

The Channel Fixed Link

Dated as of 14th March, 1986

The Secretary of State for Transport

and

Le Ministre de l'Urbanisme
du Logement et des Transports

The Channel Tunnel Group Limited

and

France-Manche S.A.

Concession Agreement

Presented to Parliament by the Secretary of State for Transport

by Command of Her Majesty

April 1986

LONDON

THIS AGREEMENT is made as of 14th March 1986 between:

The Secretary of State for Transport in the Government of the United Kingdom of Great Britain and Northern Ireland and Le Ministre de l'Urbanisme, du Logement et des Transports representing the French State of the one part, and

The Channel Tunnel Group Limited and France-Manche S.A. of the other part

WHEREAS

On the 2nd April 1985 the British and French Governments issued an Invitation to Promoters to submit proposals for the development, financing, construction and operation of a fixed link across the English Channel between the United Kingdom and France. Notice of the Invitation was published in the Official Journal of the European Communities (No. C172/5 of the 7th September 1985). In response to this invitation France-Manche S.A. and The Channel Tunnel Group Limited submitted a proposal based upon a railway tunnel with shuttles for road vehicles and undertook to submit to the two Governments by the year 2000 a proposal for a drive through link. It is envisaged that this would be undertaken as soon as the technical feasibility is assured and economic circumstances and the growth of traffic are such as to permit it to be financed without undermining the expected return on the first link.

A Treaty between the French Republic and the United Kingdom of Great Britain and Northern Ireland concerning the construction and operation by private concessionaires of a Channel fixed link was signed, subject to ratification, at Canterbury in the County of Kent on 12th February 1986. Under the aforesaid Treaty the High Contracting Parties undertake to permit the construction and operation by private Concessionaires of a Channel fixed link in accordance with the provisions of the Treaty, its supplementary Protocols and arrangements and of a concession between the two Governments and the Concessionaires. It is the intention of the Concessionaires to raise the funds necessary for realisation of the Fixed Link by way of project financing on the international capital markets.

NOW IT IS AGREED as follows:

CHAPTER I

PURPOSE OF THE CONCESSION

Clause 1: Interpretation

1.1 In this Agreement

(i) "Associated Company" of either the British Undertaking or the French Undertaking means:

(a) a company which owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in the Undertaking in question; or

(b) a company of which the Undertaking in question owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in such company; or

(c) a third company of which a company within paragraph (a) above owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital in such third company;

and for this purpose in the United Kingdom "ordinary share capital" means all the issued share capital in the relevant Undertaking or company other than share capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the relevant Undertaking or company and in France "ordinary share capital" means all the issued share capital in the relevant Undertaking or company the holders of which have no special right to a dividend nor a special voting right;

(ii) "British Minister" means the Secretary of State for Transport in the Government of the United Kingdom of Great Britain and Northern Ireland or such other person as may from time to time be designated by such Government to assume his functions under or pursuant to this Agreement;

(iii) "British Principal" means the British Minister;

(iv) "British Undertaking" means The Channel Tunnel Group Limited or any transferee or successor permitted in accordance with Clauses 31 or 32;

- (v) "Concession Period" means the period from the date upon which this Agreement comes into operation up to and including the date upon which the construction and operation of the Fixed Link by the Concessionaires terminates, for whatever reason;
- (vi) "Concessionaires" means the British Undertaking and the French Undertaking or any transferee or successor of the British Undertaking or the French Undertaking permitted in accordance with Clauses 31 or 32;
- (vii) "Documents" means all drawings, reports, studies and similar documents (including records thereof in software form) and includes any copyright therein;
- (viii) "Exceptional Circumstances" has the same meaning as exceptional circumstances has for the purposes of Article 6 of the Treaty;
- (ix) "Fixed Link" means the Channel fixed link as defined in Article 1(2) of the Treaty and as described in Clause 2 together with Annex I;
- (x) "French Principal" means the French State represented by the Minister responsible for Transport or any other authority designated for that purpose;
- (xi) "French Undertaking" means France-Manche S. A. or any transferee or successor permitted in accordance with Clause 31 or 32;
- (xii) "Intergovernmental Commission" means the Commission established pursuant to Article 10 of the Treaty;
- (xiii) "Maitre d'Oeuvre" means the project managers appointed pursuant to Clause 6;
- (xiv) "National Defence" has the same meaning as national defence has for the purposes of Article 15(3) of the Treaty;
- (xv) "Principals" means the British Principal and the French Principal;
- (xvi) "Project" means the project for the construction and operation of the Fixed Link;
- (xvii) "Safety Authority" means the Authority established pursuant to Article 11 of the Treaty.

- (xviii) "States" means the United Kingdom of Great Britain and Northern Ireland, and the French Republic;
- (xix) "Subsidiary" of either the British Undertaking or the French Undertaking means a company which falls within the provisions of paragraph (b) of the definition of "Associated Company";
- (xx) "Treaty" means the Treaty between the French Republic and the United Kingdom of Great Britain and Northern Ireland concerning the construction and operation by private concessionaires of a Channel fixed link signed at Canterbury on 12th February 1986;
- (xxi) "Users" means travellers (whether individuals or groups and whether or not they are with a vehicle), road transport operators and each of the British Railways Board and la Société Nationale des Chemins de Fer Français;
- (xxii) "Works" means the works relating to the Project contemplated by this Agreement.

1.2 In this Agreement expressions which are also used in the Treaty shall have the same meaning herein as therein.

1.3 Where anything in this Agreement requires approval or consent, such approval or consent may be given subject to conditions, and a failure to comply with any such condition shall be treated as a failure to comply with an obligation under this Agreement.

Clause 2: The Project and the Characteristics of the Fixed Link

2.1 Subject to and in accordance with the provisions of this Agreement, the Concessionaires shall jointly and severally have the right and the obligation to carry out the development, financing, construction and operation during the Concession Period of a Fixed Link under the English Channel between the Department of the Pas-de-Calais in France and the County of Kent in England. Subject as aforesaid, they shall do this at their own risk, without recourse to government funds or to government guarantees of a financial or commercial nature and regardless of whatever hazards may be encountered. The Principals shall, in a manner which they will endeavour to co-ordinate between them, adopt such legislative and regulatory measures, and take such steps, including approaches to international organisations, as are necessary for the development, financing, construction and operation of the Fixed Link in accordance with this Agreement and ensure that the Concessionaires are free, within the framework of national and Community laws, to determine and carry out their commercial policy.

Except as expressly permitted by this Agreement, by national and Community laws and by their international engagements including the Treaty, the Principals will not intervene in the conduct or

operation of the Fixed Link. They will use reasonable endeavours to carry out the infrastructure necessary for a satisfactory flow of traffic, subject to statutory procedures.

2.2 The Fixed Link will comprise a twin bored tunnel rail link with associated service tunnel under the English Channel between 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, and shall include any freight and other facility and any extension which may hereafter be agreed between the Principals and the Concessionaires to form a part thereof. The term "Fixed Link" shall include the ancillary installations, connections to the existing transport network and all plant, machinery, movable and immovable equipment and railway shuttle rolling stock, necessary for safe and efficient operation between the two terminals.

2.3 The Concessionaires shall be entitled to levy charges for the use of the Fixed Link and its ancillary facilities during the Concession Period. The Concessionaires undertake duly to discharge all liabilities and obligations incurred by them under this Agreement.

2.4 The general characteristics of the Fixed Link and the standards applicable to its construction and operation are set out in Annex 1.

Clause 3: Coming into Operation and Duration

3.1 This Agreement shall come into operation when the three following events shall have occurred:

- (a) Royal Assent has been given in the United Kingdom to a Bill conferring certain powers upon the British Minister and making other provisions in relation to the Fixed Link;
- (b) indication by the Concessionaires of their acceptance of the form of the Bill enacted as mentioned in (a) above, which shall be deemed to have occurred unless they notify the British Minister to the contrary within 15 days after the giving of Royal Assent;
- (c) the entry into force of the Treaty.

3.2. The Concession Period shall come to an end on the 99th anniversary of the date on which this Agreement came into operation, unless the Concessionaires shall have notified the Principals in writing, on or before 28 July 2051, that the Concession Period shall come to an end on the 65th anniversary of the date on which it came into operation.

3.3. The provisions of Clause 3.2 are without prejudice to the provisions of Clauses 5.3, 29, 32 and Chapter V.

Clause 4: Acquisition of Land and Ownership of the Fixed Link

4.1 Where France is concerned:

4.1.1 Land and buildings belonging to the French State will be made available to the Concessionaires as necessary. If it is necessary to acquire land, this will be done by the procedure of a declaration d'utilité publique by the French State. The cost will be met by the Concessionaires.

4.1.2 The relevant land and outbuildings will be delimited by the French State and the Concessionaire concerned; they shall achieve this by a demarcation of property during the year following the joint bringing into service of the Fixed Link. A report of this operation will be drawn up following consultation. The demarcation shall be revised in the event of modification of the subject matter of the concession.

4.1.3 The Fixed Link, as it is delimited, shall be part of the domaine public de l'Etat.

4.2 Where the United Kingdom is concerned, it is agreed that the British Minister will have vested in him the unencumbered freehold interest in all land and all rights in relation to land required for the construction or operation of the Fixed Link and that the Concessionaires will be granted interests therein in accordance with the provisions of Annex 11. The arrangements between the British Minister and the Concessionaires concerning the acquisition and subsequent disposal of such land and rights shall also be governed by Annex II.

Clause 5: Financial Requirements

5.1 Each of the Concessionaires shall guarantee to the Principals the performance by the other Concessionaire and by their respective Associated Companies of all the obligations of such Concessionaire and of such Associated Companies relating to the implementation of this Agreement.

5.2 Before commencing the construction of the permanent works for the undersea tunnels, the Concessionaires must provide evidence to the Intergovernmental Commission that they have raised funds or secured binding commitments from reliable sources for the provision of finance sufficient for the carrying out of the Works and that safeguards exist under the financial arrangements to prevent work continuing once it is clear that the level of such commitments is insufficient for the completion of the Works.

5.3 In the event that the obligations to lend of those lenders who are to provide the binding commitments referred to in Clause 5.2 do not become fully effective in accordance with their terms, the Concessionaires will unless the Principals otherwise agree terminate the Concession Period by

notice to the Principals. In these circumstances no compensation shall be payable to the Concessionaires. The provisions of Clause 39 shall apply in the case of any such termination.

5.4 Each Concessionaire shall provide a bank guarantee to each Principal in the amount of 2 million ecus on the coming into operation of this Agreement if the Concessionaires cannot prove that they have at that time already completed Works to the value of 100 million ecus. If bank guarantees are so provided, they will be released as soon as the Concessionaires have proved that they have completed Works to the value of 100 million ecus.

5.5 Until the date ascertained pursuant to Clause 34.5, neither of the Concessionaires nor any of their respective Subsidiaries shall without the prior written consent of the Intergovernmental Commission engage in any activity other than the development, financing, construction or operation of the Fixed Link or ancillary facilities permitted pursuant to Clause 17.

5.6 The Concessionaires shall ensure that any invitation of whatever kind made by or on behalf of either or both of them or of any of their respective Associated Companies with a view to raising finance of any kind for the purposes of the Fixed Link (whether by way of debt financing or equity participation) shall contain a prominent and clear statement that neither Principal makes or has made any representation, whether express or implied, as to the viability of the arrangements contemplated by this Agreement or as to the accuracy of any estimates, predictions or projections of whatever kind by the relevant company.

