

DATED 20 AUGUST 1998

(1) THE COUNCIL OF THE BOROUGH OF LUTON

(2) LONDON LUTON AIRPORT LIMITED

(3) LONDON LUTON AIRPORT OPERATIONS LIMITED

(4) LONDON LUTON AIRPORT GROUP LIMITED

CONCESSION AGREEMENT
relating to
LONDON LUTON AIRPORT

PINSENT CURTIS

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"A"	Announcement to temporary/casual staff
"B"	Announcement to permanent staff, including agreed form contracting-out notice and expression of wishes form.
"C"	Business Plan and Format
"D"	Concession Fee Bond
"E"	Daily Movement Record
"F"	Deed of Adherence
"G"	Deed of Appointment (Pensions)
"H"	Deed of Release
"I"	Development Strategy Plans
"J"	Disclosure Letter
"K"	Initial Subordinated Loan Agreement
"L"	Initial Insurances
"M"	LLA Account Charge
"N"	LLA Environmental Policy
"O"	Monitoring Report (Business)
"P"	Monitoring Report (Noise)
"Q"	Pensions Announcement Letter, together with LGPS explanatory leaflet
"R"	Pensions Deed
"S"	Property Lease
"T"	Scope Book
"U"	Opinion Letter
"V"	Accounts Analysis
"W"	Debenture Details

THIS CONCESSION AGREEMENT is made the 20th day of August 1998

BETWEEN:

- (1) **THE COUNCIL OF THE BOROUGH OF LUTON** of the Town Hall, Luton LU1 2BQ ("**the Council**");
- (2) **LONDON LUTON AIRPORT LIMITED** (formerly Luton International Airport Limited), a private company limited by shares (registered in England & Wales no. 2020381) whose registered office is at the Town Hall, Luton LU1 2BQ ("**LLA**");
- (3) **LONDON LUTON AIRPORT OPERATIONS LIMITED**, a company limited by shares (registered in England & Wales no. 3491213) whose registered office is at Percival House, Percival Way, London Luton Airport, Luton LU2 9LY ("**the Concessionaire**");
- (4) **LONDON LUTON AIRPORT GROUP LIMITED** a company limited by shares (registered in England & Wales no. 3491191) whose registered office is at 400 Capability Green, Luton LU1 3LU ("**the Guarantor**").

WHEREAS:

- (A) LLA was incorporated as a wholly-owned subsidiary of the Council on 16 May 1986 under the name "Trushelfco (No. 965) Limited" (subsequently changed to "Luton International Airport Limited" on 10 November 1986 and then to "London Luton Airport Limited" on 1 May 1992).
- (B) Pursuant to a direction dated 10 September 1986 under Sections 13 and 15 of the Airports Act 1986, the Council formed LLA for the purpose set out in such direction and submitted a scheme for the transfer of property, rights and liabilities to LLA (the "**Transfer Scheme**").
- (C) On 1 April 1987, pursuant to the terms of the Transfer Scheme, as amended and approved by the Secretary of State, the Council transferred to LLA all of the property, rights and liabilities referred to in the Transfer Scheme. In consequence, LLA now carries on the business of operating the Airport (herein defined) as a commercial undertaking.
- (D) Accordingly, for the purposes of Section 16 of the Airports Act 1986, LLA is a public airport company and the Council is the controlling authority of LLA.
- (E) Under this Concession Agreement the Concessionaire agrees with the Council and LLA to manage and operate the Airport (herein defined) and agrees to provide or make available the Airport Services (herein defined) for the purposes of or in connection with the discharge by the Council of its function to maintain the Airport.

IT IS AGREED AS FOLLOWS:

PART 1 - PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Concession Agreement, except to the extent the context otherwise requires:

"**AACC**" means the Airport Associations' Co-ordinating Council established by ICAO or any successor thereto.

"**accounting reference period**" has the meaning given in section 224 of the Companies Act.

"**Accounts**" means LLA's audited accounts (as that term is used in Section 226 of the Companies Act) and cash flow statement for the financial year ended on the Last Accounting Date, the auditors' report on those accounts and the directors' report for that year.

"**Additional Roundabout Works**" means those works or services which are required by Planning Agreement One and are not the Initial Roundabout Works.

"**Advance Works**" means those works or services forming part of the Concessionaire Works which have been carried out by or on behalf of LLA before the Commencement Date as referred to in the Scope Book.

"**Advance Works Reimbursement**" means the sum to be paid by the Contractor to LLA in respect of the Advance Works under the Master Novation Agreement.

"**aerodrome**" has the meaning given in the Civil Aviation Act.

"**Affiliate**" means, in respect of any undertaking ("the first undertaking"), any other undertaking which is a group undertaking in relation to the first undertaking (as such terms are defined in Clause 1.2.4)

"**Airline User**" means any person responsible for the carriage of passengers, animals, mail or freight by air from or to the Airport.

"**Air Navigation Order**" means the Air Navigation (No. 2) Order 1995 (SI 1995: 1970).

"**Airport**" means the aerodrome and all associated facilities located in the Borough of Luton currently known as "London Luton Airport" and comprises all the land, buildings and structures at the Airport Site.

"**Airport Business**" means the business of the Concessionaire comprising the provision of the Airport Services.

"**Airport Charges Directive**" means the proposed EU Council Directive on airport charges the latest draft of which was published in the Official Journal of the European Communities on 22 August 1997.

"**Airport Forum**" means the consultation forum formed in accordance with Clause 13.9.

"Airport Services" means the Core Airport Services and the provision of any other business, activities, facilities and services ordinarily provided from time to time at airports in connection with the Core Airport Services including, but without limitation, the following ancillary businesses, activities, facilities and services:

- (a) the allocation of access to the Airport for commercial vehicles including buses, coaches and taxis;
- (b) the provision of money exchange booths/ATM machines;
- (c) the provision of car wash services and valet parking services;
- (d) the allocation of Airport advertising;
- (e) the allocation of hotel/car rental courtesy access phones;
- (f) the provision of public telephones and other communication facilities;
- (g) the provision of business centres;
- (h) the provision of baggage carts;
- (i) the progressive development of existing retail and/or catering services analogous to developments at other airports; and
- (j) the provision of new buildings, structures and facilities at the Airport for the better provision of the Core Airport Services

and such other businesses, activities, facilities and services as may be approved by LLA in accordance with Clause 4.3.

"Airport Site" means the site of the Airport more particularly described as the "Leased Property" in the Property Lease and any additions thereto during the Concession Period, and including the Landing Lights Areas and (if the Amenity Land Lease is granted) the premises comprised within the Amenity Land Lease.

"Airports Act" means the Airports Act 1986.

"Amenity Land" means the land more particularly described as the "Leased Property" in the Amenity Land Lease.

"Amenity Land Lease" means "the Lease" as so defined in the Option Agreement.

"Articles of LLA" means the Articles of Association of LLA.

"Available Shareholder Distributions" means, in respect of each Concession Year (or part thereof), the amount of cash available to be distributed (by way of dividend or other distribution or by way of payment of interest, or repayment of principal, under any Shareholder Facility Agreement) to the Shareholders including:

- (a) any such amounts which may not be so distributed as a result of restrictions in any Funding Agreements or Hedging Agreements; and
- (b) any such amounts of cash available to be distributed in respect of any prior Concession Year (or part thereof) and not already distributed.

"Average Earnings Index" means the average earnings index for the whole economy as published from time to time by the Central Statistical Office of the Chancellor of the Exchequer or such other official index published by that Office (or any successor thereto) or by any other government department or agency which replaces or is in substitution for the said index.

"Backward Concession Fee Cover Ratio" means the Concession Fee Cover Ratio for the Calculation Period ending prior to the date of publication of a Monitoring Report (Business).

"Business Day" means any day (other than a day which, in England, is a statutory bank or other statutory holiday or Saturday) on which commercial banks are normally open for business in England.

"Business Plan" means such document as is prepared by the Concessionaire not later than the beginning of each Concession Year for the purpose of setting out (within the context of the Development Strategy and, to the extent applicable, the Scope Book and, in each case, any intended changes thereto) the detailed business and financial plans of the Airport Business over a rolling period of not less than five Concession Years from the date thereof, as submitted to the Airport Forum for consideration incorporating, amongst other things:

- (a) in respect of the initial Concession Year of each such period, a capital budget including detailed descriptions, estimated costs and justifications for each proposed item or series of related items of capital expenditure (if any) in excess of [REDACTED] (Index Linked), a quarterly cash-flow statement and a detailed description of the Concessionaire's proposed short-term financing (including borrowing) arrangements;
- (b) in respect of each subsequent Concession Year, a capital expenditure programme including outline descriptions, estimated costs and preliminary justifications, a quarterly cash-flow statement and preliminary proposals as to the Concessionaire's financing (including borrowing) arrangements for each of those years;
- (c) in respect of every Concession Year, a detailed budget or outline programme of all expenditure (including any capital expenditure falling within sub-paragraphs (a) and (b) above) proposed for the purpose of compliance with the Concessionaire's obligations pursuant to Clause 27.1;
- (d) in respect of every Concession Year, quarterly projections for Work Load Units;
- (e) in respect of every Concession Year, the semi-annual Forward Concession Fee Cover Ratio and the DSCR (as defined in the Initial Facility Documents) or the equivalent debt service cover ratio in any Funding Agreement;
- (f) in respect of every Concession Year (subject to the right to exclude any items of commercial sensitivity), an outline of any proposed transaction, whether or not within the ordinary course of business, which is of a material nature including,

without limitation, acquisitions or disposals of material assets, joint ventures and any material concession agreements or discounting arrangements;

- (g) the key business strategies and policies of the Airport Business for that period, in particular, in respect of land use and land purchase, human resources (including equal opportunities), marketing and business development, aeronautical and non-aeronautical business (including airport charges), aeronautical operations and operational performance, environmental monitoring, customer satisfaction and community relations (including local employment initiatives), together with any specific targets in respect thereof;
- (h) a review of performance since the last date on which the Business Plan was reviewed; and
- (i) such other information as may reasonably be required by LLA;

a copy of the agreed form of such plan in respect of the period to 1 April 2003 being attached to this Concession Agreement marked "C", and a copy of the agreed format for future Business Plans being attached to this Concession Agreement marked "C".

"CAA" means the Civil Aviation Authority of the United Kingdom or any other authority, government department or agency which under any relevant Law:

- (a) has control or supervision of civil aviation in the United Kingdom; and/or
- (b) has jurisdiction over the licensing or operation of aerodromes in the United Kingdom.

"Calculated Concession Fee" means, in respect of each Concession Year (or as the case may be, Reporting Period), the Concession Fee as calculated in accordance with Schedule 4.

"Calculation Date" means 30 September 1998 and subsequently 31 March and 30 September in each Concession Year until the expiry of the Concession Period.

"Calculation Period" means

- (a) in respect of a Calculation Date following less than 12 months after the date of this Concession Agreement, the period from the date of this Concession Agreement to the Calculation Date (both dates inclusive);
- (b) in respect of a Calculation Date following less than 12 months prior to the expiry of the Concession Period, the period from the Calculation Date to the date of expiry of the Concession Period (both dates inclusive); and
- (c) each period of twelve months commencing on the date immediately following a Calculation Date and ending on a subsequent Calculation Period (both dates inclusive).

"Certificate of Substantial Completion" means the certificate to be issued by the Concessionaire's Representative in respect of the New Terminal in accordance with Clause 8.22

"Certificates" means the certificates referred to in Paragraph 4, Part 2 of Schedule 1.

"Change in Law" means any change after the date of this Concession Agreement in (including any new) laws, regulations, directives, treaties, bye-laws or orders or other requirements from any relevant authority affecting the Airport Business (including, for the avoidance of doubt, the carrying out of the Concessionaire Works, Development Strategy Works and any Development Works) including any change in interpretation thereof or policies of enforcement, but excluding, for the avoidance of doubt, the exercise by the Council or any other Government Authority or Local Authority of any statutory discretion pursuant to its or their functions as planning authority under the Planning Laws and Provided that the adoption, coming into effect, and/or the implementation into English law, of the Airport Charges Directive shall not be construed as a Change in Law; and

"Chicago Convention" means the Convention on International Civil Aviation 1944, as amended and/or supplemented from time to time and references to an "annex" to the Chicago Convention shall mean such annex as amended and/or supplemented from time to time.

"Civil Aviation Act" means the Civil Aviation Act 1982.

"Close Relation" means, in respect of any individual who is relevant to the definition of Restricted Person ("the first person"), a relative (as defined in either section 160 of the Taxes Act or in Section 286 of the Taxes and Capital Gains Act 1992, as amended by section 270 of the Inheritance Taxes Act 1984) of the first person, a partner (or a relative of a partner) of the first person, or a trustee of a settlement (as defined in section 660G of the Taxes Act) of which the first person (or any relative of the first person or any relative of a partner of the first person) is a beneficiary.

"Collateral Agreements" means the EPC Direct Agreement, the Funder's Direct Agreement, the Pensions Deed and the Deed of Appointment.

"Commencement Date" has the meaning given to it in Clause 2.2.

"Commercial Contracts" means the agreements marked "CC" in the Disclosure Bundle Index attached to the Disclosure Letter.

"Companies Act" means the Companies Act 1985.

"Competing Airport" means each of the aerodromes known as at the date of this Concession Agreement as "London Heathrow", "London Gatwick" and "London Stansted" and any other aerodrome within a 50-mile radius of the Airport (measured from the centre point of the Airport control tower) with a capacity from time to time in excess of 10 million passengers per annum.

"Competing Operator" means any person who is the holder of the operator's licence granted under Article 92 of the Air Navigation Order in respect of one or more of the Competing Airports.

"Completed Discriminatory Event Projection" means any Provisional Discriminatory Event Projection which the Concessionaire and LLA agree is sufficiently accurate pursuant to Clause 10.11.3 or any further Discriminatory Event Projection produced pursuant to Clause 10.11.3.

"Completed Special Force Majeure Projection" means any Provisional Special Force Majeure Projection which the Concessionaire and LLA agree is sufficiently accurate pursuant to Clause 10.5.3 or any further Special Force Majeure Projection produced pursuant to Clause 10.5.3.

"**Completion**" has the meaning given to it in Clause 2.3.4.

"**Completion Date**" means the date the transactions set out in Clause 2.3.1 shall be completed as defined in Clause 2.3.2.

"**Concession Agreement**" means this agreement, as the same may be varied, amended or supplemented from time to time.

"**Concession Documents**" means this Concession Agreement, the Property Lease, the Option Agreement and (if granted) the Amenity Land Lease.

"**Concession Employees**" means any person (including, without limitation, the employees of the Concessionaire from time to time together with any other person employed by any of the Concessionaire's Affiliates or by any sub-contractor or delegate of any of the Airport Services) whose contract of employment would be transferred to LLA or a Successor Operator following the expiry or termination of the Concession Period by virtue of the operation of the TUPE Regulations or in respect of whom liabilities arising from a contract of employment or employment relationship would otherwise be transferred to LLA or a Successor Operator following the expiry or termination of the Concession Period.

"**Concession Fee**" means the amount of or the proportion of Calculated Concession Fee from time to time calculated under this Concession Agreement as the same may be reduced, suspended or adjusted under this Concession Agreement, and payable under the Property Lease.

"**Concession Fee Bond**" means the annual performance bond to be provided to LLA as security for payment of the Concession Fee to LLA, the first such bond in the agreed form attached to this Concession Agreement marked "D" and in the amount of £5,000,000 to be provided to LLA upon Completion and such other bonds as may replace it in any Concession Year as contemplated by Clause 12.3 or when contemplated by Clauses 12.4 or 36.1, each in such sum as shall be specified in accordance with Clauses 12.3, 12.4 or 36.1 (as applicable).

"**Concession Fee Cover Ratio**" means in relation to any Calculation Period the ratio of A:B where:

A = CFADS (as CFADS is defined in the Initial Facility Documents as at the Completion Date) after adding back the Concession Fee; and

B = the Concession Fee payable for such period.

"**Concession Fee Payment Date**" means 14 April, 14 July, 14 October and 14 January in each year and, for the last Concession Year, 14 days after the last day of the Concession Period.

"**Concession Period**" means the period commencing on the Commencement Date and expiring on the day following a period of 30 years thereafter plus the period of all and any extensions to the Concession Period agreed or determined under any provision of this Agreement or, if earlier, the Termination Date.

"Concession Year" means:

- (a) the period from the Commencement Date until 31 March 1999 (which shall be the "first Concession Year"); and
- (b) the period of four consecutive Reporting Periods beginning on the 1 April 1999, and any other period of four consecutive Reporting Periods beginning on the day after the end of a Concession Year; and
- (c) the period beginning on the day after the last day of the Concession Year preceding the end of the Concession Period and ending on the date of the end of the Concession Period.

"Concession Year Fee" means each of the following:

- (a) the aggregate of the Calculated Concession Fees for the four consecutive Reporting Periods commencing on the day after the end of the first Reporting Period of the Concession Period, and
- (b) the aggregate of the Calculated Concession Fees for each successive period of four consecutive Reporting Periods following the period referred to in paragraph (a).

"Concessionaire Borrowing Rate" means, in respect of any period and any relevant amount, if the Concessionaire does not borrow the relevant amount, the interest rate applicable from time to time under the Funding Agreements for such period (or, if there is more than one interest rate applicable from time to time, the weighted average thereof), or, if the Concessionaire borrows to finance the relevant amount, the "all-in" interest rate at which the Concessionaire borrows for such purpose and, if applicable, for such period.

"Concessionaire Event of Default" has the meaning given to it in Clause 18.

"Concessionaire's COE" means, at any time, the Concessionaire's COE determined and calculated in accordance with Clause 39.

"Concessionaire's Representative" means the Contract Administrator as defined in the EPC Contract or such other person as the Concessionaire shall notify in writing to LLA.

"Concessionaire Termination Event" has the meaning given to it in Clause 20.

"Concessionaire's WACC" means, at any time, the Concessionaire's WACC as determined and calculated in accordance with Clause 39.

"Concessionaire Works" means the works and services defined as the "Works" in the original EPC Contract.

"Conditions" means the conditions precedent specified in Schedule 1.

"Construction Disputes Resolution Procedure" means the disputes resolution procedure contained in Part 2 of Schedule 13.

"Consultative Committee" means any committee, group or other body of persons (in each case, whether or not the subject of constitutional arrangements which have legal effect) from time to time formed for the

purpose of (and/or with whom the person from time to time having the management of the Airport engages in) consultation in compliance with section 35 of the Civil Aviation Act, or any committee of Local Authorities constituted in accordance with section 102(1)(b) of the Local Government Act 1972 for the purpose of considering the interests of such Local Authorities in relation to the Airport.

"Contractor" means Bechtel Limited, a company incorporated in England and Wales with registered number 506133 whose registered office is at PO Box 749, 245 Hammersmith Road, London W6 8DP, or any replacement contractor or contractors under the EPC Contract approved by LLA in accordance with Clause 8.11.

"controlling authority" has the meaning given in section 16(2) of the Airports Act.

"Core Airport Services" means the services listed in Schedule 3.

"Council Discriminatory Event" means a Discriminatory Event which is promoted or instigated (directly or indirectly) by the Council, or any person acting on behalf of or at the direction of the Council or any person who or which is an Affiliate of the Council including, without limitation, LLA.

"Council Expropriation Event" means any Expropriation Event which is promoted or instigated (directly or indirectly) by the Council, or any person acting on behalf of or at the direction of the Council or any person who or which is an Affiliate of the Council including, without limitation, LLA.

"Council Shares" has the meaning given to it in Schedule 14.

"Daily Movement Record" means a record which is substantially similar to (and containing information which is substantially equivalent to that contained in) the daily movement record currently prepared by LLA and supplied to the CAA, in the agreed form attached to this Concession Agreement marked "E".

"Debentures" means the six debentures executed by LLA in favour of the Council, variously dated (1) 1 April 1987, (2) 20 July 1988, (3) 14 April 1989, (4) 31 July 1990, (5) 25 March 1994 and (6) 31 March 1995 (as varied on the date hereof).

"Deed of Adherence" means the deed in the agreed form and attached to this Concession Agreement and marked "F".

"Deed of Appointment" means the deed between the Concessionaire (1) the current trustees of the LLA Scheme (2), the new trustees of the LLA Scheme (3) and the new trustee nominated by LLA, (4) in the agreed form attached to this Concession Agreement marked "G" with the details of parties names inserted to be executed by the Concessionaire upon Completion.

"Deed of Covenant" means the deed of covenant entered into pursuant to the Second Schedule to the Transfer Scheme by (1) the Council and (2) LLA on 15 April 1987.

"Deed of Release" means the deed of release in the agreed form attached to this Concession Agreement and marked "H" releasing (inter alia) the Transferred Assets from the Debentures.

"Default Interest Rate" means a rate equivalent to 2.5 per cent per annum above the base lending rate published by Barclays Bank PLC , or if such base lending rate shall cease to be published such rate of interest as should be the nearest equivalent on the date the base lending rate ceased to be published as shall be agreed between the parties, or in default of agreement as shall be determined by the Fast Track Adjudication Procedure.

"Development Strategy" means such document as may be prepared from time to time for the purpose of setting out the strategy for the future development of the Airport (excluding the Concessionaire Works), initially being in the agreed form contained in Schedule 15.

"Development Strategy Contracts" means any construction contract to be entered into by the Concessionaire during the Concession Period to carry out any Development Strategy Works.

"Development Strategy Contractor" means any principal contractor directly employed by the Concessionaire to carry out any Development Strategy Works.

"Development Strategy Plans" means the plans copies of which are attached to this Concession Agreement and marked "I".

"Development Strategy Works" means those works of development or redevelopment which both:

- (a) are intended to implement the Development Strategy; and
- (b) include the construction of new buildings to accommodate or permit the accommodation at the Airport of material increases in the number of passengers per annum using the Airport.

"Development Works" means the carrying out of any works of development, redevelopment or refurbishment at the Airport during the Concession Period other than the Concessionaire Works and the Development Strategy Works.

"Disclosure Letter" means the letter to the Concessionaire in the agreed form, a copy of which is attached to this Concession Agreement and marked "J" executed and delivered to the Concessionaire immediately prior to the execution of this Concession Agreement.

"Discriminatory Change in Law" means any Change in Law which adversely affects the Airport Business (including, for the avoidance of doubt, the imposition of or increase in any Taxation from time to time) and which discriminates against:

- (1) any business or assets (or category thereof) which were originally owned, operated or financed by the Public Sector and which is or are now owned, operated or financed wholly or partly by the Private Sector where the Public Sector retains a residual or reversionary right or interest in the business or assets; or
- (2) companies or other persons incorporated to provide services to, or carry out and/or finance works for, local authorities or their Affiliates, or the Council or its Affiliates, or the Public Sector; or
- (3) any contracts (or category thereof) entered into with local authorities or their Affiliates, or the Council or its Affiliates, or the Public Sector, for the carrying out and/or financing of works and/or provision of services; or

- (4) any category of persons (which category includes the Concessionaire) entering into contracts such as those described in paragraph (3) above; or
- (5) the Airport Business (including, for the avoidance of doubt, the carrying out of the Concessionaire Works, any Development Strategy Works and any Development Works or any part thereof or any asset comprised therein) when compared with:
 - (a) all and any other airport businesses in England and Wales; or
 - (b) all and any other businesses operating within the jurisdiction of the Public Authority promoting the Change in Law; or
- (6) discriminates against the Concessionaire when compared with:
 - (a) all and any other companies in England and Wales; or
 - (b) all and any other companies within the jurisdiction of the Public Authority promoting the Change in Law,

provided that a Change in Law shall not be treated as discriminatory:

- (i) solely upon the grounds that, whilst it applies to other companies, businesses or airport businesses, its incidental effect (which is not otherwise discriminatory) on the Concessionaire or the Airport Business is greater than that on any other company, business or airport business (as the case may be); or
- (ii) solely upon the grounds that the Change in Law constitutes a direction, order or other requirement under any Law existing at the date hereof (which is not otherwise discriminatory) for the Concessionaire to comply with such Law.

"Discriminatory Date" means, in respect of a Discriminatory Event, the date such Discriminatory Event first occurs or comes into effect.

"Discriminatory Event" means:

- (1) a Discriminatory Change in Law; or
- (2) revocation or withdrawal of, or failure to renew when required upon substantially similar terms, any licence, consent or approval required by the Concessionaire from any Public Authority to develop the Airport as contemplated in this Concession Agreement and/or to operate the Airport and/or to provide the Airport Services or any part thereof to the extent caused by discriminatory action or inaction; or
- (3) an Expropriation Event (other than a Council Expropriation Event) which is treated as a Discriminatory Event in accordance with the proviso to the definition of Expropriation Event.

"Discriminatory Event Completion Date" means in respect of a Discriminatory Event, the date such Discriminatory Event comes to an end.

"Discriminatory Event Projection" means any of a Provisional Discriminatory Event Projection, Completed Discriminatory Event Projection or Revised Discriminatory Event Projection.

"Discriminatory Loss" has the meaning given to it in Clause 10.13.1.

"Dispute" means any difference or dispute of whatever nature between any of the parties arising under, out of, or in connection with the Concession Documents or the Collateral Agreements (or any of them) (including, without limitation, any question as to the interpretation, existence, breach, termination or validity of this Concession Agreement and/or any such documents or agreements).

"Disputes Procedure" means any of the procedures referred to in Schedule 13 or any other arbitration or expert determination procedures required by law or agreed between the parties.

"Dominant User" means any Airline User which, by reference to any Concession Year, satisfies any one or more of the following conditions, namely that:

- (a) the aggregate aeronautical revenue of all categories receivable by the Airport Business from that Airline User and other Airline Users who are Affiliates of that Airline User ("Grouped Users") constitutes the single largest proportion of all aeronautical revenue receivable by the Airport Business by comparison with any other Grouped Users;
- (b) the aggregate Work Load Units of all categories attributable to that Airline User and its Grouped Users constitute the single largest aggregate proportion of all Work Load Units by comparison with those attributable to any other Grouped Users;
- (c) the aggregate number of commercial air transport movements utilised by that Airline User and its Grouped Users constitutes the single largest proportion of all commercial air transport movements by comparison with those utilised by all other Grouped Users.

"Employment Contracts" means the employment contracts listed in Part Q of the Disclosure Bundle Index to the Disclosure Letter.

"Environment" has the same meaning as set out in Clause 1(2) of the Environment Protection Act 1990.

"EPC Contract" means the Engineering, Procurement and Construction Contract for the Concessionaire Works of even date herewith between the Concessionaire and the Contractor and any replacement contract or contracts entered into by the Concessionaire from time to time.

"EPC Direct Agreement" means the Direct Agreement made or to be made between LLA, the Concessionaire and the Contractor in respect of the EPC Contract.

"Excluded Initial Employees" means those of the Initial Employees who are employed on a temporary or casual basis.

"Expropriation Event" means (a) the nationalisation, acquisition, sequestration, requisition or other seizure of the Airport Business or the assets thereof (or a material part thereof or interest therein) or the rights of the Concessionaire under the Concession Documents (or any part thereof or interest therein) by a Public Authority; or (b) the prevention (otherwise than arising as a result of the Concessionaire's default) of the Concessionaire from carrying on the Airport Business (or a material part thereof) in accordance with the provisions of the Concession Documents or the exercise of the rights (or a material part thereof) of the Concessionaire under the Concession Documents by a Public Authority; and whether (in any such case) by a single act or a series of acts (whether or not connected but which together have such effect), provided that, unless the foregoing constitutes a Council Expropriation Event, if in respect of any foregoing event it is reasonably apparent, from the date of its occurrence, that the event and its effect is temporary and will not last for more than six months, then such event shall not be an Expropriation Event unless and until such event or effect last for more than six months or it becomes reasonably apparent that such event or effect will last for more than six months and unless and until such time such event shall be treated as a Discriminatory Event.

"Final Completion Date" means 31 May 2000 as such date may be extended in accordance with the provisions of Clause 8.

"Financial Investor" means a person ("the first person") whose principal business(es), when taken together with the businesses of persons who are Affiliates in respect of the first person:

- (a) has or have been authorised or, if carried on in compliance with all relevant Laws, would be capable of being authorised under the Banking Act 1987, the Insurance Companies Act 1982, the Financial Services Act 1986 and/or any equivalent national or federal legislation from time to time of the United Kingdom, the United States of America or the European Union relating to the regulation of investment, deposit-taking or insurance businesses; and
- (b) include(s) making, managing or advising upon investments in securities for investment purposes (and not, for the avoidance of doubt, as an incidental part of carrying on another business which is not an investment, deposit-taking or insurance business ("a non-financial business") or as part of a group of Affiliates whose principal businesses, taken together, consist to a substantial extent of non-financial businesses);

or a nominee of the first person or a fund (or a nominee of a fund), including an investment trust, a limited partnership (or the general partner or nominee of a limited partnership) or other collective investment scheme established for the primary purpose of investing in securities, which is managed on a discretionary basis by the first person (or by a nominee of the first person or by another person who is an Affiliate of the first person).

"Fixtures & Fittings" means all fixtures and fittings in or upon the Property Let including, without limitation, plant and machinery, lifts, boilers, central heating, air conditioning, lighting, plumbing, sanitary and sprinkler systems, baggage handling conveyor systems, electrical plant and generators, electronic and air navigational equipment and any other fixed plant from time to time in or upon the Property Let.

"Force Majeure Event" means any event which is beyond the reasonable control of the Concessionaire (and not caused by the Contractor or a Development Strategy Contractor) including, but not limited to:

- (a) war (whether declared or undeclared), invasion, blockade, armed conflict or act of foreign enemy;
- (b) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage;
- (c) nuclear explosion, radioactive, biological or chemical contamination or ionising radiation or the identification of such contamination or radiation;
- (d) strikes, working to rule, go slows and/or lockouts (excluding those undertaken solely by the employees of the Concessionaire, the Contractor or a Development Strategy Contractor);
- (e) action of air traffic controllers controlling air space over the United Kingdom and anything consequent thereto (excluding strikes, working to rule, go slows and/or lock-outs undertaken by employees of the Concessionaire or New Contractors);
- (f) any effect of the natural elements, including lightning, fire, earthquake, subsidence, flood, storm, cyclone or tornado;
- (g) explosion (other than nuclear explosion or an explosion resulting from act of war);
- (h) epidemic or plague, except where caused by the Concessionaire;
- (i) any event or circumstances of a nature analogous to (f), (g) or (h) above;
- (j) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (k) any Protester Action;
- (l) any environmental liability or environmental remediation obligations arising as a result of circumstances at the Airport, or the state or condition of the Airport Site, existing at the date of this Concession Agreement or at the Commencement Date or which existed prior to either of such dates;
- (m) any Change in Law;
- (n) any failure of any product, application or system (whether by way of computer systems or otherwise) forming part of the Transferred Assets arising as a result of the occurrence of the year 2000 or any other specific date or dates, including any reasonable precautionary action taken to prevent or remedy such failures; or
- (o) any Warranty Loss suffered by the Concessionaire which is not recoverable by the Concessionaire from the Council or LLA as a result of any limitation of amount in Clause 3.6.3 in this Concession Agreement,

in each case whether or not affecting the Airport directly.

"Forward Concession Fee Cover Ratio" means the forecast Concession Fee Cover Ratio for each Calculation Period covered by a Business Plan.

"Fossils or Antiquities" means any fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest.

"Funding Agreements" has the meaning given to it in Schedule 14.

"Funder's Direct Agreement" means the Direct Agreement made or to be made between LLA, the Council, the Concessionaire and Barclays Bank PLC in respect of this Concession Agreement.

"GACDM" means the Guidelines for Airport Capacity and Demand Management from time to time published by IATA/AC and any reference to a standard which is specified in terms of a "GACDM Level" shall mean the standard from time to time specified as such in the GACDM.

"Governing Requirements" means the Governing Requirements as so described in the Scope Book and items in the Outline Scope Book stated as taking precedence over the Governing Requirements as may be varied from time to time.

"Government" means HM Government, including any ministry, Secretary of State, state agency or other body, arm, agent or representative of HM Government.

"Government Authority" means any body falling within one or more of the descriptions set out below:

- (a) any government body of the United Kingdom or of any political sub-division of the United Kingdom or having any form of local jurisdiction in the United Kingdom;
- (b) any governmental authority established by virtue of treaties of the European Union which operates or has jurisdiction directly or indirectly within the United Kingdom having statutory, legal, fiscal, monetary and administrative effect upon the affairs of the United Kingdom;
- (c) any body having governmental functions however constituted.

"Gross Special Shareholder Loss" has the meaning given to it in Clause 10.5.5.

"Groundhandling Legislation" means The Airports (Groundhandling) Regulations 1997 (SI 1997 No. 2389 Civil Aviation).

"Groundhandling Services" shall have the meaning given to it in the Groundhandling Legislation.

"Hazardous Wastes or Substances" as defined in the EPC Contract (as at the date hereof).

"Hedging Agreements" has the meaning given to it in Schedule 14.

"Holdco" means the most recently created New Holdco (as that expression is defined in the definition of Relevant Person).

"IATA" means the International Air Transport Association or any successor thereof.

"ICAO" means the International Civil Aviation Organisation formed by the Chicago Convention or any successor thereof.

"Incapacity Event" means it is finally determined by a Court of Law that (as a result of any lack of or limitation upon the capacity of the Council or LLA to permit the same or enter into or observe or perform any Concession Document) any Concession Document or any provision of any Concession Document is unlawful or invalid or void or the carrying on of the Airport Business (including the carrying out of the Concessionaire Works, Development Strategy Works or any Development Works) or any part thereof by the Concessionaire, as contemplated by this Concession Agreement, is unlawful, provided that (1) if only an immaterial provision of a Concession Document is unlawful, invalid or void which has no material adverse effect on the Concessionaire or the Airport Business (including as aforesaid) (or any part thereof) or (from the perspective of the Concessionaire) the remainder of any Concession Document or the other Concession Documents, such event shall not be an Incapacity Event, and (2) if the Concessionaire commences, promotes or instigates (whether itself or through any person at the direction of the Concessionaire or any person who or which is an Affiliate of the Concessionaire) the legal proceedings (other than proceedings commenced in response to a claim by the Council or LLA (or any person at the direction of the Council or LLA or any person who or which is an Affiliate of the Council or LLA) or a claim by any third party) that this Concession Agreement is unlawful, invalid or void or that the carrying on of the Airport Business (including as aforesaid) as contemplated by this Concession Agreement is unlawful then the final determination of such legal proceedings shall not itself be an Incapacity Event.

"Initial Employees" means all of the individuals employed by LLA in the Airport Business as at the Commencement Date.

"Initial Facility Documents" means the facility agreement and other agreements and documents to be entered into on or before the Completion Date between the Concessionaire and Barclays Bank PLC in various capacities and other financial institutions in relation to financial accommodation to be provided to the Concessionaire, and all other documents expressly referred to or expressly contemplated by that facility agreement.

"Initial Roundabout Works" means those works which are required by Planning Agreement One and are comprised within the Concessionaire Works as at the date hereof.

"Initial Subordinated Loan Agreement" means the Subordinated Loan Note Deed Poll between each Shareholder and the Concessionaire in the agreed form attached to this Concession Agreement and marked "K".

"Instalment Finance" means any finance arranged by the Concessionaire to fund any Warranty Loss.

"Insurance Proceeds" means the proceeds payable to or receivable by the Concessionaire or any other member of the London Luton Airport Group of any insurance taken out by or on behalf of the Concessionaire or which the Concessionaire is obliged to take out pursuant to Clause 14.

"Insurances" means, as the context requires, any or all policies of insurance of any kind which are taken out by or on behalf of the Concessionaire or any other member of the London Luton Airport Group as required by or in accordance with Schedule 9 of this Agreement.

"Insured Risk" means any loss in respect of any risk which loss and risk, under the terms of this Concession Agreement, the Concessionaire is obliged to insure against in accordance with Schedule 9.

"Intellectual Property" means all legal and/or equitable interests in registered or unregistered trade marks, patents, registered and unregistered designs, applications for any of the foregoing, trading names, get-up, copyrights (including computer software), topographies of semi-conductor products, inventions,

confidential information and any other similar intellectual property, including the rights described in Directive 96/9/EC.

"Intra-Group Transactions" means any agreement or arrangement between members of the London Luton Airport Group.

"Issuer" means the issuer of any Concession Fee Bond.

"Key Contract" means any contract entered into by any member of the London Luton Airport Group for the purpose of the Airport Business which is not within the ordinary and usual course of the Airport Business or any material contract entered into in the ordinary and usual course of the Airport Business which has an impact on projected annual revenues or costs of the Airport Business of more than 5% of such aggregate projected annual revenues or costs.

"Landing Lights Areas" means those areas demised by the Landing Lights Leases.

"Landing Lights Leases" means the following leases:-

- (i) lease dated 23 October 1984 between Lynette Barbour (1) the Council (2)
- (ii) lease dated 14 June 1988 between The St. Paul's Walden Bury Estate Company (1) Luton International Airport Limited (2)
- (iii) lease dated 16 April 1986 between The Honourable Richard Oakley Pleydell-Bouverie (1) Mark Iain Tennant and Robert Smith (2) The Honourable Richard Oakley Pleydell-Bouverie (3) the Council (4).

"Last Accounting Date" means 31 March 1998.

"Law" means any statute, statutory instrument, law, proclamation, order, regulation, resolution, notice, ruling by a court, bye-law, directive, treaty or other instrument or requirement having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by the Government, any Government Authority, the legislative making institutions or bodies of the European Union, any court or other judicial forum, any Local Authority or any Regulatory Authority.

"LGPS" means the Bedfordshire County Council Local Government Pension Scheme.

"LGPS Member" means an Initial Employee who, immediately prior to the Completion Date, was an active member of the LGPS.

"Licences" means such permissions, consents, licences and approvals as the Concessionaire may be required from time to time by any applicable Law to hold in order to provide or operate the Airport Services.

"LLA Account Charge" means the Account Charge to be granted upon Completion by the Concessionaire to LLA in the agreed form annexed to this Concession Agreement and marked "M".

