitled to receive under this Agreement and that claim is not agreed by the other party, or the parties do not agree on appropriate remedial action, the matter shall be capable of resolution by the procedures mentioned in Clause 30 and any such resolution shall be final and binding upon the parties. Arbitrators appointed under that Clause may decide that, as from such date as they may determine, a specified alternative index shall be substituted or specified adjustments be made to the relevant index (and pending any such decision, the disputed applicable index shall apply).

(v) If IMP or RPI or any other index applicable for the time being under this Agreement is no longer published, it shall automatically be replaced by the index officially substituted for it, adjusted by any officially recommended basis of reconciliation or, if no index is officially substituted, the most nearly equivalent index which is then published. If either party claims that the replacement index (adjusted if appropriate) is fundamentally different from the one it replaces and is likely materially to increase the payments which it is obliged to make, or to reduce the amounts which it is entitled to receive under this Agreement, and that claim is not agreed by the parties, or the parties do not agree appropriate remedial

action, or if the parties are unable to agree which is the most nearly equivalent index, the matter shall be capable of resolution by the procedures mentioned in Clause 30 and any such resolution shall be final and binding upon the parties. Arbitrators appointed under that Clause may decide that, as from such date as they may determine, a specified alternative index shall be substituted or specified adjustments be made to the relevant index (and pending any such decision, the disputed applicable index shall apply).

(vi) The index figures applicable to any particular Reference Period or other period are the figures for the calendar month to which that Reference Period or other period corresponds, or within which it falls (or, if an index figure relates to a specific reference day, the index figure for the reference day which falls in that month).

9.8 If either party defaults for any reason in payment when due of any amount payable under this Agreement, it shall pay on demand interest at the Default Rate on that amount for the period of default (both before and after any judgment or arbitral award).

9.9 (i) All payments by the parties under this Agreement shall be made in full without any deduction or withholding on account of any taxes or duties present or future, except as required by any law, regulation, decree, or any other requirement of or applicable in the Republic of France or in the United Kingdom of Great Britain and Northern Ireland.

(ii) All sums expressed to be payable under this Agreement are stated exclusive of Value Added Tax and Taxe sur la Valeur Ajoutée and all other taxes, which are accordingly (to the extent required by the applicable tax legislation) payable in addition to the amounts payable under this Agreement.

10. OPERATING COSTS

10.1 (i) Schedule V describes certain costs which will be incurred by the Concessionaires and their "Associated Companies" in connection with the operation, maintenance and renewal of the Fixed Link ("Operating Costs") and defines principles in accordance with which a portion of Operating Costs is to be reimbursed by the Railways to the Concessionaires.

(ii) In this Agreement, Operating Costs "for" any period are those Operating Costs which would, in accordance with accounting principles generally accepted in England and France, be treated as accrued during that period.

(iii) The Railways shall, in respect of each Reference Period, bear such portion of the Operating Costs for that Reference Period, calculated in accordance with Schedule V, as is allocated to them or to Trains under Schedule V (the "Railways' Costs Contribution" for that Reference Period). The Railways shall pay the Railways' Costs Contributions in accordance with the following provisions of this Clause 10.

10.2 The Concessionaires shall produce six (6) months before the beginning of each Accounting Period a preliminary budget and one (1) month before the beginning of each Accounting Period a final budget of the aggregate estimated Operating Costs and the estimated amount (the "Railways' Estimated Costs Contribution") of the Railways' Costs Contribution for each Reference Period in that Accounting Period. The Concessionaires and the Railways shall endeavour to reach agreement on each such budget and the amount of the Railways' Estimated Costs Contribution for each such Reference Period.

10.3 Operating Costs denominated in currencies other than pounds sterling or French francs shall, for the purpose of this Clause:

- (a) if paid with the proceeds of an identifiable spot sale of pounds sterling or French francs against that currency, be translated into pounds sterling or French francs (as the case may be) at the rate of exchange at which that sale was effected;
- (b) in any other case, be translated as to half into pounds sterling and as to half into French francs at the spot rate for purchase of the relevant currency with pounds sterling or French francs (as the case may be) quoted at or about 11 a.m. local time on the normal fixing date for settlements on the due date for payment of that Operating Cost by National Westminster Bank Plc (in the case of pounds sterling) or Crédit Lyonnais (in the case of French francs) or as soon thereafter as practicable, provided that, if such rate is not available, the rate to be used shall be such other rate as most nearly reflects the rate so mentioned at the relevant time.

10.4 (i) The Railways shall, in respect of each Reference Period, pay to the Concessionaires a provisionally estimated amount in respect of the Railways' Costs Contribution for that Reference Period.

(ii) The provisionally estimated amount referred to in paragraph (i) of this Clause 10.4 (the "Provisional

Costs Payment") is, if agreed between the Railways and the Concessionaires, equal to the amount of the Railways' Estimated Costs Contribution for the particular Reference Period or, in the absence of agreement:

- (a) in the case of each Reference Period comprised in the first Accounting Period, an amount equal to:

$$(1) \quad \frac{7,000,000 \text{ Units of Account}}{365} \times n,$$

(where "n" is the number of days comprised in the relevant Reference Period), which amount shall be indexed in accordance with Clause 9.7, by reference to the index figures applicable to that Reference Period,

plus

- (2) the Railways' allocable portion, determined in accordance with Schedule V, of the cost of insurances attributable to that Reference Period (or, if that cost is not known when the relevant Provisional Costs Payment is to be made, the Concessionaires' estimate of it, made on the basis of the best information then available to them);
- (b) in the case of each Reference Period comprised in subsequent Accounting Periods, an amount equal to one twelfth of the estimated Operating Costs for the whole Accounting Period in which the relevant Reference Period falls, determined (in the absence of agreement) in accordance with Clause 10.6.

(iii) The estimated Operating Costs for each Accounting Period shall be revised by agreement after the date of any calendar quarter day to take account of any discrepancies between budgeted Operating Costs for the calendar quarter ending on that calendar quarter day and Operating Costs in fact allocated to that calendar quarter. After such a revision has been made to the estimated Operating Costs for an Accounting Period, Provisional Costs Payments to be made in respect of the remaining Reference Periods in that Accounting Period shall be appropriately adjusted by agreement between the parties.

(iv) The Railways shall pay the Provisional Costs Payment in respect of any particular Reference Period on the third Business Day following the end of that Reference Period.

10.5 (i) In respect of the period from the beginning of the first Reference Period until the next calendar quarter day and, thereafter, in respect of each calendar quarter, the Railways shall pay to the Concessionaires or the Concessionaires shall pay to the Railways, as the case may be, an adjusting payment (the "Operating Costs Adjustment"), calculated in accordance with the following provisions of this Clause.

(ii) Each Operating Costs Adjustment shall become payable on the third Business Day of the fourth month following the period referred to in Clause 10.5(i) to which it relates or, if any information necessary for its calculation is not then available, on the fifth Business Day after all such information has become available or would have become available but for the fault of the party liable to pay the Operating Costs Adjustment.

(iii) If the Provisional Costs Payment in respect of any Reference Period exceeds the Railways' Costs Contribution for that Reference Period, the difference shall be credited to the Railways as from the third Business Day after the end of that Reference Period.

(iv) If the Railways' Costs Contribution for any Reference Period exceeds the Provisional Costs Payment in respect of that Reference Period, the difference shall be credited to the Concessionaires as from the third Business Day after the end of that Reference Period.

(v) The amounts credited under paragraph (iii) or (iv) in respect of a particular Reference Period shall be entered as items of a running account ("compte courant") between the parties, the net balance of which shall bear interest from month to month until the due date for payment of the Operating Costs Adjustment at the Interest Rate for each such month, interest being carried to the account as and when it accrues.

(vi) The Operating Costs Adjustment is the balance of the running account referred to in paragraph (v) of this Clause 10.5 at the due date for payment of the Operating Costs Adjustment and shall be paid by the other to whichever of the Railways or the Concessionaires is the creditor.

10.6 (i) In default of agreement between the parties before the due date for the first Provisional Costs Payment in the second or any subsequent Accounting Period as to the amount of the estimated Operating Costs for that Accounting Period, that amount shall be equal to the Operating Costs for the immediately preceding Accounting Period (if that preceding Accounting Period was less than a year, multiplied by $365/n$ where "n" is the number of days comprised in that Accounting Period), adjusted for indexation and traffic growth in accordance with paragraph (ii) of this Clause 10.6.

(ii) (a) The adjustment for indexation referred to above shall be made separately in respect of the pounds sterling and French franc components of the relevant Operating Costs figure.

- (b) The amounts which are to be indexed shall be multiplied by the fraction:

$$\frac{\text{Current Index}}{\text{Previous Index}}$$

where:

"Current Index" is the IMP or RPI figure (according to the currency) most recently published at the date three (3) Business Days before the date on which the relevant adjustment for indexation is made, and

"Previous Index" is the relevant index figure for the same period or date in the previous calendar year.

- (c) The adjustment for traffic growth shall be made by increasing the pounds sterling and French franc components of the relevant Operating Costs figure (after indexation in accordance with paragraph (b) of this Clause 10.6 (ii)) by fifty per cent. (50%) of the forecast rate of traffic growth for the relevant Accounting Period.

- (d) That forecast rate of growth shall be calculated for each Type of traffic. The forecast rate of growth to be used for the purposes of the adjustment for traffic growth shall be the highest of the forecast rates of growth ascertained under paragraph (e) of this Clause 10.6 (ii).

- (e) Each such forecast rate of growth shall be the difference (expressed as a percentage of the Previous Level of Traffic) between the Forecast Level of Traffic and the Previous Level of Traffic, where:

- (1) the "Forecast Level of Traffic" is the number of Units of Traffic forecast for the relevant Accounting Period (on the same basis as in Clause 7.5 (iv)), and
- (2) the "Previous Level of Traffic" is the number of Units of Traffic carried during the immediately preceding Accounting Period (adjusted to a yearly figure if that immediately preceding Accounting Period was less than a year by multiplying that number by 365/n, where "n" is the number of days in that immediately preceding Accounting Period).

- (iii) Subject to Clause 8 and the preceding provisions of this Clause 10, certificates of the Concessionaires as to the amount of Operating Costs allocated or to be allocated to any particular period or as to the Railways' Costs Contribution for any Reference Period shall serve as the basis for calculation of Provisional Costs Payments and Operating Costs Adjustments.

10.7 Each Provisional Operating Costs Payment and each Operating Costs Adjustment shall:

- (a) as to the portion of it which represents Operating Costs paid in or translated into pounds sterling, be payable in pounds sterling, and
- (b) as to the portion of it which represents Operating Costs paid in or translated into French francs, be payable in French francs.

11. TRAIN MOVEMENTS

11.1 The Railways shall comply with all reasonable operational requirements imposed by the Concessionaires for the operation of the Fixed Link.

11.2 The Railways and the Concessionaires shall each be responsible for controlling the movement of Trains and Shuttles in their respective control areas. The parties shall make a Special Agreement to define those areas. This control will take into account the following:

- (i) real time indication of the approach of Trains, including their reporting number;
- (ii) the normal order of succession of Trains and Shuttles as shown in the Timetable in effect at the particular time;
- (iii) alterations necessary as a result of particular Trains or Shuttles running early or late;
- (iv) the introduction of additional Trains or Shuttles not shown in the Timetable.

11.3.1 The Railways shall, in consultation with the Concessionaires, establish a system compatible with the system of the Concessionaires to enable the Concessionaires to ascertain at any time, subject to the capabilities of the Railways' train describer systems in use at the time, the actual position of Trains moving towards or away from the Fixed Link, within the control areas mentioned in Clause 11.2.

11.3.2 The Concessionaires shall, in consultation with the Railways, establish a system to enable the Railways to ascertain at any time the actual position of Shuttles and Trains in the Fixed Link, subject to the capabilities of the Railways' and the Concessionaires' respective train describer systems in use at the time.

11.4 The Railways shall ensure that Trains are suitably equipped to enable them to communicate with the control centre(s) or control facility of the Concessionaires, in accordance with such system as shall be established by the Concessionaires in consultation with the Railways.

11.5.1 The Concessionaires and the Railways shall respectively use their best endeavours to cause their Shuttles and Trains to keep to their respective Reference Paths and to keep to the Timetable, allowing, as to the time for presentation at the Common Section, such reasonable margin, fixed by the Concessionaires, as not to affect the operation of the Timetable.

11.5.2 The Concessionaires shall use reasonable endeavours to reinsert Trains which do not keep to the Timetable, or such margins, into the existing traffic and to give priority to Trains carrying Passengers, subject to the Concessionaires' need to provide a frequent and efficient Shuttle service. Any Train not keeping to the Timetable or such margins may be required, in accordance with instructions issued by the Concessionaires' control centre(s) or control facility, to proceed at a speed different (being within its capabilities) from that originally intended, to allow for the particular circumstances.

11.6.1 The Concessionaires and the Railways shall keep one another informed of all circumstances (save for scheduled maintenance, to which Clause 13.5 applies) the effect of which is or could be to restrict or prevent the free passage of traffic through the Fixed Link. In such circumstances the Concessionaires will determine, after consultation with the Railways, the measures to be taken to allow, so far as possible, normal use of the Fixed Link. The form of consultation will be the subject of a Special Agreement.

11.6.2 If in the circumstances referred to in Clause 11.6.1, it should prove necessary to delay or cancel any Trains or Shuttles, the Concessionaires shall, so far as practicable, allocate to the Railways the same proportion of the reduced capacity in any Hour calculated in accordance with Schedule IX as the proportion of normal capacity to which they would be entitled at that time. In determining the order of passage of Trains and Shuttles, the Concessionaires shall, so far as practicable and subject to their need to maintain a frequent and efficient Shuttle service, observe the following order of priority:

- (1) Trains carrying Passengers,
- (2) Shuttles,
- (3) other Trains.

11.6.3 (i) The Concessionaires may, in order to maximise use of the Fixed Link during any period of partial reduction of capacity, in the circumstances referred to in Clause 11.6.1, establish a special transit path (the "Special Transit Path") which shall replace the Standard Path during such period as a measure of capacity available to the parties.

(ii) Except when the context otherwise requires, for each such period references in this Agreement to Standard Path shall be read (*mutatis mutandis*) as references to Special Transit Path.

(iii) During such period, any Train or Shuttle not capable of following the Special Transit Path shall not be permitted to pass. If any Train or Shuttle is thereby delayed for more than one hundred and eighty (180) minutes, the Concessionaires shall adjust the Special Transit Path to permit such Trains and Shuttles to pass until the backlog of delayed Trains and Shuttles is eliminated so far as practicable.

(iv) Any Train or Shuttle capable of following the Special Transit Path shall do so.

(v) During all such periods, Clause 11.6.2 shall apply.

11.7 If required by the parties a Special Agreement will be entered into setting out the terms and conditions upon which one party may use locomotives belonging to the other party.

12. PERSONNEL

12.1 The manning levels for the various categories of Trains will be fixed by the Railways consistently with the requirements of the IGC.

12.2 (i) Only the Railways' own personnel or other personnel approved by the Railways shall man the Railways' Trains.

(ii) The Concessionaires, as to their personnel, and the Railways, as to the personnel on Trains required by Clause 12.1, shall ensure that their respective personnel on duty in the Fixed Link have received training suitably adapted to the performance of their duties. Such training shall include (where appropriate, according to their functions and the requirements of the IGC or Safety Authority), but will not be limited to familiarity with the regulations governing Trains and Shuttles within the Fixed Link, safety, and the procedures to be followed in the event of an emergency.

(iii) Each of BR and SNCF shall issue a certificate valid for an appropriate period to all personnel working on their behalf in the Fixed Link who have satisfactorily undergone the training referred to in paragraph (ii) of this Clause 12.2 stating that such persons are competent for the tasks for which they are engaged for that period. The Railways shall not permit any personnel not holding a current appropriate certificate to do such work.

(iv) To enable the Railways to provide such training, the Concessionaires will make available without charge to the Railways all relevant operational and safety regulations.

(v) In order to monitor the competence of the drivers of Trains referred to in paragraph (i) of this Clause 12.2, the Concessionaires and the Railways shall each be respectively entitled to accompany such drivers

of the Railways during passage through the Fixed Link, provided that such accompanying personnel do not interfere with the performance by those drivers of their duties or the safe operation of Trains. Such accompaniment shall not be allowed to affect the commercial service of Trains.

12.3 The Railways shall instruct their personnel to communicate with the Concessionaires' control centre in French or English, whichever is their normal working language.

12.4 The Concessionaires, as to their personnel, and the Railways, as to the personnel on Trains, shall ensure that their respective operations personnel obey the regulations and operational orders of the Concessionaires during the performance of their duties in the Fixed Link. The Concessionaires shall ensure that such orders are given only by their qualified employees or agents.

12.5. (i) Breaches of duty by personnel on Trains will be dealt with exclusively by BR or SNCF under their own or other appropriate disciplinary procedures.

(ii) The Concessionaires shall have the right to require the Railways to withdraw or have withdrawn the certificate of competence of any personnel on Trains who do not observe or who are reasonably suspected of not observing the regulations and operational orders of the Concessionaires.

(iii) Failure by the Concessionaires to exercise their rights under Clause 12.5(ii) shall not affect their rights or liabilities under this Agreement.