CHAPTER II

CONSTRUCTION OF THE FIXED LINK

Clause 6: Independent Project Managers (Maitre d'Oeuvre)

6.1 The Concessionaires shall at their own expense appoint one or more independent project managers (together the "Maitre d'Oeuvre") who shall be considered to have been approved by the Intergovernmental Commission unless the Concessionaires receive an objection from the Intergovernmental Commission, with the reasons therefor, within 15 days from the date of notification of the identity of the Maitre d'Oeuvre. The Maitre d'Oeuvre will be required to review whether the Works carried out conform to the relevant specifications, to the relevant construction and other codes, regulations and standards, to the relevant construction contracts and to the timetable and the relevant cost projections.

Any documents delivered pursuant to Clause 7 must be accompanied by a report thereon by the Maitre d'Oeuvre. The Intergovernmental Commission shall be entitled to consult the Maitre d'Oeuvre on any matter referred to in Clause 9. It will simultaneously inform the Concessionaires in writing of each such consultation. The Concessionaires shall be entitled to comment on all reports and information to be supplied by the Maitre d'Oeuvre before they are sent to the Intergovernmental Commission.

6.2 The provisions of this Clause shall cease following the inspection pursuant to Clause 11.

Clause 7: Monitoring of the Design Phase

7.1 The Concessionaires will submit to the Intergovernmental Commission any proposed modification to the general characteristics of the Fixed Link or to the codes, standards and regulations applicable to its construction set out in Annex 1. Unless the Intergovernmental Commission raises an objection thereto within 1 month following such submission, specifying its reasons therefor, which may only be on grounds of safety, defence, security or the environment, the proposal shall be considered as accepted. The same procedure shall apply to the agreement by the Intergovernmental Commission of the principal codes, standards and regulations in accordance with Annex 1.

7.2 The Concessionaires will submit to the Intergovernmental Commission the project outline drawings and documentation listed in Annex 1 (the "Avant Projets") prepared to reflect the general characteristics of the Fixed Link and the codes, standards and regulations applicable to its construction as set out in Annex 1. The Concessionaires may proceed with the works relating to

such Avant Projets unless the Intergovernmental Commission raises an objection to such Avant Projets within 15 days following such submission, specifying its reasons therefor, which may only be on grounds of safety, defence, security, the environment or non-conformity with Annex 1.

7.3 The Concessionaires may request the Maitre d'Oeuvre to consider each objection submitted pursuant to Clause 7.1 or 7.2. If the Maitre d'Oeuvre agrees with the decision of the Intergovernmental Commission, the Concessionaires will give effect to such decision. If the Maitre d'Oeuvre does not agree with the decision, he will endeavour to find, jointly with the Concessionaires and the Intergovernmental Commission, a mutually acceptable solution within 15 days. If no such solution is found, the objection will remain in force.

7.4 The Intergovernmental Commission shall, as soon as it has been established, take in a timely manner all necessary steps and measures for the implementation of Clauses 7.1 and 7.2.

Clause 8: Contract Procedures

8.1 In accordance with the provisions of the Declaration of 26th July 1971 by the Representatives of the Governments of the Member States of the European Communities meeting within the Council concerning procedures to be followed in the field of public works concessions (OJ No.C.82, 16.8.1971, p.13), the Concessionaires or their contractors shall apply throughout the Concession Period in respect of the contracts which they award to third parties within the meaning of Title II of the aforesaid Declaration the rules set out in Title II and in the Directive of the Council of 26th July 1972 No. 72/277/EEC (OJ No.L176, 3.8.72, p.823).

8.2 The Concessionaires shall furnish to the Principals forthwith, and from time to time update, the list of companies which are not third parties within the meaning of the said Title II in relation to the Concessionaires.

8.3 The Concessionaires shall not discriminate in the award to third parties of sub-contracts or procurement contracts against nationals of other Member States of the European Economic Community on grounds of nationality.

Clause 9: Monitoring of Construction Works

9.1 The Concessionaires shall furnish to the Intergovernmental Commission such information and reports as the Intergovernmental Commission may reasonably require for the purpose of establishing the extent to which:

- (a) the construction of the Fixed Link by the Concessionaires is in compliance with the Avant Projets referred to in Clause 7 and with the timetable in Clause 10; and

(b) the cost of the construction of the Fixed Link is compatible with the funds available.

Clause 10: Timetable

10.1 The preliminary studies and preparatory works shall be carried out within 3 years from the date of coming into operation of this Agreement.

10.2 Breakthrough of the service tunnel shall be achieved within 7 years from the date of coming into operation of this Agreement.

10.3 The construction of the Works shall be completed within 10 years from the date of coming into operation of this Agreement.

10.4 The Intergovernmental Commission shall be advised of the projected programme for the carrying out of the Works.

Clause 11: Inspection and Bringing into Operation

11.1 Immediately after completion of the Works which are essential for the opening of the Fixed Link, the Intergovernmental Commission, with the assistance of the relevant Government Departments, shall inspect the Works. On receipt of a report on such inspection the Intergovernmental Commission will authorise the Fixed Link to be brought into operation immediately, provided the aforesaid Works comply with the relevant binding requirements relating to the Works, including, without limitation, those set out in Annex 1, as modified if applicable.

CHAPTER III

OPERATIONAL PHASE

Clause 12: Commercial Policy and Tariffs

12.1 The Concessionaires will be free to determine their tariffs and commercial policy and the type of service to be offered. In particular, laws relating to control of prices and tariffs shall not apply to the prices and tariffs of the Fixed Link.

12.2 The Concessionaires shall treat the different Users of the Fixed Link without discrimination, particularly with regard to their nationality or the direction of travel, where this cannot be justified on a commercial basis. Nevertheless, they may adjust their tariffs in accordance with normal commercial practice.

12.3 Subject to Community laws on value added tax including, if approved by the Council of the European Communities, the draft Directive which the Commission of the European Communities has recently proposed, the charges to Users, in accordance with the principle of equal fiscal treatment between the users of the various means of crossing the Channel, will be subject to value added tax at the rate applicable to international transport (at the date of this Agreement, zero rated or exempted with refund of input tax). In the event of the value added tax liability being altered in the future, the Users of the Fixed Link will, subject as aforesaid, continue to benefit from the principle of equal fiscal treatment.

12.4 The Concessionaires shall give public notice of their tariffs in a manner approved by the Intergovernmental Commission. They shall notify the Intergovernmental Commission of the tariffs and of any increase in them at least 15 days before they come into force.

12.5 The Concessionaires may conclude special arrangements with important Users of the Fixed Link. The Intergovernmental Commission shall have the right to request details of all such special arrangements.

12.6 Subject to the provisions of Clause 28, use of the Fixed Link without payment is prohibited.

12.7 The provisions of this Clause shall not, however, exclude the application of national or Community laws concerning competition or the abuse of a dominant position.

Clause 13: Public Order and Operating Rules

13.1 Regulations relating to public order will be prescribed by the competent public bodies and authorities in accordance with national law.

13.2 The Concessionaires shall submit to the Intergovernmental Commission for approval the operating rules for the Fixed Link which they propose be introduced. The Intergovernmental Commission shall be deemed to have approved such arrangements unless it has within 30 days after receipt of the submission notified the Concessionaires either that such approval is withheld, giving reasons, or that it requires further time to consider, but so that the total time for approval shall not exceed 2 months.

13.3 The Concessionaires may submit to the Intergovernmental Commission any observations and suggestions which they consider would be appropriate.

Clause 14: Maintenance of the Fixed Link and Continuity of Traffic

14.1 The Fixed Link shall at all times be maintained and operated by the Concessionaires at their own cost in such a condition as is necessary for it to be used for the purpose for which it is designed.

14.2 The Concessionaires shall ensure that all necessary steps are taken to permit the steady flow and continuity of traffic through the Fixed Link and that traffic may pass through with reasonable safety and convenience.

14.3 If maintenance, repair or alteration works necessitate interruption or significant restriction of the flow of traffic through the Fixed Link, the Concessionaires shall, except in case of emergency, give to the Intergovernmental Commission at least 30 days' notice thereof (or such lesser period of notice as the Intergovernmental Commission agrees). The Concessionaires shall comply with such conditions concerning such works as the Intergovernmental Commission shall determine, after consulting the Concessionaires, before the end of such period of notice with a view in particular to minimising the adverse consequences to Users.

14.4 The public shall, except in case of emergency or where the Intergovernmental Commission otherwise agrees, be informed by the Concessionaires of the proposed interruption or restriction at least 15 days (or such lesser period as the Intergovernmental Commission agrees) in advance, by means of appropriate publicity required by the Intergovernmental Commission.

Clause 15: Safety, Security and Frontier Controls

15.1 The Concessionaires shall comply with any requirements which are made by either Principal or by the Intergovernmental Commission and which are binding on them under applicable laws and regulations concerning customs, immigration, security, police, public health, veterinary, phyto-sanitary, transport or road traffic controls, fire, ambulance or other emergency services, as far as they directly relate to the construction and operation of the Fixed Link.

15.2 The two Principals will arrange frontier controls in a way which reconciles so far as possible the rapid flow of traffic with the efficiency of the controls. In accordance with the relevant Directives of the Council of the European Communities, the Principal will take measures to extend bilateral co-operation on the facilitation of controls and administrative formalities. To this end, the frontier controls which are carried out within the boundaries of the Fixed Link will be juxtaposed near to the portals to the tunnels. This does not preclude the possibility of controls on through trains.

15.3 The cost of complying with the requirements of each Principal as specified in Clauses 15.1 and 15.2 shall be borne by the Concessionaires or the relevant public authorities according to the respective national practices of the Principal concerned and respecting the principle of non-discrimination where relevant comparisons can be made with other means of transport. As far as French frontier controls are concerned, the relevant installations will be placed at the disposal of the relevant public authorities free of charge.

Clause 16: Relations with Users

16.1 The Concessionaires will establish a permanent public information point. A register will be made publicly available for Users' complaints and suggestions. The Concessionaires' response to each complaint or suggestion will be recorded in this register and a copy will be sent by post to the relevant User. The register will be examined and initialled from time to time by persons designated by the Intergovernmental Commission, who will have access to the register at any time.

16.2 The Concessionaires shall install a remote information system for Users, for use in particular in the case of prolonged interruption of the flow of traffic through the Fixed Link.

Clause 17: Sub-contracts relating to Ancillary Facilities, and other uses

17.1 The Concessionaires may freely enter into contracts for the operation of ancillary facilities open to the public or of benefit to Users of the Fixed Link. However, the initial provision of and any significant increase in these facilities will require the prior approval of the Intergovernmental Commission as to the nature and importance of the facilities and their principal characteristics. The Intergovernmental Commission shall be deemed to have given its approval unless it has within 3 months after receipt of the request for approval notified the Concessionaires that such approval is withheld. Approval will not affect the application of national and Community laws.

17.2 Any use of the Fixed Link other than as permitted by or pursuant to this Agreement, and in particular, but without limitation, the transmission of energy or telecommunications, shall require the prior consent of the Intergovernmental Commission, except to the extent that the relevant use is connected with construction or operation of the Fixed Link.