"LLA's Representative" means the Council's Director of Finance or any other person nominated from time to time by LLA and notified to the Concessionaire (the first such person if not the Council's Director of Finance to be so nominated and notified as soon as reasonably practicable and in any event prior to the Commencement Date) to undertake the duties as the representative of LLA for the purposes of Clause 8.

"LLA Scheme" means the pension scheme established by a deed of trust dated 28 March 1988, originally called the Luton International Airport Limited Pension Scheme and now known as the London Luton Airport Pension Scheme.

"Local Authority" means:

- (a) a council of a non-metropolitan county or of a metropolitan or non-metropolitan district, a unitary authority, a parish council, a London borough council, London Regional Transport, a passenger transport executive or authority or the Common Council of the City of London; and
- (b) any other body or bodies replacing any of the above from time to time.

"London Luton Airport Group" means the Guarantor and Holdco and each of its wholly-owned subsidiary undertakings.

"Loose Plant" has the same meaning given to it in Schedule 2.

"Management Accounts" means LLA's four unaudited profit and loss accounts (for the months of April, May, June and July) for the period starting on the day after the Last Accounting Date and ending on 31 July 1998 and LLA's unaudited balance sheet as at 31 July 1998.

"Master Novation Agreement" means the agreement of even date herewith between the Council, LLA and the Contractor giving effect to the transfer of the trade contracts and professional team appointments for the Advance Works.

"Material Licence" means any licence granted under Article 92 or Article 77 of the Air Navigation Order or under Part IV of the Airports Act.

"Minimum Banking Ratio" means, whilst the Initial Facility Documents are in existence, the DSCR (as defined therein) of [REDACTED] or (after the discharge of the Initial Facility Documents) the equivalent banking base case debt service cover ratio produced by the initial banking base case financial model for the relevant Funders under the relevant Funding Agreement.

"Monitoring Report (Business)" means a report addressed to LLA in a form which is substantially similar to (and containing information which is substantially equivalent to that contained in) the quarterly shareholder's report previously provided to the Council by LLA, in the agreed form attached to this Concession Agreement marked "O" and including the Backward Concession Fee Cover Ratio for 31 March and 30 September as applicable.

"Monitoring Report (Noise)" means a report in a form which is substantially similar to (and containing information which is substantially equivalent to that contained in) the annual monitoring report currently prepared by the Council, in the agreed form attached to this Concession Agreement marked "P".

"Necessary Consents" means all approvals, consents, licences, permissions, certificates and statutory agreements required from any competent authority and all consents and agreements from third parties necessary for the carrying out and completion as applicable of the Concessionaire Works, the Development Strategy Works or the Development Works.

"Net Special Shareholder Loss" has the meaning given to it in Clause 10.5.5.

"New Contractors" means any person directly contracted by the Concessionaire after the Commencement Date to carry out any of the Airport Services but excluding any contractors providing such services at the Airport prior to the Commencement Date.

"New Terminal" means Section I as defined as such in the Scope Book (which comprises the new terminal building intended to be provided by the Concessionaire Works).

"Occupational Documents" means the documents listed in Part P of the Disclosure Bundle Index to the Disclosure Letter.

"Occupier" means any tenant or licensee under the Occupational Documents.

"Option Agreement" means the option agreement of even date herewith between (1) the Council (2) LLA (3) the Concessionaire relating to the Amenity Land.

"Pensions Administration Agreement" means the Administration Agreement between LLA and the trustees of the London Luton Airport Pension Scheme.

"Pensions Announcement Letter" means a letter to all LGPS Members in the agreed form marked "Q" attached to this Concession Agreement to be issued to all LGPS Members by the Concessionaire on or as soon as reasonably practicable after the Commencement Date.

"Pensions Deed" means the deed between (1) LLA, (2) the current trustees of the LLA Scheme and (3) the Concessionaire in the agreed form attached to this Concession Agreement marked "R" to be executed by the Concessionaire and LLA upon Completion.

"Planning Agreement One" means the agreement dated 5 February 1998 entered into between (1) the Council (in its capacities as the planning and highway authorities for the area in which the Airport is located) and (2) LLA pursuant to section 106 of the Town and Country Planning Act 1990.

"Planning Agreement Two" means the agreement dated 10 January 1995 entered into between (1) the Council (in its capacities as the planning and highway authorities for the area in which the Airport is located) and (2) LLA pursuant to section 106 of the Town and Country Planning Act 1990.

"Planning Agreement Three" means the agreement dated 4 February 1996 entered into between (1) the Council (2) LLA (3) Century Park Limited (4) Gentra Limited (5) Holaw (335) Limited (6) CP Grimwade and ML Forster pursuant to section 106 of the Town and County Planning Act 1990..

"Planning Agreement Four" means the agreement dated 23 March 1988 entered into between (1) the Council (2) LLA and (3) London Aviation Centre Limited, as supplemented by a Deed dated 30 April 1990 with the additional party Swiss Canto Bank (International), and the Deed of Release and Variation dated 6 March 1991 between (1) the Council (2) Executive Aviation Centre Limited and (3) Harpener UK Limited.

"Planning Laws" means those parts of the following statutes (including any amendment, consolidation or re-enactment of the same) which deal with town and country planning matters (excluding, for the avoidance of doubt, any parts dealing with compulsory purchase or similar powers):

- (a) the Town and Country Planning Act 1990;
- (b) the Planning (Listed Buildings and Conservation Areas) Act 1990;

- (c) the Planning (Consequential Provisions) Act 1990;
- (d) the Planning (Hazardous Substances) Act 1990; or
- (e) the Planning and Compensation Act 1991.

"Planning Permission" means the permission issued by the Council, dated 5 February 1998, in respect of the planning application submitted to the Council by LLA on or about 1 July 1997 for the construction of alterations to terminal; aircraft stands; piers; first phase of parallel taxiway; and remodelling of car parking and drop-off area (reference L/22014/O) with the modifications concerning the extension of mezzanine floor/alterations to electrical details and separate cooling tower plant building approved as described in letter dated 30 July 1998 from the Development Control Manager at Luton Borough Council to Head of Development at LLA.

"Private Sector" means any company or person which is not a Public Authority and is not a person who or which is an Affiliate of a Public Authority.

"Profit Share Scheme" means the profit sharing scheme operated by LLA as at the date of this Concession Agreement.

"Property Lease" means the lease to be entered into upon Completion between (1) LLA (2) the Council (3) the Concessionaire in the agreed form attached to this Concession Agreement marked "S" and relating to the property described therein as "Leased Property" and shown edged red on Plan A annexed thereto.

"Property Let" means the Airport Site including, without limitation, all buildings and other structures, as improved and extended from time to time, roads, conducting media and amenities from time to time situated thereon and all Fixtures & Fittings.

"Protester Action" means the acts of any person or persons which are designed to obstruct, restrict or prevent the carrying out of works and/or the carrying on of operations of the Airport, whether on or off the Airport Site.

"Provisional Discriminatory Event Projection" means the first Discriminatory Event Projection in relation to a Discriminatory Event produced in accordance with Clause 10.11.2.

"Provisional Special Force Majeure Projection" means the first Special Force Majeure Projection in relation to a Special Force Majeure Event produced in accordance with Clause 10.5.2.

"public airport company" has the meaning given in section 16(1) of the Airports Act.

"Public Authority" means the Government, any Government Authority, any body, arm, agent or representative of the European Union and any Local Authority.

"Public Sector" means any Public Authority or any person who or which is an Affiliate of a Public Authority.

"Qualifying Issuer" means any bank or financial institution with a short or long term credit rating from Standard & Poor's of at least "A" or any equivalent rating from Moody's or any other reputable credit rating agency.

"Regulatory Authority" includes the CAA and any body from time to time established to regulate the airport or airline industry or any sector thereof affecting the Airport.

"Relevant Interest" means the beneficial ownership of shares carrying voting rights (for which purpose the word "shares" shall be construed in accordance with section 259 of the Companies Act).

"Relevant Person" means any member of the London Luton Airport Group which holds any interest in this Concession Agreement or any assignee of the benefit of this Concession Agreement (other than a Successor Operator). If there is more than one Shareholder (not all being Affiliates or nominees thereof) who beneficially own a Relevant Interest in the Guarantor, and the Shareholders transfer their Relevant Interests in the Guarantor to a company (the **"New Holdco"**) which owns beneficially all the Relevant Interests in the Guarantor, then New Holdco shall also be a Relevant Person, and the foregoing shall apply to any New Holdco in place of the Guarantor and if the circumstances contemplated by this definition also apply to New Holdco then the company to whom the Relevant Interests are so transferred shall become a New Holdco as herein defined.

"Reporting Period" means a period of three calendar months, provided that:

- (a) the first Reporting Period during the Concession Period shall exclude any days up to (but excluding) the Commencement Date;
- (b) the first Reporting Period during the Concession Period shall start on the Commencement Date and end on 30 September 1998;
- (c) each such three month period shall start on the day following the last day of the preceding Reporting Period; and
- (d) the last Reporting Period during the Concession Period shall end upon the expiry of the Concession Period or, if earlier, the Termination Date.

"Reporting Year" means a period normally commencing upon 1 April in each calendar year, comprising four consecutive Reporting Periods.

"Restricted Interest" means a Relevant Interest in respect of 10% or more of all the Relevant Interests in a Relevant Person or such lower proportion thereof as entitles the holder of that proportion to appoint a nominee to the board of directors or equivalent governing body of that Relevant Person pursuant to the terms of any agreement entered into or otherwise binding upon (or Law applicable to) the holders of those Relevant Interests.

"Restricted Person" means any Dominant User or any Competing Operator together with any person who is an Affiliate of any Dominant User or any Competing Operator and any individual (together with any persons whose interests are to be attributed to that individual pursuant to Clause 1.2.19) who would be treated as a parent undertaking in relation to any Dominant User or Competing Operator for the purposes of section 258 of the Companies Act if that individual (together with any such persons) constituted an undertaking.

"Retail Prices Index" means the retail prices index for all items (excluding mortgage payments) as published from time to time by the Central Statistical Office of the Chancellor of the Exchequer or such other official index published by that Office (or any successor thereto) or by any other government department or agency which replaces or is in substitution for the said index.

"Retained Earnings" shall have the meaning given to it in Schedule 14.

"Revised Discriminatory Event Projection" has the meaning given to it in Clause 10.11.4.

"Revised Special Force Majeure Protection" has the meaning given to it in Clause 10.5.4.

"Scope Book" means the Scope Book for the Concessionaire Works, a copy of which in the agreed form is attached to this Concession Agreement marked "T," as may be varied from time to time with the consent of LLA where required pursuant to Clause 8.10.

"Security Interest" means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect and includes any security as defined in section 248(b) of the Insolvency Act 1986.

"Senior Management Staff" means the managing director (or other chief executive officer) and the heads of the following functions within the Airport Business:

- (a) commercial;
- (b) marketing or business development;
- (c) finance;
- (d) human resources;
- (e) operations;
- (f) safety and security;
- (g) planning and development;
- (h) estate management.

"Shareholder" means any shareholder from time to time of the Guarantor, unless there is a Holdco, in which case of the Holdco.

"Shareholder Distribution Amount" means, in respect of each Concession Year (or part thereof), the amount of cash available to be distributed (by way of dividend or other distribution or by way of payment of interest, or repayment of principal, under any Shareholder Financing Agreement) to the Shareholders, excluding:

- (a) any such amounts which may not be so distributed as a result of restrictions in any Funding Agreements or Hedging Agreements; and
- (b) any such amounts of cash available to be distributed in respect of any Concession Year (or part thereof) occurring prior to the Special Force Majeure Event or (as the case may be) Discriminatory Event in question.

"Shareholders' Contributions" means the consideration paid-up by the Shareholders for any share capital in the Concessionaire and any loans made under any Shareholder Financing Agreements, including the capitalisation of interest under any Shareholder Financing Agreements.

"Shareholder Financing Agreements" has the meaning given to it in Schedule 14.

"Shareholder Resolutions" means the written resolutions to be executed by the Council in accordance with Part 1 of Schedule 1 for the purpose of amongst other things sanctioning the entry into by LLA of (and the performance of its obligations under) this Concession Agreement in accordance with paragraph 34 of the Articles of LLA.

"Shareholders Agreement" means the Shareholders Agreement of even date herewith to be entered into by (1) Bechtel Enterprises Luton (U.K.) Limited (2) Airport Group Luton Limited (3) Barclays Industrial Investments Limited (4) Clink Street Nominees Limited (5) Barclays Infrastructure Limited and (6) London Luton Airport Group Limited.

"Special Force Majeure Completion Date" means in respect of a Special Force Majeure Event, the date such Special Force Majeure Event comes to an end.

"Special Force Majeure Date" means, in respect of a Special Force Majeure Event, the date or dates such Special Force Majeure Event first occurs.

"Special Force Majeure Event" means (except, in the case of paragraphs (c), (f) or (h), or in the case of terrorism or sabotage, to the extent caused by the negligent acts of the Concessionaire, the Contractor, its Development Strategy Contractors or its New Contractors) any of the following:

- (a) war (whether declared or undeclared), invasion, blockade, armed conflict or act of foreign enemy;
- (b) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage;
- (c) nuclear explosion, radioactive, biological or chemical contamination or ionising radiation or the identification of such contamination or radiation;
- (d) strikes, working to rule, go slows and/or lockouts (excluding those undertaken solely by the employees of the Concessionaire, the Contractor, its Development Strategy Contractors or its New Contractors);
- (e) action of air traffic controllers controlling air space over the United Kingdom and anything consequent thereto (excluding strikes, working to rule, go slows and/or lockout undertaken by employees of the Concessionaire or its New Contractors);
- (f) epidemic or plague,
- (g) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (h) any Protester Action;
- (i) any environmental liability or environmental remediation obligations arising as a result of circumstances at the Airport, or the state or condition of the Airport Site, existing at the date of this Concession Agreement or at the Commencement Date or which existed prior to either of such dates;

- (j) any failure of any product, application or system (whether by way of computer systems or otherwise) forming part of the Transferred Assets arising as a result of the occurrence of the year 2000 or any other specific date or dates, including any reasonable precautionary action taken to prevent or remedy such failures;
- (k) any event referred to in paragraph 1.8 of Schedule 9; or
- (l) any Warranty Loss suffered by the Concessionaire which is not recoverable by the Concessionaire from the Council or LLA as a result of any limitation of amount in Clause 3.6.3 in this Concession Agreement,

in each case whether or not affecting the Airport directly.

"Special Force Majeure Projection" shall mean any of a Provisional Special Force Majeure Projection, a Completed Special Force Majeure Projection or a Revised Special Force Majeure Projection.

"Special Loss Period" means the period over which any Special Force Majeure Loss or, as the case may be, any Discriminatory Loss is suffered and/or continues to be suffered and/or crystallises. For the avoidance of doubt, the Special Loss Period may or may not include the Special Force Majeure Date or, as the case may be, the Discriminatory Date.

"Special Risk Amount" has the meaning given to it in Clause 10.7.1.

"Stanger Report" means together the following reports (each in two volumes) by Stanger Limited:

- (a) Due Diligence Environmental Audit Report dated January 1998;
- (b) London Luton Airport - Appraisal of Ground and Ground Water Conditions dated May 1998;
- (c) Additional Ground Water and Soil Borne Gas Investigations - London Luton Airport dated 30 July 1998.

"Stanger Report Costs" means those costs which it could reasonably be estimated would arise as a result of the Disclosure Letter.

"Stanger Report Disclosures" means the specific facts disclosed by the Stanger Report which are specified "Stanger Report Disclosures" as in the Disclosure Letter.

"Statutory Agreement" means any agreement or obligation entered into with the local planning or highway authority or other competent public authority or body pursuant to Section 38 or 278 of the Highways Act 1980, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 52 of the Town and Country Act 1971, Section 106 of the Town and Country Planning Act 1990 or Section 104 of the Water Industry Act 1991.

"Stock" means stocks of consumables, spare parts, stock-in-trade and operating supplies.

"Successor Operator" means any person (other than LLA) who succeeds the Concessionaire after the end of the Concession Period in the provision of the Airport Services.

"Taking Over Certificate" means the two certificates to be issued by the Concessionaire's Representative in relation to each of the New Terminal and the remainder of the Concessionaire's Works in accordance with Clause 8.23.

"Tangible Concession Assets" means all tangible assets from time to time owned or used by any member of the London Luton Airport Group for the purpose of the Airport Business including all buildings and other structures at the Airport, the Fixtures and Fittings and the Loose Plant (as defined in Schedule 2).

"Target Completion Date" means 1 June 1999 as such date may be extended in accordance with the provisions of Clause 8.

"Taxation" includes (without limitation):

- (a) advance corporation tax, capital gains tax, corporation tax, customs and excise duties, income tax (including PAYE), inheritance tax, insurance premium tax, airline passenger duty, national insurance contributions, business rates and council tax, stamp duty, stamp duty reserve tax and VAT;
- (b) all other levies, imposts, duties, charges or withholdings in the nature of taxes imposed by any Taxation Authority; and
- (c) all interest, penalties, fines and other charges relating to any of the above or to a failure to make any return or supply any information in connection with any of the above.

"Taxation Authority" means the Inland Revenue, HM Customs & Excise, the Department of Social Security, a Local Authority and any other Government Authority having functions in relation to Taxation in England and Wales.

"Taxes Act" means the Income & Corporation Taxes Act 1988.

"Technical Services Agreement" means the agreement of even date herewith between the Concessionaire and Airport Group International Inc for the provision of technical services and know-how advice with respect to the management, operations, marketing, development and maintenance of the Airport.

"Termination Date" means the date that any termination of this Concession Agreement takes effect.

"Termination Payment" means any amount payable to the Concessionaire by LLA or the Council under this Concession Agreement pursuant to Schedule 14 and the relevant provisions of this Concession Agreement following a Termination Date.

"Third Party Rights" means any rights (including, without limitation, any contracts, easements, wayleaves or Security Interests).

"Total Funded Claim" means the amount of any warranty claim for which payment by instalments is permitted under Clause 3.9 plus the additional amounts referred to in Clause 3.9.4(b).

"Trade Union" means any trade union recognised by LLA for collective bargaining purposes as at the date hereof.

"Transfer Letter" means the transfer letter or such other document as the parties may agree to be entered into between LLA, the Concessionaire and each of the counter-parties to the Contracts to give effect to the transfer or novation of the Contracts to the Concessionaire in accordance with Schedule 2.

"Transfer Scheme" means the transfer scheme proposed by the Council pursuant to section 15 of the Airports Act on 11 December 1986, as modified and approved by the Secretary for State for Transport on 25 March 1987.

"Transferred Assets" has the meaning given to it in Schedule 2.

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 as may be varied or amended or replaced by a Law of similar effect from time to time.

"Unconditional Date" has the meaning given to it in Clause 2.3.3.

"Variation" means, in respect of the Concessionaire Works, any variation (except those as may be required by a Change in Law) which is inconsistent with the Governing Requirements.

"VAT" means value added tax as provided for in the VATA or any similar tax, duty or imposition from time to time.

"VATA" means the Value Added Tax Act 1994.

"Warranty Loss" means such loss as would be recoverable by the Concessionaire in respect of any breach of warranty by the Council or LLA hereunder under the general law (excluding, for the avoidance of doubt, any limitation in amount imposed by this Concession Agreement), provided that in respect of any warranty claim for breach of the warranty contained in Paragraph 3.3 of Schedule 12 insofar as it relates to the terms of a Commercial Contract, such claim shall be limited to such loss as relates to the period up to the earlier of the date on which:

- (a) the Commercial Contract may be effectively terminated by the Concessionaire in accordance with its terms without compensation (excluding, for the avoidance of doubt, any possible termination for breach or default); or
- (b) the Commercial Contract expires by effluxion of time.

"Work Load Unit" means each of the following:

- (a) 100 kilograms of freight; or
- (b) one passenger;

Provided that, for this purpose:

- (i) "passenger" is a passenger joining or leaving an aircraft at the Airport;
- (ii) a transit passenger shall not be counted as a passenger, where "transit passenger" means a passenger who arrives at and departs from the Airport on the same aircraft which is transiting the Airport (whether or not he or she disembarks and reboards for any reason);

- (iii) "freight" is the weight of property carried on an aircraft including, for example, the weight of vehicles, mail, animals, excess baggage and diplomatic bags, but excluding passengers' and crews' permitted baggage;
- (iv) freight in transit through the Airport on the same aircraft shall be excluded;
- (v) passengers or freight on non-commercial aircraft movements shall be excluded;
- (vi) non-commercial aircraft movements shall include:
 - (1) movements for the purpose of testing aircraft or for training flying crew or ground personnel;
 - (2) demonstration flights by makers or sellers of aircraft and aviation equipment;
 - (3) non-revenue earning movements by air transport operators or manufacturers for the sole purpose of moving their own personnel or stores from one place to another, for delivery, refuelling or maintenance of empty aircraft and air transport flights forced to return to base by bad weather, engine failure or other causes;
 - (4) movements for purely non-commercial purposes by private owners or other private aircraft operators;
 - (5) movements operated by aero-club members for instruction or pleasure;
 - (6) movements for official purposes by British or foreign civil Government Departments, (for example) movements by aircraft of the Civil Aviation Authority's Flight Calibration Services and the Queen's flight; and
 - (7) movements exclusively for military purposes using military aircraft.

"Works Contribution Account" means the interest bearing account held by the Concessionaire with the Account Bank (as defined in the Initial Facility Documents or any replacement thereof thereunder or under any Funding Agreement) and designated "Works Contribution Account".

1.2 Construction and Interpretation

In this Concession Agreement, except to the extent that the context otherwise requires:

- 1.2.1 words and expressions defined in the Interpretation Act 1978 shall have the same meanings in this Concession Agreement;
- 1.2.2 a "person" includes an individual, an undertaking and also any unincorporated association, whether or not carrying on a trade or a business, together with that person's legal representatives and successors;

- 1.2.3 the words "include" and "including" are to be construed without limitation;
- 1.2.4 the words "undertaking", "parent undertaking", "subsidiary undertaking", "fellow subsidiary undertaking", "group undertaking" and "participating interest" shall have the same meanings in this Concession Agreement as are given in sections 258, 259 and 260 of the Companies Act;
- 1.2.5 the word "undertaking" as so defined shall include any undertaking wherever incorporated or wherever situate;
- 1.2.6 any reference to an undertaking which is a partnership or to a partnership shall include each partner, whether limited, general or otherwise and references to partners shall be construed accordingly;
- 1.2.7 the words "company", "subsidiary", "holding company", "wholly-owned subsidiary", "body corporate" and "corporation" shall have the same meanings in this Concession Agreement as are given in sections 735, 736 and 740 of the Companies Act;
- 1.2.8 references to documents "in the agreed form" are references to documents initialled by or on behalf of LLA, the Council and the Concessionaire;
- 1.2.9 references to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules are to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules of this Concession Agreement, unless expressly specified to the contrary, and the Schedules form part of this Concession Agreement;
- 1.2.10 headings and references to headings shall be disregarded in construing this Concession Agreement;
- 1.2.11 references to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it;
- 1.2.12 references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied or amended;
- 1.2.13 words importing the masculine gender include the feminine and *vice versa*, and words in the singular include the plural and *vice versa*;
- 1.2.14 wherever provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words "notify", "consent", "approval", "certify" or "determine" and other cognate expressions shall be construed accordingly;
- 1.2.15 references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- 1.2.16 any reference to "capital expenditure" shall not include capitalised borrowing costs;
- 1.2.17 references to "the parties" shall mean LLA, the Council and the Concessionaire;

- 1.2.18 definitions contained in any Schedule shall have the same meanings in any part of this Concession Agreement;
- 1.2.19 for the purpose of the definition of Restricted Person, there shall be attributed to any individual who is relevant to that definition ("a relevant individual") the interests of:
- (a) any nominee of the relevant individual;
 - (b) any Close Relation of the relevant individual;
 - (c) any one or more undertakings which would constitute subsidiary undertakings of the relevant individual (and/or of the relevant individual's nominees and Close Relations of the relevant individual) if such individual together with such nominees and Close Relations constituted an undertaking.

1.3 **"Last Twelve Months"**

Where reference is made in this Concession Agreement to the Last Twelve Months of the Concession Period, such period shall be deemed to commence on the following dates:

- 1.3.1 the date which is twelve months prior to the date of expiry (by effluxion of time as distinct from termination) of the Concession Period; and
- 1.3.2 the date on which LLA becomes aware of a Concessionaire Event of Default which may lead to termination and notifies the Concessionaire that such period shall be deemed to commence; and
- 1.3.3 if LLA gives notice of termination in accordance with Clause 17.2 the date twelve months prior to the date such notice expires.

Any such period (which may accordingly be shorter, but not longer, than twelve months) shall in any event expire at the end of the Concession Period or, if earlier, in the case of periods commencing under Clause 1.3.2, the date a Concessionaire Event of Default is waived or remedied or, in the case of Clause 1.3.3, the date any such notice of termination ceases and determines under Clause 17.3 or, in each case, such earlier date as LLA may determine.

1.4 **"Index Linked"**

Any amount referred to in this Concession Agreement as being "Index Linked" (each of which amounts is in this Clause referred to as the "original amount") shall be increased or, as the case may be, decreased, on each date specified in this Concession Agreement or (if not specified) on each anniversary of the date of this Concession Agreement to a sum which bears the same proportion to the original amount as the figure at which the Retail Prices Index bears at the relevant date or anniversary to the figure at which the said Index stood or stands at the date specified in this Concession Agreement or (if not specified) the date of this Concession Agreement, for which purpose:

- 1.4.1 if during the year in question the basis of computation of the said Index shall have been changed any official reconciliation between the two bases of computation published by the Central Statistical Office (or any successor thereto) or any other government department or agency shall be binding on the parties to this Agreement;
- 1.4.2 in the absence of such official reconciliation such adjustments shall be made to the figure of the said Index at the date of such increase or decrease as to make it correspond as nearly as possible to the previous method of computation and such adjusted figure shall be considered for this purpose of this Clause to the exclusion of the actual published figure.

2. **CONDITIONS PRECEDENT**

2.1 **Entry into Effect**

The provisions of Clauses 1, 2, 3, 35, 36 and 37 (except for Clause 37.7) and Schedules 1, 12 and 13 of this Concession Agreement shall take effect and be binding upon the parties immediately upon the signature of this Concession Agreement. The remaining provisions of this Concession Agreement shall take effect and become binding upon the parties on the Commencement Date.

2.2 **Commencement Date**

The "**Commencement Date**" for the purposes of this Agreement shall automatically occur following Completion having taken place in accordance with Clause 2.3 at midnight at the end of the day of Completion .

2.3 **Completion**

2.3.1 Upon the Completion Date the parties agree that:

- (a) the Pensions Deed and the Deed of Appointment shall be executed by LLA and the Concessionaire and all other parties thereto, except (in respect of both of those deeds) for [REDACTED] and [REDACTED] and except (in respect of the Deed of Appointment only) for [REDACTED], and LLA and the Concessionaire shall each use their respective best endeavours to procure that as soon as practicable after the Completion Date (i) the Pensions Deed shall be executed by the said [REDACTED] and [REDACTED] and shall then be dated and delivered as a deed; and (ii) the Deed of Appointment shall be executed by the said [REDACTED] and shall then be dated and delivered as a deed after delivery of the Pensions Deed;

- (b) LLA shall grant the Property Lease to the Concessionaire by delivering to the Concessionaire the Property Lease duly executed by LLA and the Council and the Concessionaire shall execute the counterpart of the Property Lease and deliver the same to LLA and the Council and the date to be inserted in the Property Lease as the Term Commencement Date shall be the Completion Date;
 - (c) the Concessionaire shall procure the delivery to LLA of the first Concession Fee Bond in favour of LLA;
 - (d) the Advance Works Reimbursement shall be made to LLA by the EPC Contractor and the Concessionaire shall procure the same upon Completion or within one Business Day of Completion;
 - (e) the transfer of the Transferred Assets shall be completed in accordance with Schedule 2;
 - (f) LLA and the Council shall give the Concessionaire vacant possession of the Airport Site subject only to the Occupational Documents and (as applicable) the Third Party Rights;
 - (g) the Deed of Release shall be dated and delivered to the Concessionaire having been duly executed by LLA and the Council;
 - (h) the Option Agreement shall be dated having been duly executed by the Council, LLA and the Concessionaire; and
 - (i) the LLA Account Charge shall be dated and delivered to LLA.
- 2.3.2 The "**Completion Date**" shall be the date falling five Business Days after the Unconditional Date or such other date as the parties may agree in writing.
- 2.3.3 The "**Unconditional Date**" shall be the first date that all the Conditions have either been (i) fulfilled to the reasonable satisfaction of (in the case of the conditions set out in Part 1 of Schedule 1) LLA and the Council, (in the case of the Conditions set out in Part 2 of Schedule 1) the Concessionaire and (in the case of the Conditions set out in Part 3 of Schedule 1) all the parties or (ii) waived in accordance with Clause 2.4.
- 2.3.4 "**Completion**" shall have taken place once all the events set out in Clause 2.3.1 have occurred and no party shall be required to complete except in respect of all such events occurring at the same time.

2.4 **Waiver**

LLA and the Council only may waive any of the Conditions set out in Part 1 of Schedule 1, and the Concessionaire only may waive any of the Conditions set out in Part 2 of Schedule 1 and all parties only may waive any of the Conditions set out in Part 3 of Schedule 1, in each case either without conditions or with conditions agreed by all parties. Any waiver purportedly given subject to any condition(s) shall be ineffective unless all parties have agreed to such condition(s).

2.5 **Long Stop Date**

- 2.5.1 If the Unconditional Date has not occurred by midnight 24 August 1998 or Completion has not occurred by midnight 24 August 1998, then this Concession Agreement shall automatically cease and determine and no party shall have any liability to the other under this Concession Agreement, provided that the said date of midnight 24 August 1998 may be extended if all the parties agree.
- 2.5.2 The Concessionaire shall take all reasonable steps to fulfil the Conditions set out in Part 1 of Schedule 1, the Council and LLA shall take all reasonable steps to fulfil the Conditions set out in Part 2 of Schedule 1, and each party hereto shall take all reasonable steps to fulfil the Conditions set out in Part 3 of Schedule 1.

2.6 Interim Management

After the date of this Concession Agreement and until the Commencement Date, LLA shall:

- 2.6.1 continue to carry on the business of operating and managing the Airport in a reasonable and prudent manner;
- 2.6.2 not enter into, vary, waive, release or terminate any contract or arrangement without the prior written consent of the Concessionaire, other than contracts entered into in the ordinary and usual course of the Airport Business and which fall within one of the following categories:
- (a) the acquisition of any Stock;
 - (b) the essential hiring of temporary employees whose annual remuneration (exclusive of overtime payments) shall not exceed (in aggregate) £50,000;
 - (c) contracts which are necessary to the operation of the Airport and are not of a material nature (excluding, for the avoidance of doubt, any contract or arrangement with an Airline User or an Occupier);
 - (d) contracts or arrangements which are Excluded Contracts;
- 2.6.3 keep the Concessionaire fully informed of:
- (a) anything entered into by LLA pursuant to the provisions of paragraphs (a) to (d) of Clause 2.6.2; and
 - (b) any material matters arising in relation to the Airport Business and the Airport Site; and
- 2.6.4 provide the Concessionaire with such access to the Senior Management Staff and other Initial Employees, and to such information and documents, as the Concessionaire may reasonably require for the purpose of achieving a smooth and efficient hand-over of the operation and management of the Airport.

2.7 Interim Pensions

LLA undertakes that during the period from and including the date of this Concession Agreement to and including Completion, it will not (a) without the prior written consent of the Concessionaire exercise any power or other function under the LLA Scheme out of the ordinary course of

maintaining the LLA Scheme (including, without limitation, the power to consent to any amendment to the LLA Scheme) except as provided for under Schedule 10; or (b) (likewise without the prior written consent of the Concessionaire) exercise any other power or function in relation to the provision of relevant benefits (as defined in Schedule 10 to this Concession Agreement) in relation to any of the employees of LLA engaged in the Airport Business (including in relation to the LGPS and including the issue of any notice or announcement to any of the employees of LLA engaged in the Airport Business).

3. WARRANTIES

3.1 Concessionaire's and Guarantor's Warranties

Each of the Concessionaire and the Guarantor separately warrants to LLA as at the date hereof, subject only to any matter fairly disclosed to LLA in writing or as expressly provided for under the terms of this Concession Agreement and on the assumption, which neither the Concessionaire nor the Guarantor warrants, that the warranties of LLA and/or the Council set out in Schedule 12 are true and correct and not misleading, that:

- 3.1.1 the Concessionaire and the Guarantor is a private company limited by shares incorporated under the laws of England and Wales and has been properly constituted and in continuous existence since incorporation;
- 3.1.2 the Concessionaire and the Guarantor has the corporate power and authority and has taken, or will by the Completion Date have taken, all corporate actions necessary to execute and deliver validly and to exercise its rights and perform its obligations validly under the Concession Documents, the EPC Contract, the Technical Services Agreement, the Collateral Agreements and the Initial Facility Documents to be executed at or before Completion including, without prejudice to the generality of the foregoing, to accept a transfer from LLA of the Transferred Assets upon the terms and conditions of this Concession Agreement;
- 3.1.3 the obligations of the Concessionaire and the Guarantor (where it is a party) under the Concession Documents, the EPC Contract, the Technical Services Agreement, the Collateral Agreements and the Initial Facility Documents to be executed at or before Completion are, or when entered, into will be, legally binding obligations of the Concessionaire;
- 3.1.4 that neither the Concessionaire nor the Guarantor is engaged in court or Disputes proceedings, and neither the Concessionaire nor the Guarantor has received notice of any threat of such proceedings against the Concessionaire or the Guarantor and to the best of the knowledge and belief of the Concessionaire and the Guarantor:
 - (a) no such proceedings against the Concessionaire or the Guarantor are pending or threatened, and no fact or circumstance exists which may give rise to such proceedings (save for any fact or circumstance or proceedings relating to the Airport Business or the Concessionaire Works, or of which LLA or the Council is also aware);

- (b) and there is no unsatisfied judgment order, decree, arbitral award or decision of a court, tribunal, arbitrator or governmental agency in any jurisdiction outstanding against the Concessionaire or the Guarantor;
- 3.1.5 neither the Concessionaire nor the Guarantor will have carried on any business prior to carrying on the Airport Business;
- 3.1.6 neither the Concessionaire nor the Guarantor has since incorporation incurred any material actual liabilities other than those incurred for the purpose of incorporating the Concessionaire or the Guarantor or in contemplation of entering into any of the documents referred to in Clause 3.1.7 or referred to in or contemplated by the same;
- 3.1.7 there are no agreements or arrangements which the Concessionaire or the Guarantor is a party to or between the Shareholders which relate to the Airport Business or the Concessionaire Works other than:
 - (a) the Concession Documents;
 - (b) the Collateral Agreements
 - (c) the Initial Facility Documents;
 - (d) the Shareholders Agreement;
 - (e) the Initial Subordinated Loan Agreement;
 - (f) the EPC Contract;
 - (g) the Technical Services Agreement; and
 - (h) the initial Hedging Agreements and any swaps thereunder;and any other documents which would not materially adversely effect the overall nature of the transactions represented by the documents referred to above, and any documents referred to in or contemplated by the foregoing.

3.2 Updating of Warranty

The Concessionaire further agrees with LLA that, subject as provided in Clause 3.3, the warranties contained in Clause 3.1 will be treated as made again as at the Unconditional Date in each case by reference to the facts and circumstances prevailing at such time.

3.3 Updating Exceptions

If after the signing of this Concession Agreement and before the Unconditional Date:

- 3.3.1 any event shall occur or matter arise which the Concessionaire was not aware of at the date of this Concession Agreement or the event or matter could not reasonably have been avoided or prevented by the Concessionaire; and
- 3.3.2 such event or matter is notified to LLA and the Council on or prior to the Unconditional Date; and

- 3.3.3 such event or matter would result in the breach of any warranty contained in Clause 3.1 which was not a breach of warranty as at the date of this Concession Agreement

the Concessionaire shall as soon as reasonably practicable provide such information concerning the event or matter as LLA and the Council may reasonably require and following the receipt of notification of such event or matter LLA and the Council may prior to Completion elect to terminate this Concession Agreement with immediate effect by notice in writing to the Concessionaire and if LLA and the Council elects to terminate no party shall have any liability to the other under this Concession Agreement. If LLA and the Council do not elect to terminate this Concession Agreement such event or matter shall not give rise to a breach of warranty contained in Clause 3.1.

3.4 **LLA and Council Warranties**

Subject to the limitations on LLA's and the Council's liabilities contained in subsequent sub-clauses in this Clause 3 and (subject to the terms of the Disclosure Letter) to any matter fairly disclosed in the Disclosure Letter, both LLA and the Council warrant to the Concessionaire in the terms set out in Schedule 12. Each such warranty shall be treated as made at the date hereof and as at the Unconditional Date in each case by reference to the facts and circumstances prevailing as at such time.

3.5 **Updating Exceptions**

If after the signing of this Concession Agreement and before the Unconditional Date:

- 3.5.1 any event shall occur or matter arise which LLA or the Council was not aware of at the date of this Concession Agreement or the event or matter could not reasonably have been avoided or prevented by LLA or the Council; and
- 3.5.2 such event or matter is notified to the Concessionaire by LLA or the Council on or prior to the Unconditional Date; and
- 3.5.3 such event or matter would result in the breach of any warranty contained in Clause 3.4 which was not a breach of warranty as at the date of this Concession Agreement

LLA or the Council shall as soon as reasonably practicable provide such information concerning the event or matter as the Concessionaire may reasonably require and following the receipt of such event or matter the Concessionaire may prior to Completion elect to terminate this Concession Agreement with immediate effect by notice in writing to LLA and the Council and if the Concessionaire elects to terminate no party shall have any liability to the other under this Concession Agreement. If the Concessionaire does not elect to terminate this Concession Agreement, such event or matter shall not give rise to a breach of warranty contained in Clause 3.4.