12.6 The Railways shall require their personnel or other personnel approved by them under Clause 12.2 (i) to notify the Concessionaires of any incident affecting the working of the Fixed Link which caused or could have caused personal injury, damage to luggage, freight, rolling stock, or any part of the Fixed Link. The Railways shall require such personnel to comply with any request for information from the Concessionaires, the IGC or the Safety Authority concerning events about which they may be thought to have useful evidence.

13. MAINTENANCE

13.1 (i) The Concessionaires shall take all those steps which a Prudent and Diligent Operator would take properly to maintain the Fixed Link. They will devise and operate a system of scheduled maintenance designed to minimise, so far as practicable, disruption of services through the Common Section, taking into account appropriate commercial considerations, and to ensure that, except in special circumstances, services are not restricted to one line on more than one section between consecutive crossover points at any one time. Maintenance of the Fixed Link will be the subject of long term planning.

(ii) During single line operations resulting from maintenance to be carried out by the Concessionaires under paragraph (i) of this Clause 13.1, the Railways will be entitled to pass at least five (5) Trains per two (2) Hours in each direction following a path which is the Reference Path of a one hundred (100) kph Freight Train and, if the Concessionaires so require, all Trains and all Shuttles shall follow the Reference Path of such a Train.

(iii) BR and SNCF shall, each as to its respective infrastructure, devise and operate a system of scheduled maintenance designed to minimise so far as practicable disruption to services through the Common Section, taking into account appropriate commercial considerations. For this purpose maintenance of such infrastructure shall be subject to long term planning by BR and SNCF.

13.2 The Railways and the Concessionaires shall consult one another as to their respective programmes for carrying out the maintenance referred to in Clause 13.1, in order to minimise, so far as practicable, any effect on the passage of Trains and Shuttles.

13.3 The Concessionaires shall establish procedures for unscheduled maintenance in the Fixed Link to ensure that the safety and security of the Common Section is maintained.

13.4 (i) If and when it is necessary to carry out maintenance of the Fixed Link outside scheduled maintenance periods, the Concessionaires shall endeavour to restrict so far as possible the time taken by such maintenance, and, if such maintenance could affect the movement of Trains or Shuttles, restrict the maintenance to the maintenance of equipment directly or indirectly affecting the safety, security or efficiency of the Fixed Link.

(ii) The principles set out in paragraph (i) of this Clause 13.4 above shall also apply to non-scheduled maintenance by the Railways of the main routes on the approach to the Fixed Link.

13.5 The Concessionaires shall consult the Railways before implementing any proposed reductions in the capacity of the Fixed Link which may result from maintenance to be carried out by the Concessionaires under Clause 13.1, and any consequential changes in timetabling. The Concessionaires shall allocate to the Railways the same proportion of the reduced capacity in any Hour calculated in accordance with Schedule IX as the proportion of normal capacity to which they would otherwise be entitled, but without prejudice to Clause 13.1(ii).

14. SECURITY AND SAFETY

14.1 (i) Prior to finalising those regulations, or any modifications to such regulations, to be established by the Concessionaires which concern safety, the Concessionaires shall, so far as affects the operation of Trains through the Fixed Link, discuss the relevant draft with the Railways and invite comments from the Railways in time for those comments to be taken into account, having regard to time constraints imposed by the IGC or the Safety Authority. If in addition to those regulations it is desirable for there to be an agreement between the parties on safety matters in the Fixed Link, the parties shall endeavour to enter into a Special Agreement to deal with such matters.

(ii) The timescale for implementing any modification to the regulations referred to in paragraph (i) of this Clause 14.1 will be agreed with the Railways, subject to any time constraints imposed by the IGC or the Safety Authority.

14.2 The Railways undertake to comply with the Concessionaires' regulations relating to safety approved by the IGC or the Safety Authority. The Railways undertake to provide the Concessionaires with all information that they may require in connection with the safety of the Fixed Link.

14.3 The Concessionaires shall take those measures which a Prudent and Diligent Operator would take to maintain all safety equipment in the Fixed Link in good condition and to ensure that their personnel working within the Fixed Link observe the regulations relating to safety of the Fixed Link.

14.4 The parties undertake to comply with all rules and instructions of the Safety Authority.

14.5 The Railways shall take those measures which a Prudent and Diligent Operator would take to maintain in good condition all safety equipment relating to Railways' Rolling Stock.

14.6 The parties shall enter into a Special Agreement regarding security.

15. EMERGENCY PROCEDURES

15.1 The regulations established by the Concessionaires shall set out the procedures to be implemented in emergencies.

15.2 The provisions of Clause 11.6.2 shall be applicable in the event of emergencies.

15.3 The Railways shall assist the Concessionaires in such manner as the Concessionaires shall reasonably require to ensure that the duration of any emergency is as short as possible and that its effects are minimised.

15.4 If any Train or Shuttle is involved in an accident or an incident immobilising it in the Common Section the Concessionaires will use all reasonable endeavours to ensure that such Train or Shuttle is removed from the Common Section and the operation of the Fixed Link is returned to normal as soon as possible.

15.5 In the event of an accident or incident involving a Train within the Fixed Link, the Concessionaires will take all appropriate measures for calling the relevant emergency services and technical specialists and will be responsible for any initial notice to the authorities necessary under the laws of England or France.

15.6 Additional agreements between the parties relating to emergencies directly or indirectly affecting operations in the Fixed Link, shall, if necessary, be contained in an appropriate Special Agreement.

15.7 (i) If necessary, as a result of an emergency, to enable Trains or Shuttles to be run clear of the Common Section, the Concessionaires may run Shuttles into Dolland's Moor onto such lines as are suitably equipped to receive them. If necessary, as a result of an emergency the Concessionaires may direct Trains into the terminals of the Concessionaires at Cheriton, if they are suitably equipped to receive them. The arrangements for the design and construction of the sidings at Dolland's Moor shall be the subject of a separate agreement between BR and the Concessionaires.

(ii) Arrangements for Shuttles to use sections of SNCF's track at Fréthun may be made the subject of a separate agreement between SNCF and the Concessionaires.

16. SUNDRY REGULATIONS

16.1 (i) The Railways shall be entitled, subject to the reasonable operating and commercial requirements of the Concessionaires (which may take into account, inter alia, the availability and cost of insurance), to carry dangerous goods authorised by, and subject to compliance with the regulations established under, COTIF (in particular the Regulations concerning the International Carriage of Dangerous Goods by Rail) and all relevant laws and regulations, including those of the IGC and the Safety Authority. The Railways shall give in advance to the Concessionaires necessary information concerning dangerous goods, which are to be carried on Trains.

(ii) Freight Trains will have a maximum length, excluding traction units, of approximately seven hundred and fifty metres (750m).

16.2 Trains which, on the basis of their speed, load or other features, would not otherwise be permitted to pass through the Fixed Link will be the subject of a separate agreement on a case by case basis, with a fee fixed in accordance with Clause 7.4 (v).

17. FRONTIER CONTROLS

The Railways undertake to observe the regulations imposed by the relevant authorities relating to frontier controls.

18. LIABILITY AND RECOURSE

18.1 Third party liability

- (i) Liability for death or injury to passengers (as that expression is used in CIV) in the Fixed Link shall be determined in accordance with the provisions of CIV and AIV.
- (ii) Liability for damage to luggage and registered luggage shall be determined in accordance with the provisions of CIV and AIV.
- (iii) Liability for damage to freight shall be determined in accordance with the provisions of CIM and AIM.

18.2 Recourse between the parties

- (i) Liability relating to rolling stock

(a) The rolling stock (including traction units) comprised in trains passing or intended to pass through the Fixed Link shall, irrespective of its ownership, be treated, as between the parties, as owned by the Railways.

(b) The Railways shall indemnify the Concessionaires against any liability which they may incur towards any owner or other person having an interest in rolling stock (including traction units) passing or intended to pass through the Fixed Link, but only to the extent that such liability exceeds that which the Concessionaires would have incurred to the Railways in respect of that loss if that owner or other person had been the Railways.

- (ii) Liability to employees

Each party (the "first party") shall indemnify the other against the financial effects of all liability which the other party may incur directly or indirectly connected with this Agreement to employees (including persons who have been seconded to positions of employment) of the first party (including in the case of the Railways, BR and SNCF) acting in relation to their duties.

- (iii) Recourse by the Concessionaires

The Concessionaires shall have full rights of recourse against BR, SNCF or the Railways to the extent that any death or injury referred to in Clause 18.1 (i) is attributable to the fault of BR, SNCF or the Railways as the case may be.

- (iv) Limitation of liability

(a) Liability for damage to property ("dommages matériels"), or for non-physical loss ("dommages immatériels"), including loss of profit, between the Concessionaires, on the one hand, and the Railways, BR or SNCF on the other shall be as follows:-

- (1) for damage to property ("dommages matériels"):
 - no compensation shall be payable in respect of the first two hundred thousand (200,000) Units of Account otherwise recoverable in respect of any particular event causing loss, and
 - the total compensation payable in respect of all such events causing loss as occur during any period of sixty (60) months shall not exceed one hundred million (100,000,000) Units of Account.
- (2) for non-physical loss ("dommages immatériels"), including loss of profit, whether a consequence or not of damage to property, no compensation shall be payable in respect of the first one million (1,000,000) Units of Account otherwise recoverable by reason of any particular event causing loss or, in respect of any amount over and above the next fifteen million (15,000,000) Units of Account recoverable by reason of the same event.

- (b) For the purposes of this paragraph (iv):

- (1) a continuing breach of a particular obligation under this Agreement is a single event causing loss;
- (2) the term "loss" includes all items of loss resulting from the same event;
- (3) loss caused or contributed to by concurrent breaches of different obligations shall be treated as if caused by a single event.

(c) The provisions of paragraph (a) of this Clause 18.2 (iv) shall not apply in case of "faute lourde" or "dol" (gross negligence or wilful default).

(d) Any loss suffered by the Concessionaires by reason of breach of Clause 3.1 (iii) in any period

during which Note 4 to Schedule VI applies shall be compensated solely by the amount of additional Tolls provided for in that Note.

(v) **Mitigation**

The damages which may be claimed by either party against the other for breach of any obligation under this Agreement other than the Clause 1.2 Obligations shall be limited to the amount necessary to compensate for that loss which could not be avoided by reasonable measures taken by the party bringing the claim, it being understood that the cost of those measures will be borne by the party in breach.

18.3 Conversion and indexation

(i) The figures specified in Clause 18.2 (iv) (a) (1) and (2) are before indexation. For the purpose of ascertaining, by reference to any figure so specified, whether any particular amount of compensation is recoverable:

- (a) that amount, if not expressed in Units of Account, shall be translated, so far as necessary, as to one half of the amount into pounds sterling and as to the other half into French francs, at the appropriate rate of exchange applicable on the first Business Day following the date on which the relevant event causing loss occurred,
- (b) each amount so obtained shall be deflated to December 1984/ January 1985 prices, taking the index figures applicable to the month in which the relevant event causing loss occurred and otherwise applying Clause 9.7, *mutatis mutandis*,
- (c) each resulting figure shall be translated into Units of Account on the basis that one Unit of Account equals two pounds sterling or 23.4 French francs.

(ii) The sum of the amounts so obtained under paragraph (i) (c) of this Clause 18.3 shall be used for applying the relevant figure in Clause 18.2 (iv) (a) (1) and (2).

19. INSURANCE

19.1 In accordance with the provisions of Clauses 19.2 to 19.5, the Concessionaires shall, as from the time when construction of the Fixed Link commences and during the remainder of the term of this Agreement (to the extent to which it is available to them on the international insurance market at premium rates which are not unreasonably high compared with those payable for cover for risks of the same kind) maintain insurance policies sufficient to cover the reinstatement or replacement cost following the worst reasonably foreseeable accident or incident of any property ("relevant property") forming part of the Fixed Link which affects the operation of Trains ("required policies").

19.2 The Concessionaires shall, upon request by the Railways, provide to the Railways, when available, copies of the required policies, so far as relates to relevant property and copies of the receipts for payment of the current premiums.

19.3 (i) At least twenty eight (28) days before seeking, in accordance with Clause 22.2 of the Concession, the approval of the IGC to those of the required policies to be maintained during commissioning of the Fixed Link and thereafter (or to any renewal or amendment thereof), the Concessionaires shall consult the Railways with a view to agreeing on the nature, extent and amount of cover to be provided under those policies so far as relates to relevant property, including an amount specifically allocated to the relevant property.

(ii) The Concessionaires shall arrange for the interest of the Railways to be noted in the policies referred to in paragraph (i) of this Clause 19.3 solely for the purpose of keeping the Railways informed of the making, adjustment, compromise, settlement and payment of any claims in respect of relevant property exceeding one (1) million Units of Account (or the equivalent), which amount shall be indexed in accordance with Clause 9.7 by reference to the month in which the insured incident occurred.

(iii) The policies referred to in paragraph (i) shall not apply the rule of average.

19.4 Notwithstanding of the provisions of Clause 19.1 to 19.3 inclusive, the Concessionaires shall ensure that at all times their insurance cover is sufficient to satisfy their obligations as to insurance set out in Clause 22 of the Concession.

19.5 Notwithstanding Clauses 19.1, 19.3 and 19.4, the Concessionaires shall be considered to have complied with their obligations under those Clauses if, following submission of a policy to the IGC under Clause 19.3 of this Agreement and/or under Clause 22.2 of the Concession:

- (i) the Concessionaires are not required by the IGC to amend it in accordance with Clause 22.2 of the Concession; or
- (ii) the Concessionaires having been required to amend it in accordance with Clause 22.2 of the Concession, the Concessionaires forthwith amend the policy and (following compliance with Clause 19.3 of this Agreement and/or Clause 22 of the Concession) the Concessionaires are not further required by the IGC to amend that policy in accordance with Clause 22.2 of the Concession.

19.6 (i) At the appropriate time prior to the Target Commencement Date, the parties undertake to consider together the possibility of co-ordinating their insurance arrangements (including the possibility of effecting joint insurance cover) in respect of third party claims and material damage, taking account of the capacity of the insurance market, the level of premiums and deductibles, cross-liability clauses and other relevant conditions.

(ii) Without prejudice to paragraph (i), the Railways shall be entitled, on request by notice in writing giving a reasonable time to comply, to be named (subject to the agreement of the insurers) as joint insured on the policies referred to in Clause 19.3 (i) (solely for the purposes (1) of protecting the Railways against claims by way of subrogation by the insurers of the Concessionaires and (2) should the Concessionaires recover from the Railways any sum which they could have claimed from the insurers, of enabling the Railways to recover such sum from such insurers) on condition:

- (a) that they bear any additional cost to the Concessionaires resulting from the Railways being named as joint insured, and
- (b) that the insurance cover provided under those policies is not thereby adversely affected.

19.7 As soon as practicable after the occurrence, during commissioning of the Fixed Link or at any time thereafter, of loss or damage to any relevant property, the Concessionaires shall, in consultation with the Railways, prepare a plan for the reinstatement or replacement of such property and shall take all necessary steps to reinstate or replace it (whether or not payments have been received from insurers in respect of such loss or damage) in accordance with such plan. Nothing in this Clause shall oblige the Concessionaires to effect reinstatement or replacement of any property which cannot, in the reasonable opinion of the Concessionaires, be economically reinstated or replaced or if the works of reinstatement or replacement are, in the reasonable opinion of the Concessionaires, technically impossible. Except in a case where the Railways are materially affected, the Concessionaires shall not be obliged to consult the Railways or prepare a plan for re-instatement or repair for incidents where the damage does not exceed, as reasonably estimated by the Concessionaires, one million (1,000,000) Units of Account (or the equivalent) indexed as provided in Clause 19.3 (ii).

20. PENALTIES

20.1 The Clause 1.2 Obligations of the Concessionaires on the one hand and the Clause 1.2 Obligations of the Railways on the other are interdependent. Accordingly:

- (i) if any of the Clause 1.2 Obligations of the Concessionaires remain unperformed for any period after the Target Commencement Date (whether or not as a result of an event or circumstance mentioned in Clause 21.1), the Clause 1.2 Obligations of the Railways shall be suspended during that period, and
- (ii) if, for any period after the Target Commencement Date (whether or not as a result of an event or circumstance mentioned in Clause 21.1), the Railways are not ready to perform their Clause 1.2 Obligations, the Clause 1.2 Obligations of the Concessionaires shall be suspended during that period.

20.2 (i) In this Clause "Agreed Penalties" means, in relation to a default by the Concessionaires or the Railways, as the case may be:

- (a) one hundred and twenty five thousand (125,000) Units of Account for each full week during which such default continues in the period of sixteen (16) weeks immediately following such default,
- (b) two hundred and fifty thousand (250,000) Units of Account for each full week during which such default continues in the next subsequent period of sixteen (16) weeks,
- (c) three hundred and seventy five thousand (375,000) Units of Account for each full week during which such default continues thereafter.

(ii) (a) The amount of Agreed Penalties accrued during any particular week shall be adjusted for indexation in accordance with Clause 9.7 by reference to the index figures applicable to the month in which the last day of that week falls.

(b) A provisional amount of Agreed Penalties accrued during any week, the last day of which falls in any particular calendar month, calculated on the basis of the index figures most recently published on the last day of that month, shall be payable on the third Business Day after the end of that month. An appropriate adjusting payment shall be made by one party to the other on the third Business Day after the end of the calendar month during which the relevant index figures are subsequently published.