17.3 For the avoidance of doubt, the Concessionaires shall be liable to the Principals in respect of the actions of and defaults by such sub-concessionaires, so far as their obligations under this Agreement are concerned.

CHAPTER IV

COMMON PROVISIONS

Clause 18: Organisation of the Concessionaires

18.1 The Concessionaires shall establish a single executive. It shall consist of an approximately equal number of representatives nominated by each Concessionaire.

18.2 The functions of the executive shall include:

- (i) co-ordination of the design and construction phases of the Works,
- (ii) co-ordination of the operation of the Project and of the maintenance thereof, and
- (iii) representing the Concessionaires in their dealings with the Intergovernmental Commission in relation to the development, construction and operation of the Fixed Link.

18.3 The Concessionaires undertake to use reasonable endeavours to ensure that any disputes which relate to their commercial activities do not prejudice the carrying out of their obligations under this Agreement.

Clause 19: Sharing of Costs and Revenues

19.1 During the construction and operation of the Fixed Link, the Concessionaires shall apply the principle of equal sharing of the cost price and of all other expenses and revenues between the British Undertaking and the French Undertaking. For this purpose, where any indirect tax is charged on the supply of goods or services and is not repaid or otherwise relieved, the effects of such indirect taxation shall be included in the calculation of costs to be equally shared pursuant to this Clause.

19.2 Any payments made between the two Concessionaires shall be treated as capital payments or as income payments as required by the tax laws of the two States.

Clause 20: Joint and Several Liability of the Concessionaires to the Principals

20.1 The obligations of the Concessionaires to the Principals under this Agreement shall be joint and several.

Clause 21: Liability with respect to Users and third parties

21.1 As between the Concessionaires and the Principals, the Concessionaires alone will bear any responsibility there may be for damage suffered by Users of the Fixed Link or by other third parties arising out of the construction or operation of the Fixed Link, without recourse to the Principals. The Concessionaires will hold the Principals fully protected and indemnified in respect of any such damage.

21.2 The provision of clause 21.1 shall not extend to any damage to the extent that it was caused by the serious default or recklessness of the Principals or either of them. In such a case the relevant Principal or Principals shall be liable to indemnify the Concessionaires to such extent.

21.3 The Principals and the Concessionaires shall promptly inform each other of any claim or proceedings or anticipated claim or proceedings against them and in respect of which they are entitled to be indemnified under this Clause, as soon as they become aware of the same. They shall give reasonable assistance to one another in the defence of such claims or proceedings.

21.4 No party shall permit any claim or proceedings referred to in this Clause to be settled without the prior written consent of the indemnifying parties.

21.5 For the purposes of this Clause, references to the Principals shall be construed as references to all persons or bodies representing them or acting on their behalf including without limitation the Intergovernmental Commission and the Safety Authority, and the Principals shall procure that such other persons or bodies shall comply with this Clause as if they had been parties hereto.

Clause 22: Insurance Obligations

22.1 The Concessionaires shall, on or before the commencement of the Works or at such later time as may be appropriate in view of the nature of the insurance envisaged, take out the insurance cover described in Annex III and maintain such insurance throughout the Concession Period, provided that these obligations shall apply only to the extent that such insurance is available at a reasonable cost in the international insurance markets and is not within the capacity of the Concessionaires for self-insurance as approved by the Intergovernmental Commission.

22.2 The Concessionaires shall promptly provide to the Intergovernmental Commission copies of the policies entered into by them, which shall (subject to the proviso in Clause 22. 1) conform to the provisions of Annex III. If within 15 days of receipt of such copies the Intergovernmental Commission notifies the Concessionaires that they do not so conform, the Concessionaires shall immediately procure that such policies are amended appropriately.

Clause 23: Defence and Security of the Fixed Link

23.1 The Concessionaires shall submit to the Principals for their approval any proposed designs, plans or arrangements affecting the defence and security of the Fixed Link.

23.21 At the joint request of the Principals or at the request of either Principal in the circumstances contemplated by Article 6 of the Treaty, the Concessionaires shall take such action as may be required of them with respect to the defence and security of the Fixed Link.

Clause 24: Exceptional Circumstances and Force Majeure

24.1 None of the parties to this Agreement shall be liable for any failure or delay in complying with any obligation under this Agreement to the extent that such failure or delay has been caused directly by Exceptional Circumstances or by any other event or circumstance presenting the characteristics of force majeure such as:

-war (whether declared or undeclared);

-invasion, armed conflict or act of foreign enemy;

-riot, insurrection, act of terrorism, sabotage, criminal damage or the threat of such acts;

-nuclear explosion, radioactive or chemical contamination or ionising radiation;

-any effect of the natural elements including geological conditions which it was not possible to foresee and to resist;

-strike of an exceptional importance;

-behaviour of one party causing serious and certain damage to another party;

to the intent that in particular, but without limitation, the time allowed for the performance of the obligations referred to in Clause 10 shall be extended accordingly.

24.2 Any party claiming that it has been prevented from fulfilling any of its obligations under this Agreement by reason of an Exceptional Circumstance or any other event or circumstance referred to in Clause 24.1 will notify all other parties immediately in writing, stating the basis of the claim.

24.3 Any party wishing to dispute the validity of a claim which has been notified under this Clause will give written notice of dispute to the party making the claim within 28 days of the date of the notice of claim stating the grounds on which such claim is disputed.

24.4 If neither the notice of claim nor the notice of dispute has been withdrawn within 28 days of the date of the notice of the dispute, the matter shall be submitted to arbitration in accordance with the provisions of Clause 40.

24.5 If the notice of claim is not contested or if the notice of dispute is withdrawn within 28 days, all parties shall be deemed to have accepted the validity of the claim.

24.6 A party shall not be entitled to rely upon Clause 24.1 where that party by act or omission has seriously aggravated the relevant Exceptional Circumstances or other event or circumstances referred to in Clause 24.1.

24.7 The giving of notice invoking Clause 24.1 shall not release the party giving the notice from the requirement to take all reasonable steps to mitigate the consequences of the relevant Exceptional Circumstances or other event or circumstance referred to in Clause 24.1.

24.8 Except as specifically provided to the contrary, no party shall be relieved of its obligations under this Agreement by reason of impossibility of performance or any circumstances whatsoever outside its control.

Clause 25: Interruption of Construction or Operation by order of the Principals

25.1 The Principals undertake not to interrupt the construction or operation of the Fixed Link by the Concessionaires save on grounds of National Defence or in the case of a failure by the Concessionaires to satisfy or comply with the terms of, and as provided in, this Agreement or under the powers referred to in Article 6 of the Treaty. Nevertheless the Concessionaires shall, if so required by the Principals or either of them for any reason, interrupt such construction or operation, either in whole or in part. No such interruption shall be of a duration or extent greater than is necessary having regard to the circumstances giving rise to the requirement therefor.

25.2 In the case of any interruption on the grounds of Exceptional Circumstances or other event or circumstance referred to in Clause 24.1 or a failure by the Concessionaires to satisfy or comply with the terms of this Agreement, the Concessionaires will not be entitled to any compensation.

25.3 In the case of any interruption necessitated by reasons National Defence, the Concessionaires will be eligible for compensation in accordance with the provisions of Article 15(3) of the Treaty.

25.4 Any interruption by the Principals otherwise than as referred to in Clauses 25.2 or 25.3 shall entitle the Concessionaires to compensation in accordance with the principles set out in Clause 38.2 except that no compensation shall be payable in respect of the first hour of any such interruption, up to a maximum of 12 hours in any calendar year.

Clause 26: Penalties for Breach

26.1 Subject to the other provisions of this Clause, any breach by the Concessionaires of their obligations under this Agreement will entitle the Principals to levy a penalty as their sole remedy under this Agreement.

26.2 As soon as such breach has come to the attention of the Intergovernmental Commission, it will give written notice to the Concessionaires specifying the nature and subject of the breach so that the Concessionaires can know the precise nature of the complaints that have been made against them. After hearing the Concessionaires the Intergovernmental Commission may give them notice requiring them to remedy the breach within a sufficient period which shall not be less than 30 days.

26.3 If, at the end of such period, the Concessionaires have not remedied the breach notified to them by the Intergovernmental Commission, it may impose a penalty for the non-performance of their contractual obligations on the basis of a daily rate of not less than 10,000 ecus and not more than 100,000 ecus (1986 value) for each day that such breach continues. The amount of the penalty will be proportionate to the gravity of the breach.

26.4 If a Concessionaire is in breach of its obligations under this Agreement in circumstances where the Principals are entitled for the same breach to invoke the provisions of Clause 37, then if the Intergovernmental Commission imposes a penalty under this Clause in respect of such breach, it may not invoke the provisions of Clause 37 in respect of the same breach unless that breach continues for more than 60 days after the imposition of such penalty.

26.5 If a Concessionaire is in breach of its obligations under this Agreement in circumstances where it is liable to be proceeded against under the national laws of either Principal or under Community law for the same breach and the breach is not an impediment to the performance by the Concessionaires of fundamental obligations under this Agreement, the Intergovernmental Commission shall not be entitled to impose a penalty under this Clause for the same breach so long

as the relevant Concessionaire is liable to be proceeded against under such laws or, having being so proceeded against has complied with the requirements of the relevant law enforcement body.

Clause 27: Relations with the Intergovernmental Commission

27.1 In accordance with Article 10 of the Treaty, the Intergovernmental Commission is established to supervise, in the name and on behalf of the Principals, all matters concerning the construction and operation of the Fixed Link.

27.2 The Safety Authority shall be entitled to perform the functions conferred on it by Article 11 of the Treaty, under the supervision of the Intergovernmental Commission.

27.3 The Intergovernmental Commission shall act in the name of and on behalf of the two Principals. It shall endeavour to facilitate relations between the Principals and the Concessionaires.

27.4 The Intergovernmental Commission may, after consultation with the Concessionaires, draw up regulations applicable to the Fixed Link which shall be given full force and effect within national law. These regulations shall follow the principle of non-discrimination, subject to the necessity for harmonisation between the two States and to taking into consideration the specific characteristics of the Fixed Link.

27.5 The Concessionaires shall comply with such directions of the Intergovernmental Commission and of the Safety Authority as are necessary for the performance of their functions, as provided in Clauses 27.1 and 27.2. Neither of the Principals nor the Intergovernmental Commission nor the Safety Authority shall act or take or carry out any decision in a manner which is inconsistent with the provisions of this Agreement.

27.6 The Concessionaires shall furnish to the Intergovernmental Commission and the Safety Authority such information and reports relating to the performance of the Concessionaires of their obligations hereunder as the Intergovernmental Commission or the Safety Authority may require. The Intergovernmental Commission and the Safety Authority shall allow reasonable time for the supply of information and reports. The Concessionaires shall submit jointly an annual report of their activities to the Intergovernmental Commission.

27.7 The Principals shall ensure that in the performance of their functions the Intergovernmental Commission and the Safety Authority shall take the necessary steps to facilitate the implementation of this Agreement. The Principals, the Intergovernmental Commission and the Safety Authority shall give due consideration to the reasonable commercial objectives of the Concessionaires, including the avoidance of unnecessary costs and delays.

27.8 The expenses of the Intergovernmental Commission and the Safety Authority will be borne from the date this Agreement comes into force by the Concessionaires and will be paid quarterly in advance at the rate of 3 million ecus per annum (1986 value).