3.6 **Limits on Claims**

- 3.6.1 The Concessionaire shall not be entitled to recover any amount in respect of a claim for breach of warranty under Clause 3.4 (other than a breach described in Clause 3.6.1A below) unless it is both (i) for an amount in excess of £5,000 (Index Linked); and (ii) when aggregated with all other claims made under Clause 3.4 (either before or at the same time as such claims), such aggregate amount is in excess of £250,000 (Index Linked) and in

that event, for the avoidance of doubt, LLA and the Council shall be liable for the whole of the claims and not only the amount in excess of £5,000 or £250,000 (Index Linked);

3.6.1A The Concessionaire shall not be entitled to recover any amount in respect of a claim for breach of the warranty specified in paragraph 3.1 of Schedule 12 in the case of non-disclosure of a contract with a contract value of not more than £25,000, or a contract with a contract value of not more than £25,000 which is not subsisting, provided that the aggregate of such contract values shall not exceed £100,000, and where “contract value” of a contract means the total liability under such contract.

3.6.2 A claim shall not be brought by the Concessionaire in respect of a breach of warranty under Clause 3.4 if it relates to any of the matters set out in the Paragraphs of Schedule 12 listed in the first column below, unless notice of the claim (specifying the facts or circumstance which give rise to the claim, the breach of warranty which results and an estimate of the amount likely to be claimed) has been notified to LLA or the Council before the expiration of the period specified next to such Paragraph in the second column below. Any such claim so notified shall be deemed to have been withdrawn (if it has not been previously satisfied, settled or withdrawn) one year after expiration of the period specified for the notification of claim for breach of the relevant warranty in the second column below, unless proceedings in respect of it have been issued and served on LLA and/or the Council. For the avoidance of doubt, no claim for breach of warranty by LLA and/or the Council may be referred to an Disputes Procedure by any party to this Concession Agreement other than as contemplated by Clause 20.1.2.

Paragraph of Schedule 12	Period for Notification of Claim
2 and 6.3	18 months from the Commencement Date
3, 4.1 (except in respect of matters relating to the Environment), 4.2, 5, 6.1, 6.2, 6.4, 6.5, (insofar as such breach does not amount to an Incapacity Event or materially and adversely affect the right of the Concessionaire to provide any of the Airport Services or have a material and adverse effect on the Airport Business or any part thereof, the Concessionaire Works or the Development Strategy) 7, 8 and 9	36 months from the Commencement Date
4.3 and (in respect of matters relating to the Environment) 4.1	10 years from the Commencement Date

For the avoidance of doubt, no time limit for notification of any claim or bringing proceedings shall apply in respect of any breach of warranty relating to any matters set out in any other Paragraphs of Schedule 12.

3.6.3 Without prejudice to the rights of the Concessionaire to terminate this Concession Agreement under Clause 20, the liability of LLA and the Council in respect of:

- (a) the aggregate of all claims for breach of warranty which relate to any matters set out in Paragraphs 2, 3, 4.1 (save in respect of matters relating to the Environment), 4.2, 5, 6, (insofar as such breach does not amount to an Incapacity Event or materially and adversely affect the right of the Concessionaire to operate and manage the Airport or have a material and adverse effect on the Airport Business, the Concessionaire Works or the Development Strategy), 7, 8 and 9 of Schedule 12; and
- (b) separately, in respect of the aggregate of all claims for breach of warranty which relate to any matters set out in Paragraphs 4.1 (in respect of matters relating to the Environment) and 4.3,

shall each be, whether or not such breach results in termination by the Concessionaire, limited by separate caps equal to, in the case of paragraph (a) above, [REDACTED] (Index Linked) and, in the case of paragraph (b) above, the highest, at the time the clause is notified to LLA by the Concessionaire in accordance with Clause 3.6.2, of:

- (i) [REDACTED] (Index Linked); and
- (ii) an amount which is the aggregate of the [REDACTED] Fees payable to LLA prior to the Concessionaire discovering or receiving actual notice of such information as shall enable the Concessionaire to notify a claim in respect thereof in accordance with Clause 3.6.2; and
- (iii) if there has been only one Concession Year Fee, the amount of such Concession Year Fee plus [REDACTED] (Index Linked);

and, for the avoidance of doubt, each of the two separate caps on liability referred to in this Clause 3.6.3:

- (i) shall each be an aggregate cap;
- (ii) shall each be exclusive of any costs which may be recoverable in relation to making and/or enforcing any claim;
- (iii) shall each be exclusive of interest payable under Clause 3.8;
- (iv) shall in neither case apply in respect of any claim for breach of warranty relating to any matters set out in any other Paragraphs of Schedule 12 not specified in this Clause 3.6.3.

3.6.4 The limitations on liabilities or claims set out in this Clause 3.6 shall not apply to any fraudulent breach of warranty by the Council or LLA, and any such liability shall not count as a liability for the purpose of any cap and shall not be subject to any time limitation.

3.7 **Interest**

LLA and the Council shall pay interest on the amount of any claim for breach of warranty (to the extent of the amount of such claim as is agreed or as is finally determined by proceedings) from the date the claim is notified in accordance with Clause 3.6.2 until the date of actual payment in cleared funds at the Concessionaire Borrowing Rate, calculated on a daily basis for each interest period selected by the Concessionaire and compounded at the end of each such period.

3.8 **Knowledge**

In determining whether LLA or the Council is aware or has knowledge or belief referred to in a warranty set out in Schedule 12, it shall be treated as being aware of, knowing or having belief only of anything of which the following persons are now or have been aware or now or have had knowledge or belief:

3.8.1 in the case of LLA, all members of the LLA Board (save for, unless mentioned below, those who are also members of the Council) at any time or times during the period commencing 12 months prior to the date hereof and ending on the Commencement Date, together with the following:

██████████	Business Manager Property Services
██████████	Trade Union Representative
Cooney, Walter	Chair of Airport Board
██████████	Maintenance Officer (General Services)
Esam, John	Finance & Planning Director
██████████	Planning and Development
██████████	Apron Services Manager
██████████	Head of Operations
██████████	Head of Human Resources

██████████	Financial Controller
██████████	Marketing Director
██████████	Air Traffic Services Manager
██████████	Business Manager Ground Transportation & Security
██████████	Business Manager Retail and Terminal
██████████	Business Analyst
██████████	Head of Airline Development
██████████	Planning and Development
██████████	IT Systems Controller
██████████	Chief Executive
██████████	Purchasing Manager
██████████	Cargo Manager

the persons in the audit department of ██████████ responsible for auditing the Accounts

3.8.2 in the case of the Council, the same persons as in the case of LLA plus:

██████████	Solicitor
Churchill, John	Director of Environmental Services
Davis, Roy	Leader of the Council
Gray, Tony	Director of Central Services
Hodgson, Brian	Assistant Director of Central Services (Property Management)
Jones, Kate	Chief Executive
Judah, John	Chief of Engineering Services
Malynn, Tim	Director of Planning and Development
██████████	Principal Solicitor
Slater, Ian	Head of Planning
Stevens, Richard	Assistant Director Central Services and Solicitor to the Council
Watson, Peter	Deputy Chief Executive and Director of Finance

3.8.3 Accordingly, the fact that any other person (whether at LLA or the Council or otherwise) not listed or referred to in Clauses 3.8.1 or 3.8.2 above is aware of or has knowledge or belief of any matter shall not be attributed to LLA or the Council for the purposes of

Schedule 12 and any implied obligation to make enquiry of such other person for the purposes of this Concession Agreement is hereby excluded, provided that:

- (a) for the avoidance of doubt, the persons listed or referred to above shall be treated as aware of all matters which have been brought to their attention at any time or which are within, or have at any time been, within written correspondence, memoranda, messages, notes or any other written or electronic material, or reasonably apparent from any document, addressed or copied to such person or brought to the attention of such person; and
- (b) for the purposes of Paragraph 6.1 of Schedule 12, LLA and the Council shall be deemed to be aware of matters which would have been revealed by the reasonable internal investigation of files for the purposes of first registration of title to the Airport Site; and
- (c) for the purposes of Paragraph 2 of Schedule 12, LLA and the Council shall be deemed to be aware of matters which would have been revealed by the reasonable internal investigations required for the purpose of preparing and completing the Accounts.

3.9 Deferral of Payments

- 3.9.1 The Concessionaire agrees with the Council and LLA that, subject to the conditions (which shall be continuing conditions) set out in Clause 3.9.2, LLA and the Council may pay a claim resulting from a breach of warranty under Clause 3.4 by way of instalments in accordance with the provisions of Clause 3.9.4.
- 3.9.2 Unless the Concessionaire otherwise agrees in writing, no claim may be paid by LLA or the Council in instalments unless:
 - (a) LLA and the Council have notified the Concessionaire of their unconditional acceptance of the claim (including the amount of the claim) and of their wish to pay by instalments within six months of being notified by the Concessionaire of the amount of such claim; and
 - (b) the Concessionaire has sufficient surplus finance available for such purpose which is not required for other purposes by the Concessionaire or the Concessionaire is able (using reasonable endeavours) to arrange and maintain sufficient finance satisfactory to the Concessionaire on no less advantageous terms than the terms of its then existing funding arrangements, to the extent that such finance is required by the Concessionaire to meet any Warranty Loss; and
 - (c) such payment by way of instalments (taking into account interest payable in accordance with Clause 3.7 and the finance referred to in 3.9.2(b) above) does not and will not have the effect of reducing the amount of Available Shareholder Distributions in any Concession Year, ignoring any reduction in the first Concession Year for the period between the breach of the warranty concerned and the arranging of the Instalment Finance; and

- (d) LLA and the Council prove to the reasonable satisfaction of the Concessionaire that the Council and LLA have all requisite powers and authority to agree to the payment by way of instalments in accordance with Clause 3.9.4.
- 3.9.3 If any of the conditions in Clause 3.9.2 cease to be satisfied at any time, the Council and LLA shall pay to the Concessionaire the balance of the Total Funded Claim in full upon demand.
- 3.9.4 If the conditions in Clause 3.9.2 are satisfied within six months of the date the amount of the claim is notified to LLA, the Concessionaire shall notify LLA and the Council that they may (subject to Clause 3.9.3) pay by instalments, in which case the following provisions shall apply:
- (a) LLA and the Council shall pay to the Concessionaire on the date no later than 14 days after such notification by the Concessionaire an amount equal to the aggregate of:
- (i) the higher of (aa) the Calculated Concession Fee instalment for that Concession Fee Payment Date and (bb) ██████████(Index Linked); and
 - (ii) the proportion which represents the same proportion which the number of days expired since notification of the claim by the Concessionaire bears to 365 of the sum in (i) above
- and on each Concession Fee Payment Date thereafter the higher of (1) the Calculated Concession Fee instalment for that Concession Fee Payment Date; and (2) ██████████(Index Linked), until the Total Funded Claim is satisfied in full;
- (b) the total amount of the Concessionaire's warranty claim which falls to be paid by instalments under this Clause 3.9.4 shall be increased (notwithstanding any agreed cap) by:
- (i) all reasonable costs incurred by the Concessionaire in connection with the warranty claim and the arrangements for payment by instalments contemplated in this Clause 3.9; and
 - (ii) without limiting paragraph (i) above, all financing costs incurred by the Concessionaire including, but not limited to, interest, fees, charges and breakage costs and any other amounts payable in connection with any Instalment Finance and up to the date such Instalment Finance is raised, interest shall be calculated under paragraph (iii) below and not Clause 3.7; and
 - (iii) interest calculated at the Concessionaire Borrowing Rate, compounded quarterly, upon (aa) that proportion of the Warranty Loss (increased by paragraph (i) above) which is not funded by the Instalment Finance from the date of notification of the amount of the warranty claim in question to the date of final payment thereof by LLA or the Council, and (bb) any amounts payable under or in respect of the Instalment Finance from time to time which are funded out of cash flow of the Airport Business or out of Shareholder Contributions from the date of such funding to the date of final payment

thereof by LLA or the Council and interest payable under Clause 3.7 shall not apply to such amounts;

- (c) each instalment received by the Concessionaire in respect of the warranty claim shall be allocated in the following order (or such other order as the Concessionaire may in its absolute discretion determine):
 - (i) payment of interest, fees and other charges in connection with the Instalment Finance;
 - (ii) repayment of principal due under the Instalment Finance;
 - (iii) payment of other amounts due in connection with the Instalment Finance;
 - (iv) prepayment of principal under the Instalment Finance and other related costs, fees or charges;
 - (v) retained by the Concessionaire and/or used to repay Shareholder Contributions.

3.10 Liability Exclusions

The Concessionaire shall not have any remedy, and waives any right which it may otherwise have to claim damages and/or rescind this Concession Agreement, in respect of any misrepresentation (including negligent misrepresentation), untrue statement (whether made carelessly or not) or undertaking made by LLA or the Council prior to the date of this Concession Agreement unless and to the extent that a claim lies for breach of warranty under Clause 3.4 or the same has been expressly incorporated as a provision of this Concession Agreement or was made fraudulently. In particular, LLA and the Council each disclaim all liability and responsibility for any representations, warranty, statement, opinion, or information made or communicated (orally or in writing) to the Concessionaire (including, without limitation, any representation, warranty, statement, opinion, information or advice made or communicated to the Concessionaire by any officer, director, employee, agent, consultant or representative of LLA or the Council or otherwise made available by or on behalf of LLA or the Council) prior to the date hereof, and the Concessionaire hereby acknowledges and agrees with LLA and the Council (for themselves and as trustee(s) for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in the document entitled "London Luton Airport - LLA - Confidential Information Memorandum" relating to the Airport, Provided that such disclaimer and such acknowledgement and agreement shall not apply to limit or qualify anything (including any warranty and any remedy for breach of warranty) contained in this Concession Agreement and shall not apply to any warranty, representation, statement, opinion or information fraudulently made or given.

3.11 Fraud

Clauses 3.6 and 3.10 shall not exclude or limit any liability of LLA and the Council for fraudulent breach of warranty and any such liability shall not count as a liability for the purpose of any limitation on LLA's and the Council's liabilities as to quantum in Clause 3.6.3 or time in Clause 3.6.2.

3.12 Limits on Claims

Neither LLA nor the Council shall have any liability whatsoever in respect of a claim for breach of warranty under Clause 3.4 if (and to the extent only) that:

- 3.12.1 the claim arises or is increased as a result of any changes made by the Concessionaire after the Commencement Date in the accounting policies or accounting practices of the Airport Business from those applied by LLA in relation to the operation and management of the Airport and set out in the Accounts or in any Taxation reporting practice or the length of any accounting period for Taxation purposes of the Concessionaire from those applied by LLA;
- 3.12.2 the matter giving rise to the claim arises from any action by LLA before the Commencement Date carried out at, and in accordance with, the written request or direction of, or in accordance with the specific written consent of the Concessionaire;
- 3.12.3 the claim is based upon a liability which is contingent only unless and until such contingent liability becomes an actual liability, provided that a claim for a contingent liability is notifiable under Clause 3.6.2 and the time limit for issuing proceedings for such claim as contained in Clause 3.6.2 shall commence when the Concessionaire becomes aware that the claim is an actual liability;
- 3.12.4 the claim arises or is increased as a result of any Change in Law (including, for the avoidance of doubt, any Taxation) after the date of this Concession Agreement in any such case not actually or prospectively in force at the date of this Concession Agreement;
- 3.12.5 the matter giving rise to the claim was specifically provided for or reserved in the Accounts or noted specifically in the notes to the Accounts (in either case so as to be reasonably identifiable, whether or not on the face of the accounts, by the Concessionaire);
- 3.12.6 the matter is taken into account in determining the Consideration under Schedule 2.

3.13 **Disclosure**

For the purpose of Clause 3.4, the following facts, matters and circumstances shall be deemed to have been disclosed in the Disclosure Letter:

- 3.13.1 any information which would be revealed upon an inspection (whether or not made) of the microfiche files maintained by the Registrar of Companies in England and Wales in respect of LLA as at 14 August 1998;
- 3.13.2 save against the warranties contained in Paragraphs 4.1 (in relation to the Environment) and 4.3 of Schedule 12, any matter concerning state and condition which would have been reasonably apparent to and identifiable by an experienced operator of aerodromes from a visual non-intrusive inspection (not extending to a survey) of the Tangible Concession Assets which took place on 30 July 1998 to the extent that such Tangible Concession Assets were available for inspection without entering buildings, removing covers or climbing ladders;
- 3.13.3 any matter fairly disclosed in the Confidential Information Memorandum (and Annexes thereto) prepared by UBS Limited in relation to LLA dated 17 November 1997;

3.13.4 without prejudice to the generality of any of the foregoing sub-clauses, in relation to the Property Let excluding the Amenity Land:

- (a) any information which would be revealed upon an inspection or search (whether or not made) of any document, register or record which may be inspected by the public and maintained by, or information which is available upon enquiry (whether or not made) of, or otherwise from, HM Land Registry, HM Land Charges Registry or any register of local land charges, in each case whether or not the consent of any person would be required in order to make any such inspection, search or enquiry;
- (b) any information disclosed in a local search and enquiries result received by the Concessionaire and dated 23 June 1998, and any information which would have been available upon enquiry prior to the date hereof (whether or not made) of Railtrack plc (excluding information in relation to the proposed Luton Parkway railway station), the Coal Authority or the Environment Agency;
- (c) any matter which would be revealed upon an inspection (whether or not made) of the land and charge certificates, conveyances, transfers, leases or other title deeds relating thereto provided by or on behalf of LLA or the Council to Clifford Chance;
- (d) any matter which has been fairly disclosed by or on behalf of LLA or the Council in writing in response to an enquiry of Clifford Chance raised pursuant to any investigation of title undertaken on behalf of the Concessionaire.

3.14 Set Off

All amounts available for set-off or otherwise liable to be deducted pursuant to Clause 3.12 will first be taken into account for the purpose of ascertaining the amount of loss sustained in connection with the limits referred to in Clause 3.6.

3.15 Double Counting

The Concessionaire shall not be entitled to recover more than once in respect of the same loss.

3.16 Mitigation

Nothing in this Clause 3 shall in any way restrict or limit the general obligation at law of the Concessionaire to mitigate any loss or damage which it may suffer in consequence of any matter giving rise to any claim for breach of warranty.

3.17 Third Party Claims

If the Concessionaire becomes aware of any matter involving a liability to a third party (the "Third Party Claim") which it believes will give rise to a claim for breach of warranty, or upon any such claim being made, the following provisions shall apply:

- 3.17.1 the Concessionaire shall give written notice to LLA or the Council of the matter and shall consult with LLA or the Council with respect to the matter;
- 3.17.2 the Concessionaire shall provide to LLA and the Council and LLA's and the Council's professional advisers (at the cost of LLA and the Council) such information as LLA or the

Council or their professional advisers may reasonably request for the purpose of investigating the matter and/or enabling LLA and/or the Council to take such action as is referred to in Clause 3.17.5 except to the extent protected by legal privilege or third party confidentiality;

- 3.17.3 the Concessionaire shall retain and preserve all relevant assets, documents, records and information within the power, possession or control of the Concessionaire which are or are reasonably likely to be relevant in connection with any claim for breach of warranty for so long as the claim remains outstanding;
- 3.17.4 LLA and the Council shall be entitled (at their cost) to copies of any of the documents or records referred to in Clause 3.17.2 except to the extent protected by legal privilege or third party confidentiality;
- 3.17.5 subject to a full and sufficient indemnity as to costs and the provision of such security for such costs as the Concessionaire may reasonably request the Concessionaire shall take such action and institute such proceedings, and give such information and assistance, in each case as LLA or the Council may reasonably request to:
- (a) dispute, resist, appeal, compromise, defend, remedy or mitigate the matter other than with LLA or the Council or any Affiliate of the Council or LLA; or
 - (b) enforce against any person (other than LLA or the Council or any Affiliate of the Council or LLA) the rights of the Concessionaire in relation to the matter; Provided that such action or proceedings are not materially prejudicial to the Airport Business and do not involve the Contractor; and

provided that the Warranty Loss arising out of the matter is within or is likely to be within the relevant aggregate limit set out in Clause 3.6.3 and LLA and the Council agree to pay the full amount of the Third Party Claim following any such action or proceeding and indemnify the Concessionaire against any loss or liability arising out of such action or proceeding (including, without limitation, the full amount of all counterclaims and costs).

- 3.17.6 the Concessionaire shall not make any admission of liability in respect of or compromise or settle the matter without the prior written consent of LLA or the Council (such consent not to be unreasonably withheld or delayed), provided that the Warranty Loss arising out of the matter is within or is likely to be within the relevant aggregate limit set out in Clause 3.6.3 and LLA and the Council agree to pay the full amount of any successful Third Party Claim following any withholding of consent and indemnify the Concessionaire against any loss or liability arising out of such withholding of consent (including, without limitation, the full amount of all counterclaims and costs).

3.18 Conduct of Actions

Where the Concessionaire either recovers or is entitled, either immediately or at some future date, to recover (whether by reason of insurance, payment, discount, credit, relief or otherwise) from a third party (including any Taxation Authority) any sum which is referable to a fact, matter, event or circumstance giving rise to a claim for breach of warranty or obtains relief or other saving or benefit which is so referable after LLA or the Council has made payment hereunder, the Concessionaire shall:

- 3.18.1 immediately notify LLA and the Council and provide such information and assistance as LLA or the Council may reasonably require relating to such right of recovery or such other relief, saving or benefit and the steps taken or to be taken by the Concessionaire;
- 3.18.2 subject to a full and sufficient indemnity as to costs and the provision of such security for such costs as the Concessionaire may reasonably request and provided such action is not materially prejudicial to the Airport Business take all such steps as LLA or the Council shall reasonably request (whether by way of a claim against its insurers or otherwise and including but without limitation proceedings or otherwise as LLA or the Council may reasonably require) to enforce such recovery; and
- 3.18.3 keep LLA and the Council informed of the progress of any action taken and provide it with copies of all relevant correspondence and documentation and if the Concessionaire receives or obtains such a payment, relief, saving or benefit, the Concessionaire shall pay to LLA and/or the Council (whichever has paid the claim for the breach of warranty to the Concessionaire or where it has been so paid by both pro-rata such payments) an amount equal to the amount that the Warranty Loss suffered by the Concessionaire will be reduced by virtue of the payment or the relief (less any costs incurred and not met by LLA or the Council in recovering or obtaining such payment, saving or benefit and net of any tax or other liability or burden relating thereto) (the "Benefit") to the extent that the amount of the Benefit does not exceed the aggregate payments previously made by LLA or the Council in respect of the claim, provided that the amount of the Benefit shall first be set against any part of the Warranty Loss which has not been satisfied by LLA or the Council (whether by reason of limitation of liability under this Clause 3 or otherwise) and any other related loss suffered by the Concessionaire and only any surplus Benefit shall be taken into account for the purpose of making a potential payment to LLA or the Council.

3.19 **Insurance**

If at any time after the Commencement Date LLA and/or the Council wishes to insure all or any part of its liability in respect of claims for breaches of the warranties in Clause 3.4, the Concessionaire shall provide such information as any prospective insurer or broker may reasonably require before effecting such insurance save for commercially sensitive information unless the prospective insurer or broker has entered into an undertaking to keep such information confidential in terms reasonably satisfactory to the Concessionaire.

3.20 **Use of Projections**

For the avoidance of doubt, it is agreed that, for the purpose of determining any Warranty Loss, the Business Plan projections of the Concessionaire shall not be conclusive and binding upon the parties.

PART 2 - MANAGEMENT AND OPERATION OF THE AIRPORT

4. GRANT OF CONCESSION AND PROVISION OF AIRPORT SERVICES

4.1 Grant

The Council and LLA hereby grants to the Concessionaire for the whole of the Concession Period the exclusive right and privilege to carry on the Airport Business in accordance with the terms of this Concession Agreement. For the avoidance of doubt, all revenue and income of the Airport Business during the Concession Period shall belong to the Concessionaire absolutely.

4.2 Core Airport Services

The Concessionaire hereby agrees with LLA and the Council to provide or make available the Core Airport Services at the Airport (subject only as may be provided in this Concession Agreement) for the whole of the Concession Period.

4.3 Extending Airport Services

If the Concessionaire wishes to include in the Airport Services a business, activity, facility or service which is not permitted by the definition of Airport Services, and is not the provision of any Groundhandling Services, then it shall first consult with LLA and the consent of LLA shall be required, provided that LLA shall not unreasonably withhold or delay such consent and shall not be entitled to require the payment of any consideration from the Concessionaire for such consent. If there is any reasonable doubt as to whether a consent is needed under Section 31 Civil Aviation Act, or it is needed, then LLA shall use reasonable endeavours to obtain such consent.

5. CONSENTS

5.1 Council Consent

For the purposes of the Transfer Scheme, the Debentures, the Deed of Covenant and subject to Clause 5.3 the Council hereby consents (to the extent necessary) to the provisions of this Concession Agreement and the other Concession Documents and each of the Collateral Agreements, the transfer of the Transferred Assets hereunder and the performance by LLA of its obligations hereunder.

5.2 Capacity of Council

It is agreed and acknowledged by each of the parties hereto that the Council has entered into this Concession Agreement and the other Concession Documents, and each of the Collateral Agreements, in its several capacities as the controlling authority of LLA, as a secured creditor of LLA, as the beneficial owner of the whole of the issued share capital of LLA, and as the person holding the consent of the Secretary of State to maintain the Airport.

5.3 Reservation of Certain Discretions

Accordingly, save as expressly provided in Clauses 5.1 and 5.2 and without prejudice to the provisions of Clauses 4, 10 and 20, it is also agreed and acknowledged by each of the parties that none of the provisions of this Agreement are intended or shall be deemed to limit, restrict, fetter or prejudice in any way whatsoever any of the statutory rights, duties, powers, obligations and discretions of the Council in any other capacity not mentioned in Clause 5.2, including its capacity

as a Local Authority for the purpose of the Local Government Act 1972 and/or in its capacities as the planning and highways authorities for the area in which the Airport is located for the respective purposes of the Planning Laws and the Highways Act 1980.

6. TRANSFER OF AIRPORT ASSETS

LLA and the Concessionaire shall comply with their respective obligations set out in Schedule 2.

7. MANAGEMENT OF THE AIRPORT BUSINESS

7.1 Management Obligations

The Concessionaire shall, in accordance with the degree of skill, diligence, prudence and operating practice which would reasonably be expected of a skilled and experienced operator of aerodromes engaged in a reasonably comparable undertaking under reasonably comparable circumstances:

- 7.1.1 conduct the Airport Business in all material respects in the manner contemplated from time to time by the Business Plan, the Development Strategy and the Scope Book;
- 7.1.2 manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking with a view to profit;
- 7.1.3 provide or secure the provision at the Airport of the Core Airport Services consistently with Clause 7.1.2, in accordance with standards which would be generally accepted from time to time by operators of other aerodromes in England & Wales as being appropriate to aerodrome businesses which are reasonably comparable to the Airport Business;
- 7.1.4 conduct the Airport Business in a manner which takes account of the reasonable requirements of customers and users of the Airport in respect of the provision of the Airport Services;
- 7.1.5 actively promote investment in new facilities at the Airport to the extent required by the Development Strategy;
- 7.1.6 adopt, and implement to the extent practicable and consistent with Clause 7.1.2, the statement of environmental policy adopted by the board of LLA on 30 July 1997, a copy of which is annexed hereto and marked "N" (so far as such policy has not been implemented by LLA as at the Commencement Date), for which purpose the Concessionaire shall establish (and maintain) an environmental management system pursuant to that policy, in accordance with the requirements of ISO 14001 (or such other equivalent international standard as may from time to time replace ISO 14001, in each case, as from time to time modified), provided that the Concessionaire may, consistently with the standards set out at the beginning of this Clause 7.1, at any time decide to modify and/or supplement such policy and such system subject to the prior notification of such modification or supplement to LLA and may, consistently with the said standards, decide how to implement such policy;
- 7.1.7 take reasonable steps to operate the Airport in a manner which is likely to minimise, to the extent practicable and consistent with Clause 7.1.2, any nuisance which may be occasioned to other occupiers of land affected by the Airport's operations, particularly in respect of aircraft noise, Provided that the foregoing obligations shall not prevent the Concessionaire

from implementing the Development Strategy or carrying out the Concessionaire Works or any Development Strategy Works in a manner consistent with the foregoing obligations.

7.2 General Obligations

The Concessionaire shall also:

- 7.2.1 subject to Clause 7.1.2 and the other obligations of the Concessionaire under this Concession Agreement, and applicable Law and save for emergencies or safety reasons, keep the Airport open at such times as may be reasonably required by Airline Users;
- 7.2.2 subject to Clause 7.1.2, endeavour to attain passenger service levels prevailing from time to time which are generally at least equivalent to [REDACTED], provided that this provision shall not increase the Concessionaire's obligations in respect of implementing the Development Strategy
- 7.2.3 be responsible for, and where due to LLA or the Council promptly pay, all expenses incurred by it in respect of the Airport Business including, without limitation, in respect of Taxation, insurance and the provision of all services or utilities to or at the Airport such as electricity, water, gas, refuse collection, sewerage, foul water, drainage and telephone. Where any such expenses are, by applicable Law, payable by LLA, the Concessionaire will, upon notification by LLA from time to time of the relevant amount, promptly pay the relevant creditor or reimburse LLA in respect thereof;
- 7.2.4 throughout the whole of the Concession Period retain (consistently with applicable Law) a reference to the word "Luton" in the name of the Airport;

7.3 Restricted Persons

The Concessionaire shall procure that throughout the whole of the Concession Period the Airport Business is conducted so that:

- 7.3.1 if, to the knowledge of the Concessionaire, a Restricted Person (who is a Restricted Person by reference to a Dominant User) acquires a Relevant Interest at any time in a Relevant Person, no special commercial advantage or preference (by comparison with other Airline Users) is given to that Dominant User by reason only of its capacity as a holder of such Relevant Interest and otherwise only on bona fide arms length terms in the best interests of the Airport Business
- 7.3.2 if, to the knowledge of the Concessionaire, a Restricted Person (who is a Restricted Person by reference to a Competing Operator) acquires any Relevant Interest at any time in a Relevant Person, no commercial advantage or preference is given to the airport by reference to which the Restricted Person is a Restricted Person by reason only of its capacity as a holder of a Relevant Interest, and otherwise only on bona fide arms length terms in the best interests of the Airport Business.

8. CONCESSIONAIRE WORKS

8.1 Design Development

The Concessionaire shall carry out and complete and be responsible for the design of the Concessionaire Works (or in respect of the design forming part of the Advance Works be responsible for), in accordance with and incorporating the Governing Requirements.

8.2 Drawings Review

The Concessionaire shall submit to LLA's Representative for review by LLA all material drawings and other material construction documents prepared on its behalf relating to the design or development of the design of the Concessionaire Works (including, for the avoidance of doubt, any subsequent material variations to material drawings or material documents which have previously been subject to the review and compliance procedures of this Clause 8.2 and Clause 8.3).

8.3 Drawings Compliance

The approval of LLA to the drawings and other documents submitted by the Concessionaire pursuant to Clause 8.2 shall not be required, but LLA's Representative may object to drawings or documents which do not comply with the requirements of the Scope Book. If LLA's Representative shall not have objected to the drawings or documents within seven days of their being submitted pursuant to Clause 8.2 then the drawings and documents submitted by the Concessionaire shall be deemed to be accepted by LLA and no objection thereto may thereafter be made. If an objection is made within the said seven day period, the dispute relating to compliance with the requirements of the Scope Book shall be referred to the Construction Disputes Resolution Procedure for determination. If it is determined that the relevant drawing or document does not comply with the Scope Book, the Concessionaire shall procure the revision of such drawing or document.

8.4 Construction Obligation

The Concessionaire shall carry out, and complete the design, construction and installation of the Concessionaire Works in a good and workmanlike manner with good quality materials in accordance with:

- 8.4.1 the Scope Book;
- 8.4.2 the Planning Permissions, the Planning Agreement and the Necessary Consents;
- 8.4.3 all Laws applicable to the Concessionaire Works; and
- 8.4.4 the terms of this Concession Agreement (including Clause 32).

8.5 Concessionaire Works Warranty

8.5.1 The Concessionaire warrants that it has used or procured the use of and will continue to use or procure the use of the degree of reasonable skill and judgment and the utilisation of practices, methods, and techniques and standards in the design, construction and testing of Concessionaire Works that are generally expected of skilled and experienced engineering and construction firms in the construction industry and commonly used by such firms to design, engineer and construct and test works of a similar size and complexity to the Concessionaire Works.

8.5.2 The Concessionaire adopts and shall be fully responsible for and warrants that any works of design and specification (including any works of design or specification adopted by it, including the Advance Works as if such Advance Works had been carried out by the Concessionaire pursuant to this Concession Agreement) shall satisfy the Governing Requirements.

8.5.3

- (a) Notwithstanding any term or condition to the contrary set out elsewhere in this Concession Agreement, this Clause 8.5.3 sets out the sole remedies and rights of the LLA and the Council and the sole responsibilities and liabilities of the Concessionaire in respect of year 2000 compliance.
- (b) The term "**Year 2000 Compliant**" means that a computer hardware, computer software or computer system or other computer application (the "**Computer Product**"), when configured and used according to the documented instructions on the Concessionaire Works, will:
 - (i) correctly handle and process date information before, during and after January 1, 2000, accepting "date" input, providing date output and performing calculations, including but not limited to sorting and sequencing, on dates or portions of dates;
 - (ii) function according to the documentation during and after January 1, 2000 without changes in operation resulting from the advent of the new century;
 - (iii) when appropriate, respond to two-digit date input in a way that resolves any ambiguity as to century in a disclosed, defined and predetermined manner;
 - (iv) store, process and provide output of date information in ways that are similarly unambiguous as to century; and
 - (v) manage the leap year occurring in the year 2000, following the quad-centennial rule. The "**quad-centennial rule**" means (1) if the year is divisible by 4, it is a leap year, unless (2) the year is also divisible by 100, then it is not a leap year, unless (3) the year is also divisible by 400, then it is a leap year.

- (c) The Concessionaire shall procure that the Contractor shall conduct such tests as are agreed or determined under the EPC Contract ("**Year 2000 Tests**") to determine whether the Computer Product comprised in the Concessionaire Works is Year 2000 Compliant and the timing of Year 2000 Tests.
- (d) LLA's and the Council's sole remedy and entitlement for the Concessionaire's failure to successfully pass the Year 2000 Tests or for its failure to ensure that Computer Products comprised in the Concessionaire Works are Year 2000 Compliant is that the Concessionaire shall be required to procure the remedy of any failure subject to Clause 8.5.3(e).
- (e) The Concessionaire shall use reasonable endeavours to carry out or procure the carrying out of the Year 2000 compliance tests as are agreed or determined under the EPC Contract in respect of any interface between the Computer Product comprised in the Concessionaire Works and (1) any other Computer Product either existing at the Airport or (2) to be supplied by any party other than the Contractor and its subcontractors in each case provided that the same have been notified to the Concessionaire in sufficient detail such as to enable the Concessionaire to identify the same and arrange detailed testing procedures for the same and also provide that nothing set out in this Clause 8.5.3 or any other provision of this Concession Agreement shall expressly or impliedly impose any liability upon the Concessionaire in respect of the year 2000 compliance at that interface or in respect of such other Computer Product subject to the Concessionaire having complied with its obligations in this Clause 8.5.3,

provided that the liability of the Concessionaire under this Clause 8.5 shall be no greater than that of the Contractor to the Concessionaire in respect of design, engineering, construction and testing under the EPC Contract (save for any reduction in the Contractor's liability due to any act or omission of the Concessionaire), and shall be subject to the same limitations in time.

8.6 Target Completion Date

Subject to extensions of time in accordance with Clause 8.8, the Concessionaire shall commence or procure the commencement of the Concessionaire Works as soon as reasonably practicable after the Commencement Date and shall use reasonable endeavours to procure the issue of a Certificate of Substantial Completion by the Target Completion Date or, where such date is not achieved, as soon as reasonably practicable thereafter.

8.7 Final Completion Date

Subject to extensions of time in accordance with Clause 8.8, the Concessionaire shall in any event procure the issue of the Certificate of Substantial Completion by the Final Completion Date. The Concessionaire shall not be treated as in breach of this Clause 8.7 whilst the procedures for extensions of time set out in Clause 8.8 are being invoked by the Concessionaire, or any determination or decision in relation to any extension of time is awaited or being pursued.

8.8 Extension of Time

8.8.1 If it becomes apparent to the Concessionaire that the progress of the Concessionaire Works or the issue of the Certificate of Substantial Completion is likely to be delayed by reason of any one or more of the events set out in Clause 8.8.2, the following procedure shall apply:

- (a) the Concessionaire shall give to LLA's Representative notice of the cause and circumstances thereof;
- (b) as soon as reasonably practicable the Concessionaire shall give to LLA's Representative particulars of the anticipated consequences of such event including, without limitation, the anticipated delay to the issue of the Certificate of Substantial Completion;
- (c) such particulars shall include copies of all notices, particulars and estimates given by the Contractor to the Concessionaire in respect of such delay;
- (d) the Concessionaire shall use all reasonable endeavours to mitigate any such delay.