20.3 For so long as the Concessionaires default in performance of their Clause 1.2 Obligations so as materially adversely to affect the passage of Trains through the Fixed Link, they shall, without formal demand ("mise en demeure"), pay to the Railways the Agreed Penalties.

20.4 (i) For so long as the Railways default in performance of their Clause 1.2 Obligations so as materially adversely to affect the Concessionaires, they shall, without formal demand ("mise en demeure"), pay to the Concessionaires the Agreed Penalties.

(ii) It is agreed, for the purpose of paragraph (i) of this Clause 20.4, that if the Railways do not perform their Clause 1.2 Obligations because they do not have available Railways' Rolling Stock sufficient to permit a service which would, in the opinion of a Prudent and Diligent Operator, be commercially acceptable, taking account of the provisions of this Agreement, they shall pay to the Concessionaires the Agreed Penalties to the exclusion of any liability for damages.

20.5 The penalties payable under Clause 20.3 and 20.4 are the sole remedy for breaches of the Clause 1.2 Obligations, save in the case of "faute lourde" or "dol" (wilful default or gross negligence).

21. EXONERATING CIRCUMSTANCES

* 21.1 No party shall be liable for failure to perform or for delay in performing its obligations under this Agreement to the extent such failure or delay results from:

- (i) events or circumstances having the characteristics of force majeure, according to case law, except that for the purpose of ascertaining whether an event or circumstance is irresistible ("irrésistible") an event shall be an event of force majeure if, though not making performance of an obligation totally impossible, it makes it so much more onerous that it would be unreasonable in the circumstances to expect the party concerned to perform that obligation;
- (ii) any strike or other labour dispute which is (in either case) irresistible ("irrésistible") as defined in paragraph (i) of this Clause 21.1, irrespective of whether it has the other characteristics of force majeure.

21.2 Any party which seeks to rely on an event mentioned in Clause 21.1 shall notify it in writing to the other party as soon as practicable after it occurs, specifying the nature of the event and the consequences envisaged. Each party shall inform the other as soon as practicable after such an event ceases to have effect.

21.3 Clause 21.1 (i) does not apply to the absence of, or delay in, obtaining, any authorisation, instruction, direction or approval necessary, according to law or practice applicable on the date on which they give the certificate referred to in Clause 31.2 (i) (a), to permit BR, SNCF or the Railways to comply with their obligations under Clauses 3.1, 3.2.1(i), 3.2.2(i) and 3.3.1, or to any direction or instruction inconsistent with compliance by the Railways with those obligations.

22. STATUS OF THE RAILWAYS

- (i) If:
 - (a) BR ceases to be a statutory corporation and is not a subsidiary of the Crown, the government of the United Kingdom or any agency thereof (the expression "subsidiary" to bear the meaning given in Section 736 of the United Kingdom Companies Act 1985 and, for the purposes of that Section, the Crown, the government of the United Kingdom and all agencies thereof shall each be treated as a body corporate); or
 - (b) SNCF ceases to be an "entreprise publique" subject to the "tutelle" of the French state; or
 - (c) the major part of the undertaking, assets and liabilities ("patrimoine") of BR or SNCF is transferred to a third party,

BR or SNCF as the case may be, shall, after each such event, provide to the Concessionaires such information as the Concessionaires may reasonably request in order to determine whether that event is likely materially adversely to affect performance of the obligations of BR, SNCF or the Railways under this Agreement.

(ii) If, following the event in question, the ability of BR, SNCF or the Railways to perform their obligations under this Agreement is materially adversely affected, BR or SNCF as the case may be, shall, if so requested by the Concessionaires by notice in writing:

- (a) save to the extent it has satisfactory capacity for self-insurance, take out and maintain during the year then current such insurances with reputable independent insurers as a Prudent and Diligent Operator would effect in those circumstances, but only to the extent that such insurances are available to BR or SNCF, as the case may be, on the international insurance market at premium rates which are not unreasonably high compared with those payable for risks of the same kind;
- (b) provide satisfactory evidence that it will be legally empowered and otherwise in a position, having regard to the financial and other means which it reasonably expects to have available to it, to make each payment under this Agreement as and when it falls due and to perform its other obligations under this Agreement;

- (c) provide satisfactory evidence, if the relevant event involves a successor to BR or SNCF, as the case may be, succeeding to its obligations under this Agreement, that the successor will, as from the date when the succession takes effect, be in a position to comply with those obligations.

(iii) If paragraph (ii) has applied to BR and/or SNCF, BR or SNCF, as the case may be, shall, at the beginning of each year thereafter, save to the extent it has satisfactory capacity for self insurance, take out such insurances with reputable independent insurers as a Prudent and Diligent Operator would effect in the circumstances, but only to the extent that such insurances are available to BR or SNCF, as the case may be, on the international insurance market at premium rates which are not unreasonably high compared with those payable for risks of the same kind, and shall maintain such insurances throughout that year. They shall provide particulars of such insurances and receipts for the premiums promptly to the Concessionaires.

(iv) If BR or SNCF, as the case may be, fails to comply with such a request by the Concessionaires as is mentioned in paragraph (ii) within three (3) months of the request, or does not take out and maintain insurances in accordance with paragraph (ii) (a) or (iii) of this Clause 22, arbitrators appointed under Clause 30.3 may order BR or SNCF, as the case may be, to take, within such time as the arbitrators may specify, such action as is necessary so that BR or SNCF complies with the relevant provisions of this Clause.

(v) Pending any arbitration award as is mentioned in paragraph (iv) of this Clause 22, the Concessionaires may, if they consider, on the basis of the information available to them that paragraph (ii) or (iii) applies, by notice in writing request BR and/or SNCF as the case may be, to take out such insurances as are referred to in paragraphs (ii) (a) or (iii) and BR and/or SNCF, as the case may be, shall promptly take out such insurances as are so requested by the Concessionaires. If the arbitration award holds that there is no obligation under paragraph (ii) (a) or (iii) to take out insurance, the Concessionaires shall bear the cost of insurances taken out under this paragraph (v) unless the Concessionaires' request under this paragraph (v) was reasonable on the basis of the information available to them at the time of the request. The arbitrators may, if they think fit, deduct from the cost to be borne by the Concessionaires, any pecuniary benefit of such insurances to the Railways.

23. MEMBERSHIP OF INTERNATIONAL RAILWAY ORGANISATIONS

23.1 The Concessionaires shall as soon as practicable request the governments of the United Kingdom and France to include the Fixed Link under COTIF in the list of CIV lines and the list of CIM lines, with the Concessionaires indicated as operators of such lines as to the Shuttles and as to the Trains.

23.2 Insofar as the infrastructure of the Railways comprises necessary lines not already so included, BR or SNCF, as appropriate shall request the relevant government to include those lines under COTIF in the list of CIV lines and the list of CIM lines with BR or SNCF, as the case may be, indicated as operator of such lines.

23.3 The Concessionaires shall, as soon as practicable, apply to become members of CIT and shall accordingly comply with AIV and AIM, and undertake to take all necessary steps to maintain their membership.

23.4 The Concessionaires shall take all necessary steps to maintain their membership of UIC.

23.5 To the extent that this Agreement creates rights or obligations different from those resulting from COTIF, CIV or CIM or from those which would otherwise result from membership of CIT and UIC and compliance with AIV and AIM, the provisions of this Agreement shall, as between the parties, prevail, save to the extent prohibited by COTIF, CIV or CIM.

23.6 If at any time, the lines mentioned in Clause 23.1 or 23.2 are not included under COTIF in accordance with those Clauses, so far as Trains are concerned, or the Concessionaires and the Railways are not members of CIT and UIC, the parties shall, as between themselves, apply provisions having, so far as practicable, the same effect, unless otherwise agreed between them.

24. DURATION, SUSPENSION AND TERMINATION

24.1 (i) The Concessionaires may, by not less than six (6) months' written notice to the Railways, terminate this Agreement if the Railways fail to perform their Clause 1.2 Obligations and such failure is continuing on the date on which the notice expires as provided in paragraphs (ii) and (iii) of this Clause 24.1.

(ii) Such a notice may only be given so as to expire on or after the date which is thirty six (36) months after the later of the Target Commencement Date and the date on which the Concessionaires have performed their Clause 1.2 Obligations.

(iii) The period of thirty six (36) months referred to in paragraph (ii) shall be extended by any period during which an event or circumstance mentioned in Clause 21.1 has prevented the performance of the Clause 1.2 Obligations of the Railways.

24.2 (i) The Railways may, by not less than six (6) months' written notice to the Concessionaires, terminate this Agreement if the Concessionaires fail to perform their Clause 1.2 Obligations and such failure is continuing on the date on which the notice expires as provided in paragraphs (ii) or (iii) below.

(ii) Such a notice may only be given so as to expire on or after the date which is thirty six (36) months after the later of the Target Commencement Date and the date on which the Railways are first ready to perform their Clause 1.2 Obligations.

(iii) The period of thirty six (36) months referred to in paragraph (ii) of this Clause 24.2 shall be extended by any period during which an event or circumstance mentioned in Clause 21.1 has prevented the performance of the Clause 1.2 Obligations of the Concessionaires.

24.3 If the technical or commercial operation of Trains through the Fixed Link is materially adversely affected by a particular modification to the Concession (including modifications envisaged by the Concession, except for modifications permitted by Clause 2.4 (iv)), arbitrators appointed under Clause 30.3 may on the application of the Railways declare this Agreement terminated.

24.4 If the Railways fail to comply with an arbitral award rendered under Clause 22 (iv) within three (3) months after the last date for compliance specified by the arbitrators, the Concessionaires shall be entitled, by written notice to the Railways, to terminate this Agreement.

24.5 Subject to Clauses 24.1 to 24.4, neither the Concessionaires nor the Railways may declare or request the termination of this Agreement for default.

24.6 Notwithstanding the reference of any dispute to the procedures mentioned in Clause 30, the parties shall continue to perform this Agreement in accordance with its terms.

24.7 If the Concession Period is terminated under Clauses 5, 29, 32.1(5), 35, 36 or 37 of the Concession, this Agreement shall terminate, without prejudice to obligations accrued at the date of such termination.

24.8 If the Concessionaires cease to be entitled to construct or operate the Fixed Link under Clause 29 or 37 of the Concession, or if under Clause 25 of the Concession the "Principals" interrupt the construction or operation of the Fixed Link by reason of failure of the Concessionaires to satisfy or comply with the terms of the Concession, they shall pay to the Railways the amount of that loss incurred by them in consequence of the termination or interruption which could not be avoided by the Railways taking reasonable measures, it being understood that the cost of these measures shall be borne by the Concessionaires.

24.9 Unless terminated earlier in accordance with the provisions of this Clause, this Agreement shall terminate when the Concession Period comes to an end under Clause 3.2 of the Concession.

25. MARKETING

The Concessionaires and the Railways shall discuss the marketing of their services with the aim of ensuring the optimum use of the Fixed Link.

26. ASSIGNMENT

(i) Neither the Railways nor the Concessionaires may transfer their rights under this Agreement.

(ii) Notwithstanding paragraph (i) of this Clause:

- (a) the Concessionaires may without the consent of the Railways assign, mortgage or charge their rights under this Agreement or enter into any security arrangement in respect thereof required for the purpose, in any such case, of financing or refinancing, directly or indirectly, performance by the Concessionaires of their obligations under the Concession.
- (b) BR or SNCF may, with the prior written consent of the Concessionaires, transfer to any body corporate or other entity, all or any part of its rights, liabilities and obligations hereunder, the consent of the Concessionaires not to be unreasonably withheld.

27. THE CONCESSION

27.1 The Railways shall not knowingly by act, omission or delay cause the Concessionaires to be in breach of the Concession.

27.2 No act, omission or delay of the Concessionaires shall constitute a breach under this Agreement if the relevant act, omission or delay is one which the Concessionaires are obliged under the Concession to perform or make.

27.3 (i) The Concessionaires shall promptly notify to the Railways all proposals for modifications to the Concession (including modifications envisaged by the Concession) which may affect the Railways' technical or commercial operation of Trains through the Fixed Link.

(ii) The Concessionaires shall not propose or agree to any such modification which would materially adversely affect the Railways' technical or commercial operation of Trains through the Fixed Link, except as provided by Clause 2.4.

28. MISCELLANEOUS

28.1 Any provision of this Agreement which is unlawful under any relevant law shall be of no effect and the remaining provisions shall continue in force (subject to any necessary modifications), except if the excluded provision was of fundamental importance to this Agreement. If any provision of this Agreement is unlawful under any relevant law, the parties shall seek to negotiate in good faith substitute provisions or other amendments to achieve equivalent financial and practical effect for both parties.

28.2 No failure to exercise nor any delay on the part of the Concessionaires or the Railways in exercising any right, power or remedy provided hereunder or by law shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise of any such right, power or remedy.

28.3 (i) The parties shall use their best endeavours to reach agreement in writing on and enter into all Special Agreements required by this Agreement not later than the date which is six (6) months before the Target Commencement Date or such other time as is appropriate. Special Agreements are provided for without limitation under Clause 2.6(ii), 11.2, 11.6.1, 11.7, 14.1, 14.6, 15.6, 28.3(ii), 28.5 and Schedule V paragraph H01.3.

(ii) The parties shall reach a Special Agreement on coordination of the relations between the Concessionaires and the Railways including circumstances where one Railway is to be authorised to speak for the both.

28.4 (i) Any information, whether written or oral, provided by one party to the other in connection with this Agreement shall be treated as confidential. The party receiving such information undertakes not to disclose or use such information so provided, except to show that one of the parties has not complied with its obligations hereunder or for the purpose for which it was provided, and the party receiving information may for such purposes disclose such information to the IGC or the British and/or French Governments on an expressly confidential basis.

(ii) Nothing in paragraph (i) of this Clause 28.4 shall prevent the parties from disclosing information that they are required to disclose by law or to:

- a) their professional advisers or auditors, or
- b) The Stock Exchange in London, the "Bourse" in Paris or any other relevant stock exchange authorities, or
- c) in the case of the Concessionaires, the persons providing or proposing to provide finance for the construction or operation of the Fixed Link or refinance therefor or the professional advisers of such persons.

28.5 (i) The Concessionaires will use their best endeavours within their current investment programme to allow the Railways to operate long distance motorail and motorail sleeper services to and from the Cheriton terminal, it being understood that such operation shall not be such as to prejudice the commercial operations of the Concessionaires.

(ii) The operation by the Railways of long distance motorail and motorail sleeper services to and from the Cheriton terminal for a period to be agreed shall be the subject of a Special Agreement between the parties.

(iii) Such a Special Agreement shall take into account the following principles:

- (a) The additional investment costs and the additional Operating Costs relating to the terminal and operation of the long distance motorail and motorail sleeper services will be wholly borne by the Railways.
- (b) The toll for a vehicle shall be equal to the average tariff payable by the public for that vehicle during the particular tariff period of the Concessionaires, if carried on a Shuttle, less the appropriate marginal medium term Operating Costs referable to Shuttles and the appropriate marginal contribution to the cost of specific capital investment referable to Shuttles or, if the Concessionaires establish an inclusive tariff for vehicles plus occupants (or certain of them) that inclusive tariff less the Operating Costs and cost of investment previously referred to and less, for each occupant of the vehicle included in the inclusive tariff, the Toll payable for that occupant as provided in Clause 7.4(vi).
- (c) Only personnel approved by the Concessionaires shall have the conduct of loading and unloading and other operations.

(iv) If no such Special Agreement is reached despite the Concessionaires' best endeavours in accordance with paragraph (i) of this Clause 28.5, but the Railways establish a long distance motorail and motorail sleeper service to and from their terminal at Calais-Fréthun, the parties will issue combined tickets. The portion of the fare for the combined ticket payable to the Concessionaires in respect of occupants of a vehicle shall be calculated in accordance with Clause 7.4(vi) and in respect of the vehicle shall be calculated and payable in accordance with a Special Agreement.

(v) If the Railways offer long distance motorail or motorail sleeper services to and from other sites in the United Kingdom and the continent involving passage through the Fixed Link, the parties shall enter into a Special Agreement concerning such traffic, including provisions equivalent to those mentioned in paragraph (iii) (a) and (b) of this Clause 28.5.

28.6 (i) Any notice to be given hereunder in writing shall be either delivered personally against receipt or sent by first class recorded delivery post or telex to the addresses set out at the beginning of this Agreement after the name of each party or to such address as may hereafter be notified in writing by such party to the other parties or any other means agreed by the parties. Any such notice shall be deemed to have been served as follows:

- (a) if personally delivered, at the time of delivery;
- (b) if sent by first class recorded delivery post at 10 a.m. on the second working day following the day on which the same was delivered into the custody of the postal authorities; and
- (c) if sent by telex at 10 a.m. on the working day following the day on which the same was dispatched.

(ii) In relation to a notice referred to in Clause 28.6.1 above, a "working day" is every day other than a Saturday or a Sunday or a public holiday at the place where the address of the intended recipient is situated.

28.7 This Agreement is executed in English and French. Both versions are equally authoritative.

28.8 No amendment to this Agreement shall be effective unless made in writing and signed by a representative of each of BR, SNCF and the Concessionaires.

29. APPLICABLE LAW

This Agreement shall be governed by and interpreted in accordance with the laws of France.

30. CONCILIATION AND ARBITRATION

30.1 If any dispute of any kind whatsoever arises under or in connection with this Agreement which has not otherwise been settled amicably, either party may refer such dispute to conciliation in accordance with Clause 30.2 below.