Clause 28: Free Access for Supervisory Personnel

28.1 The Concessionaires shall afford access to all parts of the Fixed Link to persons duly authorised by the Intergovernmental Commission or, under its supervision, by the Safety Authority, for the purposes of any of their functions, to inspect the Fixed Link and to investigate any matter relating to its construction or operation and shall afford such persons the facilities necessary for the performance of these functions.

28.2 The Concessionaires shall afford such access and facilities for all the officials and other persons duly authorised by the competent authorities concerned with frontier controls, defence, policing, safety and security under the conditions laid down by the Protocol or other arrangements provided for in Articles 4 and 5 of the Treaty.

28.3 Such access and facilities shall be exercised in such manner as to cause the minimum disruption to the construction and operation of the Fixed Link consistent with the purpose which the person concerned is lawfully there to fulfil.

Clause 29: Duties, Taxes and Profit Sharing

29.1 (a) The British Undertaking hereby undertakes that the central management and control of its business and of the business of any of its Associated Companies will at all times be exercised in the United Kingdom and in no other place.

(b) The French Undertaking hereby undertakes that its effective direction and that of any of its Associated Companies will at all times be exercised in France and in no other place.

(c) The British Undertaking and the French Undertaking hereby jointly and severally undertake that the business of any partnership of which they or either of them or any Associated Company of either of them is a member will at all times be controlled and managed in the United Kingdom and France and in no other place.

(d) If either the British Undertaking or the French Undertaking is in breach of its undertaking in paragraph (a), (b) or (c) above, as the case may be, the relevant Principal, acting alone, may apply the procedures for termination specified in Clause 37 except that the relevant remedy period shall not exceed 3 months.

29.2 All duties and taxes levied or to be levied, including taxes on immovable property, will be liabilities of the Concessionaires and will be applied according to the provisions of national law.

29.3 The two States will deal with fiscal and customs matters in accordance with Article 9 of the Treaty. However, if there shall be any changes in tax or customs laws which appear to have a discriminatory effect against the Fixed Link, the relevant State will be prepared to consider to issue with the Concessionaires.

29.4. Subject to no notice being duly given under Clause 3.2 and without prejudice to the provisions of Clause 29.2, with effect from the 65th anniversary of the entry into force of this Agreement, each Undertaking shall pay to its Principal a total annual sum, including all forms of corporation tax, equal to 59 per cent of the pre-tax profits, in accordance with Annex V, provided that no such calculation shall give rise to any payment by either Principal to either Undertaking.

29.5. Without prejudice to Annex V, neither Principal shall by virtue of this Clause 29 share in any losses of either Undertaking nor be considered a partner of either Undertaking.

Clause 30: Transfers of Funds and Financial Settlements

30.1 The transfers of funds and financial settlements directly connected with the development, financing (including debt servicing, capital issues and dividend payments), construction or operation of the Fixed Link or necessitated by the implementation of this Agreement, whether between the two States or from or to third countries, shall be permitted subject to any applicable procedures prescribed by national laws made consistently with Community law. Conversions shall be made at the market rate applicable to similar transactions. The two States shall not levy any tax on such transfers of funds or financial settlements other than generally applicable taxes on the payments which they represent.

Clause 31: Assignment and Security

31.1 Each Concessionaire may by an instrument expressed to be governed by the laws of either France or England assign this Agreement or its rights hereunder, with the consent of the Principals, to any company.

31.2 For the purpose of financing the construction or operation of the Fixed Link, each Concessionaire may by an instrument expressed to be governed by the laws of either France or England and with the consent of the relevant Principals create any form of security over this Agreement or the rights arising therefrom or over the movable property or intellectual property rights necessary for the construction or operation of the Fixed Link.

31.3 The holder of any security created under Clause 31.2 shall be entitled, subject to any applicable consent required for the purposes of Clause 31.1, to enforce such security in France or in England, as the case may be, in accordance with the law of that country. Such enforcement shall not affect the obligations of the Concessionaires under this Agreement with regard to the Project or its operation.

31.4 The Concessionaires may not assign this Agreement or the rights arising hereunder nor create any security over this Agreement or the rights arising from it or over the movable property or intellectual property rights necessary for the construction or operation of the Fixed Link, except as provided in Clauses 31.1 or 31.2.

Clause 32: Provisions relating to Lenders

32.1 Substitution

32.1(1) The parties to this Agreement agree that new Concessionaires shall be substituted for the initial Concessionaires in the following circumstances:

- (a) following the occurrence of one of the events referred to in Annex IV and so long as its effect shall be continuing or if the Principals take or propose to take any action which could result in the premature termination of the Concession Period, two legal entities, one French and the other English (the "Substituted Entities") controlled by the lenders financing the construction and operation of the Fixed Link (the "Lenders") shall, at the option of the Lenders and on the following terms, be simultaneously substituted by the Principals for the initial Concessionaires; and
- (b) the Substituted Entities will need to provide evidence to the Principals that they have, at the time of substitution, a financial and technical capability sufficient to perform the obligations of the Concessionaires under this Agreement.

32.1(2) In the cases referred to in Clause 32.1(1) (a), the Lenders shall be entitled to a reasonable time within which to effect the substitution.

To effect the substitution, the Lenders or the Substituted Entities will notify their intention to the Principals and will at the same time give all necessary information for the Principals to verify that the conditions set out in Clause 32.1(1) (b) are met.

Unless, within 2 months following such notification, the Principals have indicated that they are not satisfied that the conditions set out in Clause 32.1(1)(b) are met, such substitution shall be deemed to have been confirmed.

32.1(3) As from the actual or deemed confirmation of the substitution by the Principals, the Substituted Entities will benefit from all the rights and will assume all the obligations to the Principals under this Agreement and any leases granted to the initial Concessionaires pursuant to Annex 11 in place of the initial Concessionaires.

In this event the substitution will entail the vesting in the Substituted Entities, and for so long as they remain the Concessionaires, of the interest of the Concessionaires in all movable property and intellectual property rights necessary for the construction or operation of the Fixed Link.

The Principals shall in all circumstances give full effect to such substitution provided that the conditions set out in Clauses 32.1(1)(a) and (b) are met.

32.1(4) It is expressly agreed between the parties that the events outlined in Annex IV will be defined, if necessary, on or before ratification of the Treaty.

32.1(5) If any event described in Annex IV occurs after the substitution is effected, the Substituted Entities may at any time thereafter by notice to the Principals and to the Lenders terminate the Concession Period without penalty. In that event, the Substituted Entities shall nevertheless be bound by Clause 39.

32.1(6) If the Substituted Entities become the Concessionaires pursuant to Clause 32.1(1), upon the payment of all amounts of principal, interest and other moneys from time to time owed to the Lenders under their financing agreements, the original Concessionaires or any other person entitled thereto shall become the Concessionaires under this Agreement in place of the Substituted Entities. The Lenders shall give notice to the Principals of their decision to give effect to this paragraph. Any replacement shall be on the same terms, mutatis mutandis, as those set out in Clauses 32.1(1)(b), (2) (second and third paragraphs) and (3). The other provisions of this Clause 32.1 shall not be applicable to any such replacement.

32.1(7) In the event of the substitution for the initial Concessionaires of Substituted Entities controlled by the Lenders pursuant to Clause 32.1, the Concession Period shall expire on the 65th anniversary of the entry into force of this Agreement if at that time the concession has not reverted to the original Concessionaires.

32.2 New Concession:

32.2(1) If for any reason the Concession Period terminates prematurely but the Substituted Entities are not put in a position to take advantage of the substitution for any reason other than the

failure to meet the conditions specified in Clause 32. 1 (1) (b), then without prejudice to all other rights of the Lenders:

- (a) the Principals will not, unless so required by applicable Community law, offer a new concession on any terms to any third party unless the Substituted Entities have previously been offered a new concession on the same or substantially similar terms and such offer has not been accepted by the Substituted Entities within a specified reasonable period; upon any such new concession being granted to the Substituted Entities, the Principals will also, to the extent of their interest therein, make available to the Substituted Entities all movable and immovable property received by them pursuant to Clause 39.2 necessary for the purposes of such new concession;
- (b) if the Principals decide to grant a new concession and any applicable Community law deprives the Substituted Entities of their rights under Clause 32.2(1) (a), the new concession agreement shall provide that the Lenders shall be entitled to receive from the new concessionaires payments out of the net revenues generated from such new concession in or towards repayment of the amounts owed to them on a basis set out in the new concession agreement and agreed between the Lenders and such new concessionaires in the interests of the continuation of the project.

32.2(2) If the lenders have not exercised the right of substitution referred to in Clause 32. 1 (1) or, having been offered a new concession pursuant to Clause 32.2(1) (a), have not accepted the same or if the Substituted Entities have failed to fulfil the conditions specified in Clause 32. 1 (1) (b), if the Principals grant a new concession, the new concession agreement shall provide that the Lenders shall be entitled to receive from the new concessionaires payments out of the net revenues generated from such new concession in or towards repayment of the amounts owed to them on a subordinated basis agreed between the Lenders and such new concessionaires.

32.2(3) If the Substituted Entities become the new Concessionaires pursuant to Clause 32.2(1) a), the new concession shall end upon the payment of all amounts of principal, interest and other moneys from time to time owed to the Lenders under their financing agreements, and at the latest on the 65th anniversary of the entry into force of the original Concession Agreement.

32.3 Continuation by the Principals:

It is not the intention of the Principals to continue the Project if the Concession Period terminates prematurely. Nevertheless, if this should occur, the Lenders shall be eligible to receive in or towards repayment of the amounts owed to them such amounts as the Principals and the Lenders agree to be appropriate, taking into account all the relevant circumstances including the financial benefits and costs to the Principals of taking over and continuing the Project.

Clause 33: Intellectual Property and Confidentiality

33.1 The Concessionaires shall make available to the Principals, the Intergovernmental Commission and the Safety Authority for their use in relation to the Fixed Link without charge those Documents which are or were acquired or brought into existence in any manner whatsoever by the Concessionaires or either of them for the purposes of the Project. The Concessionaires shall

use reasonable endeavours to make available to the Principals Documents acquired or brought into existence by any third party for such purposes. Each of the Concessionaires shall be entitled to use the Documents referred to in Clause 33.1 for the purposes of the Project. In the case of use for any other purpose, the Concessionaires will give prior notice to the Intergovernmental Commission which may within 30 days prohibit such use, but only on grounds of safety, security or defence.

33.2 Each of the Concessionaires may use for the purposes of the Project all Documents which are or were acquired or brought into existence in any manner whatsoever by or on behalf of the Principals or either of them for the purposes of the Project upon such terms as the relevant Principal may determine.

33.3 Each of the parties hereto and the Intergovernmental Commission and the Safety Authority shall hold in confidence all Documents and other information whether technical or commercial supplied to them by or on behalf of any other party hereto relating to the Fixed Link and shall not save as required by law or procedural practices publish or otherwise disclose the same otherwise than for the purposes contemplated by this Agreement.

33.4 (a) The Concessionaires hereby grant to the Principals a non-exclusive royalty free licence to use or to sub-license for the purpose specified in Clause 33.4 (b) (the "Specified Purpose") any intellectual property rights which may be vested in them and the use of which may be necessary for the construction or operation of the Fixed Link. The Concessionaires agree to grant to the Principals a non-exclusive royalty free licence to use or to sub-license for the Specified Purpose any such rights which may become vested in them after this Agreement comes into operation. Where any such intellectual property rights are vested in any third party the Concessionaires shall use reasonable endeavours to procure the grant of a licence thereunder to the Concessionaires on terms permitting the free use and sub-licence thereof by the Principals for the Specified Purpose.