8.8.2 The events referred to in Clause 8.8.1 are as follows:

- (a) any negligence, default or omission of LLA or the Council, or of any person for whom LLA or the Council is responsible (including such person's contractors, sub-contractors and consultants) in connection with this Concession Agreement and including, without limitation, any breach by LLA of any of its warranties or obligations under this Concession Agreement;
- (b) any Change in Law which requires a modification or addition to the design or construction of the Concessionaire Works or the manner of carrying out the same or a change in or a replacement of any part of the Concessionaire Works required by or in order to achieve compliance with the Change in Law;
- (c) any delay in obtaining or any change in Necessary Consents which the Concessionaire has taken all practical steps to avoid or reduce by following the procedures laid down by the relevant competent authorities or any delay resulting from any failure to comply with Necessary Consents prior to the Commencement Date;
- (d) the occurrence of any of the following events:
 - (i) exceptionally adverse weather conditions which do not constitute a Force Majeure Event;
 - (ii) aircraft or other devices striking the Airport or the Concessionaire Works;
 - (iii) any interruption in the supply of water, electricity or gas;
 - (iv) a Force Majeure Event;
 - (v) the carrying out by any statutory undertaker (or equivalent) or Local Authority or other competent authority of work in relation to the Concessionaire Works

where the need for such work could not reasonably have been foreseen by an experienced contractor exercising the skill and judgement referred to in Clause 8.5.1 prior to the date of this Concession Agreement or the failure to carry out or any delay in carrying out of such work;

- (vi) revocation of any Necessary Consent;
- (vii) any Insured Risk not otherwise specified in this Clause 8.8.2(d);
- (viii) the discovery, removal, transport and disposal of any Hazardous Wastes or Substances;
- (ix) the discovery, examination, removal and protection of any Fossils and Antiquities;
- (x) the discovery of any fauna or flora protected by applicable Law;
- (xi) any change in, or the introduction of any new, national specifications, technical standards, building construction and environmental regulations, regulations applicable to the product being produced from the Concessionaire Works, or standards specified in the Scope Book, in any case whether or not legally binding coming into force after the date of this Concession Agreement which requires a modification or addition to the design or construction of the Concessionaire Works or the manner of carrying out the same;
- (xii) any delay in the Commencement Date beyond 21 August 1998;
- (xiii) any Discriminatory Event;
- (xiv) any delay, impediment or prevention in or from obtaining relevant insurance proceeds;
- (xv) any event not otherwise specified in this Clause 8.8.2(d) which results in a proper extension of time granted in favour of the Contractor under the EPC Contract;
- (xvi) any breach by a statutory undertaker (or equivalent) or by any Local Authority or by any other competent authority of any agreement in relation to the Concessionaire Works (including, without limitation, the Planning Agreement);
- (xvii) any *bona fide* referral by any party to any Disputes Procedure;
- (xviii) the effects of unforeseen ground conditions;
- (xix) any loss of plant, equipment or materials in transit (whether by air, sea or over land);

(xx) any impediment, delay or prevention to the carrying out of the Concessionaire Works (whether lawful or unlawful) caused by any tenant or licensee under the Occupational Documents or the holder of any Third Party Rights;

(xxi) any breach by LLA and/or the Council of its obligations under Clause 38,

provided that the specific event in question referred to in this Clause 8.8.2(d) is not due to any act (other than one arising by virtue of compliance by the Concessionaire with its obligations under this Concession Agreement) or negligent act or omission on the part of the Concessionaire or any person for whom the Concessionaire is responsible in connection with this Concession Agreement (including the Contractor and its sub-contractors).

8.8.3 The Concessionaire and LLA shall as soon as reasonably practicable following the occurrence of one or more of the events set out in Clause 8.8.2 provisionally agree the period of delay to the Target Completion Date by reason of such event, being such period as may be fair and reasonable in all the circumstances.

8.8.4 The Concessionaire and LLA shall as soon as reasonably practicable following any provisional agreement pursuant to Clause 8.8.3 agree new dates for the Target Completion Date by reason of an occurrence of any one or more of the events set out in Clause 8.8.2 and as may be fair and reasonable in all the circumstances.

8.8.5 Any dispute as to any adjustments to the Target Completion Date shall be referred to the Construction Disputes Resolution Procedure which shall determine the new Target Completion Date.

8.8.6 The Final Completion Date shall be extended by the same period as any extension to the Target Completion Date.

8.8.7 Extensions of time and adjustments to the Target Completion Date and the Final Completion Date under this Clause 8 may be made either prospectively or retrospectively and whether or not the delay event occurs before or after the Target Completion Date and/or the Final Completion Date.

8.9 No LLA Variations

Neither LLA nor the Council shall be entitled to require a Variation of the Concessionaire Works or otherwise vary or modify the same.

8.10 Concessionaire Variations

8.10.1 The Concessionaire shall not make a Variation in the Concessionaire Works or materially vary the Scope Book except in either case in accordance with Clause 8.10.2.

- 8.10.2 The Concessionaire may at any time request a Variation of the Concessionaire Works (including, for the avoidance of doubt, any subsequent Variations to material drawings or material documents which have been subject to the review and compliance procedures in Clauses 8.2 and 8.3) or a material variation to the Scope Book which LLA may approve. LLA shall not unreasonably withhold or delay such approval (and if approved the Concessionaire Works and/or the Scope Book may be varied accordingly) unless the Concessionaire Works will not comprise a new terminal building capable of handling 5 mppa at GACDM Level C as a consequence of any variation.
- 8.10.3 The Concessionaire shall obtain all Necessary Consents for all Variations.
- 8.11 Approval of Identity of New Contractor**
- The Concessionaire shall not replace the Contractor without obtaining the prior approval of LLA to the identity of the replacement Contractor, such approval not to be unreasonably withheld or delayed.
- 8.12 Direct Agreement from New Contractor**
- The Concessionaire shall use reasonable endeavours to procure that any replacement Contractor approved by LLA in accordance with Clause 8.11 shall enter into a direct agreement in favour of LLA in substantially the same form as the EPC Direct Agreement.
- 8.13 No Derogation from Liability**
- For the avoidance of doubt, the entry by the Contractor into the EPC Direct Agreement shall not diminish or affect the Concessionaire's obligations, duties or liabilities towards LLA pursuant to this Concession Agreement.
- 8.14 Disruption to Airport Business**
- 8.14.1 The Concessionaire shall use reasonable endeavours to ensure that the Concessionaire Works are undertaken in such manner so as to mitigate the disruption and disturbance to the carrying on of the Airport Business.
- 8.14.2 The Concessionaire shall use reasonable endeavours to ensure that all accommodation and other traffic relating to the Concessionaire Works shall access and egress the Airport Site in a manner which complies with the Planning Permission and so as to minimise the disruption and disturbance to the Airport Business.
- 8.14.3 The Concessionaire shall be responsible for the cost of repairing and cleaning any public highways used for the purposes of access in connection with the Concessionaire Works to the extent that the necessity for such repair or cleaning arises from the activities of the Concessionaire or the Contractor (or their sub-contractors).

8.15 **Materials**

The Concessionaire has not and shall procure that there is not specified for use in the Concessionaire Works any materials which a reasonably skilled engineering and construction firm in the construction industry would not use at the time the materials are ordered and shall use all reasonable endeavours to ensure that no such materials are included in the Concessionaire Works.

8.16 **Meetings**

The Concessionaire shall:

- 8.16.1 notify LLA's Representative in writing in advance of all monthly site meetings concerning the progress or technical aspects of all Concessionaire Works at which the Concessionaire or its representatives will be present;
- 8.16.2 supply LLA's Representative with copies of any advance agenda prior to and the minutes following such meetings;
- 8.16.3 permit LLA's Representative to attend at such meetings and consider (but shall not be bound by) his views when taking decisions. LLA's Representative shall not be entitled to give any instructions to the Contractor, its sub-contractors or the Concessionaire.

8.17 **CDM Regulations**

- 8.17.1 The Concessionaire shall for the purposes of the CDM Regulations be the Client (as defined in the CDM Regulations) and shall serve a declaration to that effect in respect of the Concessionaire Works on the Health & Safety Executive (the "CDM Declaration") within ten Business Days after the Commencement Date and shall simultaneously provide a copy of such declaration to LLA. Upon receipt of the notice from the Health and Safety Executive that it has received the CDM Declaration, the Concessionaire shall send a copy of such notice to LLA.
- 8.17.2 For the purposes of the CDM Regulations the Concessionaire will not be the agent of LLA or the Council.
- 8.17.3 The Concessionaire shall not terminate, withdraw or derogate in any manner from the CDM Declaration or its acceptance of its responsibilities as client but shall comply with its obligations under the CDM Regulations as Client in relation to the Concessionaire Works and shall use reasonable endeavours to procure compliance with the CDM Regulations by the Contractor and its sub-contractors and such consultants as it may appoint in relation to the Concessionaire Works.
- 8.17.4 The Concessionaire shall procure that a planning supervisor and principal contractor are appointed in respect of the Concessionaire Works.
- 8.17.5 As soon as reasonably practicable after the issue of the Taking Over Certificate, the Concessionaire shall provide a certified copy of the full and complete Health and Safety File (as defined in the CDM Regulations) to LLA and the Concessionaire hereby grants to LLA an irrevocable royalty free and non-exclusive licence to use and reproduce any information or documents contained at any time within such Health and Safety File for any

purpose connected with the Concessionaire Works. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.

- 8.17.6 The Concessionaire shall for the duration of the Concessionaire Works compile, maintain and update the Health and Safety File and ensure its availability for use in connection with any future works as may be carried out.

8.18 Safety Precautions

- 8.18.1 The Concessionaire shall comply with all applicable safety rules, regulations and restrictions in its design access arrangements and operations of the Concessionaire Works. The Concessionaire shall, from the commencement of the Concessionaire Works until the issue of the Taking Over Certificate, provide:

- (a) fencing, lighting, guarding and watching of the Concessionaire Works; and
- (b) temporary roadways, footways, guards and fences which may be necessary for the accommodation and protection of owners and occupiers of adjacent land, the public and others.

- 8.18.2 Without prejudice to the generality of the foregoing, the Concessionaire shall take all necessary safety precautions in respect of the Concessionaire Works in relation to visitors to and the users of the Airport Site and adjacent land and shall at all times comply with all applicable airport related safety rules, regulations and restrictions.

8.19 Protection of the Environment

The Concessionaire shall take all reasonable steps to protect the Environment (both on and off the Airport Site) and to limit damages and nuisance to people and property resulting from pollution, noise and other results of the Concessionaire Works. The Concessionaire shall ensure that air emissions, surface and effluent discharges and the handling or disposal of any waste arising from the Concessionaire Works and arising from the Concessionaire's operations during the period of the Concessionaire Works shall be in accordance with the Law and (where appropriate) shall not exceed any values prescribed by Law.

8.20 Security of the Site

The Concessionaire shall undertake all reasonable measures for keeping unauthorised persons off the Concessionaire Works.

8.21 Fossils/Antiquities

All fossils, coins, articles of value or antiquity, and structures and other remains or things of geological or archaeological interest discovered on the Airport Site shall (as between the parties) be the property of LLA. The Concessionaire shall take reasonable precautions to prevent its staff, labour or other persons from removing or damaging any such article or thing. The Concessionaire shall, immediately upon discovery of such article or thing, advise LLA, who shall (at LLA's sole cost and expense) issue reasonable instructions for dealing with it in accordance with applicable Law and promptly reimburse the Concessionaire in respect of all reasonable costs and expenses incurred in complying with such instructions and applicable Law.

8.22 **Certificate of Substantial Completion**

- 8.22.1 The Concessionaire shall procure that the Concessionaire's Representative shall certify when in his opinion the New Terminal is substantially completed to the standards for substantial completion set out in the Scope Book (the "**Certificate of Substantial Completion**").
- 8.22.2 Any dispute by LLA in respect of the issue of the Certificate of Substantial Completion shall be made by notice in writing given to the Concessionaire and the Concessionaire's Representative within four Business Days of a copy thereof being given to LLA's Representative. If no such notice is given within such period then the Certificate of Substantial Completion shall be treated as accepted by LLA for the purposes of this Concession Agreement. Any notified dispute shall be referred to the Construction Disputes Resolution Procedure for determination. If it is determined as a result of the reference to the Construction Disputes Resolution Procedure that the Certificate of Substantial Completion was not validly issued, it shall not be deemed valid for the purposes of this Agreement and in particular for the purposes of Clauses 8.6 and 8.7 and the Concessionaire will take steps necessary to procure the issue of a valid Certificate of Substantial Completion and the procedures of this Clause 8.22 will apply accordingly to such subsequent issue by the Concessionaire's Representative. Pending the determination of such dispute, the issue of the Certificate of Substantial Completion shall be deemed valid for the purposes of this Concession Agreement, and in particular for the purposes of Clauses 8.6 and 8.7.
- 8.22.3 The Concessionaire shall provide promptly a copy of the certificate referred to in Clause 8.22.1 and any agreed lists of outstanding works to LLA's Representative.
- 8.22.4 The Concessionaire shall give LLA's Representative reasonable notice in writing of any inspection, test or commissioning trial likely to give rise to the issue of the Certificate of Substantial Completion who may attend (but not give instructions at) any such inspection, test or commissioning.

8.23 **Taking Over Certificate**

- 8.23.1 The Concessionaire shall procure that the Concessionaire's Representative shall certify when in his opinion the New Terminal and the remainder of the Concessionaire Works is completed and ready to occupy and use in accordance with the Scope Book (the "**Taking Over Certificate**").
- 8.23.2 Any dispute by LLA in respect of the issue of the Taking Over Certificate shall be made by notice in writing given to the Concessionaire and the Concessionaire's Representative within four Business Days of a copy thereof being given to LLA's Representative. If no such notice is given within such period then the Taking Over Certificate shall be treated as accepted by LLA for the purposes of this Concession Agreement. Any notified dispute shall be referred to the Construction Disputes Resolution Procedure for determination. If it is determined as a result of the reference to the Construction Disputes Resolution Procedure that the Taking Over Certificate was not validly issued, it shall not be deemed valid for the purposes of this Agreement and the Concessionaire will take steps necessary to procure the issue of a valid Taking Over Certificate and the procedures of this Clause

8.22 will apply accordingly to such subsequent issue by the Concessionaire's Representative. Pending the determination of such dispute, the issue of the Taking Over Certificate shall be deemed valid for the purposes of this Agreement, and in particular for the purposes of Clauses 8.6 and 8.7.

8.23.3 The Concessionaire shall provide promptly a copy of the certificate referred to in Clause 8.23.1 and any agreed lists of outstanding works to LLA's Representative.

8.23.4 The Concessionaire shall give LLA's Representative reasonable notice in writing of any inspection, test or commissioning trial likely to give rise to the issue of the Taking Over Certificate who may attend (but not give instructions) at such inspection, test or commissioning.

8.24 Liability for Delay

LLA and the Council shall not be entitled to claim for any loss or damages or have any right to terminate in respect of any delay in completion of the Concessionaire Works, Provided only that if the circumstances set out in Clause 18.4 apply, LLA shall be entitled to terminate this Concession Agreement in accordance with Clause 19.2.

8.25 Defects Liability

As soon as practicable after the issue of a Taking Over Certificate, the Concessionaire shall at its own cost procure the:

8.25.1 completion of any work which is outstanding in connection with the part of the Concessionaire Works taken over on the date stated in the Taking Over Certificate as soon as practicable after such date; and

8.25.2 execution of all work of amendment, reconstruction, and remedying of any defect in the Concessionaire Works or damage caused by any such defect during the period of 365 days after the issue of the Taking Over Certificate.

8.26 As-Built Drawings

The Concessionaire shall prepare and submit to LLA "as-built drawings" of the Concessionaire Works, showing all Concessionaire Works as executed. The drawings shall be prepared as the Concessionaire Works proceed. As soon as reasonably practicable after the issue of the Taking Over Certificate, the Concessionaire shall submit to LLA one full-size original copy and one printed copy of the relevant "as-built drawings".

8.27 Development Strategy Works

Where the Concessionaire intends to undertake Development Strategy Works and to enter into a Development Strategy Contract in respect thereof:

- 8.27.1 the drawings, specifications and the scope of any proposed Development Strategy Works shall be referred to the Airport Forum for consideration and comment prior to any application for planning permission;
- 8.27.2 the Concessionaire shall obtain all Necessary Consents for the Development Strategy Works;
- 8.27.3 Clause 8.5.1 shall apply to the carrying out of the Development Strategy Works;
- 8.27.4 the Concessionaire will use all reasonable endeavours to procure from the contractor under a Development Strategy Contract in respect of Development Strategy Works a direct agreement in similar form to the EPC Direct Agreement.

8.28 Development Contracts

The Concessionaire shall use reasonable endeavours to procure that all Development Strategy Contracts and the EPC Contract entered into by the Concessionaire shall be assignable to LLA on termination of this Concession Agreement.

8.29 Termination and Development Strategy Contracts

In the event of the termination of this Concession Agreement by LLA:

- 8.29.1 the Concessionaire shall assign to LLA or its nominee (unless any third party consent is required which the Concessionaire shall use all reasonable endeavours to obtain) all rights which the Concessionaire shall then have to use any and all of the Scope Book, drawings, plans, specifications, calculations and other data and the designs contained in them relating in any way to the Concessionaire Works, provided that where this Concession Agreement has been terminated as a consequence of a breach by the Contractor, any claims the Concessionaire may have against the Contractor in respect of such breach shall not be assigned to LLA or its nominee; and
- 8.29.2 the Concessionaire shall to the extent it is permitted to do so under any Development Strategy Contract, if requested so to do in writing by LLA, assign in favour of LLA, or its nominee, the benefit of (and all rights of action in respect thereof) all Development Strategy Contracts (unless such shall have been the subject of a prior agreed novation) and in consideration for such assignment LLA and the Council shall indemnify the Concessionaire against all action, proceedings, claims, demands, costs, damages, expenses and liability under or in respect of such Development Strategy Contract and provided that where this Concession Agreement has been terminated as a consequence of a breach by the Development Strategy Contractor, any claims the Concessionaire may have against the Development Strategy Contractor in respect of such breach shall not be assigned to LLA or its nominee.

8.30 LLA Works Contribution

- 8.30.1 The Concessionaire shall credit to the Works Contribution Account upon the Business Day following Completion an amount equal to £5,977,000.
- 8.30.2 LLA shall deliver to the Concessionaire confirmations of release in accordance with Clause 4 of the LLA Account Charge of the following amounts, in the following circumstances, within the following time periods:
- (a) within 5 days of delivering to LLA's Representative an "Interim Payment Certificate" or a "Final Payment Certificate" under the EPC Contract (a "**Certificate**"), the amount of such Certificate, provided that:
 - (i) the aggregate amount paid to the Contractor(s) under the EPC Contract(s) is not less than, £65,740,000; or
 - (ii) if the aggregate amount paid to the Contractor(s) under the EPC Contract(s) would be, with the payment of the Certificate, not less than £65,740,000, such portion of the amount of the Certificate as would cause £65,740,000 to be so exceeded; and
 - (b) within 2 days of delivering to LLA's Representative any confirmation under Clause 8.30.3, the amount specified in such confirmation, which shall be paid to LLA.
- 8.30.3 If the Concessionaire:
- (a) agrees with the Contractor a variation of the Governing Requirements such that the "Contract Price" as finally determined under the EPC Contract is reduced, then the Concessionaire shall confirm promptly to LLA in writing the amount of such reduction and shall pay to LLA (subject to LLA complying with Clause 8.30.2(b)) the lowest of:
 - (i) the amount of such reduction;
 - (ii) the balance standing to the credit of the Works Contribution Account at the time of such confirmation; and
 - (iii) £3,708,000 million;
 - (b) agrees with the Contractor an extension to the date by which the Concessionaire Works are to be completed under the EPC Contract (which is not an extension pursuant to the terms of the EPC Contract) and obtains a reduction in the "Contract Price" under the EPC Contract in consideration for such extension, the Concessionaire shall confirm promptly to LLA in writing the amount of such reduction and shall pay to LLA (subject to LLA complying with Clause 8.30.2(b)) the lowest of:

- (i) the amount of such reduction;
- (ii) the balance outstanding to the credit of the Works Contribution Account at the time of such confirmation; and
- (iii) £2,269,000 million.

8.30.4 The Works Contribution Account shall be an interest bearing account and interest accrued thereon (less any Taxation in respect thereof and bank charges) shall be paid to LLA when the final amount is released pursuant to Clause 8.30 from the Works Contribution Account.

8.30.5 If this Concession Agreement is terminated pursuant to Clause 19.2 by LLA, the balance outstanding to the credit of the Works Contribution Account shall be paid to LLA (less any sum which fell to be released by LLA prior to such date).

9. **DEVELOPMENT STRATEGY**

The Concessionaire will use reasonable endeavours to promote its Development Strategy and, subject to Clause 5.3, LLA and the Council will assist the Concessionaire with such promotion if reasonably requested by the Concessionaire. The Concessionaire will regularly review its Development Strategy in the light of changing conditions and prospects. The Concessionaire will discuss significant issues relating to its Development Strategy with the Airport Forum and in particular changes to its Development Strategy and any implementation of future phases of development will be reviewed by the Airport Forum prior to incorporation in the Business Plan. The Concessionaire shall have due regard to the representatives of LLA and the Council on the Airport Forum.

10. **FORCE MAJEURE**

10.1 **Relief**

The Concessionaire shall not be responsible for any failure to perform any of its obligations under Clauses 4.2, 7.1, 7.2.1, 8 and 9 of this Concession Agreement (which for the avoidance of doubt shall not include the obligation in Clause 16.1 to pay the Concession Fee which subject as contained in the remainder of this Clause 10, shall continue to be payable) nor shall there be a Concessionaire Event of Default under Clause 18 if, and to the extent that, such failure is caused by or is due to any Force Majeure Event or Discriminatory Event.

10.2 **Mitigation**

10.2.1 The Concessionaire shall use all reasonable endeavours to mitigate and minimise the effects of any Force Majeure Event on the performance of its obligations under Clauses 4.2, 7.1, 7.2.1, 8 and 9 and to restore normal operations as soon as reasonably practicable after the occurrence of a Force Majeure Event. The Concessionaire shall notify LLA as soon as reasonably practicable of the occurrence of any Force Majeure Event.

10.2.2 The Concessionaire shall to the extent that it would be reasonable to do so take steps to prevent the occurrence or re-occurrence of any Force Majeure Event.

10.2.3 The Concessionaire, the Council and LLA shall jointly use all reasonable endeavours to mitigate and minimise the effects of any Discriminatory Event (other than a Council Discriminatory Event) on the performance of the obligations of the Concessionaire under

Clauses 4.2, 7.1, 7.2.1, 8 and 9 and to restore normal operations as soon as reasonably practicable after the occurrence of a Discriminatory Event. The Council, LLA and the Concessionaire shall notify one another as soon as reasonably practicable after one or the other becomes aware of the occurrence of any Discriminatory Event.

10.3 Special Uninsured Force Majeure Loss

- 10.3.1 The loss suffered by the Concessionaire or any other member of the London Luton Airport Group as a result of a Special Force Majeure Event shall be determined by reference to projections in accordance with Clause 10.5 and the effect on actual or projected Shareholder Distribution Amounts. For the purpose of this Clause 10, Shareholder Distribution Amounts may be negative amounts to represent losses.
- 10.3.2 Any loss suffered by the Concessionaire or any other member of the London Luton Airport Group as a result of a Special Force Majeure Event shall not include the effect of the amount of any Warranty Loss to the extent actually paid by LLA or the Council to the Concessionaire pursuant to Clause 3.4 or any Stanger Report Costs.
- 10.3.3 Neither the Concessionaire nor any member of the London Luton Airport Group shall be obliged to insure in respect of any Special Force Majeure Event (unless it is an obligation set out in Schedule 9).

10.4 Bridging Insurance Receipts

If any Special Force Majeure Event is covered (in whole or in part) by Insurance Proceeds, but the receipt thereof is delayed for any reason, other than the default of the Concessionaire, then the cost of financing the delay in the receipt of such Insurance Proceeds shall be added into the determination of Net Special Shareholder Loss.

10.5 Special Force Majeure Event and Projections

- 10.5.1 If a Special Force Majeure Event occurs, the Concessionaire shall notify LLA of such occurrence and the Special Force Majeure Date and supply LLA with such information in relation to such occurrence as LLA reasonably requests. If within five Business Days of any such notification LLA notifies the Concessionaire that it does not agree (a) that a Special Force Majeure Event has occurred, and (b) the Special Force Majeure Date, then the Dispute shall be determined by Fast Track Reference. Any failure to notify by LLA within such period shall be treated as acceptance of the occurrence of the Special Force Majeure Event at the Special Force Majeure Date.
- 10.5.2 Following a Special Force Majeure Date, the Concessionaire shall produce and deliver to LLA as soon as reasonably practicable and, in any event within two months thereof, a Special Force Majeure Projection showing the following:
 - (a) the projected cash flows for the Airport Business including revenues and costs (including capital costs) and the projected passenger numbers and projected freight volume (measured in tonnes) for the remainder of the Concession Period, based on the assumption that the Special Force Majeure Event did not occur and ignoring and excluding the effect of carrying out any future phase of Development Strategy Works pursuant to the Development Strategy (other than the completion of the

Concessionaire Works or any Development Strategy Works which have been commenced or have been completed) (the "**first basis**");

- (b) the projected Shareholder Distribution Amounts over the remainder of the Concession Period on the first basis;
- (c) the projected cash flows for the Airport Business including revenues and costs (including capital costs) and the projected passenger numbers and projected freight volume (measured in tonnes) for the remainder of the Concession Period, based on the assumption that the Special Force Majeure Event has occurred, but ignoring and excluding as referred to in (a) above, ignoring any adjustments to the Concession Fee which may take place under Clauses 10.6 and 10.8 and excluding the receipt or projected receipt of Insurance Proceeds in respect of the Special Force Majeure Event, but taking into account Work Load Unit variations (the "**second basis**");
- (d) the projected Shareholder Distribution Amounts over the remainder of the Concession Period on the second basis;
- (e) the projected cash flows for the Airport Business including revenues and costs (including capital costs) and the projected passenger numbers and projected freight volume (measured in tonnes) for the remainder of the Concession Period, based on the assumption that the Special Force Majeure Event has occurred, but ignoring and excluding as referred to in (a) above, and ignoring any adjustments to the Concession Fee which may take place under Clauses 10.6 and 10.8 but including the receipt or projected receipt of Insurance Proceeds in respect of the Special Force Majeure Event and taking into account Work Load Unit variations (the "**third basis**"); and
- (f) the projected Shareholder Distribution Amounts over the remainder of the Concession Period on the third basis.

A Special Force Majeure Projection shall, to the extent appropriate, and save as required above, be consistent with the bases and assumptions in the Business Plan, and the Concessionaire shall use assumptions in any Special Force Majeure Projection which are reasonable and prudent in the circumstances. If the Special Force Majeure Projection is produced before it is reasonably practicable to do so in accordance with Clause 10.5.2, assumptions will be made by the Concessionaire as to the likely duration of both the Special Force Majeure Event and the Special Loss Period, which assumptions it is acknowledged may not be reasonably reliable.

10.5.3 Unless both the Concessionaire and LLA shall agree that any Provisional Force Majeure Protection is sufficiently accurate following a Special Force Majeure Completion Date, the Concessionaire shall produce and deliver to LLA as soon as reasonably practicable, and in any event within one month thereof, a further Special Force Majeure Projection in accordance with the provisions of Clause 10.5.2, but taking into account the Special Force Majeure Completion Date and any consequential effects on the Special Loss Period and any agreed change or changes.

10.5.4 If at any time after the date of agreement or determination in accordance with Clause 10.5.3 of the Completed Special Force Majeure Projection (or if no Completed

Special Force Majeure Projection is required to be produced the Special Force Majeure Completion Date) either LLA or the Concessionaire reasonably believes and has notified to the other that one or more of the specific assumptions in a Completed Special Force Majeure Projection or the Provisional Special Force Majeure Projection, as the case may be, has proved to be materially inaccurate (including, without limitation, projected Insurance Proceeds have not and will not be received) then if such material inaccuracy is agreed by both LLA and the Concessionaire (or is determined under Clause 10.5.6), the Concessionaire shall produce and deliver to LLA as soon as reasonably practicable and in any event within one month of the date of agreement or determination a Revised Force Majeure Projection in accordance with the provisions of Clause 10.5.2, but taking into account the agreed or determined change or changes to correct the material inaccuracy.

10.5.5 The Concessionaire shall calculate from (and include in) any Special Force Majeure Projection:

- (a) the extent to which the projected Shareholder Distribution Amounts for each Concession Year or part thereof on the first basis exceed (which shall include being a lower negative number or a positive number as compared to a negative number) the projected Shareholder Distribution Amounts for each corresponding Concession Year or part thereof on the second basis, and separately on the third basis, (the difference being between the first basis and the second basis the "**Gross Special Shareholder Loss**" and the difference between the first basis and the third basis being the "**Net Special Shareholder Loss**"); and
- (b) the Special Loss Period.

10.5.6 If the Concessionaire and LLA do not agree on:

- (a) the contents of a Provisional Force Majeure Projection;
- (b) the contents of a Completed Special Force Majeure Projection;
- (c) a material inaccuracy in or change to the specific assumptions which may give rise to a Revised Special Force Majeure Projection;
- (d) the contents of a Revised Special Force Majeure Projection; or
- (e) the calculation of the Gross Special Shareholder Loss or the Net Special Shareholder Loss,

then within in the case of (a), (b), (d) and (e) 14 days of delivery of the Special Force Majeure Projection or in the case of (c) within 14 days of notification from one party to the other of the proposed change, the Dispute shall be determined by Fast Track Reference.

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10.7 [REDACTED]

10.7.1 [REDACTED]
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(a) [REDACTED]
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10.9.3 [REDACTED]

[REDACTED]

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10.11 Occurrence of Discriminatory Event

10.11.2 Following a Discriminatory Date, the Concessionaire shall produce and deliver to LLA as soon as reasonably practicable and, in any event within two months thereof, a Discriminatory Event Projection showing the following:

- (a) the projected cash flows for the Airport Business including revenues and costs (including capital costs) and the projected passenger numbers and the projected freight volume (measured in tonnes) for the remainder of the Concession Period, based on the assumption that the Discriminatory Event did not occur and ignoring and excluding the effect of carrying out any future phase of Development Strategy Works pursuant to the Development Strategy (other than the completion of the Concessionaire Works or any Development Strategy Works which have been commenced or has been completed) (the "**first basis**"); and

- (b) the projected Shareholder Distribution Amounts over the remainder of the Concession Period on the first basis;
- (c) the projected cash flows for the Airport Business including revenues and costs (including capital costs) and the projected passenger numbers and the projected freight volume (measured in tonnes) for the remainder of the Concession Period, based on the assumption that the Discriminatory Event has occurred, but ignoring and excluding as referred to in (a) above and ignoring any adjustments to the Concession Fee under Clauses 10.12 and 10.13 but taking into account Work Load Unit variations (the "**second basis**"); and
- (d) the projected Shareholder Distribution Amounts over the remainder of the Concession Period based on the second basis.

A Discriminatory Event Projection shall, to the extent appropriate, and save as required above, be consistent with the bases and assumptions in the Business Plan, and the Concessionaire shall use assumptions in any Discriminatory Event Projection which are reasonable and prudent in the circumstances.

- 10.11.3 Unless both the Concessionaire and LLA shall agree that any Provisional Discriminatory Event Projection is sufficiently accurate following a Discriminatory Event Completion Date, the Concessionaire shall produce and deliver to LLA as soon as reasonably practicable, and in any event within one month thereof, a further Discriminatory Event Projection in accordance with the provisions of Clause 10.11.2, but taking into account the Discriminatory Event Completion Date and any consequential effects on the Discriminatory Loss Period and the agreed change or changes.
- 10.11.4 If at any time after the date of agreement, or determination in accordance with Clause 10.11.5, of the Completed Discriminatory Event Projection (or if no Completed Discriminatory Event Projection is required to be produced the Discriminatory Event Completion Date) either; (a) LLA or the Concessionaire reasonably believes and has notified the other that one or more of the specific assumptions in a Completed Discriminatory Event Projection or a Provisional Discriminatory Event Projection as the case may be has proved to be materially inaccurate or (b) final determination by the Courts that the Change of Law has ceased to be a Change in Law, then if (b) applies, or if (a) applies and such change is agreed by both LLA and the Concessionaire, the Concessionaire shall produce and deliver to LLA as soon as reasonably practicable and in any event within one month of the date of agreement or determination a Revised Discriminatory Event Projection in accordance with the provisions of Clause 10.11.2 but taking into account the agreed change or changes to correct the material inaccuracy or, as the case may be, reflect the final determination of the Courts.
- 10.11.5 If the Concessionaire and LLA do not agree on:
 - (a) the content of a Provisional Discriminatory Event Projection;
 - (b) the content of a Completed Discriminatory Event Projection;
 - (c) a material inaccuracy in or change to the specific assumptions which may give rise to a Revised Discriminatory Projection; or

(d) the content of a Revised Discriminatory Event Projection;

then within (in the case of (a), (b) and (d) 14 days of delivery of the Discriminatory Event Projection or in the case of (c) within 14 days of notification from one party to the other then the Dispute shall be determined by Fast Track Reference.

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10.14.3

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10.15 **Treatment of Non-Recurring Loss**

If the Special Force Majeure Event or Discriminatory Event causes a loss which the Concessionaire elects (in whole or part) to fund by way of Funding Agreements and/or additional Shareholder Contributions and/or from Retained Earnings, then the cost of such funding (including, but not limited to, the interest rate costs, the rate of return on Shareholder Contributions and/or Retained Earnings)) and the repayment or recovery over the financing period of the loans under the Funding Agreements and/or the Shareholder Contributions and/or the Retained Earnings, (as the case may be) over such financing period shall be included in the Special Force Majeure Projections on the second basis and the third basis and, as applicable, the Discriminatory Event Projections on the second basis.

10.16 **Cumulative Nature**

Reductions in the Concession Fee and/or extensions to the Concession Period under this Clause 10 shall be cumulative.

10.17 **Cost of Projections**

The cost of producing a Special Force Majeure Event Projection or Discriminatory Event Projection and any Disputes Procedure associated therewith pursuant to the provisions of this Clause 10 shall be borne equally between the Concessionaire and LLA save in the case of Clauses 10.5.4 and 10.11.4 where the costs shall be borne by the person requesting the Revised Special Force Majeure Event Projection or Revised Discriminatory Event Projection as the case may be.

11. **CUSTOMER SATISFACTION**

11.1 The Concessionaire shall conduct satisfaction surveys of Airline Users, passengers, customers and other consumers of Airport Services no less than once during each Concession Year (or as otherwise agreed by LLA) in respect of such aspects of the Airport Services as shall be reasonable in the circumstances (which may include separate surveys of different aspects of satisfaction amongst different categories of Airline Users, passengers, customers and other consumers of Airport Services such as passenger (or freight) handling agencies and visitors to the Airport). The Concessionaire may elect to use a firm or firms of independent market researchers for such purpose, in which case it shall obtain the prior approval of LLA to such firm (such approval not to be unreasonably withheld or delayed). The Concessionaire shall consult LLA (and have due regard to any representations made by LLA) on the form or manner of such surveys (including their timing) which shall be designed to ensure, so far as reasonably practicable, that the results of surveys are typical of customer and user satisfaction for the relevant time of year and are not materially affected by any improvement or deterioration of a temporary nature in the quality of Airport Services provided at the time. The Concessionaire shall provide copies of the results of such surveys in relation to such aspects to LLA as soon as reasonably practicable.

11.2 LLA shall be entitled to verify that such surveys have been conducted in the form and manner so requested and the Concessionaire shall provide such information as LLA may reasonably so request

for such purposes. In the event that any such verification exercise reveals that the Concessionaire has not complied in any material respect with the requirements of Clause 11.1, LLA may require the surveys to be carried out again at the Concessionaire's cost.

- 11.3 The Concessionaire shall use all reasonable endeavours to secure an improvement during the Concession Period in the overall level of satisfaction of Airline Users, passengers, customers and other consumers of Airport Services with the Airport Services.
- 11.4 If a survey conducted under Clause 11.1 indicates that the level of satisfaction in respect of any particular aspect of the Airport Services requested to be surveyed by LLA has deteriorated below the level indicated by any previous survey conducted under Clause 11.1 to any material extent, the Concessionaire shall, if so requested by LLA, submit to LLA proposals which, in the Concessionaire's opinion, (and having regard to matters which are within the reasonable control of the Concessionaire, the cost and practicalities of implementation and, in particular, potentially conflicting customer requirements as between different airline business sectors) are reasonable steps to remedy the deterioration as soon as reasonably practicable. The proposals shall indicate proposed timescales for implementation and the estimated cost (if any) of implementation and the logistics associated with implementation. Such proposals shall be submitted within three months of the date of receipt of any such request from LLA.
- 11.5 If LLA does not consider that such proposals are reasonable steps to remedy the deterioration, the parties shall in good faith use reasonable endeavours to agree revised proposals within two weeks, following which the dispute may be resolved by Fast Track Reference. Following agreement or determination of such proposals in accordance with the Fast Track Reference, the Concessionaire shall use all reasonable endeavours to remedy such deterioration in accordance with such proposals as agreed or determined. No agreement or determination under Clause 11 shall oblige the Concessionaire to implement its Development Strategy or carry out the development works contemplated therein, or make changes to its prices or pricing policy.

12. CONCESSION FEE BONDS

- 12.1 The Concessionaire shall use reasonable endeavours to maintain the continuing validity and effectiveness of the Concession Fee Bond initially provided to LLA under Clause 2.3.1(c) and each subsequent Concession Fee Bond provided to LLA under this Clause 12.
- 12.2 Subject to Clause 12.4, the Concessionaire shall not be required to provide a further Concession Fee Bond in accordance with Clause 12.3 where the Concessionaire properly certifies that in respect of any Calculation Date on or after 30 June 2003 for the previous three 12 month periods the Minimum Banking Ratio was achieved.
- 12.3 Subject as provided in Clause 12.2, the Concessionaire shall ensure that LLA receives no less than seven days (or such shorter period as LLA may agree) before the expiry of a Concession Fee Bond a further Concession Fee Bond substantially in the form of the Concession Fee Bond replaced or in a form reasonably acceptable to LLA and coming into effect on the expiry of the Concession Fee Bond it replaces, duly executed and delivered by a Qualifying Issuer in a sum equal to £5,000,000 (Index Linked).
- 12.4 If the Concessionaire is no longer providing a Concession Fee Bond hereunder, in accordance with Clause 12.2, but the Business Plan delivered to LLA for a Concession Year shows that the Minimum Banking Ratio for any two consecutive Calculation Periods within the two Calculation

Periods occurring immediately prior to the Calculation Date and the two Calculation Periods occurring immediately after the Calculation Date, the Minimum Banking Ratio is not achieved the Concessionaire shall within 21 days of delivery of the Business Plan provide a Concession Fee Bond (in the form contemplated by Clause 12.3) duly executed and delivered by a Qualifying Issuer in an amount equal to £5,000,000 (Index Linked).