30.2 If a dispute of any kind whatsoever which arises under or in connection with this Agreement is so referred to conciliation, each of BR, SNCF, CTG and FM may, by notice in writing to the others of them, appoint a representative from the area of activity which it thinks fit (operating, engineering, rolling stock, commercial, financial, legal or other). If after their representatives so appointed have exchanged and considered views, it appears that the dispute continues, any of BR, SNCF, CTG and FM may, by notice in writing to the others of them, refer the dispute to a committee composed of (i) as to BR, its Chairman or Chief Executive, (ii) as to SNCF, its President or Directeur General, (iii) as to CTG, its Chairman or Chief Executive, and (iv) as to FM, its Président Directeur Général or its Directeur Général, or in any such case, their respective delegates. For the purposes of this Clause, CTG and FM may appoint a single joint representative from the relevant area of activity or be represented on the above-mentioned committee by a single person.

30.3 Any dispute of any kind whatsoever which arises under or in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (according to the version in force on 1 January 1987 or such other later version that the parties shall have agreed) by three (3) arbitrators appointed in accordance with the said Rules. A third arbitrator who shall act as president of the arbitral tribunal shall be appointed by agreement between the arbitrators appointed by the parties within thirty (30) days after the appointment of the second of them. In default of agreement between those two arbitrators within that period as to such appointment, the third arbitrator shall be appointed by the Court of Arbitration of the International Chamber of Commerce in accordance with the said Rules.

No party shall refer a dispute to arbitration before the expiry of one month from the date of the first notice referred to in Clause 30.2. For the purposes of such Rules, the Railways together shall, if they are co-Claimants or co-Respondents, be considered as one party and the Concessionaires shall be considered as one party. In the event that one of BR or SNCF should initiate arbitration proceedings against the Concessionaires, the Concessionaires may bring the other of them into the proceedings, and in those circumstances the arbitral tribunal shall be composed of the arbitrators appointed by whichever of

BR and SNCF initiated the proceedings and by the Concessionaires and of the President of the arbitral tribunal. Any award made in those proceedings shall be binding on the parties. The seat of the arbitration shall be Amsterdam.

Each of the Railways may, if it so wishes, be separately represented.

30.4 (i) FM and SNCF hereby agree, for the benefit of BR and CTG, that the High Court of Justice of England shall have jurisdiction for the purpose of any proceedings for interim or conservatory measures.

(ii) BR and CTG hereby agree, for the benefit of FM and SNCF that the competent French courts shall have jurisdiction for the purpose of any proceedings for interim or conservatory measures.

30.5 BR and SNCF each respectively for themselves renounce so far as permitted by law any immunity from jurisdiction or from execution on their property that they may have.

30.6 For the purposes of any proceedings referred to in Clause 30.4 and any proceedings for enforcement of an arbitral award under this Clause:

- (a) CTG, with respect to proceedings in France elects domicile at the siège social of FM,
 - (b) BR, with respect to proceedings in France, elects domicile at the siège social of SNCF,
 - (c) FM irrevocably appoints CTG to receive on its behalf service of process in any proceedings in England,
 - (d) SNCF irrevocably appoints BR to receive on its behalf service of process in any proceedings in England,
- without prejudice, in any such case, to other legally permissible methods of service.

31. COMMENCEMENT

31.1 This Agreement replaces in all respects the Heads of Agreement which shall cease to have effect from the date of signature of this Agreement.

31.2 This Agreement shall (other than Clauses 2.2, 2.4(ii), 4, 27, 28.1, 28.2, 28.3, 28.4, 28.6, 28.7, 29, 30, 31 and 32) only come into operation if:

- (i) on or before 21 September 1987:
 - (a) BR and SNCF have certified to the Concessionaires that they have received from their respective governmental authorities assurances satisfactory to them (or are otherwise satisfied) that (subject to the satisfaction of the other paragraphs of this Clause 31.2) they are or will be authorised, in accordance with law and practice applicable on the date when the certificate is given, to comply with their obligations under Clauses 3.1, 3.2.1(i), 3.2.2(i) and 3.3.1, taking account of any modification under Clause 32;
 - (b) the Treaty has been ratified and entered into force,
- (ii) and on or before 31 March 1988,
 - (a) the Concession has come into operation, and
 - (b) the Railways have received a copy of a letter from the IGC to the Concessionaires confirming that the Concessionaires have complied with their obligations under Clause 5.2 of the Concession.

31.3 The Concessionaires and the Railways shall use their best endeavours to procure satisfaction of the conditions in Clause 31.2 each as soon as possible, save that nothing in this Clause 31.3 shall limit the right of the Concessionaires to accept or not to accept the form of the Channel Tunnel Bill, as provided in Clause 3.1(b) of the Concession.

31.4 If any of the conditions mentioned in Clause 31.2 is not satisfied by the relevant date there specified, this Agreement shall thereupon become null and void, unless otherwise agreed by the parties, without prejudice to any liability for breach of Clause 31.3 and without prejudice to Clause 31.1.

31.5 Until such time as particulars of this Agreement shall have been furnished to the Office of Fair Trading pursuant to the provisions of the Restrictive Trade Practices Act 1976 ("the Act") or the Secretary of State by order made under Section 29(1) of the Act shall have approved this Agreement for the purposes of that Section, thereby exempting this Agreement from the requirement for registration under the Act, the coming into effect of any restrictions (in the sense in which that word is understood under the Act) contained in this Agreement shall be postponed.

32. CONVENTIONAL TRAINS

(i) This Agreement shall be modified as mentioned in paragraph (ii) of this Clause 32 unless before 21 August 1987 the Railways certify to the Concessionaires that they have received from their respective governmental authorities assurances from which they have concluded in good faith that they will be able to comply with their obligations under this Agreement without the modifications listed in paragraph (ii) of this Clause.

- (ii) The modifications referred to in paragraph (i) above are as follows:
- (a) delete the provisions of Clause 3.1 (iii) and (iv).
 - (b) in each of Clauses 3.2.1 (i) (a) and 3.2.2 (i) (a) delete the figure 17,400,000 and replace it by 13,200,000.
 - (c) in Clause 3.2 (i)(b) and (c) delete the references to Part B.1 of Schedule II and replace them by references to Part B2 and in Clause 3.2.2 (i)(b) and (c) delete the references to Part C1 of Schedule II and replace them by references to Part C2.
 - (d) in Clause 7.5 (iv) (a) (2) delete the figure 2.7% and replace it by 2.5%.
 - (e) in Clause 7.5 (v) delete the figure of 4,167,000 and replace it by 3,333,333.
 - (f) in Clause 7.7 (iii) delete the figure of 25,000,000 and replace it by 20,000,000.
 - (g) in Schedule II, Part A2 for the conventional case shall apply in lieu of Part A1 for the high speed case.
 - (h) In Schedule IV delete the figure 16.5 m and replace it by 12.3 m and delete the figure 2.7% and replace it by 2.5%.
 - (i) in Schedule VI, delete Note 4 and delete the numbers of Units of Account set against the volume ranges for Passenger Tolls and replace them as follows:

replace:	3.5	by	4.2
	3.0	by	3.6
	2.5	by	3.0
	2.0	by	2.4
	1.5	by	1.8
	1.0	by	1.2.

(iii) If, at any time after the modifications mentioned in paragraph (ii) have come into effect, the Railways certify that they have received from their respective governmental authorities assurances from which they have concluded in good faith that they will be able to comply on the due date with their obligations under this Agreement without those modifications, those modifications shall, as from the date of the certificate, be cancelled.

(iv) (a) Subject to paragraphs (b) and (c) of this Clause 32 (iv), if during any Reference Period after the modifications referred to in paragraph (ii) have come into and are in effect:

- (1) more than 75% of the Trains carrying Passengers through the Fixed Link are High Speed Trains, and
- (2) the normal scheduled journey time for non-stop High Speed Trains travelling between London and Paris through the Fixed Link is within the time band of 2 hours 55 minutes to 3 hours 05 minutes (adjusted, if necessary, as specified in Clause 3.1(iv)),

the modifications mentioned in paragraph (ii)(d), (e), (f), (h) and (i) shall, as from (and including) that Reference Period be cancelled.

(b) Paragraph (a) of this Clause 32 (iv) shall only apply if:

- (1) the Railways have given to the Concessionaires notice in writing of the date on which they anticipate that the conditions in paragraph (a)(1) and (2) will be satisfied (which date must not be more than ten (10) years after the date of the notice),
- (2) in that or a subsequent notice, the Railways state that the design stage is being initiated with a view to satisfying those conditions.

(c) If the Railways satisfy condition (1) of paragraph (a) of this Clause 32 (iv) within 24 months of the date on which the Railways commence regular commercial services of Trains carrying Passengers, then, subject always to paragraph (b) of this Clause 32 (iv), from the commencement of the Reference Period in which that condition is satisfied:

- (1) paragraph (a) shall apply as if condition (2) above were deleted therefrom ; and
- (2) the provisions of Clause 3.1(iii) and (iv) shall apply from the commencement of that Reference Period, but with the deletion in Clause 3.1(iii)(a) of the words: "on which they commence regular commercial services of Trains carrying Passengers through the Fixed Link" and their replacement by the words: "the first day of the first Reference Period in which more than 75% of the Trains carrying Passengers through the Fixed Link are High Speed Trains".

SCHEDULES

SCHEDULE I

BRIEF DESCRIPTION OF THE FIXED LINK

1. General

1.1 The Fixed Link will comprise a twin bored tunnel rail link with associated service tunnel under the English Channel between Fréthun in the Pas-de-Calais and Cheriton in Kent together with the terminal areas and dedicated facilities for control of access to and egress from the tunnels including in particular the frontier control facilities.

2. Fixed Installations

2.1 The tunnel design will permit a theoretical track design capable of allowing Trains to travel at speeds of 200kph. The minimum radius of curvature in the tunnels will be 4,200m and gradients will be no greater than 1 in 90.

Continuous welded rail will be used to eliminate rail joints and to reduce noise and vibration.

Crossovers between the two single track tunnels will be provided to facilitate Train and Shuttle movements in the reverse direction during periods of maintenance or incidents to Trains or Shuttles or fixed installations.

In the tunnels the track will be directly supported on a concrete foundation. In the sections between the tunnels and the Railways' lines the track will generally be supported on ballast.

2.2 Walkways will be provided to facilitate evacuation of Trains or Shuttles in an emergency.

Connecting passages to provide communication between the main tunnels and the service tunnel will be spaced at a nominal 375 metres except where technical reasons prevent such spacing, in which event such spacing shall not exceed 500 metres.

Piston relief ducts linking the main tunnels may be installed as found necessary in order to reduce pressure fluctuations affecting passenger comfort and resistance to forward motion of Trains and Shuttles.

The main tunnels, the service tunnel and the connecting passages will have a lighting system that may be controlled section by section from the control centre. Self-illuminated direction signs will be provided along the walkways to guide passengers to the connecting passages in the event of power failure.

The service tunnel will be provided with an independent transport system with an independent means of traction to allow emergency service teams to gain access to any part of the underground structure.

2.3 The power supplied to the Concessionaires for the Fixed Link will be provided from each of the British and French National Grids, the national supply arrangements for the Fixed Link being of adequate security and capacity for the train services envisaged. Substations will provide 25,000v single phase 50hz supply to the overhead catenary system. The substations will be located in separate cross-passages, whilst any electrical installation in ordinary cross-passages will be clear of the corridor reserved for the passage of staff and passengers in an emergency.

The power supply system will be designed so that in the event of a complete failure of supplies from one of the grids, operation of Trains and Shuttles will continue albeit at a reduced level of service.

2.4 A control centre located outside the tunnels at one of the terminals will operate the signalling, traction control and ancillary systems and will monitor the passages of all Trains and Shuttles and the functioning of all the equipment within the Concessionaires' control. A second control facility for standby purposes will be provided. There will be no lineside signals (except on secondary tracks within the terminals and if necessary at crossovers within the tunnels and on the connecting lines between the Common Section and BR's or SNCF's infrastructure) but the state of the line ahead will be displayed in the drivers' cabs.

The signalling system will be designed to allow Headways in operation of 3 minutes between Trains and/or Shuttles and will be capable of development to provide a reduced Headway.

The system will be capable of being upgraded to provide full automatic train operation.

2.5 The control centre and the control facility referred to above will be staffed by both English speaking and French speaking staff with proficiency in the other language so that messages and instructions can be passed to the train crews in English or French to avoid the risk of misunderstanding.

A discrete speech communication link between each Train or Shuttle driver and the control centre or the control facility will be provided.

Power supplies for the communications will be designed to survive for complete failure of mains power for a sufficient period to cover the time for restoration. Standby generators may be provided to operate until power can be restored.

Terminal to terminal direct communications will be provided via a high capacity cable incorporating a main and standby link over separate cable routes. This system will also act as a standby communication link for all control and communication systems. There will also be incorporated a communications link between BR and SNCF on terms, in particular as to costs, to be agreed in a Special Agreement.

3. Shuttles

Different types of Shuttles, each designed to be capable of attaining maximum speeds of 160kph within the Fixed Link, will be used for cars, for coaches and caravans and for freight vehicles. They will be closed units, brightly lit, ventilated and sound insulated.

The Shuttles will consist of one or two rakes, each rake comprising wagons permitting embarkation at one end and disembarkation at the other. The overall width of the wagons will be approximately 4.0m and the overall height approximately 5.5m. Shuttles will be hauled by two locomotives, one at each end; the envisaged power of each locomotive is anticipated to be at least 4000kw and may be as high as 5600 kw.

Passenger Shuttles will usually consist of two rakes each made up of 13 carrier wagons together with loading and unloading wagons. Wagons will either be double-deck to carry vehicles not exceeding 1.93m in height or single-deck to carry vehicles such as coaches and caravans up to 4.2m in height. The length of the double rake shuttles will be approximately 750m excluding the locomotives and the trailing load will be in the region of 2000 tonnes.

Freight Shuttles will consist of up to 25 carrier wagons together with two loading and unloading wagons. Carrier wagons will be designed to carry lorries weighing up to 44 tonnes. The length of a freight Shuttle excluding the locomotives will be approximately 560m and the trailing load will be in the region of 2000 tonnes.

SCHEDULE II
HIGH SPEED CASE
RAILWAY INFRASTRUCTURE
PART A1: GENERAL

The Railways plan to bring into operation and market high quality, fast, daytime through Passenger Train services hourly or more frequently, between the capital cities of London, Paris and Brussels and to other destinations beyond those places and to operate such services at speeds of up to 300 kph with standards of comfort and passenger environment equal to the French High Speed Train operation on the Sud-Est route and the services operated by InterCity in the UK on a variety of routes between London and major provincial cities. The planned London-Paris non-stop journey times will be approximately three (3) hours and the London-Brussels non-stop journey times approximately two hours forty minutes (2 hrs 40 mins) for such services.

To achieve these aims the Railways plan to construct, commission and bring into service a fleet of new High Speed Trains, for which the technical specification has been agreed between French, Belgian and British Railways, to introduce night sleeping and couchette car services over appropriate longer distance routes to and from UK destinations and to introduce a pattern of fast, centre to centre, through freight wagon and container conveying services with a view to achieving a major increase in the Railways' share of a growing transport market between the UK and mainland Europe.

To support these services, certain new railway infrastructure will be put in place.

SCHEDULE II
HIGH SPEED CASE
RAILWAY INFRASTRUCTURE
PART B1:
BR Railway Infrastructure

1. Connecting lines between the existing London-Folkestone-Dover main railway line and the Concessionaires' Continental main line allowing fast passenger services to pass direct into and out of the Fixed Link without stopping.
2. A new international Passenger station at Ashford, Kent, with lounge, catering and shopping facilities, conveniently located close to the centre of the town and new road accesses from trunk motorways to handle an estimated traffic potential of some two (2) million passengers per annum. Frequent services to Paris in just over two (2) hours and Brussels in one hour forty five minutes (1 hr 45 mins) will be available.
3. A new international passenger terminal complex with five platforms within the existing main Waterloo station in London, capable of handling a passenger throughput of up to 15 million per annum. A segregated high quality, airport style, lounge, refreshment, shopping, ticketing and passenger handling facility will be provided to deal with this throughput.
4. A set of freight exchange sidings at Dolland's Moor adjacent to the Concessionnaires' terminal at Cheriton near Folkestone will be constructed to allow essential frontier and safety checks for Freight Trains to be conducted during the locomotive change over period between the Railways.
5. Improvements to existing routes between London and the Fixed Link to permit freight trains to be recessed in loops as necessary and to allow passage of 8'6" (2.6 m) containers to pass freely within the structure gauge. One section of line between Tonbridge and Redhill to be electrified.
6. New chord connecting lines at Stewarts Lane and Sheepcote Lane in South London to permit the international passenger trains free and easy access between the Waterloo dedicated terminal, the routes to the Fixed Link and to servicing and maintenance points.
7. Track improvements, electrification and resignalling of the north/south central London avoiding route via Kensington Olympia to allow passenger and freight services to run direct to and from destinations beyond London to meet market demands.
8. Enlargement of Kensington Olympia passenger station and Willesden freight marshalling yards to deal with through services using this route.
9. A large new modern train servicing and maintenance depot will be constructed at North Pole in North West London specifically to deal with the new fleet of trains providing the international passenger services.