(b) The Specified Purpose shall be the construction and operation of the Fixed Link by the Principals or by any person to whom a concession for such purpose shall have been granted by the Principals in succession to the Concessionaires following the expiration or lawful termination of the Concession Period.

33.5 Each of the parties hereto agrees to execute or procure the execution of such documents as may be necessary to give effect to the rights conferred by this Clause.

Clause 34: Exclusivity and Second Link

34.1 The Concessionaires recognise that, in due course, the construction of a drive through link may become technically and financially viable. They undertake as a result to present to the Principals between now and the year 2000 a proposal for a drive through link which shall be added to the first link when technical and economic conditions for realisation of such a link shall permit it and the increase of traffic shall justify it without undermining the expected return on the first link.

34.2 The Principals undertake not to facilitate the construction of another fixed link whose operation would commence before the end of 2020. However, after 2010, and in the absence of agreement with the Concessionaires on the implementation of their proposal for the construction of a drive through link and as to its timetable, the Principals shall be free to issue a general invitation for the construction and operation of such a link. This new link shall not enter into operation before the end of 2020.

Nevertheless, before this date, in the event of demonstrable lack of quality in the service provided, to be judged according to objective criteria, the Concessionaires shall present to the Principals a proposal to remedy such lack of quality. This proposal may go so far as to involve the construction of a new link and is to be subject to the conditions provided in Clause 34.1.

34.3 The Principals agree that throughout the Concession Period no link shall be financed with the support of public funds, either directly or by the provision of government guarantees of a financial or commercial nature.

34.4 The Concessionaires shall offer, through the Fixed Link, a service adequate to meet demand as judged by objective criteria. They shall introduce improvements in the quality of the service within the structure of the Fixed Link subject to:

- conformity with the laws and regulations in force,
- the right for the Principals to refuse to incur any consequential public expenditure, relating for example to land infrastructure,
- the conditions provided in Clause 34.1.

34.5 The period during which any Exceptional Circumstances or event or circumstance as referred to in Clause 24.1 seriously affects the operations of one or both Concessionaires for a period of at least three months shall extend by the same period the date of 2020 referred to in Clause 34.2.

CHAPTER V

TERMINATION OF THE CONCESSION PERIOD

Clause 35: Termination by reason of Exceptional Circumstances or other events

35.1 If a situation contemplated in Clause 24.1 renders impossible for the foreseeable future the performance of this Agreement, then in the absence of agreement between the parties (and without prejudice to the rights of lenders set out in Clause 32) any party may apply to the arbitral tribunal established pursuant to Clause 40 for the termination of the Concession Period. In the event of such termination no compensation will be due to the Concessionaires but the Principals may pay to the Concessionaires such amount which takes account of the net financial benefits, if any, to the Principals resulting therefrom.

Clause 36: Termination on Grounds of National Defence

36.1 The Principals, or either of them, may terminate the construction and operation of the Fixed Link by the Concessionaires on the grounds of National Defence.

36.2 In the event of any such termination, the Concessionaires shall be eligible for compensation in accordance with the provisions of Article 15(3) of the Treaty.

Clause 37: Termination by reason of the Fault of the Concessionaires

37.1 In the event of:

- particularly serious default in relation to obligations under this Agreement; or
- the Concessionaires or either of them ceasing to construct or operate the Fixed Link;

the Principals may give notice to the Concessionaires, specifying the nature of the relevant circumstances and requiring the Concessionaires to remedy the same within a period of 3 months, or within such further period (not exceeding 6 months) as may be allowed by the Principals.

This notice will be given at the same time to the Lenders (as defined in Clause 32) with a view to giving them the opportunity, should they so wish, to procure the remedy of the relevant circumstances.

37.2 During this period the Concessionaires shall remedy the specified circumstances.

37.3 If the circumstances are not remedied before the expiry of the relevant period, the Principals may thereupon terminate the Concession Period, subject to first notifying such Lenders and giving them the opportunity of exercising their right of substitution within 1 month in accordance with the procedure specified in Clause 32. 1.

37.4 If such substitution is effected in accordance with the conditions set out in Clause 32.1 and Annex IV (the Principals not indicating any dissatisfaction such as is contemplated thereby) the Concession Period shall not terminate.

Clause 38: Compensation for Termination

38.1 The Principals undertake not to terminate the construction or operation of the Fixed Link other than in accordance with Clauses 29, 36 or 37. Any breach by a Principal of this obligation will give the Concessionaires a right to compensation.

38.2 Such compensation shall correspond to the aggregate net loss actually suffered by the Concessionaires which was at the date of such termination reasonably foreseeable as a direct consequence thereof. This will include both *damnum emergens* and *lucrum cessans*. Account will be taken of the mitigation of loss which the Concessionaires could have achieved by the taking of reasonable measures and the degree of responsibility of the Concessionaires (if any) for the events giving rise to such termination. The Concessionaires shall have no other rights in relation to such termination.

Clause 39: Consequences of the Concession Period Terminating

39.1 Upon expiry or termination of the Concession Period for whatever reason, this Agreement (other than Clauses 30, 32, 33 and Chapters V and VI) shall cease to have effect, subject to all rights and obligations as between the Principals and the Concessionaires accrued prior to such cessation.

39.2 On the expiry or termination of the Concession Period for whatever reason and without prejudice to any rights of the Concessionaires to compensation:

-In France all immovable property which is within the *domaine public* will revert to the French State. In the United Kingdom the term of the leases granted by the British Minister referred to in Annex II shall end; and

-The interest of the Concessionaires in all movable property and intellectual property rights necessary for the construction or operation of the Fixed Link shall become the joint property of the two Principals, without payment and clear of any security interest except for any security interest created in accordance with Clause 31.2.

39.3 The Concessionaires shall ensure that all property referred to in Clause 39.2 shall be in good working order and in a good state of repair. The Principals may at any time during the last 5 years of the Concession Period require the Concessionaires to provide them with appropriate financial security for this obligation.

39.4 Upon the expiry or termination of the Concession Period except pursuant to Clauses 3.2 or 36 or in circumstances where compensation is payable to the Concessionaires pursuant to Clause 38, the Concessionaires shall, if the relevant Principal so requests:

(a) where the construction of the Fixed Link has not been satisfactorily completed, ensure that all land comprised within the area of the Fixed Link above the low water mark is either put into a condition in which it can be used for the purpose for which it was being used before any of the Works were commenced on it or is put into a condition in which it can be used for any other purpose which the relevant Principal considers appropriate, provided that this provision shall not be taken to require the land to be restored to its level before the commencement of such works,

(b) and in any other case, all works and structures above the low water mark are made safe.

The relevant Principal may lay down the periods within which and the conditions subject to which these works shall be carried out.

39.5 If the Concessionaires fail to carry out their obligations under this Clause, the Principal concerned may carry out the relevant works and recover the cost from the Concessionaires.

39.6 For the avoidance of doubt, upon the expiry of the Concession Period for whatever reason, the Principals shall not be obliged to complete the construction of or to operate the Fixed Link.

CHAPTER VI

DISPUTES, LAWS

Clause 40: Settlement of Disputes

40.1 Any dispute between the Concessionaires or either of them and the Principals or either of them relating to this Agreement shall be submitted to arbitration in accordance with the provisions of Article 19 of the Treaty at the request of any party.

40.2 Disputes between the Concessionaires relating to the interpretation or application of the Treaty shall be submitted to arbitration in accordance with Article 19 of the Treaty at the request of either of them.

40.3 The arbitration referred to in this Clause will be conducted in accordance with the procedure specified in a Protocol or other agreement supplemental to the Treaty.

40.4 In accordance with Article 19(6) of the Treaty, in order to resolve any disputes regarding the application of this Agreement, the relevant provisions of the Treaty and of this Agreement shall be applied. The rules of English law or the rules of the French law may, as appropriate, be applied when recourse to those rules is necessary for the implementation of particular obligations under English law or French law. In general, recourse may also be had to the relevant principles of international law and, if the parties in dispute agree, to the principles of equity.

Clause 41: Applicable Law

41.1 The relationship between the Principals and the Concessionaires shall be governed by the provisions of the Treaty, as given effect to by this Agreement, and by the provisions of this Agreement.

41.2 The concessionaires undertake to comply with the laws in force from time to time in each of the two States, including Community law, to comply with those provisions of the Treaty, the supplementary Protocols and arrangements agreed pursuant to the Treaty which are applicable to them and to comply with all rules, regulations, directions and requirements binding on the Concessionaires of all relevant public bodies and authorities and all conditions relating thereto including, without limitation, those relating to the environment, safety and security.

41.3 The provisions of Clause 37 shall apply to those infringements of national or Community law which also constitute a breach of any provision of this Agreement other than Clause 41.2. As regards an infringement which is a breach of only clause 41.2, the provisions of Clause 37 shall apply only if the relevant infringement is of an extremely serious nature.

41.4 The implementation and enforcement of the laws in force from time to time in either State shall be subject to the jurisdiction of the courts of the relevant State or, where so permitted or available under national law, any other relevant forum.

41.5 The Concessionaires undertake not to take any action which may result in either State being in breach of its international obligations.

IN WITNESS whereof the parties hereto have duly executed this Agreement in four copies as of 14th March 1986, each in the English and French texts, both texts being equally authoritative.

The Secretary of State for Transport in the
Government of the United Kingdom of Great
Britain and Northern Ireland

NICHOLAS RIDLEY

Le Ministre de l'Urbanisme, du Logement
et des Transports representing the French
State

J. AUROUX

The Channel Tunnel Group Limited }

NICHOLAS HENDERSON

France-Manche S.A.

J. P. PARAYRE

Annex I
to the Concession Agreement

General Characteristics of the Fixed Link

AI.1 Description of the Fixed Link

A1.11 General:

The Fixed Link between England and France comprises two bored rail tunnels permitting the operation of a system of shuttle trains carrying road vehicles and allowing the passage of through passenger and freight trains of other companies.

It will link terminal sites positioned in the vicinity of Calais and Folkestone, which will be connected to the road and motorway networks and the railway networks.

AI. 12 Geographical limits of the Fixed Link:

- (i) On the British side, the geographical limits of the Fixed Link shall be in accordance with Paragraph AII.1 of Annex II of the Concession Agreement.

- (ii) On the French side, the limits of the Fixed Link will include all the areas necessary for the Works included in the Concession Agreement and its Annexes, as well as those necessary for other activities which may be the subject of separate agreement with the Intergovernmental Commission. As regards the existing road and rail network connections, only those specified for the operation of the Fixed Link will be included within these limits. Diversions of public roads and accesses, even if carried out by the Concessionaires under paragraph AI.8 of this Annex, will not be included. A map showing the geographical limits of the French terminals is attached.. These limits may be modified as the Project develops, and because of the fixing of the alignments of public roads associated with the Project. As regards the undersea tunnels, the Fixed Link will be limited to that space within which lie the Works resulting from the approved Avant Projets.