- 12.5 If a Step-In Period under the Funders' Direct Agreement (or any equivalent period under any similar direct agreement with a Funder) comes to an end (except as contemplated by Clause 36.1), the Concessionaire shall within 21 days provide a Concession Fee Bond (in the form contemplated by Clause 12.3) duly executed and delivered by a Qualifying Issuer in an amount equal to £5,000,000 (Index Linked), and any existing Concession Fee Bond shall be released.

13. **MONITORING**

13.1 **Maintenance of Records**

- 13.1.1 The Concessionaire and the Guarantor shall maintain accurate, up-to-date and complete financial records in accordance with the requirements set out in Part 1 of Schedule 5, as such requirements may reasonably (but not retrospectively) be amended from time to time by LLA in order to take account of changed circumstances.
- 13.1.2 The Concessionaire shall maintain accurate, up-to-date and complete records relating to the operation and maintenance of assets which it owns or operates in accordance with the requirements set out in Part 2 of Schedule 5, as such requirements may reasonably (but not retrospectively) be amended from time to time by LLA in order to take account of changed circumstances.
- 13.1.3 The Concessionaire shall maintain accurate, up-to-date and complete records relating to the operational performance of the Airport in accordance with the requirements set out in Part 3 of Schedule 5, as such requirements may reasonably (but not retrospectively) be amended from time to time by LLA in order to take account of changed circumstances.
- 13.1.4 The Concessionaire shall make available and, if reasonably requested by LLA, provide copies of, on reasonable notice by LLA and at reasonable times, the records referred to in Clauses 13.1.1, 13.1.2 and 13.1.3 for inspection by LLA. LLA shall be entitled to appoint one or more authorised representatives to check and take copies of any such records (subject to the provisions of Clause 34). The Concessionaire shall provide LLA with such further information, explanations and other assistance as may be reasonably required by LLA or any of its authorised representatives for the purpose of checking any of such records.
- 13.1.5 All records required to be maintained in accordance with this Clause 13.1 shall be held for a period of six years from the date of creation of the relevant records or until twelve months after the expiry or earlier termination of the Concession Period, whichever is the earlier, provided that the Concessionaire shall notify LLA before any such disposal and provide LLA with the opportunity to take such delivery of such records.

13.2 Provision of Accounts

- 13.2.1 The Guarantor and the Concessionaire shall deliver to LLA as soon as they are available but no later than four months after the end of each of their respective accounting reference periods, beginning with the first accounting reference period which ends within the Concession Period, copies of the annual report and audited accounts consolidated for the London Luton Airport Group and individual for the Concessionaire and (if applicable) for any other member of the London Luton Airport Group as at the end of and for that accounting reference period, together with copies of all related directors' and auditors' reports.
- 13.2.2 Each set of accounts delivered under Clause 13.2.1 shall, save as stated in the notes thereto, be prepared and audited in accordance with accounting principles and auditing standards and practices generally accepted in the United Kingdom and consistently applied and in accordance with all applicable Laws and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and profits for the period covered by such accounts.
- 13.2.3 The Concessionaire shall in addition deliver to LLA unaudited management accounts for each Reporting Period in the Agreed Form or in a form to be specified by the Concessionaire and approved by LLA (such approval not to be unreasonably withheld or delayed), within two months of the end of each Reporting Period. Each set of accounts shall be prepared consistently in accordance with the Concessionaire's normal accounting policies, details of which shall be supplied, on request, to LLA and any changes to which should be notified to LLA on submission of such accounts.

13.3 Other Reports

- 13.3.1 Each Business Plan shall be prepared substantially in the agreed form or as may be varied as a consequence of any Change in Law, changes to mandatory or advisory accounting standards applicable to the Concessionaire and the adoption of new accounting policies by the Concessionaire.
- 13.3.2 The Concessionaire shall deliver to LLA not later than 90 days before the beginning of each Concession Year a first draft of the Business Plan for that Concession Year, and a final draft not later than 30 days before the beginning of such Concession Year.
- 13.3.3 The Concessionaire shall deliver to LLA with each draft Business Plan prepared pursuant to Clause 13.3.1 above a review of the Scope Book (if applicable) and the Development Strategy.
- 13.3.4 The Concessionaire shall deliver to LLA with each set of audited accounts referred to in Clause 13.2.1 and each set of unaudited accounts prepared in respect of each Reporting Period pursuant to Clause 13.2.3 a Monitoring Report (Business) in respect of the period to which each such set of accounts relates.

- 13.3.5 If so required by LLA, the Concessionaire shall deliver to LLA a Daily Movement Record and such further information (or analysis thereof) as may be required by the CAA or LLA in order to enable the Council to prepare a Monitoring Report (Noise) as soon as reasonably practicable following the end of each calendar year during the Concession Period. The Concessionaire shall pay to LLA (or reimburse LLA in respect of) any reasonable costs incurred by LLA for the purpose of producing each such Monitoring Report (Noise).

13.4 **Provision of Registered Details**

- 13.4.1 The Concessionaire and the Guarantor shall inform LLA on or before the Commencement Date of the following information relating to the Concessionaire and the Guarantor respectively and, subsequently, of any change thereto within 21 days of the occurrence of any such change:

- (a) name;
- (b) business address and registered office;
- (c) directors and company secretary;
- (d) auditors;
- (e) trading name or names; and

to the best of the Concessionaire's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement directly or indirectly, the right to cast more than three per cent of the votes capable of being cast on a poll at general meetings of the Concessionaire.

- 13.4.2 The Concessionaire and the Guarantor shall each in addition provide to LLA on or before the Commencement Date a certified copy of its memorandum and articles of association and, subsequently, at the same time as the relevant issue or delivery (or, if effected by another person, as soon as practicable thereafter), a copy of:

- (a) each material or significant circular, notice of meeting or similar document issued to its shareholders or debentureholders (save to the extent it contains confidential material or information or commentary relating to any dispute with LLA or the Council) including (if the Relevant Person becomes listed on a stock exchange) any circular required to be delivered to its shareholders or debentureholders pursuant to the rules of that stock exchange;
- (b) any document which is delivered to the Registrar of Companies in England and Wales relating to, information provided by the Concessionaire, the Guarantor or a Relevant Person in accordance with Clauses 13.4.1 and 13.4.3(a) or any notice required to be delivered by the Concessionaire, the Guarantor or a Relevant Person or served upon the Concessionaire concerning the occurrence of any of the events referred to in Clauses 18.1.1, 18.1.4 or 18.1.5 together with any resolution which amends the memorandum and/or articles of association of the Concessionaire, the Guarantor or the Relevant Person and each annual return;

- (c) a copy of any material document delivered to any Regulatory Authority, pursuant to any request made by that Regulatory Authority, which is required to be delivered to maintain any Material Licence or as a result of any non-compliance with any Material Licence (including any Daily Movement Record required to be supplied to the CAA).

13.5 Changes in Business

The Concessionaire shall inform LLA of any material change or proposed material change in the Airport Business, as soon as reasonably practicable prior to (or, if it is not reasonably practicable prior to, as soon as reasonably practicable after the occurrence of) any such change, (including the termination of any Key Contracts, any litigation or other dispute which may have a material effect on the Airport Business and any material change in or restructuring of the capitalisation or financing of the Concessionaire).

13.6 Further Information

The Concessionaire shall deliver, or procure the delivery of, such other information, records or documents relating to, or connected with, the operation of the Airport Services to LLA, and within such period, as LLA may in each case reasonably require from time to time (subject to Clause 23).

13.7 Rights of Audit and Inspection

13.7.1 LLA and its representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the Concessionaire in order to check or audit any information supplied to LLA under this Concession Agreement or to monitor compliance with the Concessionaire's obligations under this Concession Agreement. The Concessionaire shall make available to LLA and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith. If any such exercise reveals that information previously supplied to LLA was in any material respect inaccurate on the basis of information available to the Concessionaire at the time, the reasonable costs of any such exercise shall be borne by the Concessionaire.

13.7.2 LLA and its representatives shall also be permitted to inspect at any reasonable time any part of the Property Let or any of the Tangible Concession Assets in order to monitor compliance with the Concessionaire's obligations under Clauses 8 and 27 of this Concession Agreement, for which purpose the Concessionaire shall grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith, provided that such persons shall not interfere with the performance of the relevant works or give any instruction in relation thereto or interfere with the carrying on of the Airport Services. If any such exercise reveals that the Concessionaire has not complied in any material respect with its obligations under any of Clauses 8 or 27, the reasonable costs of any such inspection shall be borne by the Concessionaire.

13.8 Performance Reviews

The Concessionaire shall on a four monthly basis and so as to coincide with meetings of the Airport Forum attend meetings with LLA or its representatives for the purpose of enabling LLA to conduct

periodic reviews of the financial and operational performance of the Concessionaire and the performance of its obligations under this Concession Agreement. The persons attending such meetings on behalf of the Concessionaire shall be of appropriate seniority and responsibility and shall include such Senior Management Staff of the Concessionaire as LLA may reasonably require. If requested to do so on reasonable notice by LLA, the Concessionaire shall prepare and present reports at such meetings in respect of such aspects of its performance as LLA may reasonably request.

13.9 Airport Forum

The Airport Forum will be established to provide an opportunity for senior representatives of the Concessionaire, LLA and the Council to discuss and consider key areas of the Airport Business that are of significant relevance to LLA and the Council.

The initial terms of reference of the Airport Forum are set out in Schedule 17.

13.10 Access to Management

LLA shall be entitled to reasonable access from time to time to the Senior Management Staff of the Airport Business at reasonable times and following reasonable notice to the person(s) concerned.

13.11 Consultative Committee

The Concessionaire shall continue to provide such facilities as are provided by LLA as at the date of this Concession Agreement in compliance with section 35 of the Civil Aviation Act and the guidelines issued by the Secretary of State for Transport on 1 March 1988 (as from time to time amended, supplemented or replaced) including, in particular:

- 13.11.1 paying the reasonable expenses of any independent chairman from time to time of any Consultative Committee;
- 13.11.2 providing appropriate facilities for quarterly meetings of any Consultative Committee;
- 13.11.3 procuring attendance at such quarterly meetings by appropriate directors and/or Senior Management Staff of the Concessionaire, to the extent reasonably required.

13.12 Disputes

The Concessionaire shall notify LLA of any material dispute (excluding for the avoidance of doubt routine litigation relating to claims not exceeding £50,000 (Index Linked) for each individual claim unless the aggregate of such individual claims exceeds £250,000 (Index Linked) in any one Concession Year conducted in the ordinary course of business) to which it is a party which has been submitted for resolution either to the courts or to any other procedure for dispute resolution. Such notification shall be made at the time of such submission (including reasonable details of the nature of the dispute) and (in any case) at the time of the resolution of the dispute (whether or not subject to appeal) (including reasonable details of the result of the dispute, any associated award and whether it is subject to appeal). The Concessionaire shall provide such further details of any such dispute as LLA may reasonably request from time to time.

13.13 Environmental Investigation

- 13.13.1 The Concessionaire shall (at its own cost) within each of the fifth and fifteenth Concession Years (and thereafter as provided in Clause 13.3.2) within the Concession Period undertake an environmental investigation of the Airport Site and certain remedial works arising therefrom in accordance with the requirements of this Clause 13.13.
- 13.13.2 As soon as reasonably practicable after the fifth and fifteenth anniversaries of the Commencement Date and the last day of each ten year period after such fifteenth anniversary and (if applicable) the date five years prior to the expiry of the Concession Period (by effluxion of time) (provided that such requirement shall not be closer than five years), the Concessionaire shall appoint an environmental consultant (the "**Environmental Consultant**") who shall prepare with the Concessionaire (and in consultation with LLA) the proposed terms of reference (including the services to be provided) and scope of the environmental investigation and once prepared the Concessionaire shall deliver a copy thereof to LLA.
- 13.13.3 The terms of the reference (including the services to be provided) and the scope of the environmental investigation shall:
- (a) in the case of the environmental investigation for the fifth Concession Year comprise only the checking and reporting upon the environmental monitoring systems of the Concessionaire; and
 - (b) in the case of the other environmental investigations:
 - (i) identify those parts of the Concession's activities at the Airport which could have an adverse impact on the Environment and evaluate the resulting impact on the Environment resulting from such activities;
 - (ii) adverse impacts shall be ascertained by reference to breach of Environmental Laws;
 - (iii) include investigation of areas or activities of tenants, concessionaires or licencees where the Concessionaire has a right to do so, or enforce any similar right against the foregoing person to investigate;

- (iv) exclude activities unlikely to have a significant impact on the Environment;
- (v) identify the impact on the Environment using the results of the following information and data produced by the Airport Company (if any):
 - (1) EMS Audits;
 - (2) EMS Management Audits;
 - (3) specific and relevant Environmental Agreement work;
 - (4) established environmental monitoring programme; and
 - (5) any ad-hoc physical surveys;
 and have regard to other matters considered to be appropriate,
- (vi) provide that significant Environmental impact will be investigated and evaluated by the most appropriate methods available at the time and against them current specifications and standards; and
- (vii) ensure the scope and terms of reference are such that the cost of the environmental investigation in the fifth Concession Year shall be approximately £50,000 (Index Linked) and for the other environmental investigations shall be approximately £100,000 (Index Linked), provided that LLA may elect to pay for costs in excess of such amounts;
- (viii) identify whether any significant adverse Environmental impact, or the cause thereof, pre-dates the Commencement Date ;
- (ix) require a report in reasonable detail upon his findings.

13.13.4 Within 14 days of receipt of the proposed terms of reference and scope LLA shall notify the Concessionaire that it either:

- (a) accepts the proposed terms of reference and scope; or
- (b) it does not accept the proposed terms of reference and scope.

13.13.5 If Clause 13.13.4(a) applies, or LLA fails to notify in accordance with Clause 13.13.4 within the period of 14 days referred to, then the Concessionaire shall proceed with the environmental investigation on the terms of reference and for the scope proposed by the Concessionaire.

13.13.6 Where Clause 13.13.4(b) applies the dispute shall be referred to an independent environmental consultant the identity of whom shall be agreed by LLA and the Concessionaire and in default of agreement within 3 Business Days shall be appointed by the Environmental Auditors Registration Association, who shall determine the dispute on the criteria contained in Clause 13.13.3 by Fast Track Reference.

13.13.7 Following determination of the terms of reference and scope of the environmental investigation in accordance with Clause 13.13.6, the Concessionaire shall proceed with the

environmental investigation in accordance with the determined terms of reference and scope.

13.13.8 The Concessionaire shall copy to LLA the report of its environmental consultant, Provided that such report shall be treated as confidential information.

13.13.9 The Concessionaire (at its own cost) shall take reasonable steps to prevent or remedy the effect of any significant adverse impact on the Environment which the environmental consultant demonstrates in his report has been caused by the Concessionaire and which the environmental consultant reasonably recommends must be remedied in order to comply materially with applicable Laws, provided that, for the avoidance of doubt, this shall not extend to carrying out works of remediation within areas held or occupied by tenants or licensees of the Airport Site or to works of remediation in respect of any adverse Environmental impact existing or caused prior to the Commencement Date.

14. **INSURANCE**

14.1 The Concessionaire shall on or before the Commencement Date, at its own cost take out the insurance required by Schedule 9 and thereafter subject as otherwise may be required in Schedule 9 maintain such insurances throughout the Concession Period.

14.2 The Concessionaire shall promptly after the same become available provide LLA with, at the option of LLA, copies of the policies entered into by it or a certificate from the insurers or insurance brokers that the insurance required by Schedule 9 is in place, which policies or certificate shall conform to the provisions of Schedule 9. If such certificates or policies do not conform (and LLA so notifies the Concessionaire, giving reasonable details of the failure to conform), the Concessionaire shall, at its own cost, ensure that such certificates (and, if necessary, the policies) are amended appropriately as soon as reasonably practicable.

14.3 Neither LLA nor the Council shall do (or omit to do) anything whereby any insurance taken out under Schedule 9 may be rendered void or voidable or suspended, impaired or defeated in whole or in part.

14.4 Neither LLA nor the Council shall make any claim under any policy effect pursuant to Schedule 9 without the consent of the Concessionaire (such consent not to be unreasonably withheld or delayed).

15. **PENSIONS**

The Council, LLA and the Concessionaire agree that Schedule 10 shall have effect, and LLA and the Concessionaire shall comply with their respective obligations set out in Schedule 10 and in the Pensions Deed.

PART 3 - FINANCIAL PROVISIONS

16. CONCESSION FEE

16.1 Concession Fee

16.1.1 Schedule 4 shall have effect for the purpose of determining the Calculated Concession Fee. The Rent (so defined in the Property Lease) payable from time to time under the Property Lease shall be the Concession Fee from and including the Commencement Date until the end of the Concession Period, subject to the provisions in this Concession Agreement.

16.1.2 The Concession Fee shall be reduced on each Concession Fee Payment Date set out in column one, by the amounts set out opposite that date below:-

Concession Fee Payment Date	Amount
14 th October 1998	£700,000
14 th January 1999	£700,000
14 th April 1999	£700,000
14 th July 1999	£700,000
10 th October 1999	£37,000
Each Concession Fee Payment Date in 2000	£37,000
14 th January 2001	£37,000
14 th April 2001	£37,000
14 th July 2001	£37,000

16.1.3 If on any Concession Fee Payment Date referred to in Clause 16.1.2, the reduction therein provided is greater than the amount of the Concession Fee payable on such date, LLA and the Council shall pay the amount of the difference to the Concessionaire as a contribution to the capital costs of the Concessionaire.

16.2 VAT

16.2.1 The consideration for any supply made by LLA is exclusive of any VAT which is or becomes chargeable on such supply and if any sum is or becomes so payable then the Concessionaire shall, against delivery of an appropriate VAT invoice, pay the same to LLA.

16.2.2 Where pursuant to this Concession Agreement a sum is to be paid to LLA in respect of any costs, fees or expenses incurred by LLA, the Concessionaire shall, in addition to such amounts, pay to LLA such amount as equals the VAT incurred by LLA in respect of such costs, fees or expenses which LLA certifies that it is unable to recover (whether by cash, reclaim, credit or set off against output tax) from HM Customs & Excise having used all reasonable endeavours to do so.

Provided that, for the avoidance of doubt, any VAT in respect of the Concession Fee shall be paid pursuant to the Property Lease and not this Clause 16.2.

PART 4 - TERM AND TERMINATION

17. CONCESSION TERM AND EXPIRY

- 17.1 This Concession Agreement shall terminate on the expiry of the Concession Period.
- 17.2 Subject to Clause 17.3, LLA shall be entitled to terminate this Concession Agreement by giving not less than 12 months and no more than 18 months written notice to the Concessionaire so as to expire on the day after the expiry of the 16th Concession Year after the Commencement Date. Any such notice shall be irrevocable by LLA.
- 17.3 If LLA exercises the right of termination set out in Clause 17.2, the Council and LLA shall pay to the Concessionaire the Termination Payment calculated pursuant to Part 2 of Schedule 14. If such Termination Payment has not been paid in full, in accordance with the provisions of this Concession Agreement, then the termination by LLA pursuant to Clause 17.2 shall not take effect until such Termination Payment has been paid in full. If, by a date one month after the date such Termination Payment is due, such Termination Payment has not been paid in full the Concessionaire may, by notice to LLA and the Council, cancel such termination, in which the Concession Period shall continue and any right of LLA under Clause 17.2 shall cease and determine.

18. CONCESSIONAIRE EVENTS OF DEFAULT

The following are "**Concessionaire Events of Default**":

18.1 Insolvency

- 18.1.1 Administration: Any petition being presented for the administration of the Concessionaire or Guarantor under Part II of the Insolvency Act 1986;
- 18.1.2 Insolvency: The Concessionaire or Guarantor stopping or suspending or threatening to stop or suspend payment of all or a material part of (or a particular type of) its debts, if it is proved to the satisfaction of the court that the Concessionaire or Guarantor is unable to pay its debts as they fall due or if the Concessionaire or Guarantor admits inability to pay its debts as they fall due.
- 18.1.3 Arrangements with Creditors: The directors of the Concessionaire or Guarantor making any proposal under section 1 of the Insolvency Act 1986, or the Concessionaire or Guarantor proposing or making a general assignment or an arrangement or composition (excluding any arrangement or composition involving the re-scheduling of debt under the Initial Facility Documents and or any other Funding Agreements) with or for the benefit of all of its creditors or in respect of all (or a particular class) of its unsubordinated debts, or a moratorium being agreed or declared in respect of or affecting all or a material part of (or all of a particular class of) its unsubordinated debts;

- 18.1.4 Security Enforceable: Any distress, execution or other similar process being levied or sued out against the whole or a substantial part of the assets or undertaking of the Concessionaire or Guarantor or the appointment of a receiver, administrative receiver, manager or similar person to enforce security over the whole or a substantial part of the assets or undertaking of the Concessionaire or Guarantor;
- 18.1.5 Stopping Business/Winding-Up: Any resolution being passed by the Concessionaire or Guarantor with a view to its winding-up or any person presenting a winding-up petition in respect of the Concessionaire, or the Concessionaire ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by LLA (such approval not to be unreasonably withheld or delayed) before that step is taken,

unless, in the case of paragraphs 18.1.1, 18.1.4 and 18.1.5, the relevant petition, proceeding or other step is being or is promptly to be actively contested in good faith by the Concessionaire or the Guarantor with recourse to all appropriate resources and procedures or is otherwise discharged or removed within 21 days.

18.2 Revocation of Licence(s)

Revocation of any Material Licence held by the Concessionaire (except where such revocation is caused by a default or negligent act of LLA or the Council) which the Concessionaire is required to hold in order to comply with its obligations under this Concession Agreement and in any such case the Material Licence is not replaced or reissued (including to a contractor of the Concessionaire) within 90 days.

18.3 Performance Bonds

Any Concession Fee Bond ceasing to be (or any relevant Qualifying Issuer alleging that any Concession Fee Bond is not or has ceased to be) a legal, valid and binding obligation of the relevant Qualifying Issuer (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for the relevant Qualifying Issuer to perform its obligations thereunder, or the relevant Qualifying Issuer ceasing to be a Qualifying Issuer and in any such case the relevant Concession Fee Bond is not replaced (subject to Clause 12.3) to the same effect within 60 days.

18.4 Final Completion Date

The Concessionaire fails to procure the issue of a valid Certificate of Substantial Completion in accordance with Clause 8.22 by the Final Completion Date as may be extended pursuant to Clause 8.8.

18.5 Breach of Other Obligations

The Concessionaire or the Guarantor being in material breach of this Concession Agreement (including any material breach of the Concessionaire's warranties in Clause 3.1) or any other Concession Document (other than such breach as may constitute a Concessionaire Event of Default under Clauses 18.1 to 18.4 or 18.6) (any provided that any delay in the Concessionaire Works or any other Development Strategy Works shall not constitute a material breach) and, after a written notice from LLA specifying such breach permitting the breach to continue and, if the breach is

capable of remedy, failing to remedy such breach within 90 days or such longer period as may be reasonable.

18.6 Non-payment

The Concessionaire fails to pay any sum due to LLA under any Concession Document within 60 days of the due date.

19. CONSEQUENCES OF CONCESSIONAIRE EVENT OF DEFAULT

19.1 Notification of Concessionaire Event of Default

The Concessionaire shall notify LLA as soon as reasonably practicable on, and, in any event, within 2 Business Days of, it becoming aware of the occurrence of a Concessionaire Event of Default or an event which is reasonably likely to result in the occurrence of a Concessionaire Event of Default. The Concessionaire shall take such action or steps as LLA may reasonably require for any Concessionaire Event of Default to be remedied as a condition of waiver.

19.2 Termination

LLA shall be entitled following the occurrence of a Concessionaire Event of Default to terminate this Concession Agreement forthwith on written notice, Provided that prior to giving such notice LLA shall notify the Concessionaire of its intention to serve such notice, and LLA and the Council and the Concessionaire shall consult for a period which is reasonable in the circumstances of the nature of the Concessionaire Event of Default and the likelihood of remedy of the Concessionaire Event of Default (being a period of no longer than thirty days) with a view to avoiding the need for termination of this Concession Agreement. Provided that consultation shall not be required to the extent it would prevent "step-in" by LLA under the EPC Direct Agreement.

19.3 Damages

If LLA terminates this Concession Agreement in accordance with Clause 19.2, LLA shall be entitled to make demand under the Concession Fee Bond in respect of any Concession Fee due but unpaid hereunder in respect of the period up to the Termination Date and neither LLA nor the Council shall have any further recourse to or remedy against the Concessionaire or the Guarantor (including damages, costs or expenses).

20. TERMINATION BY CONCESSIONAIRE

20.1 The following are "Concessionaire Termination Events":

20.1.1 **Material Breach:** LLA or the Council is in material breach of this Concession Agreement or any other Concession Document and, after written notice from the Concessionaire specifying such breach permitting the breach to continue and, if the breach is capable of remedy, failing to remedy such breach within 90 days or such longer period as may be reasonable.

20.1.2 **Material Breach of Warranty:** LLA or the Council is in material breach of any of its warranties under this Concession Agreement, unless:

- (a) within 14 days of such material breach being notified to LLA or the Council, LLA or the Council has agreed that there is a material breach of warranty and has made an application for a determination by Expert Determination as to the likely quantum of damages LLA would be liable for as a consequence of the material breach of warranty (ignoring any cap on liability) on account of and without prejudice to final determination of the quantum of damages; and
- (b) such determination of the likely quantum of damages is received by the parties within 28 days of LLA or the Council being notified of the material breach; and
- (c) LLA or the Council pay to the Concessionaire in cleared funds the full amount of the damages determined by Expert Determination plus all costs of the Concessionaire; and
- (d) LLA and the Council agree to pay to the Concessionaire the full amount of the Warranty Loss as finally determined by the Courts (ignoring any cap on liability in Clause 3.6.3 of this Concession Agreement) less the amount paid pursuant to paragraph (c) above (exclusive of costs).

For this purpose, a breach of warranty which gives rise to a Warranty Loss (exclusive of costs) in excess of any cap on liability in this Concession Agreement shall be deemed to be material.

- 20.1.3 Council Discriminatory Event: the occurrence of any Council Discriminatory Event unless any resulting Discriminatory Loss is fully compensated by effective reduction in the Concession Fee during the Concession Period, disregarding any extensions thereto.
 - 20.1.4 Council Expropriation Event: the occurrence of any Council Expropriation Event.
 - 20.1.5 Other Expropriation Event: the occurrence of any Expropriation Event other than a Council Expropriation Event.
 - 20.1.6 Incapacity Event: the occurrence of an Incapacity Event.
- 20.2 The Concessionaire shall be entitled following the occurrence of a Concessionaire Termination Event to terminate (or if the Concession Agreement is void, invalid or has been taken from the Concessionaire pursuant to any Concessionaire Termination Event treat as terminated) this Concession Agreement forthwith on written notice, provided that prior to giving such notice, the Concessionaire shall notify LLA and the Council of its intention to serve such notice, and LLA and the Council and the Concessionaire shall consult for a period which is reasonable in the circumstances of the nature of the Concessionaire Termination Event and the likelihood of the remedy of the Concessionaire Termination Event being a period of no longer than thirty days with a view to avoiding the need for termination of this Concession Agreement.

- 20.3 If the Concessionaire terminates (or treats as terminated) this Concession Agreement in accordance with Clause 20.2 for any of the Concessionaire Termination Events indicated below LLA and the Council jointly and severally agree to pay to the Concessionaire the Termination Payments in accordance with Part 10 and the relevant Part of Schedule 14 to this Agreement as follows:

Concessionaire Termination Event		Termination Payment
Clause 20.1.1	Material Breach	Part 3, Schedule 14
Clause 20.1.2	Material Breach of Warranty	Part 3, Schedule 14
Clause 20.1.3	Council Discriminatory Event	Part 4, Schedule 14
Clause 20.1.4	Council Expropriation Event	Part 4, Schedule 14
Clause 20.1.5	Expropriation Event other than a Council Expropriation Event	Part 5, Schedule 14
Clause 20.1.6	Incapacity Event	Part 6A, Schedule 14

- 20.4 If the Concessionaire terminates or treats as terminated this Concession Agreement in accordance with Clause 20.3 for the Concessionaire Termination Event in Clause 20.1.6 then the Council may transfer the Council Shares to the Concessionaire (which transfer the Concessionaire shall accept) for the consideration set out in and in accordance with Part 6B of Schedule 14 to this Concession Agreement, in full and final settlement of the Council's obligation in respect of the Termination Payment (other than the Termination Amount) and any damages for breach of the warranties in paragraphs 1 or 7 of Schedule 12, due to the Concessionaire in accordance with Clause 20.3 and Part 6A of Schedule 14 on condition that:

- 20.4.1 the Court which finally determines the occurrence of the Incapacity Event also finally determines that the provisions contained in Part 6B of Schedule 4 are within the powers and authority of the Council or are otherwise fully enforceable by the Concessionaire notwithstanding the Incapacity Event; and
- 20.4.2 the option to transfer the Council Shares is exercised by the Council by written notice to the Concessionaire given within 14 days of the Concessionaire Termination Event occurring; and
- 20.4.3 the Incapacity Event will not affect, nor will any similar event or circumstances affect, the Concessionaire or the carrying on of the Airport Services after the transfer of Council Shares to the Concessionaire.

- 20.5 If the Concessionaire terminates the Concession Agreement in accordance with Clause 20.3 for a material breach of the warranties in paragraphs 1 or 7 of Schedule 12 and such circumstances constitute an Incapacity Event then Clause 20.4 shall apply.

- 20.6 If Clause 20.4 applies, and the conditions set out in Clauses 20.4.1, 20.4.2 and 20.4.3 are not satisfied, then the Termination Payment shall be paid to the Concessionaire in accordance with Clause 20.3.

21. **CONSEQUENCES OF TERMINATION**

Upon termination of this Concession Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties hereunder shall cease and other than for Termination Payments or as may be expressly provided in this Concession Agreement no party shall be entitled to any recourse against any other party (including damages, costs or expenses).

PART 5 - OBLIGATIONS

22. MAINTENANCE OF CONCESSION

22.1 Retendering of Concession

The Concessionaire acknowledges that LLA may wish, at or before the expiry or termination of the Concession Period, to invite persons (who may, except in consequence of termination pursuant to Clause 19.2, include the Concessionaire) to tender for the right to provide all or some of the Airport Services under an agreement which is similar to this Concession Agreement. The Concessionaire accordingly accepts and agrees to the restrictions and obligations imposed on it under this Part 5 of this Concession Agreement.

22.2 Maintenance as Going Concern

22.2.1 The Concessionaire shall maintain and manage the Airport Business with the intent that LLA or a Successor Operator would be able to take over the operation and management of the Airport at any time. The Concessionaire shall use all reasonable endeavours to secure that LLA or such Successor Operator would have immediate access to all Concession Employees and all assets of the Airport within the Concessionaire's control for such purpose at such time.

22.2.2 The Concessionaire shall conduct the Airport Business on the basis that, to the extent possible and practicable, the Airport Business may be transferred, in the manner contemplated under this Concession Agreement, as a going concern at the end of the Concession Period to, and continued immediately thereafter by, LLA or a Successor Operator. The Concessionaire shall accordingly use all reasonable endeavours to ensure that the Airport Business has an appropriate number of employees (having sufficient skills, qualifications and experience) at the time of transfer to LLA or any Successor Operator following the expiry or termination of the Concession Period, Provided that the Concessionaire shall not be obliged to offer inducements to agree to any transfer to LLA or any Successor Operator or to remain up to the time of such transfer.

22.2.3 Without prejudice to its obligations under Clause 7 of this Concession Agreement, the Concessionaire shall ensure that:

- (a) throughout the Concession Period, if the Concessionaire is operating a separate business distinct from the Airport Business and unrelated to the Airport Business (not including therefore the provisions of Groundhandling Services) the Airport Business shall be the primary business managed by the Senior Management Staff; and
- (b) separate records and accounts for the Airport Business and any such other such business are maintained.

- 22.2.4 The Concessionaire shall ensure that all consents, licences and approvals, given or received, and all agreements and arrangements entered into by the Concessionaire in relation to the Property Let and/or with any occupational lessee or sub-lessee occupying under a lease granted out of the Property Lease or, if granted, the Amenity Land Lease shall be properly documented and retained.

22.3 Handover Packages

- 22.3.1 For the purposes of facilitating the transfer of assets in accordance with Schedule 16 to LLA or any Successor Operator on the expiry or termination of the Concession Period, the Concessionaire shall maintain and regularly update two packages, each of which shall contain the information and objects set out in Schedule 8 and such other information and objects as LLA may reasonably specify from time to time as being reasonably necessary to facilitate the transfer of assets in accordance with Schedule 16 to LLA or any Successor Operator.
- 22.3.2 The Concessionaire shall ensure that LLA or any Successor Operator will have access to such packages referred to in Clause 22.3.1 on the expiry of the Concession Period and shall accordingly notify LLA from time to time of the locations of such packages at the Airport.
- 22.3.3 If so requested by LLA (but no more than once in each Concession Year save where there is a reasonable prospect of termination of this Concession Agreement prior to the end of the Concession Year), LLA may inspect the packages maintained by the Concessionaire pursuant to Clause 22.3.1 to ensure they contain the information and objects required thereunder.

22.4 Preparation for Retendering

- 22.4.1 The Concessionaire, if and to the extent so reasonably requested by LLA, shall provide LLA and its authorised representatives with reasonable access to the assets of the Airport from time to time and Concession Employees and the books, records and other material kept by or on behalf of the Concessionaire (with the exception of such books, records and other material relating to employees of sub-contractors or delegates of the Airport Services where to do so would breach any duty owed by or to the sub-contractors or delegates, the Concessionaire having used all reasonable endeavours where permitted by Law to exclude such duty) in connection with the Airport Business for the purpose of such representatives preparing any reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to provide or operate all or any of the Airport Services.
- 22.4.2 The Concessionaire shall make available in the Last Twelve Months of the Concession Period to LLA and its authorised representatives such information as LLA shall reasonably require in connection with such preparation for tendering provided that LLA and its representatives shall not be entitled in any way to interfere with or prejudice the carrying on of the Airport Business and the provision of Airport Services by the exercise of any rights under Clauses 22.4.1 and 22.4.2.

22.5 Non-frustration of Transfer

The Concessionaire shall not take any action or steps which is or are deliberately designed, directly or indirectly, to materially prejudice, frustrate, avoid or circumvent the transfer as a going concern of the Airport Business at the end of the Concession Period to LLA or a Successor Operator. Subject to such restriction and the other provisions of this Concession Agreement, the Concessionaire shall be entitled to take such action (except in consequence of termination pursuant to Clause 19.2) as may be necessary for the purpose of bidding to become, or becoming, such a Successor Operator.

23. RESTRICTIONS ON ACTIVITIES

23.1 The Concessionaire shall:

23.1.1 procure that, if and for so long as the Relevant Person is not constituted as a public company limited by shares the articles of association or equivalent constitutional documents of that Relevant Person shall provide that Part VI of the Companies Act (Disclosure of Interests in Shares) shall apply as if that Relevant Person was constituted as a public company limited by shares.

23.1.2 procure that the articles of association or equivalent constitutional documents of the Relevant Person contain an absolute prohibition upon the exercise of voting rights in relation to (or the appointment of any director to the board of) the Relevant Person by virtue of any Relevant Interest which is held (or has been transferred to any person) in breach of any of the following conditions:-

- (a) all Relevant Interests in that Relevant Person or any beneficial interest therein being held at any time prior to the issue of a valid Taking Over Certificate otherwise than by the following persons (and/or by persons who are Affiliates of the following persons) and in the following proportions:

Barclays Industrial Investments Limited and/or Barclays Infrastructure Limited
62.5% (in aggregate)

Airport Group International Inc. ("AGI") (including Airport Group Luton Limited as general partner of a limited partnership carrying on business under the name Airport Group Luton Investment Limited Partnership) 25%

Bechtel Limited 10%

others 2.5%

- (b) (unless the Technical Services Agreement is terminated for whatever reason) no Relevant Interests have been transferred such that less than 10% of all the Relevant Interests in that Relevant Person continue to be legally and beneficially owned (either directly or indirectly) by AGI or an Affiliate of AGI up to the 10th anniversary of the Commencement Date or thereafter (unless the Technical Services Agreement is terminated for whatever reason) without the prior consent of LLA (such consent not to be unreasonably withheld or delayed, it being agreed that this right to consent shall apply to only the identity of the prospective transferee and shall not be concerned with whether AGI or its Affiliate can transfer at all);

- (c) prior to the later of the date of issue of a valid Taking Over Certificate and the fifth anniversary of Completion, no Restricted Interest shall be held by a Restricted Person or an Affiliate of a Restricted Person, except that if a Financial Investor holds an interest (directly or indirectly) in a Restricted Person, this condition shall not be breached.
- 23.1.3 procure that for so long as the Relevant Person is not constituted as a public company limited by shares, it maintains a register equivalent to that required to be maintained by a public company pursuant to Part VI of the Companies Act.
- 23.1.4 if at any time the Concessionaire has a reasonable belief, or has notice of a reasonable belief from LLA, that any Restricted Person has acquired any Relevant Interest in any Relevant Person in breach of Clause 23.1.2, use all reasonable endeavours to identify that person and the nature of the Relevant Interest acquired as soon as reasonably practicable thereafter and, upon establishing that any person has acquired any Relevant Interest in that Relevant Person in breach of Clause 23.1.2, procure within 90 days that the voting rights attached to such shares as are attributable to the Relevant Interest in question are not capable of being exercised until the earlier of:
 - (a) the relevant breach of the condition in Clause 23.1.2 has been remedied; and
 - (b) the said condition falls away.

23.2 Other Business Interests

- 23.2.1 No member of the London Luton Airport Group shall, directly or indirectly, without the prior written consent of LLA, carry on any separate business distinct from the Airport Business Provided that the provision of the Groundhandling Services (or any other Airport Services) as a separate business shall not constitute a separate business for this purpose.
- 23.2.2 Except in the case of the business of a Competing Airport Operator or of a Dominant Airline User, such consent referred to in Clause 23.2.1 shall not be unreasonably withheld by LLA unless, in LLA's reasonable opinion:
 - (a) such additional business or activity might prejudice the continuity of the provision of the Airport Services by LLA or a Successor Operator at the end of the Concession Period; or
 - (b) might result in material additional liabilities and obligations being assumed by LLA or such a Successor Operator.
- 23.2.3 LLA, to the extent that it does so consent, may do so on such conditions as LLA reasonably considers appropriate for the purpose of securing the continuity of the provision of the Airport Services at the end of the Concession Period.