SCHEDULE II

HIGH SPEED CASE

PART C1:

SNCF Railway Infrastructure

1. Construction of freight exchange sidings alongside the Terminal at Fréthun to receive freight trains travelling to and from the Fixed Link, including the necessary installations for the management of locomotives and the facilities necessary for the Railways' Train staff.
2. Construction of a modern international passenger station at Fréthun. This station, which will have comprehensive travel and commercial facilities, will give access to the international passenger trains travelling to and from the Pas-de-Calais Coast.
3. Electrification at 25kv 50Hz of the section of line between the Fixed Link and Hazebrouck providing a fast link for all freight trains travelling from the Continent over the SNCF electrified network. This investment will also permit international passenger night trains to run through the Fixed Link. The modernization will be accompanied by the rehabilitation of the signalling and telecommunications systems.
4. Additional passenger handling facilities and improved amenities to cater for the increased passenger movements through the international passenger terminal at Paris-Nord station.
5. Construction of a high speed line branching off the present Paris-Lille line about 16km from the Paris-Nord station. This dedicated high speed line will be approximately 320km long and would allow a frequent and regular passenger service. The maximum line speed will be at least 300 kph.
6. Track improvements to increase the capacity between Paris and the branch with the high speed line by the addition of supplementary lines.
7. Creation of maintenance installations for High Speed Train sets at the workshop at Landy.

SCHEDULE II
CONVENTIONAL CASE
RAILWAY INFRASTRUCTURE
PART A2: GENERAL

The Railways plan to bring into operation and market high quality, fast, daytime through Passenger Train services at regular frequencies, between the capital cities of London, Paris and Brussels and according to demand to other destinations beyond those places, to operate such services at speeds of up to 160 kph with standards of comfort and passenger environment equivalent to those provided by BR and SNCF in their principal services operated between major towns and cities on their respective networks. The planned London-Paris journey times will be approximately 4 hours to 4 hours 30 minutes and London-Brussels journey times 4 hours 15 minutes for such services.

The Railways plan to introduce night sleeping and couchette car services over appropriate longer distance routes to and from UK destinations, to introduce a pattern of fast, centre to centre, through freight wagon and container conveying services with a view to achieving a major increase in the Railways' share of a growing transport market between the UK and mainland Europe.

To support these services, certain new railway infrastructure will be put in place.

SCHEDULE II
CONVENTIONAL CASE
RAILWAY INFRASTRUCTURE
PART B2:
BR Railway Infrastructure

1. Connecting lines between the existing London-Folkestone-Dover main railway line and the Concessionaires' Continental main line allowing fast passenger services to pass direct into and out of the Fixed Link without stopping.
2. A new international passenger station at Ashford, Kent, with lounge, catering and shopping facilities, conveniently located close to the centre of the town and new road accesses from trunk motorways to handle an estimated traffic potential of some one million five hundred thousand (1.5 million) passengers per annum. Services to Paris in just over 3 hours 30 minutes and Brussels in just over 3 hours 15 minutes will be available.
3. A new international passenger terminal complex within the existing main Waterloo station in London, capable of handling a passenger throughput of over 10 million per annum. A segregated high quality, airport style, lounge, refreshment, shopping, ticketing and passenger handling facility will be provided to deal with this throughput.
4. A set of freight exchange sidings at Dolland's Moor adjacent to the Concessionnaires' terminal at Cheriton near Folkestone will be constructed to allow essential frontier and safety checks for freight trains to be conducted during the locomotive change over period between the Railways.
5. Improvements to existing routes between London and the Fixed Link to permit freight trains to be recessed in loops as necessary and to allow passage of 8'6" (2.6 m) containers to pass freely within the structure gauge. One section of line between Tonbridge and Redhill to be electrified.
6. New chord connecting lines at Stewarts Lane and Sheepcote Lane in South London to permit the international passenger trains free and easy access between the Waterloo dedicated terminal, the routes to the Fixed Link and to servicing and maintenance points.
7. Track improvements, electrification and resignalling of the north/south central London avoiding route via Kensington Olympia to allow passenger and freight services to run direct to and from destinations beyond London to meet market demands.
8. Improvements to Kensington Olympia passenger station and Willesden freight marshalling yards to deal with through services using this route.
9. A large new modern train servicing and maintenance depot will be constructed at North Pole in North West London specifically to deal with the new fleet of trains providing the international passenger services.

SCHEDULE II
CONVENTIONAL CASE

PART C2:
SNCF Infrastructure

1. Construction of freight exchange sidings alongside the Terminal at Fréthun to receive freight trains travelling to and from the Fixed Link, including the necessary installations for the management of locomotives and the facilities necessary for the Railways' Train staff.
2. Construction of a modern international passenger station at Fréthun. This station, which will have comprehensive travel and commercial facilities, will give access to the international passenger trains travelling to and from the Pas-de-Calais Coast.
3. Electrification at 25kv 50Hz of the section of line between the Fixed Link and Hazebrouck providing a fast link for all freight trains travelling from the Continent over the SNCF electrified network. This investment will also permit international passenger night trains to run through the Fixed Link. The modernization will be accompanied by the rehabilitation of the signalling and telecommunications systems.
4. Additional passenger handling facilities and improved amenities to cater for the increased passenger movements through the international passenger terminal at Paris-Nord station.
5. Electrification at 25kv 50Hz of sections of the line between Lille and the Belgian frontier to permit direct links between London and Brussels.
6. Improvement of the capacity of the present line in the suburbs and the outer suburbs of Paris by:
 - construction of a fly-over in Pierrefite,
 - construction of a third track between Chantilly and Creil,
 - construction of a fly-over in Creil station with rationalisation of the signal boxes of this same station,
 - construction either of the third track or of permanent reverse working installations between Creil and Amiens.

SCHEDULE III

TECHNICAL SPECIFICATIONS FOR THE FIXED LINK

PART A

- (A) The track will be suitable for Freight Trains with a maximum axle load of 22.5 tonnes.
- (B) The overhead line equipment will be compatible with the 1.6m wide pantographs currently in use by the Railways on 25Kv systems.
- (C) The signalling system will be compatible with the speeds and braking performance of Trains which shall be agreed.
- (D) The interlocking used for the signalling will be to standards and qualities comparable to those of the Railways.
- (E) If relays are used in the safety logic they will be of the fail-safe signalling type.
- (F) Telecommunications fixed links will be provided to C.C.I.T.T. (Comité Consultatif International Télégraphique et Téléphonique) and C.E.P.T. (Conférence Européenne des Postes et Telecommunications) standards.

SCHEDULE III

PART B

B.1 TRACK

- (A) The characteristics of both plain track and switches and crossings.
- (B) The cant applied and the cant deficiencies relative to the speeds of different types of Train and Shuttle.
- (C) The acceptance procedures to be applied and methods for recording the condition of the track after installation.

B.2 TRACTION POWER SUPPLY

- (A) The design characteristics of the overhead live equipment.
- (B) The electrical clearance dimensions between live equipment and earth and the insulation levels of switching station equipment and overhead live equipment.
- (C) The schematic diagrams of the traction return system and of the earthing and bonding arrangements. Values of the rail to earth voltages.
- (D) The values of maximum, average and minimum voltages at pantographs under designated traffic and feeding conditions.
- (E) The schematic diagram of the traction supply feeding arrangements and the electrical sectioning plans.
- (F) The power demands for individual Trains and for the total service of the Trains.
- (G) The maximum short-circuit current levels at pantographs.
- (H) The design of the electrical protection system.
- (I) The procedure for the emergency isolation of the overhead line equipment.
- (J) The interference problems associated with the traction system.

B.3 SIGNALLING AND TRAFFIC CONTROL

- (A) The principle of the installation (two-way working, reversible signalling) and the definition of the signal aspects and/or cab signalling and their interpretation by drivers.
- (B) The arrangement of any beacons and train-borne pick up equipment for speed control.
- (C) The general design of the signalling system, including possible provision for jointless track circuits, cab signalling, automatic train protection (ATP), automatic train operation (ATO) and headway improvement in the future including broken rail and hot axle box detection and the possible requirements for increased train speed. In preparing these designs, every endeavour will be made to minimise the amount of the additional equipment required on the Trains.
- (D) The general design of the signalling, despatching and control centre(s) (train describer, control of points, links with the Railways' control centres and the electrical control rooms).
- (E) The design of signalling equipment to ensure its operation with complete safety in the marine environment of the tunnel.
- (F) The definition and design of the signalling interface between the area operated by the Concessionaires and the Railways.

B.4 TELECOMMUNICATIONS

- (A) The general design of the communications subsystems to ensure continuous communications and data transmission within the tunnels, Trains, ancillary areas and terminal areas.
- (B) The type and number of circuits (including interconnection circuits between the Railways).
- (C) The ground to train and other radio systems.
- (D) The provision of alarm, safety and emergency facilities in the Fixed Link.

B.5 CIVIL ENGINEERING

- (A) The types of crossover.
- (B) The dimensions and form of construction of the walkways within the tunnels.
- (C) The design of the bridges, structures and other works between the tunnel portals and the Railways.

B.6 MAINTENANCE

- (A) Fixed equipment tolerances.
- (B) Pantograph and wheel tolerances.

SCHEDULE IV

TRAFFIC FORECASTS

	Passengers	Non-Bulk Freight	Bulk Freight
1993 (full year)	16.5 m.	4.9 m. tonnes	2.4 m. tonnes

The relevant figure referred to in Clause 7.5 (iv)(a) (1) shall, if the first Accounting Period is or falls within 1993, be the figure given above for 1993 or, if the first Accounting Period is later than 1993, the figure given above for 1993 adjusted between 1993 and the year concerned by an annual cumulative growth rate of 2.7 % for Passengers, 4.3 % for Non-Bulk Freight and 2.2 % for Bulk Freight.

SCHEDULE V
OPERATING COSTS
(INCLUDING RENEWAL EXPENDITURE)

Cost Identification & Allocation

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INTRODUCTION & PRINCIPLES

1. This Schedule:-

- 1.1 identifies the operating, maintenance and renewal costs of the Fixed Link (the "Operating Costs");
- 1.2 allocates the costs to individual cost pockets;
- 1.3 sets down a method of allocation between Eurotunnel (as defined below) and the Railways;

2. It is recognised that this Schedule and its contents and principles have been prepared approximately six years prior to the expected Target Commencement Date.

2.1 It is recognised that conditions, technology and the requirements of the parties will change during the period for which this Schedule will be in effect.

2.2 Consequently it is recognised that additions, deletions and amendments will need to be discussed and agreed.

2.3 Such additions, deletions and amendments will be discussed and agreed as far as possible in accordance with the bases and principles set out herein.

2.4 The possibility of costs other than those identified in this Schedule arising at the outset or later is recognised; the method of allocation of such costs will as far as possible be determined in accordance with the bases and principles set out herein.

2.5 The Operating Costs to which the Railways are required to contribute are limited to those which a Prudent and Diligent Operator would incur in operating the Fixed Link.

The following principles have been adopted in this Schedule:-

3.1 Principle A

3.1.1 Certain costs identified herein and related to the Common Section will be allocated to the Railways in proportion to the share of the capacity of the Fixed Link, as measured in Standard Paths in any Hour, to which the Railways are entitled under this Agreement.

3.1.2 Notwithstanding 3.1.1, if either party, in any period, utilises more than the share of the capacity of the Fixed Link to which it would otherwise be entitled, then it shall bear costs in proportion to the share of capacity it uses, and the other party shall bear the balance.

3.2 Principle B

3.2.1 There will be an initial analysis, where appropriate, to one or more of the following five geographical areas:-

- 001 Common Section
- 002 Continental Main Line UK (CML-UK)
- 003 Continental Main Line France (CML-FR)
- 004 Eurotunnel Terminal (UK)
- 005 Eurotunnel Terminal (FR),

where references to the Continental Main Line or CML are references to the part of the infrastructure of the Fixed Link lying between the Common Section and the Railway Infrastructure, and intended for use solely for the passage of Trains.

3.2.2 The shared costs will, following analysis under 3.2.1, be analysed to one or more of the following three businesses:-

- 01 Shuttles
- 02 Trains
- 03 Eurotunnel ancillary business (all revenues of Eurotunnel other than revenue attributable to 01 and 02 above).

3.3 In this Schedule, "Eurotunnel" means the Concessionaires and Associated Companies (as defined in the Concession) which incur costs in connection with the operation, maintenance or renewal of the Fixed Link.

ANALYSIS POCKETS

These are the geographical areas and businesses established by Principle B.

SECTION A – MANAGEMENT & ADMINISTRATION

CODE	ITEM	DESCRIPTION	METHOD OF ALLOCATION TO COST POCKETS
A01	HEAD- QUARTERS STAFF	<ol style="list-style-type: none"> 1. Company chief executive 2. HQ support staff 3. Finance (incl. insurance) 4. Commercial & ancillary business 5. Public relations 6. Legal 7. Engineering & maintenance (rolling stock) 8. Engineering & maintenance (railway) 9. Operation (railway) 10. Other staff 	<p>1.0 Wherever possible all costs associated with staff will be allocated to one of the three businesses, namely:-</p> <p>01 Shuttles</p> <p>02 Trains</p> <p>03 Eurotunnel ancillary business.</p> <p>2.0 The allocation will be to the particular business in which the person is exclusively employed.</p> <p>3.0 For personnel employed in more than one of the three businesses, where exclusive allocation to individual businesses is not appropriate, periodic sampling of activity will be conducted, and costs will be allocated as follows:-</p> <p>3.1 for individuals other than executives and people managing groups, in proportion to the time spent by them in each of the three businesses;</p> <p>3.2 for executives and people managing groups, in proportion to the allocation under item 3.1 above for people reporting to them.</p> <p>4.0 The final analysis pockets will be:-</p> <p>01 Shuttles</p> <p>02 Trains</p> <p>03 Eurotunnel ancillary business.</p>
A02	ADMINIS- TRATION COSTS	<ol style="list-style-type: none"> 1. Computer costs (operating & leasing) 2. Postage, telex, telephone 3. HQ cars & vehicles 4. Audit fees 5. Consultancy (technical, legal, etc.) 6. Office cleaning & maintenance 7. HQ staff travel & accommodation 8. Leases 9. Heating and lighting costs 10. Office & cleaning materials 11. Miscellaneous 	<p>1.0 Wherever possible costs will be allocated specifically to one of the three businesses, namely:-</p> <p>01 Shuttles</p> <p>02 Trains</p> <p>03 Eurotunnel ancillary business.</p> <p>2.0 Costs incurred in more than one business will be allocated in proportion to the allocation of the staff costs derived for those businesses in A01.</p> <p>3.0 The final analysis pockets will be:-</p> <p>01 Shuttles</p> <p>02 Trains</p> <p>03 Eurotunnel ancillary business.</p>
A03	INTER- GOVERNMENTAL COMMISSION AND THE SAFETY AUTHORITY COSTS	<p>Eurotunnel's contribution to the costs of the IGC and the Safety Authority as stated in the Concession.</p>	<p>1.0 The total cost of A03 will be allocated on the basis of Principle A and analysed to pockets:-</p> <p>01 Shuttles</p> <p>02 Trains.</p>

SECTION B — ENERGY

B01 TRACTION

Energy used by motive power units. Actual cost of energy used recognising power factor and maximum demand insofar as they affect the basis of payment.

1. The energy costs will be measured separately for the three uses of B01, B02 and B03, and then allocated as follows:

1.0 B01 – Traction

1.1 Energy will first be allocated to the five geographical areas, namely:

001 Common Section

002 CML – UK

003 CML – FR

004 Eurotunnel Terminal UK

005 Eurotunnel Terminal FR.

1.2 For the 001 Common Section the energy for a particular period will be allocated on actual usage, based upon the predetermined theoretical consumption level per Train or Shuttle type, taking into account:

a) Power factor characteristics per Train or Shuttle type.

b) Contribution to the maximum demand by each Train or Shuttle usage.

1.2.1 a) A theoretical cost of energy will be established for each type of Train and Shuttle during its passage through the Common Section.

b) A calculation will then be done to assess the theoretical cost of energy, based on actual Trains or Shuttles run, for a given period and this will be allocated between Shuttles and Trains.

c) Subsequently, an actual cost of energy for the same given period will become known.

d) The basis of allocation of this actual cost will be the theoretical cost derived in 1.2.1.(b).

1.2.2 This exercise will apply to all Train and Shuttle movements through the Common Section.

1.2.3 The final analysis pockets will be:

01 Shuttles

02 Trains

1.3 The analysis of costs for the other geographical areas will be:

a) 002 CML-UK - analysed to 02 Trains

b) 003 CML-FR - analysed to 02 Trains

c) 004 Eurotunnel Terminal (UK) - analysed to 01 Shuttles

d) 005 Eurotunnel Terminal (FR) - analysed to 01 Shuttles.

B02 RAILWAY NON TRACTION

1. Railway system (Non traction). All energy consumed by the railway system.

1.1 Excluding that fed directly to Trains and Shuttles.

1.2 Including service tunnel.

1.0 B02 Railway Non Traction

1.1 The energy is first analysed to the five geographical areas, namely:

a) 001 Common Section

b) 002 CML – UK

c) 003 CML – FR

d) 004 Eurotunnel Terminal (UK)

e) 005 Eurotunnel Terminal (FR).