AI. 13 Principle of the operation by means of rail shuttles:

The road vehicles will be received at a terminal where they will pass through a toll facility and pass French and British frontier controls. They will then be directed to a loading platform from which they will enter a shuttle. Shuttle rakes of different types will be provided, designed for the

different categories of vehicles to be transported. The shuttles will travel through the tunnel to the terminal at the other end, where the vehicles will leave and pass onto the national road network.

AI. 14 The Tunnels:

The structure will consist of twin bored single track tunnels with internal diameter of about 7.3 metres, designed for the passage of shuttles having a special loading gauge and through trains having a UIC-B gauge. A service tunnel with a minimum internal diameter of about 4.5 metres situated between the two operating tunnels will fulfil ventilation, maintenance and safety functions. At two points crossovers will enable trains to pass from one tunnel to the other in both directions. Various facilities necessary for operation or safety will complete the structures outlined above:

- (i) Connecting passages shall be provided between the service tunnel and the main tunnels as indicated in paragraph AI.53 of this Annex. Unless the Concessionaires provide evidence to the Intergovernmental Commission that piston effect relief ducts are not necessary, such ducts shall be provided between the main tunnels at such intervals and of such cross sections as shall be approved by the Intergovernmental Commission. Pressure fluctuations shall be reduced to a level which does not cause discomfort to the passengers in trains.
- (ii) Percolation water shall be extracted using pumping stations located at various points. Sumps shall be provided at the low points.
- (iii) If found to be required, a system for cooling the tunnels to maintain an environment suitable to personnel and passengers shall be provided.

AI.15 The Terminals:

- (i) The terminals will be provided with the facilities and equipment necessary for the operation and administration of the Fixed Link. They will include in particular the facilities of the authorities responsible for frontier controls and security. The French and British controls will be juxtaposed near to the entry to the tunnels. However, subject to the Principals' international obligations, duty free and tax free shops will be provided between the frontier controls of the two States. The terminals will be equipped with facilities for use by passengers and other users of the terminals. The Concessionaires shall provide reasonable additional parking areas to cater for emergencies and other interruptions.
- (ii) The French terminal will be situated to the west of Calais, mainly in the districts of Coquelles and Frethun. Road links will be established with the A26 motorway, via the south Calais bypass, and with the RN1. Railway links will be established with the SNCF Calais-Boulogne existing line, as well as with possible new lines. A cutting in Beussingue Hill will allow access to the tunnels.

Some fixed equipment and facilities will also be provided near the adit at Sangatte.

- (iii) On the British side, the terminal will be located near Folkestone in the district of Shepway. The terminal will be linked to the M20 Motorway and the A20 road which borders the site. There will be a connection to the existing Ashford-Folkestone railway line.

Some fixed equipment and facilities will be situated at Shakespeare Cliff.

AI. 16 The Shuttles:

The shuttles will consist of one or two rakes, each rake comprising a series of wagons, permitting embarkation at one end and disembarkation at the other. The overall width of the wagons will be about 4 metres and at commissioning the maximum length of shuttle trains shall be about 750 metres, excluding the locomotives.

Several types of rake are projected:

- (i) Rakes for tourists' low vehicles:

The wagons would have two decks each with a minimum headroom of 1.95 metres. They would accommodate vehicles whose height is below 1.85 metres.

- (ii) Rakes for tourists' large vehicles:

The wagons would have a single deck. They would accommodate tourists' vehicles within the limits set out in A1.21 below.

- (iii) Rakes for commercial freight vehicles:

The wagons would accommodate commercial vehicles on a single deck within the weight and dimension constraints set out in AI.21 below.

Rakes provided for one type of vehicle will be permitted to transport other types of vehicles, provided that these rakes meet the relevant safety requirements.

AI.17 The Track:

The design shall allow the installation of a railway track in each of the main tunnels suitable for trains travelling at speeds of 200 kilometres per hour.

- (i) The curves shall have a minimum radius of 4,200 metres in the tunnels. This may be reduced to 280 metres within the terminals. The radii of the curves in, and those providing access to, stabling and other sidings and for cross-overs in the tunnels shall be settled as part of an Avant Projet. The connections to the national railway networks and the tracks from these to the tunnels shall be agreed with the national railway undertakings and the Intergovernmental Commission.
- (ii) The longitudinal profiles shall not include gradients greater than 1 in 90 unless otherwise agreed and shall allow for adequate drainage.
- (iii) The track in the tunnels shall be supported directly throughout on a concrete foundation. The track construction shall be such as to contain any derailed train. The track shall be designed to reduce noise and vibration so far as is practicable.
- (iv) The track is to be located to maintain adequate lateral and vertical clearances. Types of fastenings will be specified in the Avant Projets.
- (v) Rail joints are to be eliminated as far as possible and gaps in the running surface of the rails are to be reduced to a minimum. Runaway catchpoints or derailleurs are not to be provided.

AI. 18 Equipment:

The Fixed Link will have the vehicles, plant, equipment and other fixtures and fittings necessary for operation and to ensure the service, performance, quality and safety levels defined in the Concession Agreement.

AI.2 Services provided by the Fixed Link

AI.21 Vehicles accepted by the shuttles (including accompanying travellers):

The shuttles will accept the following categories of vehicles:

- motorcycles of cylinder capacity greater than 49cc

- tourist vehicles of all types, either alone or pulling a trailer or caravan, and coaches, which fall within the dimension limits defined by the Concessionaires which will be not less than the figures listed below:

maximum length-12 metres

maximum width-2.5 metres

maximum height-4 metres

- vans and lorries, with or without trailers, which fall within the dimension limits defined by the Concessionaires which will not be less than the figures listed below:

maximum length-18 metres

maximum width-2.5 metres

maximum height-4 metres

total load-44 tonnes

- other categories of vehicles or users may be accepted subject to the agreement of the Intergovernmental Commission.

AI.22 Other Rail Users:

The Fixed Link will allow the passage of trains of other rail companies. Agreements shall be made by the Concessionaires with other rail users in accordance with the provisions of the Treaty and the Concession Agreement. These agreements shall include:

- (i) the specification of the rolling stock allowed to pass;
- (ii) the arrangements for connecting the rail infrastructure to the Concessionaires' facilities;
- (iii) operational priorities;
- (iv) rules and regulations covering operation and safety and the arrangements for the on-board staff and drivers; and
- (v) all obligations arising from the Concession Agreement which must be observed by the train operators.

AI.3 *Performance specifications of the System*

AI.31 General performance specifications:

The Fixed Link shall allow, at commissioning, the following performances at the same time over a sustained period of operation:

- (i) An average frequency of 4 minutes between any of two shuttles, a train and a shuttle, or two trains.
- (ii) The passage of trains in the tunnel at speeds up to 160 kilometres per hour in conformity with the operating rules of the Concessionaires (for trains capable of achieving this speed).
- (iii) A shuttle transit time of the order of 35 minutes from terminal to terminal

AI.32 Minimum frequencies:

The Fixed Link shall be open day and night. The frequency of services will be determined by the Concessionaires on a commercial basis. However, the minimum service to be maintained shall be equivalent to one tourist shuttle and one commercial freight shuttle every half hour during the day and every hour during the night.

AI.33 Terminal Design:

The capacity of the terminals shall be compatible and may be modified from time to time to suit the demands of the traffic, and shall be such as to avoid vehicles waiting more than 30 minutes at the fiftieth most busy hour in any one year (excluding time for frontier controls).

AI.34 Fixed railway equipment:

The dimensions to be adopted for the loading and structure gauges, as well as all the safety clearances involved, must be proposed by the Concessionaires and approved by the Intergovernmental Commission. The following basic principles must be followed in establishing the structure gauge:

- (i) The structure gauge must allow for end and side throw on curves. In the tunnels cant must be allowed for by the rotation of the complete gauge about the centre point of the tunnel.
- (ii) No fixed structure within the tunnel shall be positioned so that it approaches within 750 millimetres of the static wagon body contour between the level of the walkway in the tunnel and the top of the emergency doors in the wagon side.

- (iii) The lower portion of the structure gauge shall provide adequate clearances for locomotives and traction units conforming to the kinematic gauge defined in Union Internationale des Chemins-de-fer leaflet No. 505-1.
- (iv) All locomotives which will require to pass over tracks electrified on the conductor rail system must conform to the kinematic gauge referred to in (iii) above, restricted on the underside by a horizontal cut-off line 115 millimetres above rail level, as defined in Union Internationale des Chemins-de-fer leaflet No. 505-2.
- (v) The interior width of shuttle wagons for the transport of accompanied road vehicles must be at least 1.15 metres wider than the widest vehicles normally to be carried.
- (vi) Catenaries: electric power supply for the trains will be provided by a catenary carrying 25000V single phase 50hz. The power supplied to the Concessionaires for the Fixed Link shall be delivered by two separate circuits from each of the British and French National Grids. In the event of a break in power supply from one of the Grids, the system shall permit the operation of a lower level of overall service.

AI.4 Frontier Controls

AI.41 For road traffic the frontier controls shall be arranged on the principle of free exit. Accordingly procedures, in particular those relating to customs, immigration, police, veterinary and other services, will be carried out on the entry side of the tunnel: in France for traffic from France to Great Britain and in Great Britain for traffic from Great Britain to France.

(1) Thus for vehicles leaving France the sequence of operations is as follows:

i(i) On the French side

- Export customs clearance of heavy goods vehicles, if necessary, at the freight terminal
- Toll
- French Police and Customs
- British Immigration, Customs and veterinary

(ii) On the British side

-Import customs clearance facilities for heavy goods vehicles are provided at various locations within the customs territory.

(2) Thus for vehicles leaving Great Britain the sequence of operations is as follows:

(i) On the British side

-Export customs clearance facilities for heavy goods vehicles are provided at various locations within the Customs territory;

-Toll

-British Immigration and Customs -French Police and Customs

(ii) On the French side

-Import customs clearance for heavy goods vehicles will, if necessary, be carried out at the freight terminal at Frethun.

AI.42 Traffic may be liable to spot checks at the terminal in the country of arrival for customs, veterinary or other controls.

AI.43 The frontier control authorities will provide attendance to enable full-time operation of the Fixed Link.

AI.44 Those parts of the terminals situated between the frontier controls and the tunnel portals will be restricted and access controlled by the Concessionaires and/or police authorities according to national practice. Other parts of the terminal areas may be the subject of a surveillance system, as directed by the Intergovernmental Commission. Incoming and outgoing traffic will be segregated in a way that is acceptable to the relevant authorities.

AI.45 Regardless of who is responsible for the cost in accordance with Clause 15 of the Concession Agreement, the Concessionaires will be responsible for construction and maintenance of the facilities required by the frontier control authorities.

AI.5 Safety

AI.51 Safety provisions:

In accordance in particular with Clauses 13, 14 and 15 of the Concession Agreement, the Concessionaires shall submit to the Intergovernmental Commission for approval, proposed safety arrangements including operating rules and emergency procedures. These arrangements will apply to all trains passing through the tunnels and shall conform to the general measures set out in paragraph AI.52 below.