23.3 **Other Material Investments**

- 23.3.1 Without prejudice to the generality of Clause 23.2, no member of the London Luton Airport Group shall during the Concession Period, without the consent of LLA (which consent cannot be unreasonably withheld), hold shares, ownership participation or any other ownership interest in any other undertaking, save as permitted by Clause 23.3.2 or excepted from the restriction in Clause 23.3.2
- 23.3.2 No member of the London Luton Airport Group shall create or acquire any investment in any other undertaking (except for investments, including deposits, in the ordinary case of treasury management) unless:
- (a) the investment constitutes a wholly-owned subsidiary undertaking of the Guarantor or Holdco; and
 - (b) a Deed of Adherence is executed by that subsidiary undertaking and delivered to LLA and the Council within 7 days of the subsidiary undertaking being created or acquired.
- 23.3.3 Without prejudice to Clause 23.3.2, every member of the London Luton Airport Group shall execute a Deed of Adherence and deliver the same to LLA and the Council within 7 days of becoming a member of the London Luton Airport Group.

23.4 **Employees**

The Concessionaire shall not require any Concession Employee to carry on any activity or business which the Concessionaire may not conduct or engage in under this Clause 23.

23.5 **Technical Know-How**

The Concessionaire shall obtain LLA's consent (such consent not to be unreasonably withheld or delayed and, for the avoidance of doubt, whether or not such person is a Restricted Person shall be a factor to be considered):

- 23.5.1 prior to giving any consent to the assignment of the Technical Services Agreement (which shall not be varied to exclude the requirement for the Concessionaire's and LLA's consent to assignment);
- 23.5.2 to the identity of any person providing services to the Airport analogous to those provided under the Technical Services Agreement as successor to AGI;
- 23.5.3 prior to dispensing with the provision by a third party of all or substantially all of the core services (or analogous services) as are currently provided under the Technical Services Agreement.

23.6 **Additional Land**

The Concessionaire and the Guarantor undertake to LLA and the Council that all land, property and structures thereon acquired or leased during the Concession Period and required for the operation and management of the Airport shall be owned or leased by a member of the London Luton Airport Group and shall be transferred to the Transferee upon the Reversion Date in accordance with Schedule 16.

24. **CONTRACTS**

24.1 **Contracts Generally**

Save with the prior consent of LLA (such consent not to be unreasonably withheld or delayed), the Concessionaire shall not enter into any contract, or other arrangement or transaction in relation to the Airport Business:

- 24.1.1 (save for the Shareholders Agreement) otherwise than for the purpose of or in connection with carrying on the Airport Business or any other business or activity permitted hereunder, including the financing and refinancing thereof by whatever means and the implementation of the Development Strategy;
- 24.1.2 otherwise than on *bona fide* arm's length terms, Provided that Intra-Group Transactions, the Technical Services Agreement, the Shareholders Agreement, the EPC Contract and any other Development Strategy Contract contemplated by the EPC Contract, any arrangement for the use of consortium or similar relief shall not be treated as in breach of such restriction;
- 24.1.3 in respect of the Property Let, otherwise than in accordance with the Property Lease and this Clause 24.1;
- 24.1.4 in the case of any Key Contract which imposes obligations or liabilities upon the Airport Business which will not be fully performed or discharged prior to the expiry of the Concession Period by virtue of effluxion of time as distinct from termination or which is for a term or period which extends beyond the expiry of the Concession Period by effluxion of time as distinct from termination (except upon terms that the relevant contract or other arrangement or transaction may be terminated without compensation upon (or within a reasonable period, not exceeding six months, after) termination of this Concession Agreement);
- 24.1.5 in the case where an Anticipatory Termination Notice has been served by LLA on the Concessionaire and is subsisting which are structured disproportionately in timing of performance so that whilst the rights and benefits granted to a third party or the financial burden to the Airport Business occur or accrue in whole or substantially in whole at or towards the end of the period of the Contract the financial benefit to the Airport Business or the rights and benefits to be received from a third party occur or accrue in whole or substantially in whole at or towards the beginning of the period of the Contract;
- 24.1.6 which is a Key Contract and either is entered into during the Last Twelve Months of the Concession Period and or is varied with the variations taking effect within the Last Twelve Months of the Concession Period or after termination;

24.1.7 which amends any of the Occupational Documents which at the Commencement Date have terms expiring beyond the end of the Concession Period in a manner which reduces to a material extent significant income for LLA or the Successor Operator which would have been generated after the expiry of the Concession Period by effluxion of time as distinct from termination;

24.1.8 which releases or surrenders any of the Occupational Documents which at the Commencement Date have terms expiring beyond the end of the Concession Period,

and the Concessionaire shall not agree to vary, amend or supplement any of the Commercial Contracts in any respect such that the relevant Commercial Contract acquires any of the characteristics described in Clauses 24.1.1 to 24.1.6 (other than Clause 24.1.3) above without the consent of LLA (such consent not to be unreasonably withheld or delayed),

provided that for the purpose of giving its approval to any contracts, arrangements or transactions under Clause 24.1:

- (i) LLA shall give its approval or objection within a period of 7 days of any request by the Concessionaire, and any failure by LLA to object (in accordance with paragraph (ii) below) within such period shall be treated as approval by LLA for all purposes of this Concession Agreement;
- (ii) any objection by LLA must be accompanied by a full statement of all grounds of objection (the "**Objection Reasons**");
- (iii) LLA shall only be deemed to be reasonably withholding its consent on the grounds (if such grounds are not established) that the contract in question does not properly and reasonably balance the interests of the Airport Business both beyond and before the expiry of the Concession Period.

24.2 **Anticipatory Termination Notice**

For the purposes of Clause 24.1 an Anticipatory Termination Notice is a notice which may be served by LLA and LLA reasonably believes that the occurrence of an actual Concessionaire Event of Default is probable. The Concessionaire may dispute any such belief as unreasonable and apply for determination by Fast Track Reference. An Anticipatory Termination Notice shall cease to subsist and shall be deemed withdrawn as soon as the occurrence of the relevant Concession Event of Default is no longer probable.

24.3 **Confirmations**

24.3.1 Where it is necessary or desirable for the purpose of the Airport Business to grant rights or enter into agreements which will extend beyond the expiry of the Concession Period for whatever reason and provided that such contracts are not in breach of Clause 24.1 LLA and the Council shall enter into such agreements as the Concessionaire shall reasonably require for the purposes of confirming the grant of such rights or such contracts with reference to their reversionary interests.

24.3.2 LLA confirms that, for the avoidance of doubt and save as excluded in Schedule 16, they will take subject to the provisions of all contracts entered into and grants made in

accordance with Clause 24.1 at the end of the Concession Period and will promptly confirm the same to any third party if the Concessionaire so requests.

24.4 Report on Airport Business

- 24.4.1 At any reasonable and convenient time to the Concessionaire on or after the twenty fifth anniversary of the Commencement Date (or, if later, the date which is five years prior to the expiry of the Concession Period) LLA shall have the right exercisable upon reasonable notice to the Concessionaire on one occasion only and at its own cost to employ a firm of reporting accountants to undertake a full "long-form" report of a type and content which is then customary to be provided to a company and its sponsors prior to the admission of any security of that company to the official list of the Stock Exchange or the then equivalent regulated investment exchange on the Airport Business for the purpose of advising LLA on the potential handover at the expiry of the Concession Period.
- 24.4.2 At the time of the report preparation in accordance with Clause 24.4.1, the Concessionaire shall consult with LLA in relation to the manner of conduct of the Airport Business having due regard to the operation of the Airport at the end of the Concession Period by LLA or a Successor Operator.

24.5 Last Twenty Four Months

If any material contract with an Airline User or any material contract with an Occupier expires or comes to an end during the last twenty four months of the Concession Period (by effluxion of time as distinct from termination), the Concessionaire shall notify LLA of each expiry and consult with LLA during any negotiations for renewal of such contract. If required by the Airline User or Occupier the Concessionaire shall negotiate on the basis of extensions beyond the end of the Concession Period Provided that:

- (a) the Concessionaire shall not be obliged to agree any contract with an Airline User or Occupier; and
- (b) if LLA do not consent to a contract extending beyond the end of the Concession Period (without prejudice to the Concessionaire's rights in relation to unreasonable withholding of consent) the Concessionaire may enter into a contract expiring on or before expiry of the Concession Period.

25. SUBCONTRACTING

25.1 Permitted Subcontracting

The Concessionaire may subcontract or delegate the provision of any of the Airport Services or any part of them which are to be provided under this Concession Agreement, provided that in doing so the Concessionaire shall comply with the conditions in Clause 25.2. For the avoidance of doubt, any such subcontracting or delegation shall not relieve the Concessionaire from its obligations in respect of such Airport Services under this Concession Agreement, including its obligations under Clause 22.3.

25.2 Conditions for Subcontracting

- 25.2.1 The Concessionaire shall not sub-contract or delegate any Airport Service or any part of an Airport Service (except for any Groundhandling Services or permitted self-handling as referred to in and to the extent required or as shall be required by the Groundhandling Legislation) at any time during the period of two years commencing on the Commencement Date without the consent of each relevant Trade Union or a majority of the relevant Concession Employees.
- 25.2.2 The Concessionaire agrees to adopt a policy of providing the Airport Services (other than Groundhandling services or services required by applicable Law to be sub-contracted) using Concession Employees employed directly by the Concessionaire to the extent that such policy is consistent with Clause 7.1.2 and is competitive.
- 25.2.3 The Concessionaire through Senior Management Staff employed by the Concessionaire shall continue to exercise, in all material respects, overall management control and supervision of the Airport Business.

Provided that nothing in this Clause 25.2 shall prevent the Concessionaire entering into the Technical Services Agreement (or any agreement which is substantially analogous in effect), or complying with the same, or cause the Concessionaire to be in breach of applicable Laws.

26. CONCESSION EMPLOYEES

26.1 Miscellaneous Restrictions

The Concessionaire shall not without the prior consent of LLA:

- 26.1.1 terminate the employment of any of the Initial Employees (other than the Excluded Initial Employees), without the consent of the individuals concerned or of the relevant Trade Union, on the ground of redundancy at any time during the period of two years commencing on the Commencement Date;
- 26.1.2 require any of the Initial Employees (other than the Excluded Initial Employees), without the consent of the individuals concerned or of the relevant Trade Union, to work permanently at a location other than the Airport at any time during the period of two years commencing on the Commencement Date;
- 26.1.3 vary, or purport or promise to vary, except with the consent of the individuals concerned or of the relevant Trade Union, the terms or conditions of employment of any of the Initial Employees, including pay rates and structures, the terms of preserved "ring-fenced" posts

and employment policies, but excluding the terms relating to the Profit Share Scheme and occupational pension rights, at any time during the period of two years commencing on the Commencement Date;

- 26.1.4 vary, or purport or promise to vary, except with the consent of the relevant Trade Union, the terms of any collective agreement relating to recognition or procedures or otherwise which subsists as at the Commencement Date between LLA and any Trade Union, at any time during the period of two years commencing on the Commencement Date. For the avoidance of doubt the Concessionaire shall be free to recognise any other trade union and to consult, negotiate or in any way deal with any other trade union or any elected employee representatives so far as may be required by Law or necessary for good industrial relations;
- 26.1.5 vary, or purport or promise to vary, the terms or conditions (as amended from time to time) of employment of any Concession Employee (excluding employees of sub-contractors or delegates of the Airport Services) (including promise to make any additional payment or provide any additional benefit) where such variation or addition:
- (a) first takes effect during the Last Twelve Months of the Concession Period unless:
 - (i) it is not reasonably likely that it would take effect during the Last Twelve Months of the Concession Period, or
 - (ii) it is in the ordinary course of business or
 - (iii) when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of the Concession Employee of no more than the percentage increase in the level of the Average Earnings Index between the month for which such index was last published at the time the variation or addition is made or proposed and the month falling 12 months before such month; or
 - (b) all (or part of it) first takes effect after the expiry by effluxion of time (as distinct from termination) of the Concession Period or is expressed to take effect on termination of the Concession Period; or
 - (c) results in any such employment not being terminable by the employer within twelve months of the expiry by effluxion of time (as distinct from termination) of the Concession Period; or
 - (d) relates to the payment or the provision of a disproportionate benefit triggered by termination of employment upon or following termination of this Concession Agreement; or
 - (e) relates to the provision of a benefit (but excluding base salary) which any such employee will or may first have a contractual right to receive after the expiry (by effluxion of time as distinct from termination) of the Concession Period; or
 - (f) prevents or restricts any such employee from working for LLA, the Council or a Successor Operator or from performing the duties such employee performed for the Concessionaire after the end of the Concession Period.

26.2 Terms of Employment of New Employees

The Concessionaire shall not, without the consent of LLA (not to be unreasonably withheld or delayed) create or grant, or promise to create or grant, terms or conditions of employment for any Concession Employee where such employment by the Concessionaire may commence on or after the Commencement Date if and to the extent that both the following provisions are satisfied:

- 26.2.1 such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent Concession Employees at the date of commencement of employment of such new Concession Employees; and
- 26.2.2 if such terms or conditions were granted to such equivalent Concession Employees already employed by the Concessionaire by way of variation to their terms or conditions of employment, the Concessionaire would be in breach of Clause 26.1.5.

26.3 Changes in Numbers and Total Cost of Employees

Subject to and excluding any increase in the remuneration of Concession Employees permitted under Clause 26.1.5(a), the Concessionaire shall not increase or decrease in the Last Twelve Months of the Concession Period the number of Concession Employees either such that the total number of Concession Employees or the total cost per annum to the Concessionaire of employing all Concession Employees is increased or such that the total number of Concession Employees is decreased, in each case, by more than 5% during such period, without the prior consent of LLA (such consent not to be unreasonably withheld or delayed).

26.4 Profit Share Scheme

- 26.4.1 The Concessionaire shall operate a profit share scheme for the Initial Employees (other than the Excluded Initial Employees) in substantially the same form and with the same rules as to membership eligibility as the Profit Share Scheme and based on substantially the same accounting model as the Profit Share Scheme, for the period of two years commencing on the Commencement Date.
- 26.4.2 For the purpose of enabling the relevant Initial Employees to verify the benefits payable pursuant to the profit share scheme referred to in Clause 26.4.1, the Concessionaire shall either:
 - (a) procure that the accounts required to be delivered to LLA pursuant to Clause 13.2.1, in respect of each accounting reference period of the Concessionaire during which the first two Concession Years fall, shall be in substantially the same form as (and shall be prepared on the basis of the same accounting policies and practices as formed the basis of) the accounts to be prepared by LLA in respect of the accounting reference period of LLA ended on the Last Accounting Date; or
 - (b) failing compliance with sub-clause (a), deliver to LLA with the accounts required to be delivered to LLA pursuant to Clause 13.2.1 in respect of such accounting reference periods, such further information as may be required to reconcile those accounts to the bases specified in sub-clause (a) above.

26.5 Equal Opportunities

The Concessionaire shall adopt the equal opportunities policy and procedures of LLA as at the date of this Concession Agreement and will use reasonable endeavours to remain at the forefront of good equal opportunities practice.

26.6 **Trade Union Recognition**

The Concessionaire agrees that trade union recognition will continue to form an important principle of its industrial relations policy throughout the Concession Period.

27. **MAINTENANCE OF TANGIBLE CONCESSION ASSETS**

27.1 Without prejudice to Clauses 7.1, 8 and 9, the Concessionaire shall, in accordance with the degree of skill, diligence, prudence and operating practice which would reasonably be expected of a skilled and experienced operator of aerodromes engaged in a reasonably comparable undertaking under reasonably comparable circumstances, maintain and repair (and if necessary renew and/or replace) during the Concession Period (fair wear and tear excepted) the Tangible Concession Assets to the extent it would be reasonable for the Concessionaire to do so in the circumstances (having regard to the proximity of the end of the Concession Period):

27.1.1 in the manner contemplated by the Business Plan;

27.1.2 so far as consistent with Clause 7.1.2, and subject and to the extent as aforesaid, in accordance with standards which would be generally accepted from time to time by operators of other aerodromes in England & Wales as being appropriate to aerodrome businesses which are reasonably comparable to the Airport Business (and which have assets which are reasonably comparable to the Tangible Concession Assets); and

27.1.3 in any event, to standards which are at least equivalent to the highest standard of practice adopted by LLA during the five-year period immediately preceding the Commencement Date and which (to the extent relevant to the Tangible Concession Assets) ensure that prevailing passenger service levels (excluding standards relating to space) are generally at least equivalent to [REDACTED];

27.1.4 so that the Concessionaire or any member of the London Luton Airport Group shall have together incurred expenditure (including labour and staff costs) for the purpose of or in connection with complying with its obligations under Clause 27.1, carrying out works of refurbishment or improvement, complying with any applicable Laws requiring capital expenditure, acquiring or leasing new Tangible Concession Assets (but excluding the Concessionaire Works, any Development Strategy Works and the acquisition of land or the construction of new buildings) ("**Maintenance Expenditure**") during each Maintenance Calculation Period which is not less than the Minimum Maintenance Expenditure for such Maintenance Calculation Period, where:

"**Maintenance Calculation Period**" means each period of five Concession Years (excluding the first Concession Year) commencing on the day after the end of the first and the sixth Concession Year and every fifth Concession Year thereafter of the Concession Period, provided that if this would leave a final period of the Concession Period of three years or more but less than five years, then the final Maintenance Calculation Period shall be such period, but if such final period is less than three years the final Maintenance Calculation Period shall be such period plus the prior period of five years;

"Minimum Maintenance Expenditure" for each Maintenance Calculation Period shall be equal to the aggregate of the Annual Expenditure Amounts for each Concession Year of such Maintenance Calculation Period;

"Annual Expenditure Amount" for each relevant Concession Year, means an amount equal to [REDACTED] of the Adjusted Asset Value as at the first day of such Concession Year.

"Adjusted Asset Value" for each relevant Concession Year, means the aggregate of the following as at the first day of such Concession Year:

- (i) [REDACTED] in respect of Tangible Concession Assets demised by the Property Lease or transferred pursuant to Schedule 2;
- (ii) the initial book value (but before depreciation) in the accounts of the Concessionaire for new Tangible Net Assets acquired by the Concessionaire after the Commencement Date (Index Linked after the first Concession Year such value is so reflected);
- (iii) the initial book value (but before depreciation) as reflected in the accounts of the Concessionaire for the completed Concession Works and completed Development Strategy Works (Index Linked after the first Concession Year such cost is so reflected);

LESS the aggregate of the following:

- (i) the book value of any Tangible Concession Asset included in the foregoing which Tangible Concession Asset has been sold or treated as surplus to requirements; and
- (ii) the book value of costs included in the foregoing in respect of any building, structures or facilities which have been demolished or treated as surplus to requirements,

AND ignoring, for the avoidance of doubt, subsequent depreciation;

- 27.1.5 on the assumption that the Tangible Concession Assets will be transferred upon the expiry or termination of the Concession Period to LLA or a Successor Operator and used by LLA or such Successor Operator in the provision or operation of the Airport Services;
- 27.1.6 to the extent relevant, in accordance with such requirements as may be imposed by manufacturers or suppliers as a condition of the continuing validity of any guarantees or warranties and otherwise in accordance with the reasonable recommendations of manufacturers or suppliers;
- 27.1.7 in compliance with all Laws relating to (and, so far as consistent with Clause 7.1.2, so as to implement the policies of the Airport Business concerning) health, safety, security and the protection of the Environment;

27.1.8 so as to avoid (to the extent consistent with Clause 7.1.2) any deterioration of service levels for Airline Users, passengers, customers and other consumers of Airport Services and user satisfaction, as evidenced pursuant to Clause 11,

provided that the Concessionaire shall not be obliged to LLA or the Council to carry out any remediation works under this Concession Agreement in relation to contamination or pollution which pre-dates this Concession Agreement (unless it is within Stanger Report Costs).

27.2 **Remediation**

If it becomes apparent to LLA (whether in consequence of any inspection of the Property Let or of the Tangible Concession Assets pursuant to Clause 13.7.2 or otherwise) that the Concessionaire has not complied in any material respect with its obligations under Clause 27.1, LLA may serve written notice of the relevant breach upon the Concessionaire and, if the Concessionaire fails to remedy any such breach which is capable of remedy within 90 days or such longer period as shall be reasonable, LLA and its authorised representatives shall be entitled (without prejudice to any other right arising under this Concession Agreement, including LLA's rights under Clause 19.2) to enter upon the Property Let (or upon any other property upon which any relevant Concession Asset is situated) for the purpose of remedying the relevant breach. Any reasonable costs incurred by LLA for such purpose shall be reimbursed by the Concessionaire upon demand and the Concessionaire shall grant such access or procure the grant of such access (including from third parties) as LLA shall reasonably require in connection therewith.

28. **STOCK**

The Concessionaire shall maintain (to the extent required for the Airport Business) an appropriate level of Stock or an appropriate level of access to Stock from a third party for use in connection with the Airport Business in accordance with the degree of skill, diligence, prudence or operating practice which would reasonably be expected of a skilled and experienced operator of aerodromes engaged in a reasonably comparable undertaking under reasonably comparable circumstances.

29. **ASSOCIATED OBLIGATIONS**

29.1 **Assistance in Securing Continuity**

In order to facilitate the continuity of the Airport Services on expiry or termination of the Concession Period the Concessionaire shall take such steps, both before and after the expiry of the Concession Period, as LLA may reasonably require, to assist and advise LLA or any Successor Operator (subject to payment of reasonable remuneration and out-of-pocket expenses) in providing and operating the Airport Services Provided such obligation shall not continue beyond six month following handover and the Concessionaire shall not assume a duty of care in respect of any such assistance or advice. In particular, the Concessionaire shall provide LLA or any Successor Operator with such records and information (including financial information) relating to or connected with the Airport Services as LLA may reasonably request (including all relevant records relating to the Concession Employees, but excluding records relating to the employees of sub-contractors or delegates of the Airport Services where such provision would breach any duty owed by or to the sub-contractor or delegates the Concessionaire having used all reasonable endeavours where permitted by Law to exclude such duty).

29.2 **Access**

The Concessionaire hereby authorises LLA and its representatives (subject to the payment of any Termination Payment by LLA under this Concession Agreement) to have such access as LLA may reasonably request on the expiry or termination of the Concession Period to such Tangible Concession Assets as the Concessionaire may own, lease or operate at such time, for the purpose of facilitating the continuity of the Airport Services.

30. **TRANSFER OF CONCESSION ASSETS**

The provisions of Schedule 16 shall apply on expiry or termination of this Concession Agreement by effluxion of time or otherwise.

31. **CONTRACTS AND LICENCES**

NOT USED.

PART 6 - GENERAL PROVISIONS

32. COMPLIANCE

32.1 Subject to the proviso to clause 27.1, the Concessionaire shall comply, in all material respects, with all applicable Laws relating to the operation and development of the Airport, the provision of the Airport Services or the conduct of the Airport Business under this Concession Agreement (including, for the avoidance of doubt, in respect of the physical condition and use of the Property Let), including:

32.1.1 the Civil Aviation Act and any obligation imposed pursuant to the Civil Aviation Act (including any obligation arising from or condition attached to any Licence granted pursuant to the Civil Aviation Act);

32.1.2 the Airports Act and any obligation imposed pursuant to the Airports Act (including any obligation arising from or condition attached to any Licence granted pursuant to Part IV of the Airports Act);

32.1.3 the Planning Laws and the terms and conditions of (or incorporated in) the Planning Permission and (subject to LLA and the Council complying with their obligations under Clause 38) Planning Agreement One (in each case, as such Planning Permission and Planning Agreement One subsist as at the date of this Concession Agreement and, as may, from time to time, be varied, amended or supplemented, provided that the Concessionaire shall not vary the same without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed));

32.1.4 the Control of Pollution Act 1974, the Environmental Protection Act 1990, the Water Resources Act 1991 and the Environment Act 1995.

33. EXCLUSION OF LIABILITY

33.1 Liability with respect to Third Parties

The Concessionaire hereby acknowledges that neither LLA nor the Council will be responsible for the actions of any member of the London Luton Airport Group and that, otherwise than as expressly provided in this Concession Agreement or in any of the Collateral Agreements, the Concessionaire will provide and operate the Airport Services at its own cost and risk without recourse to LLA or the Council or funds or guarantees of LLA or the Council. The Concessionaire will accordingly hold LLA and the Council fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made upon LLA or the Council in connection with any death or personal injury (except to the extent that LLA or the Council causes or contributes to any death or personal injury or has done so in the past), loss or damage suffered by the Concessionaire or any third party in consequence (directly or indirectly) of the operation and development of the Airport, the carrying out of the Concessionaire Works, Development Strategy Works or Development Works, the provision of the Airport Services or the conduct of the Airport Business in each case from the Commencement Date (including the infringement, disturbance or destruction of any right, easement or privilege, nuisance and every other liability arising, directly or indirectly, out of any defect in or the condition or use of the Property Let or anything done or omitted to be done thereon or any breach of the tenant's obligations under the Property Lease and (if granted) the Amenity Land Lease), save to the extent the same were caused by LLA or the Council.

33.2 **Entire Agreement**

This Concession Agreement (together with the Collateral Agreements) contains the entire agreement between the parties in relation to the subject matter of this Concession Agreement and supersedes all prior agreements and arrangements.

34. **CONFIDENTIALITY**

34.1 **Confidentiality**

Subject to the provisions of Clauses 34.2 to 34.5, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of another party to this Concession Agreement (including, without limitation, all documents and information supplied in the course of proceedings under any Dispute Resolution Procedure) and shall not, except with that other party's written authority, publish or otherwise disclose the same except as expressly provided for in this Concession Agreement unless or until the recipient party can reasonably demonstrate that any such document, material or information is in the public domain through no fault of its own and through no breach of this Concession Agreement, whereupon (to the extent that the recipient party has reasonably demonstrated that it is in the public domain) this obligation shall cease in respect of such document, material or information to the aforesaid extent only.

34.2 **Disclosure of Confidential Information**

A party shall be entitled to disclose any data or information acquired by it under or pursuant to this Concession Agreement or information relating to a dispute arising under this Concession Agreement without the prior written consent of any other party if such disclosure is made in good faith:

- 34.2.1 to any Affiliate of such party, upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in Clause 34.1;
- 34.2.2 to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers (other than legal advisers or auditors) an undertaking of confidentiality equivalent to that contained in Clause 34.1;
- 34.2.3 to any lenders, security trustee, bank or other financial institution or other investors (and their advisers) from which such party is seeking or obtaining finance, after obtaining from any such person an undertaking of confidentiality equivalent to that contained in Clause 34.1 or if the information is given on a strictly confidential basis;
- 34.2.4 to the extent required by Law or pursuant to an order of any Court of competent jurisdiction or under any Dispute Procedure or the rules of a recognised stock exchange or a formal or informal request of any Taxation Authority; or
- 34.2.5 to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in Clause 34.1;
- 34.2.6 to directors, employees and officers of such party, to the extent necessary to enable such party to perform its obligations under this Concession Agreement or to protect or enforce its rights under this Concession Agreement.

34.3 Publication of Certain Information

34.3.1 Notwithstanding the provisions of Clause 34.1 above, LLA and/or the Council shall be entitled to disclose or publish in such form and at such times as they see fit (including disclosure to prospective Successor Operators), the following:

- (a) the aggregate amount of the Concession Fee received under this Concession Agreement (excluding the components and the manner of calculation);
- (b) (subject to the recipients providing suitable confidentiality undertakings) such information as may reasonably be required in connection with the retendering of the Concession or any part thereof, provided that such information may only be published during the period of, or during the period leading up to, such retendering;
- (c) the results of any monitoring or measurement of the operational performance of the Concessionaire in the provision of the Airport Services (including any information provided under Clause 13.1.3 of this Concession Agreement) with the consent of the Concessionaire, such consent not to be unreasonably withheld or delayed;
- (d) the results of any customer satisfaction surveys under Clause 11 with the consent of the Concessionaire, such consent not to be unreasonably withheld or delayed;
- (e) (subject to the recipients providing suitable confidentiality undertakings) such information as LLA and/or the Council may reasonably require to publish at or around the expiry of the Concession Period in order to secure continuity of the provision and operation of the Airport Services.

34.4 Publication by LLA and the Council

Nothing in this Clause 34 shall be deemed to prohibit, prevent or hinder, or render LLA, the Council or the Concessionaire liable for, the disclosure of any information to the CAA, the Audit Commission, the Commissioner for Local Administration in England, a Minister of the Crown or any department of the government of the United Kingdom, provided that such information shall be disclosed only subject to the classification of such information as confidential and potentially price sensitive.

34.5 Disclosure by Audit Commission

The parties to this agreement recognise that the Audit Commission may in pursuance of its functions under the Local Government Finance Act 1982 disclose information which it has obtained pursuant to that Act and which a party to this Concession Agreement would not be able to disclose otherwise than under this Clause 34.5, provided that such information shall be disclosed only subject to the classification of such information as confidential and potentially price sensitive.

34.6 Continuing Obligation

This Clause 34 (and any other clauses necessary to give effect thereto) shall survive the termination of this Concession Agreement, irrespective of the reason for termination for a period of five years.

34.7 Exempt Information

The Council agrees, to the extent permitted by law, to treat the Concession Documents (and information relating or delivered pursuant thereto) as exempt information for the purposes of Section 100 I and Schedule 12A of the Local Government Act 1972.

35. **NOTICES**

35.1 **Notices**

35.1.1 Any notice, notification or other communication under or in connection with this Concession Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by electronic data transfer (subject to notification by the recipient of any facility it may operate for receipt of such data transfers) to the relevant parties at the relevant address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other parties to this Concession Agreement:

Name: LLA and the Council

Address: The Town Hall
Luton LU1 2BQ

Attention: The Chief Executive

Name: The Concessionaire

Address: Percival House
Percival Way
London Luton Airport
Luton LU1 2BQ

Attention: The Financial Director and the AGI Representative

Name: The Guarantor

Address: Percival House
Percival Way
London Luton Airport
Luton LU1 2BQ

Attention: The AGI Representative

35.2 Deemed Receipt

Any such notice or other communication shall be deemed to have been given to the party to whom it is addressed as follows:

- 35.2.1 if sent by hand or recorded delivery, when so delivered;
- 35.2.2 if sent by pre-paid first class post, from and to any place within the United Kingdom, three business days after posting unless otherwise proven; and
- 35.2.3 if by electronic data transfer, upon sending and receipt by the sender of a satisfactory receipt message.

36. ASSIGNMENT

- 36.1 The Concessionaire shall not without the prior written consent of LLA assign this Concession Agreement, any Concession Document or any Collateral Agreement or any part thereof or any benefit or interest or rights therein or thereunder (other than in respect of moneys receivable) except pursuant to any Security Interest permitted under Clause 36.2, provided that upon the date any person shall succeed to this Concession Agreement as Concessionaire that person shall provide and deliver to LLA a Concession Fee Bond to come into immediate effect (in the form contemplated by Clause 12) duly executed and delivered by a Qualifying Issuer in an amount equal to £5,000,000 (Index Linked as provided in Clause 12), whereupon Clause 12 shall apply to such Concession Fee Bond and any existing Concession Fee Bond shall be released.
- 36.2 LLA and the Council hereby give their consent to and agree to enter into the Funder's Direct Agreement and such other direct agreement in such form as may be approved by LLA and the Council (such approvals not to be unreasonably withheld or delayed) for the purpose of any Funding Agreement from the time entered into by any member of the London Luton Airport Group. The Council and LLA shall not be obliged to enter into a new direct agreement at any time in the form of the Funder's Direct Agreement unless the Concessionaire (after using reasonable endeavours) is unable to raise finance or refinance without a direct agreement in such form. The Concessionaire may create or agree to create any Security Interest (other than in favour of a Restricted Person) to the extent that the terms of any such Security Interest are such that if any of the assets of the Airport Business which are the subject of the Security Interest are assigned, novated or otherwise transferred to LLA or its nominee under Schedule 16 of this Concession Agreement, they shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer or in accordance with the terms of the Funders' Direct Agreement (or any other agreement entered into by the LLA and the Council with any Funder under a Funding Agreement).

- 36.3 The Concessionaire shall provide LLA with such information as LLA may reasonably require in relation to any Security Interest over any of the Concessionaire's property or rights.

37. MISCELLANEOUS PROVISIONS

37.1 Variations in Writing

- 37.1.1 Subject to Clause 37.1.2 and Clause 37.1.3, no variation of this Concession Agreement (other than expressly contemplated under this Concession Agreement) shall be effective unless in writing and signed by duly authorised representatives of the parties.
- 37.1.2 The consent or approval of LLA shall not be required for any variation or amendment of the rights or obligations (if any) of the Concessionaire and the Council, *inter se*, under this Concession Agreement.
- 37.1.3 The consent or approval of the Concessionaire shall not be required for any variation or amendment of the rights or obligations (if any) of the Council and LLA, *inter se*, under this Concession Agreement.
- 37.1.4 Subject thereto, the parties may make such variations as they may consider appropriate from time to time.

37.2 Waivers

- 37.2.1 LLA may at any time waive the obligations of the Concessionaire under this Concession Agreement and the Concessionaire's obligations hereunder shall be construed accordingly.
- 37.2.2 No waiver by any party of any default by another in the performance of any of the provisions of this Concession Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under this Concession Agreement shall not constitute a waiver of that right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Concession Agreement shall prevent any further exercise of that right or remedy or the exercise of any other right or remedy.

37.3 Time Limits

Where in this Concession Agreement, any obligation of a party is required to be performed within a specified time limit that obligation shall be deemed to continue after that time limit if the party fails to comply with that obligation within the time limit.

37.4 Payments to be Free and Clear

- 37.4.1 All sums payable by any party under this Concession Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counterclaims, save only as may be required by Law or as expressly permitted or required under this Concession Agreement.
- 37.4.2 If any payment (other than interest due on any payment to such party) received by any party under this Concession Agreement is subject to any deduction or withholding in respect of Taxation, the payer shall pay to the payee such additional amount (after taking into account any deduction or withholding in respect of such additional amount) as will ensure that the payee receives and retains a net amount equal to the full amount which it

would have received and retained had the payment not been subject to such deduction or withholding.

- 37.4.3 If as a consequence of being deemed for tax purposes liable to pay any premium under the Property Lease, Amenity Land Lease or this Concession Agreement which the Concessionaire does not in fact pay and the Concessionaire or any member of the London Luton Airport Group (the "**Beneficiary**") obtains a deduction or relief in respect of a liability to corporation tax (or any successor Tax) for an accounting period in respect of that premium, (which deduction or relief the Concessionaire shall claim after having been deemed to pay any premium which it does not in fact pay) the Concession Fee shall be increased or additional fee payable at the time and in the manner of the Concession Fee to the extent of the deduction or relief divided by the rate of corporation tax applying to the person obtaining the deduction or relief in the liability to tax in the accounting period for which the deduction or relief is obtained at the time the person obtaining the deduction or relief would otherwise have been liable to pay corporation tax in respect of the accounting period for which the deduction or relief is obtained, provided that no such increase or payment shall be made if the deduction or relief is not used by the Concessionaire and, for this purpose, all other reliefs, deductions or allowances available to any Beneficiary shall be used in priority.

37.5 **Partial Invalidity**

If any provision of this Concession Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Concession Agreement but the legality, validity and enforceability of the remainder of this Concession Agreement shall not be affected.

37.6 **Further assurance**

Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Concession Agreement.

37.7 **Costs**

Each of the parties shall pay its own costs, charges and expenses in relation to the preparation and completion of this Concession Agreement and each of the Concession Documents and the Collateral Agreements, except:

- 37.7.1 as between the Council and LLA, their costs, charges and expenses shall be borne as may be agreed between the Council and LLA;
- 37.7.2 for a success fee payable to UBS AG, as financial advisors to LLA and the Council, which shall be paid to UBS AG (or to LLA in reimbursement) by the Concessionaire on the Commencement Date, the amount of which shall be £400,000 (if the Commencement Date falls on or before 31 March 1998) plus £35,000 for each complete calendar month falling between 31 March 1998 and such later date as may be the Commencement Date, pro-rated accordingly on a daily basis (together with irrecoverable VAT thereon).

37.8 No Partnership or Agency

Nothing in this Concession Agreement or in any of the Collateral Agreements shall be deemed to constitute a partnership between any of the parties nor, save as may be expressly set out herein, constitute any party the agent of another party for any purpose. In addition, unless otherwise agreed in writing between the parties, none of them shall enter into contracts with third parties as agent for any other party nor shall any of the parties describe itself as agent as aforesaid or in any way hold itself out as being an agent.

37.9 Anti-Trust Issues

37.9.1 Notwithstanding any other provision of this Concession Agreement, any restriction or restrictions contained in this Concession Agreement or in any agreements or arrangements of which this Concession Agreement forms part ("Related Agreements") which cause this Concession Agreement and any such other Related Agreements to be registrable under the Restrictive Trade Practices Act 1976 ("RTPA") shall be of no effect until such time as particulars of this Concession Agreement and any such Related Agreements shall have been furnished to the Director General of Fair Trading. The parties agree that the furnishing of particulars and any subsequent correspondence and dealings with the Office of Fair Trading ("OFT") and/or Department of Trade and Industry ("DTI") arising out of such furnishing shall be undertaken by Pinsent Curtis as representative of the Council and LLA at the Council and LLA's expense. The Council and LLA shall procure that Pinsent Curtis consults with Clifford Chance as representative of the Concessionaire prior to undertaking the filing and any such subsequent correspondence and dealings and fully reflects therein any comments made by Clifford Chance concerning:-

37.9.1.1 restrictions in this Concession Agreement or any Related Agreements that benefit the Concessionaire; and/or

37.9.1.2 any provisions of this Concession Agreement or any Related Agreements insofar as the Concessionaire requests confidential treatment therefor under Section 23(3) of the RTPA and the comments concern that request;

provided in all cases that such comments are made in good time to enable any deadlines laid down by the RTPA or by the OFT or the DTI to be met.