1.2 001 - Common Section

1.2.1 This will first be analysed to:

- a) Cooling
- b) All other requirements.

1.2.2 The cost of energy for cooling will be allocated on the same basis as B01 Item 1.2. This will be analysed to the following businesses:

- 01 Shuttles
- 02 Trains.

1.2.3 The costs of energy for other requirements will be allocated on the basis of Principle A.

1.2.4 The final analysis pockets will be:

- 01 Shuttles
- 02 Trains.

1.3 The analysis of costs for the other geographical areas will be:

- a) 002 CML-UK - analysed to 02 Trains
- b) 003 CML-FR - analysed to 02 Trains
- c) 004 Eurotunnel Terminal (UK) - analysed to 01 Shuttles
- d) 005 Eurotunnel Terminal (FR) - analysed to 01 Shuttles

B03 TERMINALS

1. Terminals

1.1 Including supplies to tracks of the maintenance workshops.

1.0 B03 Terminals

1.1 This covers all the energy supplied to the Terminals except that detailed in B01 and B02.

1.2 The only charges to the Railways will be their share of the energy used in those maintenance workshops concerned with the maintenance of plant and equipment for the railway system in the Common Section, CML-UK and CML-FR.

1.3 Energy to the Terminals, excluding maintenance workshops, will be allocated to Eurotunnel:

- a) Analysis pockets:
 - 01 Shuttles
 - 03 Eurotunnel ancillary business.

1.4 Energy to maintenance workshops will be analysed to:

1.4.1 Maintenance of Eurotunnel motive power and rolling stock

- a) Eurotunnel responsibility
- b) Analysed to pocket:
 - 01 Shuttles

1.4.2 Maintenance of Fixed Link railway system

- a) The workshop activity will be analysed on a percentage basis to the five geographical areas and then the energy costs allocated and analysed as follows:

001 Common Section

Allocated on the basis of the total costs in B02 (Items 1.2.2 and 1.2.4) and analysed to:

- 01 Shuttles
- 02 Trains.

002 CML — UK

Analysed to 02 Trains

003 CML — FR

Analysed to 02 Trains

004 Eurotunnel Terminal (UK)

Analysed to 01 Shuttles

005 Eurotunnel Terminal (FR)

Analysed to 01 Shuttles

1.4.3 Maintenance of the Terminal for its activities other than those referred to in 1.4.1 and 1.4.2

a) Allocated to Eurotunnel

b) Analysed to pockets:

01 Shuttles

03 Eurotunnel ancillary business.

SECTION C — SECURITY AND SAFETY RELATED MATTERS

1. General

1.1 There are two different types of cost, namely:—

1.1.1 day to day costs

1.1.2 costs associated with emergencies or out of the ordinary situations.

2. The following comments relate exclusively to normal day to day costs.

3. The costs relating to security can also be analysed to:—

3.1 Policing

3.2 Security

4. The policing costs are essentially in respect of the Terminals and are a Eurotunnel cost.

4.1 The security costs are essentially in respect of the railway system, tunnel and frontier aspects and hence are allocated to both Eurotunnel and the Railways.

5. It is agreed that if any of the apportionments within this section are shown by experience to be inequitable, then the parties will meet to renegotiate an equitable basis, taking into account where appropriate the reason for the IGC and Safety Authority requirements.

C01 SECURITY

1. Eurotunnel management & supervision

2. Eurotunnel staff

3. Eurotunnel office & operating costs

4. External resource costs

1.0 The responsibilities are at present as follows:—

1.1 France

1.1.1 All security and policing responsibility will be undertaken by the "Police de l'Air et des Frontières" and the French immigration authorities at their cost.

1.1.2 Should this position change, then the principles and procedures established for the UK will prevail.

1.2 UK

1.2.1 The responsibility for policing on the UK Terminal will be that of the Kent Police at Eurotunnel cost.

1.2.2 The responsibility for security is that of Eurotunnel and can be analysed to:

- i) Security of and in the Terminal
- ii) Security of and in the Common Section
- iii) Security of and on the CML-UK

1.2.3 The resources and hence cost will be related to:—

- i) Eurotunnel staff
- ii) Eurotunnel dogs
- iii) Eurotunnel equipment
- iv) External resources

1.3 Allocation of UK costs

1.3.1 The costs in 1.2.2 above will be allocated to the following three geographical areas as follows:

- a) 001 Common Section analysed to:
 - 001 Shuttles
 - 002 Trains
- in accordance with Principle A.

SECTION C — SECURITY AND SAFETY RELATED MATTERS (continued)

		b) 002 CML - UK Analysed to 02 Trains
		c) 004 Terminal (UK) Analysed to 01 Shuttles
C02	FIRE	<ol style="list-style-type: none"> 1. Eurotunnel management and supervision 2. Eurotunnel staff 3. Eurotunnel offices and operating costs 4. External resource costs
		<p>1.0 The Fixed Link system requires a permanent based fire service in the Terminals.</p> <p>1.1 The cost will be allocated on the basis of Principle A and analysed to:</p> <p>01 Shuttles</p> <p>02 Trains</p>
C03	EMERGENCY	<ol style="list-style-type: none"> 1. Eurotunnel medical staff 2. Eurotunnel operating costs 3. External resource costs
		<p>1.0 This will cover the permanent medical staff based on the Terminals and consequently will be allocated fully to analysis pocket:</p> <p>01 Shuttles</p>
C04	TRAIN RESCUE	<ol style="list-style-type: none"> 1. Manning & operation costs of rescue trains 2. Rescue teams
		<p>1.0 In conjunction with the IGC and the Safety Authority full emergency and rescue facilities and resources will be developed.</p> <p>1.1 At the appropriate time the views of the IGC and the Safety Authority will be sought as to the specific type of resources and their allocation of this need between:</p> <p>1.1.1 Terminals</p> <p>1.1.2. The railway system</p> <p>2.0 A method of allocation of cost will be developed from these views by agreement between the parties.</p> <p>2.1 Analysis pockets will be:—</p> <p>01 Shuttles</p> <p>02 Trains</p>

SECTION D - RATES & TAXES

1. Includes all UK and French rates and taxes

1.0 General

1.1 Since the basis on which rates and taxes will be levied is uncertain at the time of preparation of this Schedule, the parties accept the following provisional basis for their allocation but will meet again at the appropriate time to discuss and develop a definitive basis of allocation and analysis.

1.2 For the present, individual cost pockets have been listed and allocated as detailed below.

D01 RATES AND TAXES

1. UK Rates (including water rates)

1.0 UK rates will be payable on the following units:-

1.1 UK Terminal

1.1.1 Part will be providing joint services, eg. administration building, control centres and workshop and maintenance facilities used for the railway system and the road link to the Terminal.

1.1.2 Part will be solely for the use of Eurotunnel business.

1.1.3 The basis of allocation and analysis to cost pockets will be based on the principle that rates will be allocated pro rata to the cost of the people using the building and recognising the particular business activity being undertaken by those people (as set out in Sections A, C, E and F of this document).

01 Shuttles

02 Trains

03 Eurotunnel ancillary business

1.2 CML - UK

1.2.1 This is solely for the use of the Railways and will be analysed to:-

02 Trains

1.3 UK part of the Common Section

1.3.1 This is of use both to Eurotunnel and the Railways and will be analysed on the basis of Principle A to:-

01 Shuttles

02 Trains

2.0 The Concessionaires will produce a matrix and endeavour to allocate the cost of rates (including water rates) to individual locations and buildings.

2. France

2.1 Local authority tax on improved land and on buildings.

1.0 FR local authority tax will be payable on:-

1.1 French Terminal

1.1.1 where part is for the common use of Eurotunnel and the Railways and part solely for Eurotunnel.

1.2 CML-FR

1.2.1 Solely for the use of the Railways (excluding the Common Section).

1.3 French part of the Common Section.

2.0 Taxes will as far as possible be allocated to individual areas of land or specific buildings as follows:-

2.1 Initially to specific areas or buildings used solely by Eurotunnel or the Railways.

2.2 In the case of shared facilities on the same basis as set out in Section D01 Item 1.0.

SECTION D — RATES & TAXES (continued)

- 3.0 The final analysis pockets will be:-
 - 01 Shuttles
 - 02 Trains
 - 03 Eurotunnel ancillary business
- 3. France
 - 3.1 "Taxe professionnelle" levied on:-
 - 3.1.1 Capital assets
 - 1.0 "Taxe professionnelle" will be payable on:-
 - 1.1 Capital assets which are the French part of:-
 - 1.1.1 The tunnel and the Common Section
 - 1.1.2 CML-FR
 - 1.1.3 French Terminal
 - 1.2 The tunnels and the Common Section
 - a) On the basis of Principle A
 - b) Analysis will be to pockets:
 - 01 Shuttles
 - 02 Trains
 - 1.3 CML-FR
 - a) All allocated to the Railways
 - b) Analysed to:
 - 02 Trains
 - 1.4 French Terminal
 - a) On the same basis as the UK Terminal Item D01 (1.1)
 - b) Analysed to:
 - 01 Shuttles
 - 02 Trains
 - 03 Eurotunnel ancillary business
 - 1.5 Eurotunnel rolling stock
 - a) Will be allocated to Eurotunnel and analysed to cost pocket:
 - 01 Shuttles
 - 1.6 Wages and salaries:
 - a) Allocation will be according to the type of work done by each individual (as referred to in Sections A, C, E, and F of this document) and analysed to pockets:
 - 01 Shuttles
 - 02 Trains
 - 03 Eurotunnel ancillary business
 - 3.1.2 Eurotunnel rolling stock
 - 4. France
 - 4.1 Undersea tax
 - 1.0 Undersea tax
 - 1.1 If payable will be allocated to Eurotunnel and the Railways on the basis of Principle A.
 - 1.2 The final analysis pockets will be:-
 - 01 Shuttles
 - 02 Trains

SECTION E - MAINTENANCE

| | | |
|--|--|---|
| E01 TUNNEL | <ol style="list-style-type: none"> 1. Running tunnel structure (including walkways) 2. Passage structures joining the running and service tunnels 3. Service tunnel structure 4. Piston relief duct structures | <p>1.0 Tunnel costs will be allocated on the basis of Principle A.</p> <p>2.0 The final analysis pockets will be:-</p> <p>01 Shuttles</p> <p>02 Trains.</p> |
| E02 RAILWAY CIVIL WORKS | <ol style="list-style-type: none"> 1. Track bed or ballast 2. Rail support structures 3. Rail, points, crossings and fastenings 4. Shuttle platforms and associated structures 5. Rail grinding, tamping and lining | <p>1.0 Railway direct civil costs will be allocated to the individual sections of track on which they were incurred, namely:-</p> <p>001 Common Section</p> <p>002 CML-UK</p> <p>003 CML-FR</p> <p>004 Eurotunnel Terminal (UK)</p> <p>005 Eurotunnel Terminal (FR)</p> <p>1.1 Management and overheads in respect of maintenance will be allocated pro rata to the direct costs.</p> <p>1.2 For sections of track used jointly by Eurotunnel and the Railways, the basis of allocation will be related to the number of Trains and Shuttles passing, taking into account their speed, weight and axle load.</p> <p>1.3 The analysis pockets will be:-</p> <p>001 Common Section - Analysed to:-</p> <p>01 Shuttles</p> <p>02 Trains</p> <p>002 CML-UK - Analysed to 02 Trains</p> <p>003 CML-FR - Analysed to 02 Trains</p> <p>004 Eurotunnel Terminal - (UK) Analysed to 01 Shuttles</p> <p>005 Eurotunnel Terminal - (FR) Analysed to 01 Shuttles.</p> |
| E03 RAILWAY SYSTEM ELECTRICAL AND MECHANICAL | <ol style="list-style-type: none"> 1. All power supplies | <p>1.0 These cover all the maintenance costs related to all the power supplies on the Fixed Link.</p> <p>1.1 Initially costs will be allocated to:-</p> <p>1.1.1 Supplies to railway traction</p> <p>1.1.2 Railway system cooling</p> <p>1.1.3 Other railway system requirements</p> <p>1.1.4 Terminals UK and FR (excluding maintenance workshops)</p> <p>1.1.5 Maintenance workshops</p> <p>1.2 The allocation and analysis will be:-</p> <p>1.2.1 Railway traction</p> <p>- allocated according to traction power used in B01</p> <p>- analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains</p> <p>1.2.2 Railway system cooling</p> <p>- allocated according to traction power used in B02, Item 1.2.2</p> <p>- analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains</p> <p>1.2.3 Other railway system requirements</p> <p>- allocated according to the totals of B02 Item 1.2.4 plus B02 Item 1.3</p> |

SECTION E - MAINTENANCE (CONTINUED)

| | | |
|-----|--|--|
| | | 1.2.4 Terminals (UK and FR)
- allocated to Eurotunnel
- analysed to:-
01 Shuttles
1.2.5 Maintenance workshops
- allocated on the basis in B03 Item 1.4
- analysed to:-
01 Shuttles
02 Trains |
| | 2. Catenary (including earthing and bonding) | 1.0 The costs will be allocated to the five geographical areas and allocated and analysed as follows:-
001 Common Section
allocated on the basis of the actual number of Train and Shuttle passages and analysed to:-
01 Shuttles
02 Trains
002 CML-UK
003 CML-FR
both allocated to the Railways and analysed to:-
02 Trains
004 Eurotunnel Terminal (UK)
005 Eurotunnel Terminal (FR)
allocated to Eurotunnel and analysed to:-
01 Shuttles |
| | 3. Cooling | 1.0 Costs will be allocated on the basis of energy used for cooling in B02 Item 1.2.2. |
| | 4. Other railway system electrical and mechanical maintenance costs including the service tunnel | 1.0 Initially analysed to the five geographical areas and then allocated and analysed as follows:-
001 Common Section
allocated on the basis of Principle A and analysed to:-
01 Shuttles
02 Trains
002 CML-UK
003 CML-FR
all allocated to the Railways and analysed to:-
02 Trains
004 Eurotunnel Terminal (UK)
005 Eurotunnel Terminal (FR)
all allocated to Eurotunnel and analysed to:
01 Shuttles |
| E04 | RAILWAY SYSTEM SIGNALLING AND TELECOMMUNICATIONS | 1. Signalling and telecommunications (for railway system use only).
1.1 Including costs in system control centres
1.0 These cover all costs on the Fixed Link railway system and initially will be analysed to:
001 Common Section
002 and 003 CML-UK and CML-FR
004 and 005 Eurotunnel Terminals
2.0 The basis of allocation will be:
2.1.001 Common Section
a) Based on Principle A
b) Analysed to pockets:
01 Shuttles
02 Trains
2.2.002 and 003 CML-UK and CML-FR
a) To the Railways
b) Analysed to pocket:
02 Trains |

SECTION E - MAINTENANCE (CONTINUED)

| | | | |
|-----|---|--|--|
| | | | 2.3.004 and 005 Eurotunnel Terminals
Analysed to pocket:
01 Shuttles |
| E05 | MAINTENANCE
WORKSHOPS
AND STORES | 1. All on site workshops and stores. | <p>1.0 Costs will initially be analysed to activities and then allocated as follows:-</p> <p>1.1 Maintenance of motive power and rolling stock all to Eurotunnel</p> <p>Analysed to pocket:
01 Shuttles</p> <p>1.2 Maintenance of civil engineering (railway)</p> <p>1.2.1 Analysed to particular sections of track and then allocated and analysed as E02.</p> <p>1.3 Maintenance of civil engineering (Terminals)</p> <p>1.3.1 Allocated to Eurotunnel and analysed to pocket:
01 Shuttles</p> <p>1.4 Maintenance of electrical and mechanical</p> <p>1.4.1 Analysed and allocated as E03</p> <p>1.5 Maintenance of signalling and telecommunications</p> <p>1.5.1 Analysed and allocated as E04</p> |
| E06 | SECURITY,
FIRE AND
EMERGENCY
EQUIPMENT | <p>1. This includes all such equipment in the terminals and the railway system</p> <p>1.1 It excludes equipment provided on Trains and Shuttles.</p> | <p>1. Costs will be allocated on the same basis as the day to day costs are allocated in Section C.</p> <p>2. Analysed to pockets:
01 Shuttles
02 Trains
03 Eurotunnel ancillary business</p> |

SECTION F - RAILWAY MANAGEMENT & CONTROL

| | | | |
|-----|---|---|--|
| F01 | RAILWAY
OPERATIONS
SITE
MANAGEMENT
AND
SUPERVISION | <p>1. All site management & staff (except HQ staff) and associated costs</p> <p>1.1 Directly involved on a day by day basis with the operation of the railway system.</p> | <p>1.0 The costs will be allocated initially to the five geographical areas and then allocated and analysed as follows:</p> <p>001 Common Section
allocated on the basis of Principle A and then analysed to:</p> <p>01 Shuttles
02 Trains
002 CML-UK
003 CML-FR
all allocated to the Railways and analysed to:</p> <p>02 Trains
004 Eurotunnel Terminal (UK)
005 Eurotunnel Terminal (FR)
all allocated to Eurotunnel and analysed to:</p> <p>01 Shuttles</p> |
| F02 | CONTROL
CENTRES | <p>1. All staff directly involved on a day by day basis in the operation of the centres including associated staff</p> <p>1.1 Control centres will include in both UK and France:</p> <p>1.1.1. a railway control
1.1.2 a terminal control
1.1.3. fixed railway equipment monitoring and control.</p> | <p>1.0 Costs for the control centres will be allocated and analysed in the same manner as in F01.</p> |