AI.52 General measures:

- (i) In the event of a train becoming immobilised in a tunnel for any reason, it must be possible to ensure that any other trains in the tunnel can be brought out without delay and that all passengers including those from the stranded train can reach open air within a period not exceeding 90 minutes. This arrangement shall be satisfied even if there is an interruption of power supply from one side or the other or if there is an accident to a section of the catenary.
- (ii) The ventilation system, in addition to maintaining a satisfactory tunnel environment during normal operation, must be capable of maintaining a smoke-free area into which passengers from a train on which a fire has occurred can be moved pending evacuation of the tunnels. In case of a fire in a tunnel, a special ventilation system in the main tunnels must permit the control of smoke to enable emergency services to attend the incident.
- (iii) The service tunnel shall 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.
- (iv) Materials and equipment to be used in the tunnels should, as far as possible, be of fire-resistant materials and of a nature that when exposed to fire or electrical discharge do not give off toxic fumes or dense smoke.
- (v) Rules for the transport of dangerous loads will be submitted by the Concessionaires for the approval of the Intergovernmental Commission.
- (vi) The services of the fire authorities and other public emergency services in the vicinity of the terminals in the two countries may be called upon to provide assistance in cases of emergency and in accordance with contingency plans to be agreed between the Concessionaires and the competent authorities. These arrangements will be incorporated in the emergency procedures of the Fixed Link.

A1.53 Special civil engineering measures:

(i) Connecting passages to provide communication between the service tunnel and the main tunnels will be required at a nominal spacing of 375 metres, and where, for constructional reasons, it is necessary to exceed this spacing the maximum distance between adjacent passages shall not exceed 500 metres. The minimum clearance width in the connecting passages shall be not less than 1.4 metres including doorways. In the tunnels, no safe refuges will be required between the connecting passages.

(ii) Walkways will be required on each side of the track throughout the length of both main tunnels. One, to facilitate evacuation of a train in an emergency, should have clear width alongside the rolling stock of 800 millimetres and be located on the side nearest the service tunnel at a height of at least 550 millimetres above rail level except at crossovers and opposite the connecting passages, where it may be reduced in height. The gap from the edge of this walkway to the narrowest rolling stock shall be not more than 350 millimetres. The walkway shall be provided with a handrail on the side of the tunnel wall and direction markers to guide users to the nearest point of access to the service tunnel. The other walkway should be at least 500 millimetres in width and placed at such a level that an inspection of the running gear of a stationary train can be effected from it.

AI.54 Special measures relating to the fixed equipment:

- (i) the main tunnels, the service tunnel and the connecting passages shall be permanently lit. Two power sources will be provided (one from each end) up to each sub-station thus ensuring a continuous power supply. Self-illuminated direction signs shall be provided along the walkways to guide passengers to the connecting passages in the event of power failure.
- (ii) Provision shall be made to detect derailed wheels and to bring the train to a stand in the event of a derailment. This protection shall extend as necessary on the approach lines so that trains can be stopped outside the tunnel portals. Hot axle-box detectors shall be provided on the approach lines outside the tunnel portals and shall be coupled with an automatic device to indicate that the train must be brought to a stand.
- (iii) The catenary will be divided electrically into sections with the intention that only one single train suffers a loss of power in the event of catenary accident.
- (iv) A water distribution system for fire fighting will be provided in the tunnels. The special equipment provided for this purpose must be approved by the Intergovernmental Commission.

AI.55 Measures relating to the rolling stock and personnel:

- (i) All trains using the Fixed Link must comply with the Concessionaires' operational and equipment arrangements, and the security requirements of the relevant authorities, and must be fitted with compatible systems.

- (ii) Except where operating rules otherwise permit, all trains shall be equipped with two locomotives, one situated at the head and the other at the rear of the train enabling the train to be split and to reverse direction. This arrangement may be modified for certain types of trains (particularly in the case of freight trains) and in certain operating conditions provided that the operating rules are followed.
- (iii) All trains using the Fixed Link must be fitted with an automatic continuous brake of a pattern conforming to the Union Internationale des Chemins-de-fer requirements for international traffic.
- (iv) Shuttle rakes must be provided with intermediate fire doors or curtains with a fire resistance time of at least 30 minutes to prevent the spread of smoke along the train in the event of a fire occurring on board. As far as is practicable, the design of shuttle rakes should be such as to enable, in appropriate circumstances, a train to continue on its journey to clear the tunnel in the event of an outbreak of fire.
- (v) A driver-guard communication system with public address facilities will be required on all shuttle trains.
- (vi) On shuttle trains a passenger alarm system shall be provided so that the train staff can be alerted in the case of emergency. It should not apply the brakes of the train.
- (vii) Staff trained in fire-fighting duties and in the use of fire-fighting equipment will be required on all shuttle trains. On through trains a member of the railway staff will be responsible for safety.
- (viii) Shuttle wagons will be provided with two emergency doors on each side of a clear width of at least 600 millimetres. When in the fully open position, the doors shall not project more than 200 millimetres outside the wagon body contour. Users should not be able to open the doors accidentally.
- (ix) All toilets provided on passenger-carrying trains shall be of a retention type.

AI.56 Signalling and Communications:

- (i) A cab signalling system will be required capable of maintaining a space interval between trains adequate for safety. It should incorporate some form of automatic train protection system. If not provided initially, the signalling system should be capable of development to provide full automatic train control.

- (ii) A discrete speech communication link between each train driver and the control centre will be provided.
- (iii) A radiotelephone system or equivalent will be required for communication between trains and the control centre.
- (iv) A separate telephone system shall be provided for emergency use and for maintenance and inspection staff at suitable intervals along the service tunnel or in the connecting passages; it shall incorporate some form of emergency call device.
- (v) The signalling system shall allow headways in operation of 3 minutes between trains at normal speeds and be capable of development to provide for lesser headways should these be necessary.
- (vi) The movement of trains will be controlled by a single principal control centre, located at one of the terminals. A full standby facility will be located at the other terminal. Control centres will be equipped to monitor all information generated within the terminals, the tunnels and road approaches. Road traffic movements within each terminal and its approaches will be controlled by specialised equipment.

AI.6 Codes, Standards and Regulations

French, British and European codes, standards and regulations will be utilised in the design and construction of the Fixed Link. At the initiative of the Concessionaires, a list of the principal codes, standards and regulations to be used for each main section of the Works shall be agreed with the Intergovernmental Commission. These lists will be submitted to the Intergovernmental Commission in good time before submission of the Avant Projets.

The Works will withstand the effect of natural events predicted to occur once in 120 years.

AI.7 Definition of the term Avant Projet

AI.71 The Avant Projets will comprise a set of documents which will define the Works to be constructed, their objectives and their characteristics, and will give an explanation of the manner in which they meet such objectives, the feasibility of the Works, and the way in which they conform to safety rules and environmental requirements in accordance with the general obligations set out in the Concession Agreement.

AI.72 The documents will include:

1. The design parameters.
2. The list of the principal codes, standards and regulations.
3. The justification of the main options selected.
4. The design criteria and calculation methods for the main structures and equipment.
5. The outline calculations for the main structures and equipment.
6. Description and general specifications for the main structures and equipment.
7. Plans and drawings indicating the general arrangements of the Works together with principal dimensions.

AI.73 For example the following documents may be required for the civil engineering of the tunnels:

1. A location plan to a scale of 1/100,000.
2. A general plan of the Works in the area of the portals and other access points.
3. Horizontal and vertical profile of the tunnels.
4. Cross sections to a scale of 1/100.
5. A statement justifying the location of the horizontal and vertical trace of the tunnels.
6. A summary report on the geological and geotechnical investigations carried out including:
 - (a) A geological map of the area of the Works.
 - (b) A geological elevation of the line of the tunnels.
 - (c) The site investigation reports.

- (d) A report on the interpretation of the site investigation and geological data, together with the proposed means of construction in the areas of faults, discontinuities and water ingress.

7. The design parameters, including the method of operation, and design throughput of traffic. It must include a report on the design of the lining.

8. A report justifying the cross-section of the tunnels taking into account geology, dimensions of rolling stock, mechanical and electrical equipment, ventilation, safety, piston effect.

9. Construction methods statement and safety measures.

AI. 8 Works to be provided at the Concessionaires' Expense

AI.81 The Concessionaires will provide at their expense all the connections from the terminals to the existing road networks.

AI.82 Certain items outside the boundaries of the Fixed Link such as those defined in paragraph AI.12 (Geographical limits of the Fixed Link) will also be paid for by the Concessionaires. The works constructed in this category will, after issue of the completion certificate of these works, pass into the title of the Principals or local authorities.

On the French side these works comprise:

- (i) A share in the construction of the motorway link between RN1 and the south Calais bypass, according to arrangements which will be agreed between the Concessionaires and the French Principal in an exchange of letters.
- (ii) The diversion of all roads, watercourses, services, temporary and permanent, made necessary by the construction of the Fixed Link.

On the British side:

The diversion of all roads, watercourses, services, temporary or permanent, made necessary by the construction of the Fixed Link.

AI.9 Procedures for Approvals, Consents and Agreements of Intergovernmental Commission

The provisions of the Concession Agreement shall apply to all approvals, consents and agreements of the Intergovernmental Commission referred to in this Annex.

Annex II
to the Concession Agreement

**Acquisition of Land, Ownership of the Fixed Link and Rights of the
Concessionaires in so far as these relate to the United Kingdom**

AII.1 The extent of the land and rights in relation to land required for the construction and operation of the Fixed Link (referred to in this Annex as "Operational Land") shall be all those lands and rights authorised (whether for compulsory acquisition or vesting as provided in Paragraphs AII.21 and AII.22 below) for the purpose of such construction and operation as referred to in the Bill mentioned in Clause 3.1 of the Agreement to which this is an Annex ("the Concession Agreement" and words and expressions defined in the Concession Agreement shall have the same meaning herein) and/or as defined in the plans deposited in Parliament for the purposes of such Bill excepting all those lands and rights in relation to land required only for the construction of the Fixed Link (referred to in this Annex as "Construction Site Land"). The references in this Annex to Operational Land and Construction Site Land (other than in Paragraph AII.21 below) shall also include all other lands or rights which the British Minister and the Concessionaires shall agree to designate as "Operational Land" or "Construction Site Land" as the case may be.

AII.21 All right and title to the land and rights in relation to the land required for the construction or operation of the Fixed Link under the foreshore and the bed of the sea on the British side of the frontier (as ascertained in accordance with the Treaty), including the Fixed Link itself as it becomes constructed, and all land and rights in relation to land so required which are, before the date of the Concession Agreement, vested in or acquired by a Secretary of State other than the British Minister or otherwise under the control of the British Government, will be vested in the British Minister either before or forthwith following the date on which the Concession Agreement shall come into operation in accordance with Clause 3.1 thereof. The British Minister will also by the date on which the Concession Agreement shall come into operation have vested in him all powers necessary to acquire compulsorily (and to extinguish as necessary any rights incumbrances and covenants in respect thereof) all Operational Land and Construction Site Land not already vested in him or acquired by him by agreement.

AII.22 All right and title to land and rights in relation to land acquired by the Concessionaires and required as Operational Land or Construction Site Land shall be transferred by the Concessionaires to the British Minister at his request and free of charge.

AII.3 The British Minister will grant to the Concessionaires:

AII.31 in respect of the whole of the Operational Land not less than three leases (comprising respectively (1) land at Cheriton near Folkestone, (2) land at Ashford and (3) land between Cheriton and the frontier (as ascertained in accordance with the Treaty) in forms to be agreed prior to the date on which the Concession Agreement shall come into operation in accordance with Clause 3.1 thereof for periods commencing on such date and terminating concurrently with the Concession Period;

AII.32 in respect of the Construction Site Land a lease or leases as required by the Concessionaires in forms to be agreed prior to the date on which the Concession Agreement comes into operation for periods of 10 years (subject to determination and extension as therein provided) commencing on the said date on which the Concession Agreement shall come into operation;

and the Concessionaires undertake to observe and perform the provisions of all such leases.