37.9.2 Where so requested by LLA and LBC the other parties to this Concession Agreement agree to implement any variation (and to enter into any further agreements, deeds or other documents containing such terms as shall be necessary to achieve such implementation) to any provision of this Concession Agreement which:-

37.9.2.1 may be necessary to secure the issue of directions in respect of this Concession Agreement and any Related Agreements under Section 21(2) of the RTPA; and

37.9.2.2 imposes no greater a restriction on the party bound by the restriction which requires to be varied than that originally imposed and contained in this Concession Agreement.

37.9.3 The parties agree to implement any variation (and to enter into any further agreements, deeds or other documents containing such terms as shall be necessary to achieve such implementation) to any provision of this Concession Agreement which:-

37.9.3.1 may be necessary to satisfy any requirement of the European Commission to enable the grant of an exemption (whether formal or informal) under Article 85(3) of the EC Treaty in respect of this Concession Agreement; and

37.9.3.2 imposes no greater a restriction on the party bound by the restriction which requires to be varied than that originally imposed and contained in this Concession Agreement.

37.9.4 Any costs or expenses incurred in notifying this Concession Agreement and/or applying for a negative clearance to the European Commission to be borne by the notifying party/applicant, and the notifying party/ applicant shall indemnify the other party or parties against all reasonable legal costs and expenses incurred by them or their shareholders (or any Affiliate thereof) in connection with the requirements of the European Commission for information supporting such notification or application.

37.10 Interest

Without prejudice to each party's right to receive payment in accordance with this Concession Agreement and save as otherwise expressly provided, interest shall accrue on any sum due and owing to any party under this Concession Agreement or any Collateral Agreement at the Default Interest Rate calculated on a daily basis if and to the extent that payment is not received in accordance with this Concession Agreement or any Collateral Agreement.

37.11 Counterparts

In the event of this Concession Agreement being prepared in several parts each of the parties may execute one or more parts and the parts so executed shall constitute one agreement and be binding on the parties as if they had all executed the same document.

37.12 Dispute Procedures

The dispute procedures set out in Schedule 13 shall apply to the extent expressly required by any provision of this Concession Agreement.

37.13 Governing Law

This Concession Agreement shall be governed by and construed in accordance with the laws of England and Wales and, subject to the provisions of Clause 37.12, the parties irrevocably agree that the Courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Concession Agreement.

37.14 Obligations of LLA and the Council

- 37.14.1 Where provisions in this Concession Agreement contain warranties, covenants, agreements, obligations or restrictions which are expressed to be given or accepted by both LLA and the Council, then unless expressly stated otherwise they shall be joint and several obligations and liabilities of LLA and the Council.
- 37.14.2 LLA shall indemnify and keep the Council indemnified against all actions, proceedings, claims, demands, damages, costs, fees, expenses and other liabilities arising from a breach by LLA of any provision of this Concession Agreement as referred to in Clause 37.14.1.
- 37.14.3 The Concessionaire agrees not to enforce against the Council any agreement or settlement with or judgement against both LLA and the Council in respect of the same claim unless LLA shall not have satisfied the claim within 14 days of such agreement, settlement or judgement or the other due date (if any) for satisfaction.

37.15 Consent and Waivers

Any consent, approval, waiver or notice given under this Concession Agreement by LLA shall bind the Council and any of the foregoing given by the Council shall bind LLA.

37.16 No Loss Avoidance

Whenever in this Concession Agreement it is provided that the LLA and/or the Council will pay any amount by way of compensation for breach of warranty or any other provisions of this Concession Agreement or as compensation upon a termination (for whatever reason), or for the purpose of indemnifying Concessionaire in respect of losses or liabilities, LLA and/or the Council shall not be entitled to reduce or avoid any such payment to Concessionaire in reliance only on the fact that such entitlements of the Service Provider are conditional on payment by the LLA and/or the Council. For this purpose, "Service Contract" means any contract entered into by the Concessionaire for the provision of goods or services (including, without limitation, the EPC Contract) and "Service Provider" shall mean the providers of such goods or services.

PART 7 - PROPERTY PROVISIONS

38. PLANNING AND PROPERTY

38.1 Planning Agreement One

38.1.1 Subject to Clause 38.1.2, the Concessionaire shall procure the carrying out and completion of the Additional Roundabout Works under the supervision of LLA's Representative.

38.1.2 LLA and the Council shall:

- (a) pay to the Concessionaire within 14 days of demand all costs (inclusive of irrecoverable VAT) incurred by the Concessionaire from time to time in carrying out and completing the Additional Roundabout Works in accordance with Planning Agreement One to the extent such costs exceed an aggregate amount of £750,000 (exclusive of VAT);
- (b) promptly (taking into account necessary statutory procedures) procure (at their own cost) such title and/or access to any land or facilities outside the Property Let as may from time to time be required in order to carry out and complete the Initial Roundabout Works and the Additional Roundabout Works in accordance with Planning Agreement One;
- (c) indemnify and keep indemnified, the Concessionaire against all costs, liabilities, actions, proceedings and losses (including loss of revenue) which may be incurred or suffered by the Concessionaire as a result of any breach of Planning Agreement One resulting from a breach by LLA and/or the Council of Clauses 38.1.1 or 38.1.2.
- (d) pay to the Concessionaire within 14 days of demand all VAT chargeable by the Concessionaire upon any supply made by the Concessionaire to LLA or the Council.

38.1.3 If the costs (inclusive of irrecoverable VAT) of the Additional Roundabout Works are less than £750,000 (exclusive of VAT), the Concessionaire shall, to the extent such costs are less than £750,000 (exclusive of VAT) (the "**Cost Underrun**") pay to LLA the amount of the Cost Underrun within 14 days of the Cost Underrun being finally determined.

38.2 Other Planning Agreements

LLA and the Council (as the controlling shareholder in LLA rather than the local planning authority) shall indemnify, and keep indemnified, the Concessionaire against all costs, liabilities, actions, proceedings and losses (including loss of revenues) which may be incurred or suffered by the Concessionaire if any obligation on the part of LLA or any successor in title or person deriving title under them under Planning Agreement Two, Planning Agreement Three and Planning Agreement Four has not been satisfied and discharged in full prior to the date of this Concession Agreement.

38.3 Transfer Deed

The Council hereby agrees to waive and not to enforce all of the rights and entitlement that it has in respect of the restrictive covenants contained in the Second Schedule to the Transfer Deed dated 15 April 1987 made between the Council (1) and LLA (then called Luton International Airport Limited) (2).

PART 8 - SPECIAL PROVISIONS

39. CONCESSIONAIRE'S WACC AND CONCESSIONAIRE'S COE

- 39.1 The Concessionaire shall calculate the Concessionaire's WACC and/or Concessionaire's COE when required for the purposes of this Concession Agreement, as at the relevant date required, in accordance with the principles set out in Schedule 18 and shall notify LLA accordingly.
- 39.2 If LLA does not agree with the calculation of Concessionaire's WACC and/or Concessionaire's COE notified to LLA in accordance with Clause 39.1, LLA shall be entitled within 14 days of each notification to refer the Dispute for determination by Expert Determination. If LLA does not make such reference within such period, LLA and the Council shall be treated as accepting such calculation for all purposes of this Concession Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 40.2 The Concessionaire may, as at the end of each Reporting Period, produce projections (based upon the Business Plan projections from time to time, but revised to take account of such changes as the Concessionaire reasonably determines to be appropriate) for the then current Concession Year and for the next following Concession Year which will, inter alia, indicate the revenues of the Dominant User described in Clause 40.1 above. If the projections show that there is likely to be a Material Business Reduction for any such Concession Year then the Concessionaire may notify to LLA a Material Business Reduction for the purpose of this Clause 40.
- 40.3 If there is a Material Business Reduction notified pursuant to Clause 40.1 or 40.2 and the Minimum Banking Ratio is not met (or would not be met if calculated at that time) then the Concessionaire shall notify LLA of such event (a "**Material Adverse Business Event**").

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40.5 For the purpose of this Clause 40, "**Recovery Date**" shall mean the first date that the Minimum Banking Ratio is satisfied following a Material Adverse Business Event and for which purpose the Minimum Banking Ratio shall be tested by the Concessionaire as at 31st March, 30th June, 30th September and 31st December.

40.6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40.7 The Concessionaire shall carry out all the calculations referred to in this Clause and shall notify LLA of the results thereof. The Base Amounts calculated pursuant to Clause 40.6 shall be used to

[REDACTED]

Clause 40.6 shall cease to apply.

40.8 Clause 40 shall not apply to a Material Adverse Business Event on a date after the tenth anniversary of the Commencement Date.

- 40.9 Without prejudice to Clause 10, Clause 40 shall not apply where the Material Adverse Business Event is caused by a Special Force Majeure Event.
- 40.10 Where Clause 40.2 applies and as a result the Concession Fee is reduced, if the Material Adverse Business Event projected by Clause 40.2 fails to occur when or before it is projected to occur then (without prejudice to the continuing application of Clauses 40.1 and 40.2) the Concessionaire shall on the next Concession Fee Payment Date (subject to any other application of this Clause 40) pay the Concession Fee without reference to the said Material Adverse Business Event together with the portion of any Concession Fee which would (but for the application of Clause 40 in respect of the said Material Adverse Business Event) have been paid prior to the Concession Fee Payment Date but was not paid (plus interest thereon at the Concessionaire Borrowing Rate to the date of actual payment).
41. **EFFECT OF CONCESSION FEE REDUCTIONS**
- 41.1 Where a reduction in the Concession Fee is required pursuant to any provision of this Concession Agreement, such reductions shall be cumulative.
- 41.2 No reduction shall give rise to a negative Concession Fee for any Concession Year.
- 41.3 Where a reduction in Concession Fee commences during a Concession Year the calculations set out in paragraphs 5 and 6 of Schedule 4 shall nevertheless take place after the end of such Concession Year with the reduction in the Concession Fee being factored into such calculation.
42. **PERMITTED FUNDING COMPENSATION**
- 42.1 Nothing in this Clause 42 shall limit or prevent the Concessionaire borrowing or otherwise arranging financial accommodation.
- 42.2 For the purpose of determining "**Permitted Additional Funding**" for the purposes of Schedule 14 the provisions of this Clause 42 shall apply.
- 42.3 Indebtedness under any Funding Agreement or Shareholder Contributions shall be Permitted Additional Funding if it is incurred for or in connection with any of the following:
- 42.3.1 carrying out and completing the Concessionaire Works;
 - 42.3.2 carrying out and completing any Phase 2 Development Strategy Works if LLA has given its approval pursuant to Clause 43;
 - 42.3.3 carrying out and completing any Development Works up to a maximum principal amount of £10m plus the funding or capitalisation interest (or such higher amount as shall not cause paragraph (a) of the definition of Senior Funding Amount to exceed £85 million);
 - 42.3.4 funding any Warranty Loss, any Net Special Shareholder Loss or any Discriminatory Loss;
 - 42.3.5 funding any working capital requirements from time to time of the Airport Business including, without limitation, funding any repair and maintenance works and providing the Concession Fee Bond;
 - 42.3.6 (without prejudice to Clause 42.3.5) funding any expenditure required by any applicable Law or any obligations of the Concessionaire under this Concession Agreement from time to time;

42.3.7 refinancing any of the foregoing.

- 42.4 Before arranging any new financing the Concessionaire shall notify LLA with a view to procuring LLA's confirmation that such indebtedness will be Permitted Additional Funding. If LLA fails to provide such confirmation in writing this shall not in itself prevent the indebtedness from being Permitted Funding. However, the Concessionaire may refer any such failure or any Dispute for determination by Fast Track Reference.

43. FINANCING DEVELOPMENT STRATEGY WORKS

- 43.1 The Concessionaire may refer to LLA for approval of any proposed financing for the purpose of carrying out and completing Phase 2 Development Strategy Works when the Concessionaire has obtained an outline planning permission for the Phase 2 Development Strategy Works and the Concessionaire shall have obtained indicative terms for such funding from a bank or financial institution. No failure to give such approval shall prevent the Concessionaire from carrying out and completing such works.
- 43.2 If LLA fails to approve any proposed funding for Phase 2 Development Strategy Works then the Concession Period shall, at the option of the Concessionaire, exercisable by notice or in writing to LLA, be extended by an additional period of ten years. No payment or other consideration shall be provided by the Concessionaire to LLA for such extension in such circumstances, provided that no extension shall be made to the Concession Period until the Concessionaire shall have:
- (a) obtained detailed planning permission for its Phase 2 Development Strategy Works; or
 - (b) the Council (as planning authority) has resolved to grant such planning permission.
- 43.3 For the purpose of this Clause 43, Phase 2 Development Strategy Works means any Development Strategy Works designed to accommodate at least 6.5 million passengers per annum at the Airport.
- 43.4 Any failure by LLA to give an approval to any proposed financing for any Development Strategy Works shall remove any obligation the Concessionaire may have to carry out such works under this Concession Agreement.

44. INCAPACITY EVENT

If any Incapacity Event occurs, then for the purposes of the Local Government (Contracts) Act 1997, the Termination Payment set out in Part 6A of Schedule 14 (and, if applicable, the transfer of shares set out in Part 6B of Schedule 14) shall constitute agreed discharge terms.

45. FUTURE COUNCIL FUNDING

If at any time funding becomes available to the Council or LLA for expenditure on the Airport the Concessionaire, LLA and the Council will discuss together the possibility of the Council or LLA investing such funding in the Airport.

PART 9 - GUARANTEE

46. GUARANTEE AND INDEMNITY

46.1 The Guarantor by way of primary obligation hereby:

46.1.1 irrevocably and unconditionally guarantees to LLA and the Council the due and punctual performance and observance by the Concessionaire of each and all the duties obligations covenants warranties and undertakings of the Concessionaire under and pursuant to the Concession Documents and Collateral Agreements when such duties obligations covenants warranties and undertakings or any part of them shall become due and performable according to the terms of the Concession Documents and Collateral Agreements;

46.1.2 (without prejudice to the generality of the foregoing) covenants with and undertakes to LLA and the Council on the first demand of LLA or the Council to pay and make good to LLA and/or the Council forthwith (and fully to indemnify LLA and the Council from and against) any losses costs claims damages proceedings and expenses occasioned to or suffered by LLA and/or the Council arising directly or indirectly out of or by reason of any default of the Concessionaire in respect of any of the said duties obligations covenants warranties and undertakings of the Concessionaire under and pursuant to the Concession Documents and Collateral Agreements, provided that the Guarantor shall not be obliged to do or pay anything that the Concessionaire is not obliged to do or pay under this Concession Agreement.

46.2

46.2.1 The obligations of the Guarantor herein contained shall be in addition to and shall be independent of any other security which the Concessionaire may at any time hold in respect of any of the obligations of the Concessionaire under the Concession Documents or the Collateral Agreements.

46.2.2 The Guarantor shall not be exonerated from its liability hereunder nor shall such liability nor the rights powers and remedies conferred upon LLA or the Council be lessened impaired discharged or otherwise affected by:

- (a) any of the obligations of the Concessionaire under the Concession Documents and the Collateral Agreements being or becoming illegal invalid void voidable unenforceable or ineffective in any respect unless as a result of an Incapacity Event;
- (b) the bankruptcy insolvency liquidation reorganisation dissolution amalgamation reconstruction or any analogous proceeding relating to the Concessionaire or any change in the status function control or ownership of the Concessionaire;
- (c) any amendment to or variation of the Concession Documents or the Collateral Agreements (whether or not such amendment or variation shall increase the liabilities of the Concessionaire thereunder or the Guarantor hereunder) or by any concession, arrangement or other indulgence being granted or made or agreed to be granted or made by LLA and/or the Council to or with the Concessionaire in respect of its obligations under the Concession Documents or the Collateral Agreements or by anything that LLA or the Council or the Concessionaire may do or omit or neglect to do (including but without limitation the assertion or failure or delay or assert any

right or remedy of LLA and/or the Council or the pursuant of any rights or remedies by LLA or the Council or the giving by the Concessionaire of any security or the release modification or exchange of any such security) which but for this provision might exonerate the Guarantor; or

- (d) any other act event or omission which but for this condition might operate to discharge impair or otherwise affect any of the obligations of the Guarantor hereunder or any of the rights powers or remedies conferred upon LLA or the Council by this Concession Agreement or by law.

46.2.3 The Guarantor shall not (so long as the Concessionaire has any actual or contingent obligations pursuant to the Concession Documents or Collateral Agreements by reason of performance by it of its obligations hereunder or by any other means or on any ground (a) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of LLA or the Council under the Concession Documents or the Collateral Agreements, or (b) prove in competition with LLA or the Council in respect of any payment by the Guarantor hereunder, or (c) entitled (if the Concessionaire is being wound-up) in competition with LLA or the Council to claim or have the benefit of any set-off counterclaim or proof against or dividend composition or payment by the Concessionaire or of any security by the Concessionaire to LLA or the Council, and in case the Guarantor receives any sums from the Concessionaire in respect of any payment of the Guarantor to LLA or the Council hereunder and the Guarantor shall hold such monies received in breach of the foregoing in trust for LLA and the Council for so long as any sums are payable (contingently or otherwise) under this Guarantee.

46.2.4 Neither LLA nor the Council shall be obliged before enforcing any of its rights or remedies conferred upon it by this Deed or by law:

- (a) to grant any time or indulgence to the Concessionaire;
- (b) to take any legal proceedings or action or obtain any judgement against the Concessionaire in any Court;
- (c) to make or file any claim in any bankruptcy liquidation winding-up or dissolution of the Concessionaire; or
- (d) to pursue or exhaust any other right or remedy against the Concessionaire,

and the liabilities of the Guarantor may be enforced irrespective of whether any legal proceedings are being or have been taken against the Concessionaire and the terms of this Guarantee shall be a continuing guarantee and shall remain in full force and effect until each and every part of the duties obligations covenants warranties and undertakings on the part of the Concessionaire under and pursuant to the Concession Documents and the Collateral Agreements shall have been discharged and performed in full.

46.3 If at any time any provision hereof is or becomes illegal invalid or unenforceable in any respect under the law of any jurisdiction neither the legality validity or enforceability of the remaining provisions hereof nor the legality validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

IN WITNESS whereof the parties hereto have executed this Concession Agreement as a deed, delivered on the day and year first before written.

SCHEDULE 1
CONDITIONS PRECEDENT

(Clause 2)

Part 1

1. The Initial Shareholders shall have subscribed for, and paid up in aggregate an amount of not less than £100,000 for, share capital in the Concessionaire, such amount shall be paid up in cash.
2. The Concessionaire shall have delivered to LLA certified copy of (in the case of paragraphs (b) to (f) as duly executed by the parties thereto):
 - (a) the memorandum and articles of association of the Concessionaire and the Guarantor;
 - (b) the Shareholders Agreement;
 - (c) the Initial Subordinated Loan Agreement.
 - (d) the EPC Contract
 - (e) the Technical Services Agreement
 - (f) the Initial Financing Documents
3. The Concessionaire shall have notified to LLA the names of all its directors, its company secretary and its auditors and those of the Guarantor.

Part 2

4. A certificate of the Council (issued and delivered to the Concessionaire) in respect of each of this Concession Agreement and the Funder's Direct Agreement, each such certificate satisfying the certification requirements in respect of this Concession Agreement, the Property Lease, the Option Agreement and the Funder's Direct Agreement respectively specified in subsections (2) to (4) of section 3 of the Local Government (Contracts) Act 1997.
5. A legal opinion issued and delivered on behalf of the Council to each of the Concessionaire, the initial Shareholders and the initial Funders in the agreed form attached to this Concession Agreement and marked "U".
6. LLA shall have delivered to the Concessionaire a certified copy of (a) its memorandum and articles of association, and (b) the Master Novation Agreement (as duly executed by the parties thereto).
7. Letters of resignation of the Chief Executive, Finance and Marketing Directors of LLA as directors of LLA duly signed and effective as at completion.

Part 3

8. Evidence that the following licences will be issued in favour of the Concessionaire upon Completion:
 - (a) an aerodrome licence granted by the CAA under Article 92 of the Air Navigation (No.2) Order 1995; and
 - (b) an approval for the provision of air traffic control services (as currently provided by LLA) at the Airport under Article 77 of the Air Navigation (No.2) Order 1995 (Part IX).
9. Financial Close having occurred under the Initial Financing Documents to the effect that the facilities contained in the Initial Financing Documents are (subject only to Completion taking place in accordance with Clause 2.3) all unconditionally available to the Concessionaire.
10. The Funder's Direct Agreement shall have been duly executed, dated and delivered by all the parties thereto in the agreed form.
11. The EPC Direct Agreement shall have been duly executed, dated and delivered by all the parties thereto in the agreed form.
12. An Order being made under the provisions of Section 34(4) of the Landlord and Tenant Act 1954 excluding the provisions of Section 24 to 28 (inclusive) of that act in relation to the Property Lease.
13. The approval of the Secretary of state (subject only to Completion taking place in accordance with Clause 2.3) to the arrangements for the management of the Airport by the Concessionaire and the direction of the Secretary of State that Section 17(1) of the Airports Act 1986 shall not apply to LLA made under S17(2) of that Act.
14. The delivery to each party hereto of duly executed consents by each party to this Concession Agreement, the Property Lease and the Funder's Direct Agreement to the issue of the Certificate.
15. [REDACTED] shall have entered into new service agreements.

SCHEDULE 2

TERMS OF TRANSFER OF CONCESSION ASSETS

(Clause 6)

1. DEFINITIONS

In this Schedule, except to the extent that the context otherwise requires, terms defined in Clause 1 of this Concession Agreement shall have the same meanings and, in addition:

"Accounts" means the audited balance sheet of LLA as at, and the audited profit and loss account and cash flow statement of LLA, for the financial year ended on, the Accounts Date.

"Accounts Analysis" means the analysis of the Accounts and the forecast balances as at 31 July 1998, together with the list of assets of the Business as at the Accounts Date (which is intended to be illustrative of the assets or categories of assets which will comprise the Loose Plant) which are attached to this Agreement in the agreed form marked "V".

"Accounts Date" means 31 March 1998.

"Accounting Policies" means the policies set out in Appendix 3 to this Schedule.

"Accounting Statements" means the Short Life Net Liabilities Statement, the Completion Balance Sheet and the Net Consideration Statement.

"Books and Records" means all of the books and records, lists of customers and suppliers, books of account and other records of any kind whatsoever of LLA in relation to the Business including (without limitation) all records relating to the Initial Employees but excluding any records referred to in section 49(1) VATA and also excluding the Retained Records.

"Business" the business of managing and operating the Airport carried on by LLA up to Completion.

"Business Information" means all information relating to the marketing of the Airport and its services (including customer names and lists, sales targets, sales statistics, market share statistics, marketing surveys and reports, marketing research and advertising or other promotional materials and media buying information materials) belonging to LLA and used in connection with the Business.

"Collection Period" means the period of 60 days following Completion.

"Completion" means completion of the transfer of the Transferred Assets in accordance with this Schedule.

"Completion Balance Sheet" means a balance sheet showing a true and fair view of the state of affairs of LLA as at Completion, prepared on a basis consistent with the Accounts using the same accounting principles, policies and practices (in each case, save as varied by the Accounting Policies).

"Concessionaire's Accountants" means Ernst & Young, Luton Office or such other firm of chartered accountants as the Concessionaire may notify to LLA.

"Consideration" means the consideration for the transfer of the Transferred Assets, as determined pursuant to paragraphs 4 and 6.

"Construction Contracts" means those construction contracts and professional team agreements entered into by LLA in respect of construction or engineering works completed by LLA during the period of six years prior to the date hereof including all guarantees, consents or warranties supporting the same, except for the Phase I Development Contracts.

"Contracts" means all contracts of LLA (including any lease, licence or other right granted to LLA in respect of the occupation or use of land owned by any third party) relating to the Business which are subsisting as at Completion, including, without limitation, the Commercial Contracts, the Construction Contracts, the Occupational Documents, the Landing Light Leases, the Third Party Rights, the Customer Contracts, the Supplier Contracts, the Finance Agreements, the Pensions Administration Agreement and any licences in respect of Intellectual Property, except to the extent comprising Excluded Contracts.

"Council Contract" means any contracts between LLA and the Council.

"Customer Contracts" means those contracts entered into by LLA for the supply of goods and/or services by LLA in connection with the Business which are subsisting at Completion.

"Disclosed Contracts" means those Contracts which are listed in appendices to the Disclosure Letter and the Pensions Administration Agreement.

"Dornier Guarantee" means a guarantee dated 24 October 1995 between LLA and Dornier Luftfahrt GmbH.

"Excluded Contracts" means the Phase I Development Contracts, the Concession Documents, the Collateral Agreements, the Master Novation Agreement, the Debentures, the Dornier Guarantee and the Council Contracts (other than a Service Level Agreement for support and maintenance between LLA (1) and the Council (2) dated April/May 1997, an agreement dated 23 September 1997 between LLA (1) and the Council (2) in relation to the provision of a manager for LLA's Motor Transport Department, and a Service Level Agreement for the provision of nursing administration between the Council (1) and LLA (2) dated 1 December 1993).

"Excluded Items" means the assets, rights and liabilities referred to in paragraph 3.

"Finance Agreements" means those contracts entered into by LLA which are subsisting at Completion pursuant to which any assets used by LLA are (or are purportedly) being supplied to or are (or are purportedly) held by LLA on hire purchase, conditional purchase, hire, rental, leasing, licence, retention of title pending payment or other terms such that title thereto has not at Completion passed to LLA.

"Insured Employee Liabilities" all Transferred Employee Liabilities to the extent attributable to the period prior to Completion and to the extent recoverable from LLA's insurers before or after Completion.

"Leased Assets" means any assets used by LLA which are the subject of the Finance Agreements.

"LLA's Accountants" means PricewaterhouseCoopers, St Albans Office or such other firm of chartered accountants as LLA may notify to the Concessionaire.

"LLA Retained Liabilities" means all and any the following:

- (a) the obligations of LLA to make payments provided for under any Disclosed Contracts or in respect of statutory compensation for compulsory purchase during or in respect of the period up to Completion;
- (b) any obligations or liabilities of LLA arising out of any negligent, unlawful or illegal acts or omissions of LLA or the Council or any of their contractors or sub-contractors prior to Completion;
- (c) any obligations or liabilities of LLA arising out of any breach of statutory duty or any breach of applicable Laws prior to Completion;
- (d) save in respect of Transferred Employee Liabilities any obligations or liabilities of LLA which have been insured by LLA in respect of any period prior to Completion to the extent capable of recovery by LLA,

in each case except to the extent taken into account in determining the Net Consideration.

"Long Term Development" means the Advance Works identified as such in the Accounts Analysis.

"Loose Plant" means the loose and/or moveable plant, machinery, motor vehicles, tools, equipment, furniture and other like articles owned and/or used by LLA in connection with the Business at Completion (not being Fixtures & Fittings).

"Net Consideration" the aggregate net amount (which may be a positive amount or a negative amount) of the following items:

- (a) the Short Life Net Liabilities, as shown by the Short Life Net Liabilities Statement;
- (b) the net book value of the Stock extracted from the Completion Balance Sheet;
- (c) the net book value of the Loose Plant extracted from the Completion Balance Sheet; and
- (d) any other asset (or liability) comprised within the Completion Balance Sheet which is categorised within the "Newco" column of the Accounts Analysis, with the exclusion of any asset comprising the Long Term Development.

"Net Consideration Statement" means a statement in the form set out in Appendix 1 showing the amount of the Net Consideration.

"Non-Material Contracts" means any Contracts which are not Disclosed Contracts or Construction Contracts and which do not give rise to any liability which is not taken account of in preparing the Completion Balance Sheet.

"Phase I Development Contracts" means those contracts which have been entered into by LLA in connection with the Advance Works.

"Retained Records" the statutory books of LLA and the original title deeds relating to the Property Let.

"Short Life Assets" means any asset comprised within the Completion Balance Sheet which is categorised within the "Transition" column of the Accounts Analysis.

"Short Life Liabilities" means any liability comprised within the Completion Balance Sheet which is categorised within the "Transition" column of the Accounts Analysis.

"Short Life Net Liabilities" means the net amount of the Short Life Liabilities, less cash paid in respect thereof during the Collection Period.

"Short Life Net Liabilities Statement" means a statement in the form set out in Appendix 2 to this Schedule showing the amount of the Short Life Net Liabilities.

"Specified Disclosed Contracts" means the Disclosed Contracts except for the Construction Contracts.

"Stock" means all stocks of consumables, stock in trade, spare parts and operating supplies owned and/or used by LLA in connection with the Airport Business at Completion.

"Supplier Contracts" means the benefit (subject to the burden) of all contracts, arrangements and outstanding orders entered into prior to Completion by LLA with suppliers for the supply to LLA of goods or services (other than in respect of insurance) in connection with the Airport Business which are subsisting at Completion.

"Transferred Assets" means all the property, undertaking, rights and assets agreed to be transferred to the Concessionaire under this Schedule, details of which are set out in paragraph 2 of this Schedule.

"Transferred Employee Liabilities" all liabilities of LLA to which the TUPE Regulations apply

2. TRANSFER OF ASSETS

LLA agrees to transfer to the Concessionaire (and the Concessionaire agrees to accept the transfer from LLA), with effect from Completion, the Transferred Assets comprising:

- 2.1 the Books and Records;
- 2.2 the Business Information;
- 2.3 the Loose Plant subject to the Finance Agreements;
- 2.4 the Stock;
- 2.5 the benefit of the Contracts, and, subject to as provided in Clause 11, the burden of the Specified Disclosed Contracts and the Non-Material Contracts;
- 2.6 the benefit of any sum to which LLA is entitled from its insurers in respect of damage to any of the Transferred Assets or any of the Property Let, other than any sum expended by LLA before Completion in making good or reinstating the loss or damage provided that LLA shall not be obliged to pay to the Concessionaire any sum in excess of that which it actually recovers provided further that the sum is not already taken into account in the Completion Balance Sheet;
- 2.7 any other asset (or liability) comprised within the Completion Balance Sheet which is categorised within the "Newco" column of the Accounts Analysis.

3. EXCLUDED ITEMS

For the avoidance of doubt, the following items are excluded from the transfer:

- 3.1 the Property Let and the Fixtures & Fittings (which are the subject of the Property Lease and the Option Agreement);
- 3.2 all cash in hand and at bank;
- 3.3 all assets and liabilities of LLA comprised within the Completion Balance Sheet which are categorised within the "LLA" column of the Accounts Analysis (and, without prejudice to the generality of the foregoing, in any event, all liabilities of LLA in respect of the Debentures, Taxation, bank borrowings and pension charges accrued as at Completion);
- 3.4 the Retained Records (provided that copies of the original title deeds relating to the Property Let shall be made available to the Concessionaire);
- 3.5 the Short Life Assets;
- 3.6 the Short Life Liabilities;
- 3.7 the benefit and burden of the Excluded Contracts;
- 3.8 the LLA Retained Liabilities.

4. CONSIDERATION

- 4.1 No consideration shall be payable in respect of the transfer of the Business Information and the Books and Records. The consideration for the transfer of the other Transferred Assets shall be as determined and paid (by the Concessionaire or LLA) in accordance with paragraph 6.

5. COMPLETION

- 5.1 Completion shall take place at the London office of Clifford Chance.
- 5.2 Upon completion LLA shall:
 - 5.2.1 deliver to the Concessionaire possession of those Transferred Assets which are transferable by delivery at the Airport; and
 - 5.2.2 assign or transfer to the Concessionaire the benefit of such of the Contracts as the Concessionaire may require (except to the extent third party consents are required).
- 5.3 The Council and LLA agree that those Council Contracts transferred to the Concessionaire hereunder shall be deemed varied such that the Concessionaire may terminate such contracts forthwith upon written notice without payment of compensation. The parties agree that all other Council contracts shall be treated as terminated immediately prior to Completion.

6. DETERMINATION AND PAYMENT OF CONSIDERATION

- 6.1 The Concessionaire shall act as the agent of LLA to collect the Short Life Assets and to discharge the Short Life Liabilities during the Collection Period (using all reasonable endeavours so to do in the case of collection). All Short Life Assets received shall be held by the Concessionaire on trust

for LLA and forthwith deposited in (and all Short Life Liabilities discharged shall be paid out of) a separate interest-bearing trust account to be opened by the Concessionaire in the name of LLA designated as "LLA Collections (Trust) Account" ("the Collection Account"), the positive (or negative) amount (including such interest that may accrue) of which shall be notified to LLA on the first Business Day following the expiry of the Collection Period and paid to (or discharged by) LLA within seven Business Days of receipt of such notification. Following the expiry of the Collection Period, the Concessionaire shall continue to act as agent of LLA to collect any Short Life Assets not received during the Collection Period (in the manner aforesaid) but, prior to payment into the Collection Account, shall be entitled to deduct a management charge of 5% (plus VAT) of the amount of such Short Life Assets. The balance held in the Collection Account at the end of each month following the Collection Period shall be paid to LLA within seven Business Days of the relevant month end.

- 6.2 As soon as possible (and in any event within 60 days) after Completion, the Concessionaire (with the co-operation of LLA) shall procure that the Accounting Statements are prepared (by the Initial Employees at the cost of the Concessionaire) and submitted to LLA's Accountants together with all related working papers.
- 6.3 LLA shall procure that, within 15 days of receipt of the Accounting Statements and related working papers, LLA's Accountants shall certify whether or not in their opinion the Accounting Statements show a true and fair view and shall submit the Accounting Statements and their opinion certificate to the Concessionaire's Accountants. The Concessionaire shall procure that, within 8 days of receipt of the Accounting Statements and the opinion certificate of LLA's Accountants, the Concessionaire's Accountants shall certify whether or not in their opinion the Accounting Statements are fairly stated. The Concessionaire shall procure that the Concessionaire's Accountants and LLA's Accountants are given all such assistance and access to all such additional information as they may reasonably require in order to enable them to give their respective certificates.
- 6.4 If LLA's Accountants and the Concessionaire's Accountants both certify that, in their respective opinions, the Accounting Statements show a true and fair view, the amounts shown therein shall be final and binding on the Concessionaire and LLA. If either the Concessionaire's Accountants or LLA's Accountants fail to deliver their respective opinion certificates or certify that in their respective opinions any of the amounts shown in the Accounting Statements are not fairly stated, then the provisions of paragraph 6.5 shall apply and the amounts determined in respect thereof by the independent firm of chartered accountants in accordance with paragraph 6.5 shall be final and binding on LLA and the Concessionaire.
- 6.5 If any dispute arises between LLA's Accountants and the Concessionaire's Accountants as to any amount shown by the Accounting Statements either LLA or the Concessionaire may give notice that a dispute exists (a "Dispute Notice") to the other and, if LLA and the Concessionaire have not resolved the dispute within 28 days of the date of receipt of the Dispute Notice by the other, the following provisions shall apply, provided that no Dispute Notice shall be served (nor shall any Dispute Notice be valid) in respect of any amount allegedly (or purportedly) in dispute which is less than £10,000 in respect of any single item (or series of related items) or less than £50,000 in aggregate. Either LLA or the Concessionaire may refer the dispute to an independent firm of chartered accountants agreed by LLA and the Concessionaire or, in default of agreement within 28 days of the date of the Dispute Notice, an independent firm of chartered accountants nominated by

the President for the time being of the Institute of Chartered Accountants in England and Wales (the "Expert"), with a request that the Expert make a decision on the dispute within 28 days of receiving the reference. In any reference, the Expert shall act as an expert and not as an arbitrator. The decision of the Expert shall, in the absence of fraud or manifest error, be final and binding on LLA and the Concessionaire. The costs of the Expert shall be borne by LLA and the Concessionaire in such proportions as the Expert may determine to be fair and reasonable in the circumstances.

- 6.6 If the amount of the Net Consideration is a negative amount, the Consideration shall be a cash sum equal to such negative amount, payable by LLA to the Concessionaire; and if the amount of the Net Consideration is a positive amount, the Consideration shall be a cash sum equal to such positive amount, payable by the Concessionaire to LLA.
- 6.7 The amount of the Consideration payable by (or to) LLA to (or by) the Concessionaire shall be paid by electronic funds transfer to such bank account as may be notified to the payor by the payee within seven Business Days after determination of the amount thereof pursuant to this paragraph 6.

7. RISK AND TITLE

Risk in and title to the Transferred Assets shall pass to the Concessionaire on Completion with the intention that such transfer takes place with economic effect from Completion (where practicable) and LLA shall after Completion be a trustee for the Concessionaire in respect of all the Transferred Assets until title to the same shall have been formally vested in the Concessionaire or (where appropriate) any transfers or assignments have been registered (where appropriate).

8. POSITION AFTER COMPLETION

- 8.1 Save as expressly provided in this Agreement, the Airport Business shall be carried on by the Concessionaire after Completion, in all respects for the account and at the risk of the Concessionaire.
- 8.2 LLA and the Concessionaire shall forthwith pass to the other any payment, notice, correspondence, information or enquiry in relation to the Business, the Airport Business or the Transferred Assets which it receives after Completion and which properly belongs to the other.

9. INITIAL EMPLOYEES

- 9.1 LLA and the Concessionaire acknowledge and agree that, pursuant to the TUPE Regulations, the contracts of employment between LLA and the Initial Employees, together with any related collective agreements (save insofar as such contracts and agreements relate to any occupational pension scheme benefits for old age, invalidity or survivors) will have effect after Completion as if originally made between the Concessionaire and the Initial Employees (or between the Concessionaire and the relevant Trade Union, as the case may be). Accordingly, the Concessionaire shall assume and discharge all of the Transferred Employee Liabilities, to the extent not taken into account in the Completion Balance Sheet, provided that LLA shall procure the discharge on behalf of the Concessionaire of all Insured Employee Liabilities which would otherwise fall upon the Concessionaire.