SECTION G - RENEWALS

General

1. The basis of allocation of renewal costs will follow the principles and allocations established for maintenance costs.
2. Renewal costs due to faulty supply or workmanship will be solely the responsibility of Eurotunnel.
3. If other faults arise and the equipment was not shown not to be to specification and if it passed quality assurance, then the costs of replacement or refurbishment will be shared on the same basis as the maintenance cost allocations.
4. Since basic structures of the running and service tunnels are expected to last the full Concession Period, it is not expected that the Railways will be liable to contribute to renewal costs, unless such renewals are "normal renewals" as defined below.
 - 4.1 Any other items identified as being expected to last the full Concession Period will be treated as Item 4 above.
 - 4.2 These items will be identified from time to time by agreement between the parties adopting the best standard practice for main line railway systems.
5. In this section, a "normal renewal" is at any time a renewal which is at that time considered to be necessary by reference to the prevailing standard practice on the main line systems of the Railways, recognising the need for preventative maintenance.
6. The total cost of anticipated normal renewals shall be reviewed annually together with the date on which any such renewal is expected to take place.
7. For each item of anticipated normal renewals, there shall be established (in accordance with the principles in paragraphs G01 to G08) for each year or part year (appropriately weighted pro rata temporis) of the operational life of that item, the proportion (expressed as a percentage) for each party of its liability for the renewal cost.
8. In the year in which renewal is effected, the actual cost of renewal shall be apportioned and borne by each of the parties in proportion to the aggregate of the percentages so accumulated under paragraph 7 above during each year or part year of the operational life of the item.
9. The following is an example of how paragraphs 7 and 8 will work:
 - a) Suppose an item had an actual operational life of four (4) years and six (6) months, at the end of which it was renewed at a cost of one (1) million French francs;
 - b) Suppose in each of the five (5) years during which it is used operationally, the appropriate cost allocation to the parties (in accordance with paragraphs G01 to G08) were as follows:

SECTION G — RENEWALS (continued)

| Year | Railways
% | Eurotunnel
% |
|------|---------------|-----------------|
| 1 | 40 | 60 |
| 2 | 30 | 70 |
| 3 | 70 | 30 |
| 4 | 50 | 50 |
| 5 | 50 | 50 |

c) The aggregate of the percentages attributable to the Railways (including appropriate weighting for the final six (6) months) is 215 and to Eurotunnel 235.

d) Accordingly, the Railways' share of the replacement cost would be French francs : one (1) million $\times \frac{215}{450} = 478,000$

and that for Eurotunnel would be French francs : one (1) million $\times \frac{235}{450} = 522,000$

| | | | |
|-----|---------------------|--|--|
| G01 | TUNNEL | 1. Elements within the running and service tunnels, cross passages and piston relief ducts, excluding the basic structures. | 1.0 Costs will be allocated:
1.1 On the basis of Principle A.
2.0 Analysis pockets will be:
01 Shuttles
02 Trains. |
| G02 | RAILWAY CIVIL WORKS | 1. Track, bed or ballast, rail support structures, points, crossings and fastenings.

2. Shuttle platform and associated structures. | 1.0 Costs will initially be allocated to:
001 Common Section
002 and 003 CML-UK and CML-FR
004 and 005 Eurotunnel Terminals.
2.0 Costs will be allocated on the following basis:
2.1 Common Section
a) The allocations between Eurotunnel and the Railways will follow the basis established for the allocation of maintenance costs as set out in E02.
b) Analysis pockets will be:
01 Shuttles
02 Trains.
2.2 002 and 003 CML-UK and CML-FR
a) Costs will be allocated to: 02 Trains.
2.3 Eurotunnel Terminals
a) Costs will be allocated to: 01 Shuttles.
2.0 Allocation fully to Eurotunnel, analysed to pocket:
01 Shuttles. |
| G03 | CATENARY | 1. All catenary equipment and supports. | 1.0 Costs will initially be analysed to:
001 Common Section
002 and 003 CML-UK and CML-FR
004 and 005 Eurotunnel Terminals
2.0 Costs will be allocated on the basis as set out in Section E03 Item 2.(1.0).
3.0 Analysis to pockets:
01 Shuttles
02 Trains |
| G04 | POWER SUPPLIES | 1. Power supplies from electricity authorities to Eurotunnel sub-station. | 1.0 Allocated on the same basis as power used under Sections B01, B02 and B03.
2.0 Analysed to pockets:—
01 Shuttles
02 Trains
03 Eurotunnel ancillary business |

SECTION G — RENEWALS (continued)

| | | | |
|-----|-----------------------------------|---|---|
| | | 2. All railway power supplies to the catenary. | <p>1.0 Allocated on the same basis as the maintenance costs in E03 Item 2 (1.0).</p> <p>2.0 Analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains</p> |
| | | 3. All other railway & tunnel power supplies | <p>1.0 Initially analysed to:</p> <p>1.1 cooling</p> <p>1.2 remainder</p> <p>2.0 Allocation on the same basis as maintenance costs as follows:—</p> <p>2.1 cooling — E03 Item 3 (1.0)</p> <p>2.2 remainder — E03 Item 4 (1.0)</p> <p>3.0 Finally analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains</p> |
| | | 4. All other power supplies within the Fixed Link. | <p>1.0 Other power supplies are related to the Terminals and are, therefore, fully allocated to Eurotunnel.</p> <p>2.0 Analysed to pocket:</p> <p>01 Shuttles</p> |
| G05 | SIGNALLING AND TELECOMMUNICATIONS | 1. All signalling and telecommunication equipment for use by the railway within the Fixed Link including the UK and French control centres. | <p>1.0 This will be allocated on the same basis as the maintenance costs per Section E04.</p> <p>2.0 Analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains</p> |
| G06 | ELECTRICAL AND MECHANICAL | 1. All electrical and mechanical equipment within the railway system. | <p>1.0 First costs will be analysed to:</p> <p>1.1 Cooling equipment</p> <p>1.2 All other equipment (railway system)</p> <p>1.3 All other equipment (Terminals, except maintenance workshops)</p> <p>1.4 Maintenance workshops.</p> <p>2.0 Allocation will be on the following basis:</p> <p>2.1 Cooling equipment</p> <p>a) On a similar basis to the maintenance costs in Section E03 Item 3 (1.0).</p> <p>2.2 All other equipment (railway system)</p> <p>a) On a similar basis to the maintenance costs in Section E03 Item 4 (1.0).</p> <p>2.3 All other equipment (Terminals, except maintenance workshops)</p> <p>a) All to Eurotunnel.</p> <p>2.4 Maintenance workshops</p> <p>a) Cost allocated on the same basis as E05.</p> <p>2.5 All the above costs will be finally analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains.</p> |
| | | 2. Service tunnel transportation system | <p>1.0 All costs on a similar basis to maintenance costs, being:</p> <p>1.1 On the basis of Principle A.</p> <p>2.0 Analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains.</p> |
| G07 | SECURITY FIRE AND EMERGENCY | 1. All equipment within the Fixed Link. | <p>1.0 Costs will be allocated on the same basis as maintenance in Section E06.</p> <p>2.0 Analysed to pockets:</p> <p>01 Shuttles</p> <p>02 Trains.</p> <p>03 Eurotunnel ancillary business</p> |

SECTION G — RENEWALS (continued)

| | | | |
|-----|-------------------------------------|---|---|
| G08 | RESCUE AND
MAINTENANCE
TRAINS | 1. Rescue and maintenance
trains and vehicles. | 1.0 Each item of major equipment will be
separately identified with its usage.
2.0 The allocation of costs between the three
businesses will be made in accordance with
the usage of major equipment taken as a
whole. |
|-----|-------------------------------------|---|---|

SECTION H - INSURANCES

| | | | |
|-----|-------------------------|---|--|
| H01 | EUROTUNNEL
INSURANCE | This includes:
1.1 Third party
1.2 All risks
1.3 Employer's liability
1.4 Other insurances. | <ol style="list-style-type: none">1. It is recognised that until nearer the Commencement Date the actual availability and cost of insurance cover from the market will not be known.2. Consequently, at the appropriate time prior to the Commencement Date the parties will meet to reach agreement on the type and level of insurance cover to be effected recognising the principles outlined below.3. A Special Agreement will be reached between the parties in respect of insurance during the commissioning period and other periods prior to the Commencement Date.4. The Railways shall pay that proportion of the costs of the Concessionaires third party liability insurance which is the difference between the actual cost and what the cost would have been had the Concessionaires been able to secure a full effective waiver from the Railways, Passengers, the Railways' employees (and other similar persons mentioned in Clause 18.2(ii) and those interested in their freight and any other interests derived from Trains including those mentioned in Clause 18.2(i)(b) of this Agreement.5. The costs of the insurance covers referred to in Clause 19.1 of this Agreement shall be borne as to 49% by the Railways and as to 51% by the Concessionaires.6. The cost of all other insurances shall be borne by the Concessionaires. |
|-----|-------------------------|---|--|

SCHEDULE VI
USAGE CHARGES

| | Volume Range
(millions per
annum) | Units of
Account |
|-------------------------------------|---|---------------------|
| A. Passenger Toll | | |
| For each Passenger from | 0 to and including 12 | 3.5 |
| " " | 12 " " 16 | 3.0 |
| " " | 16 " " 18 | 2.5 |
| " " | 18 " " 19 | 2.0 |
| " " | 19 " " 20 | 1.5 |
| For each Passenger above | 20 | 1.0 |
| B. Non-Bulk Freight Toll | | |
| For each Tonne of | 0 to and including 4 | 3.0 |
| Non-Bulk Freight from | 4 " " 5 | 2.5 |
| " " | 5 " " 6 | 2.0 |
| For each Tonne of | | |
| Non-Bulk Freight above | 6 | 1.5 |
| C. Bulk Freight Toll | | |
| For each Tonne of Bulk Freight | 0 to and including 3 | 1.0 |
| from | 3 " " 4 | 0.75 |
| for each Tonne of Bulk Freight | | |
| above | 4 | 0.25 |
| D. Fixed Annual Usage Charge | 7 million Units of Account per annum | |

Notes:

- The Tolls per Unit of Traffic, the Fixed Annual Usage Charge and the volume ranges specified above apply to the year in which the Target Commencement Date falls.
- The limits of the volume ranges specified above shall, for any Accounting Period which is less than a year, be multiplied by $\frac{x}{365}$, where "x" is the number of days comprised in that Accounting Period.
 - The Toll per Unit of Traffic of each Type applicable to each year following that in which the Target Commencement Date falls and the rate of Fixed Annual Usage Charge applicable to each such year shall, subject to (iii), be 98.9% of, respectively, the Toll per Unit of Traffic of that Type applicable to the immediately preceding year and the rate of Fixed Annual Usage Charge applicable to that preceding year.
 - If the Target Commencement Date does not fall on 1 January, the Toll per Unit of Traffic of each Type, and the rate of Fixed Annual Usage Charge, in each case applicable to the year following that in which the Target Commencement Date falls, shall be equal to $\left(100 - \frac{1.1 \times n}{365}\right)$ % of the figure specified in the relevant column above, where "n" is the number of days from (and including) the Target Commencement Date to (and including) 31 December of the year in which it falls.
- On 1 January of the year following that in which the Target Commencement Date falls, the limits of the volume ranges specified above shall be increased by the following percentages:

| Type of traffic | Percentage |
|------------------|----------------------------|
| Passengers | $\frac{2 \times n}{365}$ |
| Non-Bulk Freight | $\frac{3 \times n}{365}$ |
| Bulk Freight | $\frac{2.5 \times n}{365}$ |

where "n" is the number of days from (and including) the Target Commencement Date to (and including) 31 December of the year in which it falls.

(ii) On 1 January of the fourteen years following the year referred to in (i), the limits of the volume ranges shall be increased to 102% (in the case of Passengers), 103% (in the case of Non-Bulk Freight) and 102.5% (in the case of Bulk Freight) of what they were, respectively, in the immediately preceding year (or what they would have been in the preceding year but for the application of Note 2(i)).

(iii) If the Target Commencement Date does not fall on 1 January, the limits of the volumes ranges shall, on 1 January of the year following the last year mentioned in (ii), be increased by the following percentages (and thereafter remain constant during the remaining term of this Agreement):

| Type of traffic | Percentage |
|------------------|------------------------------------|
| Passengers | $\frac{2 \times (365 - n)}{365}$ |
| Non-Bulk Freight | $\frac{3 \times (365 - n)}{365}$ |
| Bulk Freight | $\frac{2.5 \times (365 - n)}{365}$ |

where "n" is the number of days from (and including) the Target Commencement Date to (and including) 31 December of the year in which it falls.

4. The Tolls otherwise applicable per Unit of Passenger traffic in respect of the second Accounting Period during which the Railways are operating regular commercial services of Trains carrying Passengers and/or any subsequent Accounting Period shall be increased by 20% if, during that Accounting Period:

- (i) less than 75% of the Trains carrying Passengers are High Speed Trains, and
- (ii) the total number of Passengers carried by Trains through the Fixed Link is less than 75% of the number forecast, for the year corresponding to (or including) that Accounting Period, by the most recent Agreed Traffic Forecast, restated on the assumption that services of High Speed Trains will be running (if not already made on that assumption) and adjusted (a), if that Accounting Period is less than a year, by multiplying the Agreed Traffic Forecast by $\frac{x}{365}$, where "x" is the number of days comprised in that Accounting Period and (b) to take account pro rata temporis of any periods of unavailability, non-usage or interruption referred to in Clause 7.5 (vi).

5. (i) No Tolls shall be payable for luggage, mail, parcels, newspapers or other similar goods belonging to Passengers or carried in the normal luggage compartments or normal luggage vans of Trains carrying Passengers.

(ii) Where such goods and luggage are carried in a special van or wagon attached to a Train carrying Passengers or to a Freight Train primarily carrying other goods, the Tolls for them shall be the Tolls for Non-Bulk Freight.

(iii) Where paragraphs (i) or (ii) do not apply, special Tolls for those goods and luggage shall be established by a Special Agreement, it being intended to agree a rate for the Train concerned as a whole in appropriate cases.

6. "Kangaroo" and "Piggyback" or similar traffic on Trains:

(i) will be subject to Tolls as Non-Bulk Freight provided that the origin and destination of the railway part of the journey are both more than 75 kms from the terminals of the Fixed Link;

(ii) otherwise will be subject to separate Tolls, to be fixed by a Special Agreement, on the principle that such Tolls shall be established on a basis comparable with the tariffs payable by freight hauliers using Shuttles with similar volumes of traffic, but after deducting from such tariffs the cost of such services which the Concessionaires do not have to provide for such a case (operations, maintenance, depreciation and financial costs relevant to the Shuttles and the installations at the terminals) since these are borne by the Railways.

7. The above Tolls have been negotiated in good faith on the basis that they form a coherent toll structure as a whole and no individual element can be reviewed without such review encompassing the whole structure, it being agreed that no such review is envisaged.

SCHEDULE VII

USAGE CHARGE REDUCTIONS

PART A:

1. (i) The Usage Charges payable in respect of any Accounting Period are subject to reduction in accordance with this Schedule.
(ii) The amount of any such reduction is called a "Usage Charge Reduction".
2. (i) For the purpose of recording the maximum aggregate amount of Usage Charge Reduction in respect of a particular Accounting Period, two memorandum accounts ("Surplus Payment Accounts") shall be created between the Railways and the Concessionaires for that Accounting Period, designated, respectively, "French Franc Surplus Payment Account" and "Pound Sterling Surplus Payment Account".
(ii) Amounts equal to 20% of the French Franc component and 20% of the Pound Sterling component of each Provisional Usage Payment shall, as and when the payment is made, be credited to the French Franc Surplus Payment Account and the Pound Sterling Surplus Payment Account, respectively.
(iii) (a) Each amount credited to a Surplus Payment Account shall bear interest for the period from the date on which payment was so credited until the next Provisional Payment Date, and thereafter for the successive periods from one Provisional Payment Date to the next or, if earlier, to the date on which the Usage Charge Reduction is paid.
(b) Interest shall accrue, during each such period, at the Interest Rate for that period.
(c) Interest accrued on the credit balance of a Surplus Payment Account during any such period shall be credited to that account at the end of the period.
(iv) As and when a Usage Charge Adjustment is paid by the Railways to the Concessionaires or by the Concessionaires to the Railways, the credit balance of the Surplus Payment Accounts shall be adjusted:
(a) if the payment is made by the Railways, by crediting 20% of the French Franc component and 20% of the Pound Sterling component of that payment to the French Franc Surplus Payment Account and the Pound Sterling Surplus Payment Account, respectively;
(b) if the payment is made by the Concessionaires, by deducting from the credit balance of the French Franc Surplus Payment Account and the Pound Sterling Surplus Payment Account 20% of the French Franc component and 20% of the Pound Sterling component of that payment, respectively.
3. (i) A Usage Charge Reduction shall be calculated for the Accounting Period corresponding to the third year after that in which the Target Commencement Date falls or, if the Target Commencement Date falls after 30 September in any year, corresponding to the fourth year after that in which it falls, and for each subsequent Accounting Period.
(ii) The amount of Excess Cash Flow available to reduce the Usage Charges in any Accounting Period is:
(a) 25% of the Excess Cash Flow for that Accounting Period, calculated in French Francs under paragraph 8(vi) ("Available French Franc Cash Flow"), plus
(b) 25% of the Excess Cash Flow for that Accounting Period, calculated in Pounds Sterling under paragraph 8(vi) ("Available Pounds Sterling Cash Flow").
4. (i) The Usage Charge Reduction for a particular Accounting Period is:
(a) the Available French Franc Cash Flow or, if less, the balance of the French Francs Surplus Payment Account on the date on which the Usage Charge Reduction is paid,
plus
(b) the Available Pounds Sterling Cash Flow or, if less, the balance of the Pounds Sterling Surplus Payment Account on the date on which the Usage Charge Reduction is paid.
(ii) The amount of Usage Charge Reduction in respect of any particular Accounting Period shall be paid by the Concessionaires to the Railways no later than the third Business Day of the fourth month following the end of that Accounting Period or, if any information necessary for its calculation is not then available, on the fifth Business Day after all such information has become available or would have become available but for the fault of the Concessionaires.
(iii) As and when the Usage Charge Reduction payable in respect of any Accounting Period is paid, the balance of the Surplus Payment Accounts created for that Accounting Period shall be written off.