AII.41 Subject to there being not less than three leases of the Operational Land as provided in Paragraph AII.31 above (but without prejudice to the right of the Concessionaires to call for more than three leases) but not so as to oblige the Concessionaires to take more than one lease of each of the three areas of land therein mentioned the grant of each lease will be completed forthwith following the later of:

- (i) the date on which all such land and rights as form the subject matter of the lease in question have become vested in the British Minister or have been acquired by him; and
- (ii) the date on which the Concession Agreement shall come into operation in accordance with Clause 3.1 thereof; and
- (iii) the earlier of the date on which the British Minister receives the payment (if any) due to him from the Concessionaires in respect of such land and rights referred to in Paragraph AII.7 below and the date on which the British Minister receives a duly executed bank guarantee in respect of the likely amount of such payment or payments as certified by the District Valuer.

AII.42 Pending the grant of the leases or any of them (and subject either to the events mentioned in Paragraph AII.41(i) and (ii) above having occurred or to the British Minister having served Notices to Treat and Enter in respect of land or rights not yet vested in him or acquired by him) the Concessionaires shall have the exclusive right and licence to enter into possession of the land and rights in relation to land which form the subject matter of such lease or leases as if such lease or leases had at that time been granted upon providing to the British Minister a duly executed bank guarantee or guarantees in respect of the likely amount of the payment (if any) due to him from the Concessionaires in respect of such land and rights pursuant to Paragraph AII. 7 below as certified by the District Valuer and the Concessionaires and British Minister shall observe and perform all covenants conditions and other matters contained or referred to in such lease or leases to the extent that these are not inconsistent with the licence created by this Paragraph.

AII.5 In relation to Construction Site Land it is agreed that:

AII.51 where such land or rights are acquired by the British Minister pursuant to the exercise by him of his powers for compulsory acquisition, upon such land and rights being no longer required for the purposes of the construction of the Fixed Link they will (if the British Minister is obliged so to do as a matter of law or of national practice) be reoffered to the person from whom they were obtained upon the terms then customarily applicable in such circumstances. If such person

repurchases such land or rights from the British Minister in accordance with this procedure, any consideration received by the British Minister (net of any transfer or other like costs properly incurred) will be paid by him to the Concessionaires promptly upon its receipt by him. If such land or rights are not repurchased by such person, the British Minister shall promptly transfer such land and rights to the Concessionaires free of charge,

AII.52 all other Construction Site Land (other than the land at Dolland's Moor mentioned in Paragraph AII.53 below) shall be transferred by the British Minister to the Concessionaires free of charge promptly following the determination of the lease or leases relating to such land save where such determination occurs as a result of the termination of the Concession Agreement,

AII.53 the land at Dolland's Moor not forming part of the Operational Land shall promptly following the determination of the lease or leases relating to such land (save where such determination occurs as a result of the termination of the Concession Agreement) be transferred by the British Minister to British Railways Board at a price and on such other terms (which shall include without limitation terms relating to the grant and exception and reservation of necessary rights and easements) as the Concessionaires shall agree with the said Board such price to be paid forthwith to the Concessionaires.

AII.54 Where such land or rights have been designated as Construction Site Land by agreement between the British Minister and the Concessionaires (as provided in Paragraph AII.1 above) and such land or rights were, before the date of the Concession Agreement, vested in or acquired by a Secretary of State other than the British Minister pursuant to the exercise of powers for compulsory acquisition, Paragraph AII.51 above shall apply thereto, subject as provided in Paragraph AII.55 below, as if references therein to "the British Minister" were to such other Secretary of State.

AII.55 In respect of the land shown on the attached plan (marked "AII.55 Plan") which the British Minister and the Concessionaires have agreed to designate as "Construction Site Land", the British Minister and the Concessionaires shall be entitled to enter into an agreement entitling the British Minister to an additional payment in the circumstances therein set out, and accordingly to that extent Paragraphs AII.51 above and AII.73 below shall not apply.

AII.61 In any case where the British Minister acquires or has vested in him land or rights in relation to land which do not form part of the subject matter of any of the leases referred to in Paragraph AII.3 above but such acquisition or vesting occurs by reason of the Project, and such acquisition or vesting is made either:

- (i) as a result of an agreement between the British Minister and the then owner with the prior written approval of the Concessionaires, or
- (ii) as a result of the process of law following the application for such vesting by the then owner,

the British Minister shall promptly transfer such land or rights to the Concessionaires free of charge.

AII.62 Upon the Fixed Link being brought into operation any surplus land then vested in the British Minister for which the Concessionaires have paid pursuant to paragraph AII.7 below shall promptly be transferred to the Concessionaires free of charge unless the British Minister is then obliged as a matter of law or of national practice to reoffer such land to the person from whom it was originally obtained in which event the provisions of Paragraph AII.51 above shall apply mutatis mutandis in respect of such land.

AII.7 The Concessionaires shall pay to the British Minister the amounts specified in Paragraph AII.71 below forthwith following the vesting therein mentioned, the amounts specified in Paragraphs AII.72 and AII.74 when such amounts are due to be paid by the British Minister and the amounts specified in Paragraph AII.73 forthwith following the issue of the District Valuer's certificate:

AII.71 in the case of land or rights vested in him under the foreshore and the bed of the sea, the costs of such vesting (including the amount of any compensation payable by him),

AII.72 in the case of land or rights acquired by him after the date of the Concession Agreement, the costs of acquiring such land or rights such costs (in the case of land or rights acquired by him by agreement) to be previously approved in writing by the Concessionaires such approval not to be unreasonably withheld or delayed and which approval shall be deemed to have been given if the amount of such costs have been determined by the Lands Tribunal;

AII.73 in the case of land or rights which are, before the date of the Concession Agreement, vested in him or in another Secretary of State or otherwise under the control of the British Government, the current market value (as certified by the relevant District Valuer) of such land or rights on the date on which the Concession Agreement shall come into operation in accordance with Clause 3. 1 thereof as if they were being acquired compulsorily by him for the purposes of the Project and on the assumptions as to compulsory purchase compensation contained in the Bill referred to in Clause 3.1 of the Concession Agreement; and

AII.74 any compensation payable by him by reason of the Project in respect of other land or rights not required for the Fixed Link, whether or not such land or rights are acquired, the amount of such compensation where the same is paid by the British Minister by agreement and not as a result of the process of law to be previously approved in writing by the Concessionaires.

Annex III to the Concession Agreement

Insurance Obligations

In accordance with Clause 22 of the Concession Agreement to which this is an Annex ("the Concession Agreement") specific insurances are to be arranged to the extent that the same are available at reasonable cost in respect of the following:

-any legal liability of Government, Government agencies such as the Intergovernmental Commission and the Safety Authority, their servants or employees, contractors and operators to third parties and Users of the Fixed Link arising out of the construction or operation of the Fixed Link other than liability arising out of the serious default or recklessness of the Principals;

-the risks of physical damage to the Fixed Link or interruption to construction or operation resulting therefrom;

-legal liability risks, particularly those arising during the period of abandonment.

The insurances may incorporate appropriate deductibles or similar elements of self insurance subject to the approval of the Intergovernmental Commission.

The insurance arrangements will be made under two separate programmes:

The first will cover the construction phase and shall continue until the bringing into service of the Fixed Link pursuant to Clause 11 of the Concession Agreement;

The second will start at the bringing into service of the Fixed Link on a one, two or three years basis renewable thereafter.

All insurance policies and arrangements for their administration will be submitted to the Intergovernmental Commission which inter alia shall review policy exclusions and other limitations of coverage in the light of insurance market conditions at the time of submission.

In compliance with the French compulsory decennial insurance law, a decennial insurance policy must be taken out to insure both the terminal buildings and the operating buildings on French territory.

Liability to the Principals incurred by the Concessionaires for non-compliance with their obligations under or pursuant to the Concession Agreement shall not be insurable risks.

The risks to be insured by the Concessionaires will include the following:

(1) Physical loss or damage to the Fixed Link including marine property (if any), such as loss or damage caused by strikes, riots, acts of terrorism and of sabotage, natural catastrophes including (without limitation), flood, tidal wave, landslip and earthquake, lightning and fire explosion; and electrical and machinery breakdown and train derailments.

(2) Delay in start up and interruption of operations resulting from physical loss or damage for which indemnity is provided under the insurance described in (1) above.

(3) Liability to third parties including Users in respect of

(a) death or bodily injury or disease; or

(b) loss of or damage to property including an extension providing compensation for each individual insured party as if they were insured separately.

Annex IV

to the Concession Agreement

Events giving rise to the Right of Substitution

(1) failure to make any payment required under the financing agreements within a stated grace period;

(2) it appears, by reference to an objective test, that the Concessionaires do not have available and are not in a position to obtain sufficient funds to meet the estimated cost of construction or operation of the Fixed Link, together with the associated financing costs;

(3) it appears, by reference to an objective test, that the estimated final maturity date for repayment of the Lenders financing the construction and operation of the Fixed Link will be materially extended; or

(4) abandonment of the Project, insolvency, liquidation, enforcement of security by other creditors and related events.

Annex V

to the Concession Agreement Arrangements for Principals' Participation in profits

A In calculating the sum payable under Clause 29.4 the following will apply:

1. (a) "Pre-tax profits" shall be the profits before tax as disclosed in the statutory accounts for the relevant accounting period.
(b) "Pre-tax losses" shall be the losses before tax as disclosed in the statutory accounts for the relevant accounting period.
2. In determining the pre-tax profits or losses for this purpose no account shall be taken of the sum so payable.
3. The sum will be calculated on an annual basis by reference to the statutory accounts of the relevant Undertaking.
4. The pre-tax profits on which a calculation is made will be reduced by any pre-tax losses made in a prior accounting period beginning after 29 July 2052 to the extent that these have not already been offset.
5. In the case of the first accounting period to which the calculation is to apply, there will be brought into account only those pre-tax profits or losses that are deemed to have accrued between 29 July and the last day of that accounting period (both days inclusive) (on the basis that the pre-tax profits or losses shall be deemed to have accrued pro rata from day to day throughout that accounting period).
6. In the case of the last accounting period, there will be brought into account only those pre-tax profits or losses that are deemed to have accrued between the first day of that accounting period and the day on which the Concession ends (both days inclusive) (on the basis that the pre-tax profits or losses are deemed to have accrued pro rata from day to day throughout that accounting period).
7. If either Principal considers that the statutory accounts for the first accounting period in which a calculation is to be made include values for any brought forward asset or liability which are not fair, the Parties shall make every effort to agree fair values which shall be used instead of those in the statutory accounts for the purpose of calculating the sum payable under Clause 29.4 in that and subsequent years.

B (a) That part of the sum payable under Clause 29.4 which does not comprise any form of corporation tax will be due and payable at the times and in the manner which would be required had the whole of the sum comprised corporation tax, unless agreed otherwise between a Principal and its Undertaking.

(b) Interest on amounts overdue in respect of such sum will accrue thereon at the same rate and for the same periods and be due and payable at the times and in the manner which would be required had the whole of such sum comprised corporation tax, unless agreed otherwise between a Principal and its Undertaking."