SCHEDULE VII

USAGE CHARGE REDUCTIONS

PART B:

5. (i) In this Schedule "Cash Flow" means, for any particular year:
(Revenues disregarding any Usage Charge Reductions) plus grants (capital or revenue))
minus
(Operating Costs plus capital expenditure plus Notional Taxes)
- (ii) The amounts to be taken into account in calculating Cash Flow for any particular year are all those and only those which were received or paid after 1 January 1986 and are properly attributable to the project in isolation, that is to say the project of construction and operation of the Continental Main Line (UK) and Continental Main Line (FR) (as defined in Schedule V) and of those facilities of the Fixed Link which are within the toll barriers erected by the Concessionaires and comparable facilities at the Ashford inland clearance depot including those properly attributable to such project even though arising outside such area.
- (iii) Capital expenditure, revenues, grants and Operating Costs shall be taken into account in the year in which they were received or paid.
- (iv) "Notional Taxes" are the tax payments which the Concessionaires would be liable to make in the relevant year (irrespective of whether those tax payments relate to taxes assessed in respect of earlier or later periods) if the only receipts and expenditures of the Concessionaires were those taken into account for the calculation of Cash Flow, ignoring all income, profits, gains, allowances, deductions and reliefs which derive from operations of the Concessionaires other than those referred to in (ii) above.
6. Cash Flow shall be calculated both in French Francs and in Pounds Sterling, for which purpose:
- (a) All amounts not paid or received in French francs shall be translated into French francs at the rate of exchange for the spot purchase of French francs with the relevant other currency quoted by Credit Lyonnais at or about 11 a.m. Paris time on 30th June of the year for which the calculation is being done (or if that day is not a Business Day, on the next Business Day) or, if such rate is not available, at the rate most nearly equivalent to such rate at that date and time; the aggregate French Franc amount resulting from that translation will be added to the amounts directly paid or received in French Francs in the same Accounting Period.
- (b) All amounts not paid or received in pounds sterling shall be translated into pounds sterling at the rate of exchange for the spot purchase of pounds sterling with the relevant other currency quoted by National Westminster Bank Plc at or about 11 a.m. London time on 30th June of the year for which the calculation is being done (or if that day is not a Business Day, on the next Business Day) or, if such rate is not available, at the rate most nearly equivalent to such rate at that date and time; the aggregate Pounds Sterling amount resulting from that translation will be added to the amounts directly paid or received in Pounds Sterling in the same Accounting Period.
7. In order to calculate "Deflated Cash Flow" for any year:
- (a) Each of the French Franc and the Pounds Sterling Cash Flows obtained under paragraph 6 shall be deflated to December 1984/January 1985 prices by reference to the index figures applicable to June of the year for which the calculation is being done, and otherwise in accordance, mutatis mutandis, with Clause 9.7; and
- (b) capital expenditure after the year in which the Target Commencement Date falls shall then be reallocated in equal amounts to the year in which it was paid and the nine subsequent years (or the anticipated remaining part of the Concession Period, if less).
8. (i) If the Deflated Cash Flow for any year, taking into account the Adjusted Deflated Cash Flow for all previous years, exceeds that which would have been required in order for the project "in isolation" to show for the whole period from 1 January 1986 up to and including that year an internal rate of return equal to that specified for that year in Part C of this Schedule, the excess is "Excess Deflated Cash Flow" for that year.
- (ii) "Adjusted Deflated Cash Flow" is, for any year as to which there is an Excess Deflated Cash Flow, the Deflated Cash Flow for that year less the Excess Deflated Cash Flow for that year.
- (iii) For the purpose of ascertaining the internal rate of return of the project "in isolation", all Deflated Cash Flows shall be assumed to have occurred on 30 June of the relevant year.
- (iv) The Excess Deflated Cash Flow shall be calculated for each year in both French Francs and Pounds Sterling.

(v) The Excess Cash Flow for any particular year is the Excess Deflated Cash Flow for that year reflatd, in accordance with Clause 9.7, by reference to the index figures most recently published on the third Business Day preceding the date on which the Usage Charge Reduction is paid. An appropriate adjusting payment shall be made as soon as practicable after publication of the index figures applicable to the month during which the Usage Charge Reduction is paid.

(vi) The Excess Cash Flow for each year shall be calculated in both French Francs and Pounds Sterling.

SCHEDULE VII**USAGE CHARGE REDUCTIONS****PART C:****PROJECTED INTERNAL RATES OF RETURN (IRR)**

| CALENDAR
YEAR No. | PROJECTED
IRR | CALENDAR
YEAR No. | PROJECTED
IRR |
|----------------------|------------------|----------------------|------------------|
| 01 | - | 23 | 7.106 |
| 02 | - | 24 | 7.269 |
| 03 | - | 25 | 7.413 |
| 04 | (16.211) | 26 | 7.544 |
| 05 | (11.238) | 27 | 7.660 |
| 06 | (7.669) | 28 | 7.765 |
| 07 | (4.867) | 29 | 7.858 |
| 08 | (2.727) | 30 | 7.937 |
| 09 | (1.006) | 31 | 8.013 |
| 10 | 0.381 | 32 | 8.079 |
| 11 | 1.517 | 33 | 8.142 |
| 12 | 2.515 | 34 | 8.195 |
| 13 | 3.317 | 35 | 8.244 |
| 14 | 4.002 | 36 | 8.289 |
| 15 | 4.578 | 37 | 8.331 |
| 16 | 5.064 | 38 | 8.368 |
| 17 | 5.503 | 39 | 8.402 |
| 18 | 5.869 | 40 | 8.432 |
| 19 | 6.189 | 41 | 8.461 |
| 20 | 6.458 | 42 | 8.487 |
| 21 | 6.702 | 43 | 8.511 |
| 22 | 6.915 | 44 | 8.532 |
| | | 45 | 8.551 |
| | | 46 | 8.568 |
| | | 47 | 8.584 |
| | | 48 | 8.598 |
| | | 49 | 8.610 |
| | | 50 | 8.622 |

Year No. 1 is the year in which the Target Commencement Date falls.

SCHEDULE VIII

PART A:

TIMETABLING

1. Reference Path

The Concessionaires and the Railways will establish a reference path for Shuttles and each type of Train travelling through the Fixed Link (its "Reference Path"). Reference Paths shall be based on the running time for Shuttles and each type of Train to pass under normal conditions through the Fixed Link, taking into account the following technical criteria:

- (i) the layout and gradient of the railway track;
- (ii) the maximum speed of the Train or Shuttle;
- (iii) speed limits within, entering and leaving the Fixed Link;
- (iv) the type, power, traction and braking characteristics of the locomotive;
- (v) the weight, length and braking characteristics of the hauled stock;
- (vi) the running and aerodynamic resistance;
- (vii) any stops made by Trains at Fréthun or Dolland's Moor; and
- (viii) a performance allowance of 5% from the Reference Path established under paragraphs (i) to (vii) above.

Reference Paths will be used to establish timings for Shuttles and Trains in relation to the reference points in paragraph 2. below.

2. Reference Points

The reference points, which will be identified by their distance in kilometres, are:

- passenger or freight station at Fréthun, or Shuttle terminal;
- the junction between SNCF's lines and the Common Section;
- each of the cross-overs within the Common Section;
- the junction between the Common Section and BR's lines;
- Dolland's Moor or Shuttle terminal.

Timings will be calculated in each direction for normal direction of working and for reverse direction working for Trains and Shuttles over the cross-overs during maintenance periods when reversible working is in operation.

SCHEDULE VIII

PART B:

THE TIMETABLE

The principles relevant to the preparation of the Timetable are as follows:

1. The Concessionaires shall draw up the Timetable (and any provisional timetable) in cooperation with the Railways and take account above all other considerations of:

- (i) the technical constraints of the infrastructure of the Fixed Link and areas near it;
- (ii) the need of the Concessionaires to provide a frequent efficient and competitive Shuttle service;
- (iii) the desire of the Railways to pass Trains (of the various types allowed) at frequent intervals;
- (iv) the need of the use by the Railways of consecutive Standard Paths at various times in each Hour; and
- (v) the objective of both parties to run their operations in the most commercial and profitable manner.

2. There will be a division into a Winter and a Summer Service, the respective dates of which are fixed by CEH and CEM.

3. The parties shall first seek to establish anticipated peak periods, both in terms of days or fractions of days and in terms of season.

The parties shall use their best endeavours to reach agreement on the pattern of operation for such peak periods, taking account of their respective needs. In establishing, after consulting the Railways, a timetable for the entry of Trains at each end of the Common Section, the Concessionaires shall endeavour to reconcile the operating and commercial requirements of the parties and their need to be competitive. If necessary to achieve optimum use of the Fixed Link, the parties will so far as possible align the passage of Trains and Shuttles upon the Standard Path.

4. The parties will consider terms upon which the Concessionaires may at the Concessionaires' absolute discretion agree to the Railways having the use of a part of the capacity of the Fixed Link in a peak hour beyond that to which they would be entitled under Clause 6.

5. As far as 100 kph Freight Trains are concerned, except where otherwise agreed the Railways shall be entitled to pass at least one such Freight Train per Hour in each direction at a speed over the greater part of the Common Section of 100 kph, but if there is to be more than one, and requirements relating to the use of capacity so dictate, they will occupy successive paths.

Nevertheless, whenever commercial and competitive conditions and connections at marshalling yards so allow, the Railways will use their reasonable endeavours to ensure that 100 kph Freight Trains are passed only during off-peak hours.

6. The Railways shall be entitled to pass one Freight Train per day at a speed between 80 kph and 100 km/h at a mutually convenient time.

7. The path allocated to each Train or Shuttle must be suitable to enable it to maintain as far as practicable its normal Reference Path over the whole of the Common Section.

8. Where practicable priority shall be given to Trains carrying Passengers, subject to the Shuttle frequency pattern being maintained.

9. The Timetable shall include the following categories of Shuttles and Trains:

- (i) Shuttles and Trains operating throughout the entire period of the Timetable;
- (ii) Shuttles and Trains operating for limited periods determined in advance;
- (iii) such relief Shuttles and Trains as are expected to be required in the year. Such relief Trains will be run by the Railways in their allocated path without previous agreement by the Concessionaires, subject to advising the Concessionaires' control centre or control facility of the running of the Trains, which the Railways shall do as soon as practicable and in any event at least 24 hours in advance of their time of entry into the Common Section according to the Timetable.

10. The parties shall endeavour to start and complete each stage of the process of preparation of the Timetable in good time having regard to the parties' needs.

Modifications to the Timetable

11. (i) Modifications may be made by the Concessionaires during the year to the Timetable as established for that year, at their discretion, so far as Shuttles are concerned, but subject to the agreement of the Railways if the scheduling of Trains is affected.
(ii) All requests for modifications by the Railways shall be made to the Concessionaires' control centre as soon as they can be anticipated.
12. The Railways shall be entitled, without the agreement of the Concessionaires,
 - (i) to cancel one or more Trains, or
 - (ii) in accordance with Clause 6.7, to substitute other Trains for scheduled Trains as defined in paragraph 15 below, so long as they use no more than the same number of Standard Paths.The Railways will notify any such changes to the Concessionaires as soon as possible.
13. Modifications made on not less than 24 hours notice prior to the scheduled time of entry to the Common Section are called "planned modifications".
14. Modifications other than planned modifications are called "operational modifications".
15. Trains or Shuttles whose passage is scheduled in the Timetable or by a planned modification are called "scheduled" Trains or Shuttles.
16. Modifications may in particular be made in response to requests made by the Railways in respect of a Train (whether for the postponement or advancement of a service, or for the insertion of the passage of an additional Train).
17. Requests for planned modifications will be individually considered by the Concessionaires and may be achieved, inter alia, by:
 - (i) occupying an unused path within the existing framework of paths, without affecting paths already allocated unless specifically agreed by the Railways; or
 - (ii) modifying the Timetable as to one or more Shuttles or Trains, particularly, but not exclusively, when work is being carried out on the Common Section or on the Railways' tracks near the Fixed Link.
18. Requests for operational modifications will be considered individually by the Concessionaires, having regard to the remaining availability of paths. The Concessionaires' control centre shall respond within two hours to any such request made by the Railways.
19. When the Railways request more paths than are allocated to Trains in the Timetable, the Concessionaires may allocate additional paths if they are available. The Concessionaires will use any paths unless and until allocated to scheduled Trains as they see fit. If the Railways request a greater number of paths during an Hour when the capacity to which they are entitled in that Hour has not been entirely allocated to scheduled Trains, and acceptance of that request would not cause their entitlement to be exceeded, the Concessionaires shall use their reasonable endeavours to satisfy the request.
20. It may be necessary to insert additional Trains or Shuttles if peak periods develop other than those envisaged when the Timetable is drawn up in accordance with paragraph 3 above. In that event, to facilitate the insertion:
 - (i) the Concessionaires and the Railways will use reasonable endeavours to ensure that the capacity of the Common Section as to Trains or Shuttles is not decreased during the peak time as a result of maintenance work on their respective infrastructure;
 - (ii) the Concessionaires will limit, cancel or reprogramme any scheduled maintenance work as far as practicable;
 - (iii) as far as competitive and commercial conditions allow, the Railways will use reasonable endeavours to cancel or agree rescheduling of slow Freight Trains;
 - (iv) if the parties agree, the Concessionaires shall establish a special transit path to which, so far as practicable, the passage of all Shuttles and Trains shall be aligned.

SCHEDULE IX

CALCULATION OF STANDARD PATHS UTILISED BY A TRAIN

1. The following abbreviations shall mean respectively:
E - Deviation from the path as determined below
H - Headway in seconds
m - The difference in seconds between the time of transit over the Common Section of the Train under consideration and the Standard Path
n - The difference in seconds between the time of transit over the Common Section of the Train under consideration and the Train or Shuttle preceding it
p - The difference in seconds between the actual headway and the Headway (or if it is smaller, the headway between the Train under consideration and the available Standard Path preceding such Train) at the entry or at the exit of the Common Section (the shorter of the headways at entry to or exit from the Common Section shall be taken into account).

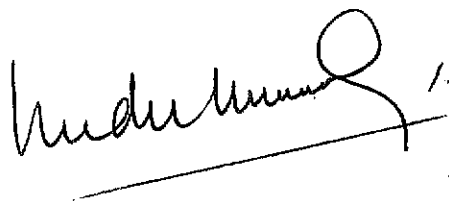
For m, n and p the times of transit are obtained from the difference in time of entry and exit from the Common Section based on the Timetable (taking into account all modifications, including operational modifications, if any).

2. The number of Standard Paths utilised by a Train is equal to $1 + \frac{m}{H} + E$ where E is determined for each Train as follows.
3. When the time of transit of a Train (over the Common Section) is equal to the time of transit of a Standard Path, $E = 0$.
4. When the time of transit of a Train (over the Common Section) is less than the time of transit of a Standard Path:
 - (i) where the time of transit of the Train is greater or equal to that of the preceding Train or Shuttle, $E = 0$.
 - (ii) where the time of transit of the Train is less than that of the preceding Train or Shuttle, E, is equal to the smaller of the two expressions $\frac{m}{H}$ and $\frac{n}{H}$.
5. When the time of transit of a Train (over the Common Section) is greater than that of the Standard Path:
 - (i) where the time of transit of the Train is less than or equal to that of the preceding Train or Shuttle, $E = 0$.
 - (ii) where the time of transit of the Train is greater than that of the preceding Train or Shuttle, E is equal to the smaller of the two expressions $\frac{m}{H}$ and $\frac{n}{H}$.

Done in Paris, in four originals the 29 July 1987,

THE CHANNEL TUNNEL GROUP LIMITED
represented by Alastair Morton

FRANCE MANCHE S.A.
represented by André Bénard

Handwritten signature of Alastair Morton in cursive script, with a horizontal line underneath.Handwritten signature of André Bénard in cursive script, with a horizontal line underneath.

THE BRITISH RAILWAYS BOARD
represented by Sir Robert Reid

LA SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS
represented by Philippe Essig

Handwritten signature of Sir Robert Reid in cursive script, consisting of two stylized 'R's.Handwritten signature of Philippe Essig in cursive script, with a horizontal line underneath.