- 9.2 The Concessionaire shall indemnify LLA against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) as a result of any failure by the Concessionaire to comply with its obligations under Regulation 10 (3) of the TUPE Regulations.
- 9.3 Upon or as soon as reasonably practicable after Completion the Concessionaire shall give:
- 9.3.1 to the Initial Employees, other than the Excluded Initial Employees, a notice in the agreed form attached to this Concession Agreement and marked B; and
- 9.3.2 to the Excluded Initial Employees a notice in the agreed form attached to this Concession Agreement and marked A.
- 9.4 LLA shall indemnify and continue to indemnify the Concessionaire against all costs, claims, expenses, outgoings and accrued liabilities arising in respect of any Initial Employee from the change of employer occurring by reason of the operation of the TUPE Regulations being a significant change and to the detriment of any of the Initial Employees.
- 9.5 LLA represents and warrants that as at the date of this Agreement, it has complied with its obligations imposed by the TUPE Regulations in connection with any Initial Employee. In particular LLA has complied with its obligation to inform and consult with the appropriate representatives of affected employees pursuant to Regulation 10 of the TUPE Regulations and will continue to do so. LLA shall indemnify and will continue to indemnify the Concessionaire on demand against all costs, claims, expenses and liabilities arising from or in connection with any breach of its obligation to inform and consult (including all legal fees and expenses incurred as a result of defending or settling any claims relating to any breach of its obligations under the TUPE Regulations.)
- 9.6 LLA shall indemnify the Concessionaire against any costs, claims, liabilities, awards or expenses as a result of any claims made by any Initial Employees in respect of health and safety at work matters, industrial accidents, injuries, diseases, allergies or illness or breach of the Occupiers Liability Act 1957, the Health and Safety at Work Act 1974 and any other applicable legislation which supersedes those acts from time to time which have been made or of which LLA is aware prior to close of business on Completion, or relate to any accident, injury, process or event occurring prior to close of business on Completion.

10. **APPORTIONMENTS**

- 10.1 For the purpose of preparing the Accounting Statements and subject to any contrary provisions in this Schedule:
- 10.1.1 all rent, rates, service charges and other periodic outgoings relating to or payable or accruing in respect of the Business down to and including Completion shall be borne by LLA (and, in respect of the Airport Business, as from Completion, shall be borne by the Concessionaire). Such outgoings and amounts receivable shall if necessary be apportioned accordingly provided that all outgoings specifically referable to the extent of the user of any property or rights shall be apportioned according to the extent of such user; and
- 10.1.2 all salaries, wages and other periodic outgoings for which LLA is accountable and all employer's pension contributions and all other normal employment costs (including

accrued holiday pay and bonuses) in respect of the Initial Employees down to and including Completion shall be borne by LLA and shall be apportioned accordingly and thereafter shall be borne by the Concessionaire; and

- 10.2 The Concessionaire and LLA agree that following the end of the first Concession Year the payments of profit share to the employees under the Profit Share Scheme (as continued by the Concessionaire) shall be borne as between the Concessionaire and LLA on the basis of the relative profits of the Business and the Airport Business for the relevant period and the relative periods of employment of the employee with the Concessionaire and LLA, and LLA and the Council agree promptly to make payment of such proportion to the Concessionaire before the Concessionaire is due to make payments to the employees.
- 10.3 The Concessionaire and LLA agree that where any of the Contracts (including, without limitation, price support agreements) involve the giving or potential giving of rebates or refunds or similar payments by the Concessionaire after Completion by reference to circumstances which occurred before Completion or before and after Completion, then the amount of such payments shall be fairly and reasonably apportioned as between the Concessionaire and LLA (taking into account any apportionment already made in the Accounting Statements and used to calculate the Net Consideration) and LLA and the Council agree promptly to make payment of such proportion as is attributed to LLA to the Concessionaire before the Concessionaire is due to make payments to the relevant third parties or, if not practicable, within 14 days thereafter (or, if the apportionment to LLA in the Accounting Statements used to calculate the Net Consideration is higher than the proportion attributed to LLA as aforesaid, then the Concessionaire shall make an adjusting payment to LLA within 14 days of such determination).
- 10.4 Any Dispute in relation to Clause 10.2 or 10.3 shall be determined by Fast Track Reference.

11. CONTRACTS AND LIABILITIES

11.1 Without prejudice to any claim for breach of warranty under Clause 3.4 of this Concession Agreement and any Special Force Majeure Event, as from Completion the Concessionaire shall assume responsibility for and shall observe, perform and discharge the obligations of LLA (past and present) contained in the Specified Disclosed Contracts and in the Non-Material Contracts, except for (i) the LLA Retained Liabilities, and (ii) any liabilities recoverable, without prejudice to the provisions of Clause 3.6.3, by way of breach of warranty under Clause 3.4 (except to the extent the amount of such liability has been paid by LLA or the Council to the Concessionaire), provided that a claim may not be brought by LLA in respect of such past breaches unless a claim has been brought by the third party to the contract against LLA and the Concessionaire shall not be obliged to make any payment to the third party (or LLA by way of reimbursement) in respect of such claim unless:-

- (a) the claim and quantum has been accepted by the Concessionaire; or
- (b) the claim is settled by the Concessionaire; or
- (c) final judgment has been obtained by the third party (from which there is no appeal);

and in such cases to the extent of the acceptance, settlement or judgment as applicable, and the Concessionaire shall indemnify LLA against liability for such future breaches by the Concessionaire, provided that LLA shall give the Concessionaire the same rights in relation to conduct of the claim as the Concessionaire provides to LLA as set out in Clause 3.17.

11.2 Insofar as the benefit of any of the Contracts cannot lawfully be transferred to the Concessionaire except by an assignment made with the consent of another party or by an agreement of novation, then (without prejudice to any other rights of the Concessionaire) the following provisions shall apply:

11.2.1 this Schedule shall not constitute an assignment or an attempted assignment of the Contract if the assignment or attempted assignment would constitute a breach of the Contract;

- 11.2.2 each party shall use its respective reasonable endeavours to obtain any such consent, agreement or novation (or, if the Concessionaire so requires, a novation) but the absence of or failing to obtain any such consent or agreement shall not relieve the Concessionaire from any of its obligations under Clause 11.1;
- 11.2.3 until such consent, agreement or novation is obtained, LLA shall hold the benefit of all Contracts not novated or effectively assigned to the Concessionaire upon trust for the Concessionaire and shall immediately credit (and procure the immediate credit) of all revenues derived from such Contracts (the "**Trust Contracts**") to a designated "LLA Trust Contracts Account" opened with Barclays Bank plc prior to Completion. LLA shall hold all such revenues, the LLA Trust Contracts Account and monies standing to the credit thereof upon trust for the Concessionaire and shall pay all monies standing to the credit of the LLA Trust Contracts Account to the Concessionaire promptly upon receipt to such account of the Concessionaire as the Concessionaire may nominate from time to time.
- 11.2.4 LLA shall take such steps as the Concessionaire may require (at the cost of the Concessionaire) in respect of the Trust Contracts and shall not amend, waive, release or terminate any of the Trust Contracts or do any other thing in relation thereto without the consent of the Concessionaire.
- 11.3 LLA shall observe and perform and discharge (by way of indemnity only unless failure to observe, perform and discharge prevents the Concessionaire from obtaining the benefit of any Contract) the LLA Retained Liabilities.
12. **VAT**
- 12.1 The purchase price determined in accordance with paragraph 6 shall be exclusive of VAT and the Concessionaire shall pay any VAT chargeable in respect of a supply made under this Schedule 2 against delivery of the appropriate VAT invoice by LLA.
- 12.2 LLA agrees that the amount of VAT due is only payable on the earlier of:
- (a) a date 7 days after confirmation from HM Customs & Excise to the Concessionaire that it is entitled to treat the VAT under section 26 of the VATA; or
 - (b) thirty days after the end of the VAT accounting period in which LLA is required to account for the VAT mentioned in Clause 16.2.1
- 12.3 If HM Customs & Excise refuse credit for the VAT charged on the tax invoice produced by LLA in accordance with paragraph 12.1, on the basis that they do not consider the sale is subject to VAT, LLA shall raise a credit in accordance with Regulation 34 of VAT Regulations 1995 and will reimburse the Concessionaire for any VAT paid by them to LLA.
13. **FURTHER ASSURANCE**
- LLA and the Concessionaire shall do or procure the doing of all such acts and things and/or execute or procure the execution of such documents as may be reasonably necessary for the purpose of giving effect to the provisions of this Schedule.
14. **ACCESS TO BOOKS AND RECORDS**

The Concessionaire shall hold all of the Books and Records for a period of six years from the date of Completion or until twelve months after the expiry of the Concession Period, whichever is earlier, and shall permit LLA and its representatives such access to the Books and Records as LLA may reasonably require, including, in particular, for the purpose of enabling LLA and LLA's Accountants to prepare the accounts of LLA for the period ending 31 March 1999.

15. EFFECT OF COMPLETION

The provisions of this Schedule, in so far as any such provision remains to be, or is capable of being, performed or observed, shall remain in full force and effect after Completion.

16. USE OF NAME

- 16.1 Save as provided in paragraph 16.2, LLA hereby grants to the Concessionaire (so far as LLA may have any right so to do) an exclusive licence to use the name "London Luton Airport" as part of a corporate name and (for the purpose of carrying on the Airport Business only) as a business name for the duration of the Concession Period, provided always that no warranty is given, express or implied, as to any proprietary interest which LLA may have in (or right which LLA may have in relation to) such name or as to any competing right, interest or use of such name by any third party (whether alone or in conjunction with any other name or form of words which is similar thereto).
- 16.2 LLA shall be entitled to continue to use the name "London Luton Airport" as part of its corporate name but not, for the avoidance of doubt, for the purpose of carrying on any trade or business in competition with the Airport Business carried on by the Concessionaire.
- 16.3 LLA and the Concessionaire shall co-operate together for the purpose of informing third parties of their respective corporate identities, names and activities so as to avoid confusion arising on the part of third parties dealing with either of them.
- 16.4 Upon termination of such licence the Concessionaire shall cease to use (and shall procure that none of its Affiliates shall continue to use) the name "London Luton Airport" or any similar name.

Appendix 1

Form of Net Consideration Statement

From Completion Balance Sheet

Stock	X
Loose Plant	X
Other assets/liabilities	X/(X)
Short Life Net Liabilities	<u>(X)</u>
Net Consideration	<u>X</u>

Appendix 2

Form of Short Life Net Liabilities Statement

Collections

Short Life Assets	X
Less: cash received during Collection Period	<u>(X)</u>
	X
Less: post-Collection Period receivables	<u>(X)</u>
	Nil

Payments

Short Life Liabilities	(X)
Less: cash paid	<u>X</u>
Short Life Net Liabilities	<u>(X)</u>

Appendix 3

Accounting Policies

The Completion Balance Sheet shall be prepared using the accounting policies, principles and practices used in the preparation of the Accounts save for where amended by the specific clauses below, if further clarification is required reference will be made to UK GAAP.

1. Long Term Development Expenditure

The amount of Long Term Development expenditure to be included in the Completion Accounts shall be the amount paid by LLA up to Completion Date and no account shall be taken of accruals or prepayments.

2. Tour Operator/Airline Rebates

The provision to be included in the Completion Balance Sheet for price support claims under agreements with tour operators and airlines shall be based on the following:

For 98/99: On actual passenger numbers up to Completion as a proportion of total forecast numbers for the year.

For 97/98: The provision as established in the Accounts less amounts paid between 31 March 1998 and Completion Date and any other final settlement of the liability.

For 96/97 and earlier: No provision.

3. Insurance Claims

Provision should not be made in the Completion Balance Sheet for the cost of rectification of any asset within Completion Balance Sheet for which the Concessionaire receives payment pursuant to paragraph 2.6 of Schedule 2.

SCHEDULE 3

DESCRIPTION OF "CORE AIRPORT SERVICES"

The management and operation of the Airport and the conduct of the following businesses, activities and/or the provision of the following facilities and services (except to the extent Airline Users are self-handling within the meaning of the Groundhandling Legislation):

- (a) air traffic control and the movement and parking of aircraft;
- (b) the handling of aircraft (including the supply of fuel, catering, duty free (until the abolition thereof) supplies and provisions);
- (c) the maintenance and hangarage of aircraft;
- (d) the handling of passengers and their baggage or of cargo at all stages while on land, including the transfer of passengers, their baggage or cargo to and from aircraft;
- (e) car parking for staff and passengers at the Airport or other persons visiting the Airport in (and/or in connection with) the ordinary course of the Airport business;
- (f) the refreshment of staff and passengers at the Airport or other persons visiting the Airport in (and/or in connection with) the ordinary course of the Airport business;
- (g) the supply of consumer goods (whether duty paid or duty free (until the abolition thereof)) or services to staff and passengers at the Airport and/or other persons visiting the Airport in (and/or in connection with) the ordinary course of the Airport business;
- (h) management and administration of personnel employed at the Airport;
- (i) the movement of staff and passengers and their inter-change between all modes of transport;
- (j) ensuring the safe and secure operation of the Airport;
- (k) complying with all relevant Laws;
- (l) letting (subject to the terms of the Property Lease) and general estate management of the Property Let;
- (m) maintenance of the Tangible Concession Assets in accordance with the terms of this Concession Agreement.

SCHEDULE 4
CONCESSION FEE
(Clause 16)

Service	Percentage of respondents
General practitioner	100%
Pharmacist	95%
Physiotherapist	85%
Psychologist	75%
Dietitian	65%
Social worker	55%
Counsellor	45%
Mental health nurse	35%
Community health worker	25%
Peer support worker	15%

1

[illegible]

- 2.2 On 1 July 2003 an amount of £00.10 shall be added to the Base Amount and on 1 July 2008 an amount of £00.37 shall be added to the Base Amount. After such amounts have been added to the Base Amounts on such dates, the Base Amount shall thereafter continue to be calculated as provided in this paragraph 2.
3. Clauses 1.4.1 and 1.4.2 of this Concession Agreement shall apply in the case of changes to the Retail Prices Index.
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. In the event that there is a Dispute as to the amount of a Calculated Concession Fee, such Dispute shall be resolved in accordance with Paragraph 6 of this Schedule 4.
8. The Council shall be jointly and severally liable with LLA for any payment obligation of LLA under this Schedule 5 of the Property Lease.

SCHEDULE 5
CONCESSION RECORDS

(Clause 13)

Part 1

Financial Information (Clause 13.1.1)

Such accounting records as are required to be kept under section 221 of the Companies Act, which shall:

- (a) be prepared on a consistent basis for each consecutive period not exceeding one month;
- (b) include an analysis of revenue and costs of commercially identifiable segments of the Airport Business in terms of activities, customers, business types or other suitable analysis of the Airport Business;
- (c) include for each period at least the following measures:
 - (i) revenue analysis by significant customer;
 - (ii) staff cost analysis by activity and number of employees;
 - (iii) measures of cost efficiency;
 - (iv) aged debtor and stock turnover analysis;
- (d) be available not later than one month after the end of each relevant period;
- (e) include details of any arrangement or contracts with any member of the London Luton Airport Group (including the subject matter of such arrangements, their durations and any associated charges or payment obligations).

Part 2

Material Assets (Clause 13.1.2)

For each material Tangible Concession Asset:

- (a) all relevant maintenance schedules for the last five years;
- (b) all operating manuals (including any safety related information);
- (c) all current permits, licences, certificates or other documents required to operate that asset;
and
- (d) any warranty, guarantee or similar document relating to the design, durability, capacity, construction, installation, alteration, repair or maintenance of that asset.

Part 3

Operational Information (Clause 13.1.3)

1. a record of aircraft movements, containing such information as may be required in order to enable the Concessionaire to comply with its obligations under Clause 13.3.5 together with details of punctuality of aircraft departures.
2. a record of all complaints received in relation to aircraft noise or other nuisances caused by the operation of the Airport Business.
3. Such records as are required to be kept by Law in respect of health, safety, security and the protection of the environment.

SCHEDULE 6

NOT USED

SCHEDULE 7

NOT USED

SCHEDULE 8
HANDOVER PACKAGES
(Clause 22.3)

1. Aerodrome Manual

An up-to-date copy of the aerodrome manual required to be maintained in respect of the Airport pursuant to section 60 of the Civil Aviation Act and Article 92 of the Air Navigation Order and, to the extent that such information is not included in such manual, the further information specified in paragraphs 2 to 9 below.

2. Key Personnel

A list of key personnel, to front line manager level, showing name, address, home telephone number, work telephone number, role and responsibilities.

3. Premises

3.1 A list of all premises owned, leased or operated by any member of the London Luton Airport Group showing the status, address, telephone number, responsible manager and use of each.

3.2 a list of all premises forming part of the Property Let showing equivalent details in relation to any tenant or other occupier thereof together with details of the rent payable and a summary of the principal terms of such tenancy or occupation.

3.3 an up-to-date plan of the Property Let showing all material buildings or other structures located thereon and the routes of all roads, service access and utility supplies, together with any material third party rights-of-way or easements.

3.4 Copies of all consents, licences, approvals and agreements given or received in relation to the Property Let.

4. Contracts

A list of all contracts (sales, purchase or otherwise), permits, licences or other such documents which are material to the operation of the Airport Business showing (as appropriate) the contract account number; name, address and telephone numbers of counter parties, contract price, value, term, expiry.

5. Systems

A list of systems used (computer and otherwise) for the maintenance of the Airport Business together with a description of the systems and master passwords where applicable.

6. **Daily Operations**

A list of any other information key to the daily operation of the Airport Business including:

- 6.1 cash floats by location;
- 6.2 key holders' names;
- 6.3 lists of assets owned, leased or otherwise operated by any member of the London Luton Airport Group and having a value of more than [REDACTED] (Index Linked) or being otherwise key to the operation of the Airport Business.

7. **Insurance**

- 7.1 The names and addresses of all insurers providing insurance cover to any member of the London Luton Airport Group during the Concession Period, along with the applicable policy numbers and other references.
- 7.2 The name and address of the insurance advisor(s) employed by any member of the London Luton Airport Group.
- 7.3 A letter, in a form satisfactory to LLA, authorising LLA and its agents to request and to receive from the relevant insurers of any member of the London Luton Airport Group details of all claims paid or outstanding under its insurance(s).
- 7.4 The basis of rating used to calculate the insurance premium(s) for the last five years (i.e. whether based on payroll/turnover etc.).
- 7.5 Details of all claims paid and/or outstanding with a note of any applicable deductibles.
- 7.6 Specific details on safety-related activities of any member of the London Luton Airport Group (such as major maintenance) showing the nature of the activity, locations at which it is undertaken, the extent to which the activity forms part of the work undertaken at that location and the *quantum* of resources employed in the activity (in each case for the last five years).

8. **Employees**

- 8.1 Full particulars of each Concession Employee, including name, sex and the date on which continuity of employment began for each such Concession Employee for statutory purposes;.
- 8.2 Terms and conditions of employment of each such person.
- 8.3 All payments, benefits or changes to terms and conditions of employment promised to any such person.
- 8.4 Dismissals of any Concession Employees or termination of employment effected within the last 12 months.
- 8.5 All agreements or arrangements relating to any Concession Employees entered into between any member of the London Luton Airport Group and any trade union or association of trade unions or organisation or body of employees, including elected representatives.

- 8.6 Particulars of all strikes or other industrial action taken by any Concession Employee within the last 12 months.
- 8.7 Copies of the employment manuals and policies from time to time adopted by the Airport Business (including policies in respect of health & safety and equal opportunities).

9. **Concession Records**

Copies of the records specified in Schedule 5.

SCHEDULE 9

INSURANCE

(Clause 14)

Part 1 - Operational

1. Insurance to be effected from the Commencement Date

1.1 Subject as provided in Part 3 of this Schedule, the Concessionaire shall at its own cost and expense ensure that the insurances specified in this paragraph are effected from the Commencement Date and are maintained (subject as provided in this Schedule 9) in full force for the remainder of the Concession Period:

- 1.1.1 insurances in respect of "all risks" as customarily covered by such insurance policies for physical loss or damage to the Airport and all or any structures (including temporary structures), plant (including hired in plant) and equipment including computer equipment and vehicles on the Airport, but excluding the Concessionaire's Works (or part thereof) whilst covered under paragraph 3.1 below (excluding those risks usually excluded) to their full rebuilding or replacement cost (including allowance for professional fees and removal of debris costs), increased from time to time as necessary to maintain such full rebuilding or replacement cost;
- 1.1.2 business interruption insurance to indemnify the Concessionaire in respect of the Concessionaire's revenues for a period of not less than 24 months (save in the case of the blockage of a runway where the period shall be not less than 7 days) if any of the property insured under paragraph 1.1.1 is lost or destroyed or damaged by any of the risks insured under paragraph 1.1.1 (including loss which would be identifiable but for the application of customary deductibles) which causes interruption to or interference with the Airport Business
- 1.1.3 insurance in respect of any legal liability of the Concessionaire and any of its agents, servants, employees and contractors, any third party, aircraft operator, user of the Airport or otherwise, or liability of such persons in respect of loss or damage arising out of the construction, maintenance, operation and/or management of the Airport (including the air traffic control towers), including death or bodily injury or disease, loss of or damage to property, including resultant loss of use, to such amounts as would be effected by a prudent operator of airports of the size and with characteristics comparable to the Airport and in each case which does not self-insure (except for any customary deductibles) in the initial sum of not less than [REDACTED] combined single limit (bodily injury and property damage);
- 1.1.4 any legal liability of the Concessionaire in respect of loss or damage as a result of the death and/or personal injury suffered by any employee of the Concessionaire or any person for whom the Concessionaire is responsible in the sum of not less than [REDACTED] for any one occurrence.

- 1.2 The details of the initial insurances to be effected from the Commencement Date in the agreed form are attached to this Concession Agreement and marked "[]" ("the Initial Insurances").
- 1.3 All insurances effected and maintained pursuant to this part of Schedule 9 shall include provision for self insurance by deductibles no higher than those specified in the Initial Insurances or if higher the minimum deductibles which are customary from time to time and may include the exclusions and exceptions specified in the Initial Insurances and such other exclusions or exceptions which are customary to that type of policy and size of risk covered by the policy from time to time.
- 1.4 The obligation to effect and maintain the Insurances against risks other than natural catastrophes, subsidence, earthquake, lightning, fire and explosion shall be on condition that the Insurances are available on reasonable commercial terms.
- 1.5 If the Concessionaire acting reasonably considers as soon as practicable prior to the date ("Renewal Date") for the renewal of any of the Insurance Policies that at the expiry of the Insurance Policies, any of the Insured Risks (save as set out in paragraph 1.4.1) will become uninsurable or insurable other than on reasonable commercial terms in accordance with the requirements of this Schedule 9 otherwise than due to the act or omission of the Concessionaire or any one for whom the Concessionaire is responsible, the Concessionaire shall immediately give notice to LLA in writing of:
- 1.5.1 the Insured Risks in respect of which insurance cover is no longer available (the "Uninsurable Risks"); and
 - 1.5.2 reasons why insurance cover is no longer available in the insurance market in respect of the Uninsurable Risks; and
 - 1.5.3 its proposals ("Proposals") as to what actions it considers reasonable and appropriate to undertake in order to mitigate, manage and control the Uninsurable Risks (which Proposals may include measures to share the risks and costs associated with the absence of insurance cover to amend or vary the Airport Services).
- 1.6 As soon as possible and in any event within 10 Business Days after delivery of the information referred to in paragraph 1.5.1 the parties shall meet to discuss in good faith whether or not insurance cover or modified insurance cover may be obtained in respect of the Uninsurable Risks.
- 1.7 If the parties agree in writing (or in the absence of agreement it is determined by a Fast Track Reference) that a suitable policy of insurance can be obtained in the insurance market from insurers meeting the criteria set out in paragraph 1.1 above on reasonable commercial terms in respect of the Uninsurable Risks, the Concessionaire shall immediately obtain such replacement policy.
- 1.8 If the parties agree in writing (or in the absence of agreement it is determined by a Fast Track Reference) that a suitable policy of insurance cannot be obtained in the insurance market from insurers meeting the criteria set out in paragraph 1.1 above on reasonable commercial terms in respect of the Uninsurable Risks then those Uninsurable Risks shall be a Special *Force Majeure* Event if that event were to occur.

2. **Additional Insurances**

- 2.1 The Concessionaire shall ensure (subject as contained in Clause 1.4.1 of this Schedule 9) that each policy taken out pursuant to paragraphs 1.1.1 to 1.1.4 shall be increased or decreased from time to time to such amounts (and with such deductibles) as would be effected by a prudent operator of airports of the size and with characteristics comparable to the Airport, and in each case which does not self-insure (except for any customary deductibles) and shall stipulate other requirements or amendments to Insurances, wider cover for Insurances or additional insurances as shall become customary; and
- 2.2 The Concessionaire undertakes that if at any time it shall be agreed or determined that the Scope of Insurances shall be reduced pursuant to the provisions of paragraph 1.5 and/or 2.1, then thereafter the Concessionaire shall approach the insurance market at intervals of not less than twelve months to check whether any of the terms not included in the Scope of Insurances at the relevant date have become available again on reasonable commercial terms and shall provide LLA with information on the outcome of all such enquiries and shall if thereafter so required by LLA forthwith effect revised insurances extending the Scope of Insurances to that which is achievable in the light of the renewed availability of insurance cover.
- 2.3 Without prejudice to the other provisions of this Schedule, the Concessionaire shall, throughout the Concession Period:
- 2.3.1 from time to time effect and maintain in full force those insurances which it is required to have by any applicable Law or by the terms of any contract entered into by it in respect of the Airport; and
- 2.3.2 use all reasonable efforts to effect and maintain in full force those insurances which it is required to have by the terms of any other contract to which it is at any time a party.
- 2.4 Subject to such insurance being available at reasonable cost upon terms which provide for reasonable cover for loss of an amount of Concession Fee by LLA which (based upon projections) LLA may have received as rent under the Property Lease (in excess of ██████████ per Concession Year), the Concessionaire will use reasonable endeavours to procure such cover (for a period of not more than 24 months) as part of its business interruption insurance referred to in paragraph 1.1.2 above. If the Concessionaire takes out such insurance it shall pay over to LLA such sums (if any) as the Concessionaire recovers for such loss (subject to the provisions of the Funding Agreements).
- 2.5 The Concessionaire shall at any time be entitled to effect such other insurances in addition to or supplementing those referred to elsewhere in this Schedule as it may think fit. The Concessionaire shall notify LLA of any such additional or supplementary insurances.

Part 2

3. Construction

- 3.1 The Concessionaire shall insure or cause to be insured the Concessionaire Works (including all permanent and temporary works materials and goods and all other things used for or intended for incorporation in the Concessionaire Works) in the joint names of the Concessionaire, LLA, the Council, the EPC Contractor, subcontractors and others, against loss or damage. This insurance shall cover loss or damage from any cause other than Special *Force Majeure* Events insofar as such insurance is readily obtainable. Such insurance shall be for the full replacement cost and shall also cover the costs of demolition and removal of debris. Such insurance shall be effected and maintained from the Commencement Date until the date of issue of the Taking Over Certificate for the Concessionaire Works or earlier termination of the Concession Agreement.
- 3.2 The Concessionaire shall insure against or cause to be insured liability to third parties, in the joint names of the Concessionaire, LLA, the Council, the EPC Contractor, subcontractors and any others, for any loss, damage, death or bodily injury which may occur to any physical property and shall include "Airside Liability" as such term is generally recognised in the Insurance industry (except things insured under paragraph 3.1) or to any person (except persons insured under paragraph 3.3) which may arise out of the execution of the Concessionaire Works and occurring before the expiry of the defects liability period referred to in Clause 8.25. Such insurance shall be for a limit of not less than [REDACTED] combined single limit for bodily injury and property damage liability per occurrence.
- 3.3 The Concessionaire shall insure against or cause to insured losses and claims arising from the death or injury to any person employed by the Concessionaire, the EPC Contractor or any subcontractor in such manner that the Concessionaire, LLA and the Council are indemnified under the policy of insurance.
- 3.4 The Concessionaire shall insure or cause to be insured any Development Strategy Works on the same terms as the Concessionaire Works as contained in paragraphs 3.1 to 3.3 or on such other terms as may be customary at that time for the nature, size and type of works comprising the Development Strategy Works.

Part 3 - General

4. Provisions Common to all Insurances

- 4.1 The Concessionaire shall ensure that each policy taken out pursuant to this Schedule shall be placed and maintained through such brokers and with such insurers or underwriters as may be approved from time to time by LLA, such approval not to be unreasonably withheld or delayed.
- 4.2 The Concessionaire shall ensure that (save or otherwise provided in this Schedule) in each policy taken out pursuant to this Schedule the Concessionaire is named as the principal insured. In addition, the Concessionaire shall procure that each of LLA and the Council shall be named as an additional insured or co-insured party to any policy the Concessionaire is obliged to take out under this Schedule, together with such other parties as the Concessionaire requires.

- 4.3 The Concessionaire shall use reasonable endeavours (unless unreasonable additional costs would be incurred) ensure that subject as in paragraph 1.4.1 of this Schedule 9 each policy taken out pursuant to this Schedule shall contain or have endorsed upon it provisions to the effect that:
- 4.3.1 the policy shall not be invalidated as regards the respective rights and interests of each named insured and that the insurers will not seek directly or indirectly to avoid any liability under the policy because of any act, neglect, error or omission made by any other named insured (whether occurring before or after the inception of the policy), including, without limitation, any failure by any named insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any named insured, any breach or non-fulfilment by any named insured of any condition, warranty or provision contained in this policy, whether or not such act, neglect, error or omission could, if known at any time, have affected any decision of the insurers to grant the policy, to agree to any particular term or terms of the policy (including without limitation this endorsement and the amount of any premium) or to act or refrain from acting in any way whatsoever in relation to the policy or liability which may arise thereunder; and
 - 4.3.2 the insurers agree to waive all rights of subrogation howsoever arising which they may have or acquire against any of the named insureds arising out of any occurrence in respect of which any claim is admitted under the policy.
- 4.4 The Concessionaire shall ensure the prompt payment of all premiums payable under each policy in accordance with its terms taken out pursuant to this Schedule and shall, on request of LLA, produce as soon as is reasonably practicable evidence of such payment and upon the effecting or renewal of any such policy, produce, on or before the date such policy is effected or expires, as the case may be, evident thereof.
- 4.5 The Concessionaire shall require that each broker or agent through whom any insurance policy referred to in this Schedule is effected or renewed shall give notice of such effecting or renewal to LLA as soon as practicable after such insurance policy is effected or renewed.
- 4.6 All Insurance Policies issued shall:
- 4.6.1 include a severability of interest clause which provides that the Insurance will operate to give each insured the same protection as if there was a separate policy issued to each assured subject to this not increasing the insurer's liability;
 - 4.6.2 contain a provision confirming that the relevant policy is primary and without right of contribution and the liability of the insurers will not be affected by any other insurance of which the Concessionaire or LLA may have the benefit so as to reduce the amount payable to any assured under such policy;
 - 4.6.3 provide that the Insurances will continue unaltered for the benefit of the insured for at least 30 days after written notice of any cancellation, change, modification or lapse by reason of non-payment of premiums or instalment or otherwise thereof has been received by the Concessionaire or LLA;

5. Information

5.1 The Concessionaire shall give to LLA such information as to the insurances taken out pursuant to this Schedule (or as to any matter which may be relevant to such insurance) as may be reasonably requested, and shall ensure that (subject to continued availability on reasonable commercial terms) no reductions in limits coverage (including those resulting from extensions) or increases in deductibles, exclusions or exemptions shall be made to any insurance effected or renewed pursuant to this Schedule without the written consent of LLA, such consent not to be unreasonably withheld or delayed.

5.2 The Concessionaire shall notify LLA as soon as reasonably practicable after it becomes aware of any occurrence which may entitle any person to submit a claim [REDACTED] (Index Linked) or the equivalent in any other currency under any of the policies required to be maintained pursuant to this Schedule.

6. Permission to Procure Insurances

If at any time and for any reason any insurance required to be maintained under this Schedule shall not be in full force and effect for any reason LLA shall thereupon, or at any time whilst the same is continuing, be entitled to procure such insurance at the expense of the Concessionaire.

7. Application of Insurance Proceeds by Concessionaire

Subject to paragraph 8 below, the Concessionaire shall as soon as reasonably practicable apply any monies received following any claim made under the policies maintained by it (whether pursuant to this Schedule or otherwise) toward making good the loss or damage to which the claim relates.

8. Application of insurance proceeds by Funders

If the Funders under any Funding Agreement prevent the application of any proceeds of insurance as contemplated in paragraph 7 above, the Concessionaire shall as soon as reasonably practicable replace or make good the buildings or structures damaged or destroyed in accordance with an alternative strategy prepared by the Concessionaire based upon the market conditions prevailing at that time having consulted in good faith with LLA and the Council on the content of the alternative strategy. This obligation shall take precedence over the obligation in Clause 27.1, for the avoidance of doubt.

9. Customary

Reference in this Schedule 9 to "customary" shall mean customary for airports of a similar size and characteristics to the Airport.

SCHEDULE 10

PENSIONS

(Clause 15)

1. Throughout the Concession Period, save as otherwise required by any applicable legal or regulatory requirement and subject as hereinafter provided in this Schedule 10:
 - 1.1 the Concessionaire will comply with all of its obligations under the terms of the LLA Scheme including, in particular, without prejudice to the generality of the foregoing, its obligation to make contributions under clause 2.4, clause 2.6, clause 4, Rule 5.1, Rule 7.4 and Rule 13.1(6) thereof either during or after the cessation of the Concession Period as required in accordance with the respective clause or rule;
 - 1.2 each of the Concessionaire and LLA will exercise all of its powers and discretions under the LLA Scheme in a manner which is intended not to prejudice the relationship of confidence and good faith between it and the Concession Employees;
 - 1.3 the Concessionaire will procure that all information which is required by law to be disclosed, and all information which is actually disclosed by it to members of the LLA Scheme (but not information relating only to any single member specifically, unless that information is connected in any way with the granting of special benefits or other non-standard terms of membership) or to any recognised independent trade union in relation to the LLA Scheme and which is material to the functions of LLA under the LLA Scheme is also disclosed to LLA in writing (whether or not LLA actually requests it);
 - 1.4 the Concessionaire will refrain from exercising any power under the LLA Scheme at any time when under the terms of the LLA Scheme the power is stated only to be exercisable with the consent of LLA except in accordance with the terms of the LLA Scheme;
 - 1.5 the Concessionaire will procure that all Concession Employees who immediately before Completion are members of the LLA Scheme remain entitled to be members on the terms of the LLA Scheme at the date of Completion (as amended either because of any relevant legal or regulatory requirement, or otherwise in accordance with the terms of the LLA Scheme) unless LLA gives its written consent to any variation to this obligation;
 - 1.6 the Concessionaire will refrain from offering, announcing, introducing (or intimating, implying or stating to any Concession Employee or to any relevant trade union that there may be offered, announced or introduced) any relevant benefit (as that term is defined in section 612 of the Taxes Act) to any Concession Employee or any person claiming under any Concession Employee, except under the terms of the LLA Scheme or with the written consent of LLA;
 - 1.7 the Concessionaire will refrain from taking, instigating, encouraging or financing (directly or otherwise), any legal action (including without limitation complaints to the Pensions Ombudsman) which would or might increase the size of any transfer payment payable in respect of an LGPS Member by the LGPS to the LLA Scheme;

- 1.8 the Concessionaire will not permit any Employer (as defined in the LLA Scheme's terms) other than itself to participate in the LLA Scheme or permit any employee of its own or of any other person who is not wholly or primarily employed in the Airport Business to become a Member (as defined in the LLA Scheme's terms) or to remain such a Member, except insofar as this may be permitted under the terms of the LLA Scheme.
2. The Concessionaire will allow all those Initial Employees entitled to become members of the LLA Scheme, who are not immediately before Completion already members of the LLA Scheme or the LGPS, to remain entitled (on the same terms and subject to the same conditions as apply on Completion under the LLA Scheme) to become members of the LLA Scheme after Completion.
3. The Concessionaire and LLA will each use best endeavours to procure that all LGPS Members become members of the LLA Scheme with effect from Completion except in cases where the LGPS Member concerned exercises, within two months of Completion, any right not to be or to become a member of the LLA Scheme.
4.
 - 4.1 If and to the extent that any law applicable to the Concessionaire requires the Concessionaire to provide pension arrangements or other arrangements providing relevant benefits (defined as above) in respect of any Concession Employee, no provision of this Concession Agreement shall be interpreted as prohibiting the Concessionaire from complying with any such law or as requiring any person's consent to do so.
 - 4.2 If and to the extent that any such law applies to the Concessionaire, the Concessionaire will, so far as that law permits (subject to paragraphs 4.3 and 4.4) make any such mandatory provision under the terms of the LLA Scheme.
 - 4.3 The obligation of the Concessionaire under paragraph 4.2 may be disapplied if LLA gives its written consent to any written proposal received from the Concessionaire for any alternative means of making such mandatory provision.
 - 4.4 If and to the extent that the law does not allow such mandatory provision to be made under the terms of the LLA Scheme, or such provision is not within the powers of and cannot be procured by the Concessionaire, the Concessionaire undertakes to consult with LLA with a view to LLA and the Concessionaire agreeing in writing an alternative means of provision to satisfy the requirements of such law and in these circumstances LLA shall not unreasonably withhold or delay its agreement beyond any date by which the Concessionaire is obliged by such law to make such mandatory provision.
- 5.1 LLA confirms that as at Completion it has not received notice of any claims or potential claims against it in its capacity as Principal Employer or Employer under the LLA Scheme and so far as LLA is aware the Trustees of the LLA Scheme have not received any notice of any such claim or potential claim (save as disclosed in the Disclosure Letter or, in respect of claims or potential claims notice of which is received between the signature of this Concession Agreement and Completion only, as disclosed to the Concessionaire in writing prior to Completion).

- 5.2 Save and except as excluded under paragraph 5.3, the Concessionaire undertakes to LLA that it will assume responsibility with effect on and from Completion for all liabilities, obligations and responsibilities as Principal Employer and as an Employer under the LLA Scheme including, without limitation, any liabilities arising after Completion which relate to matters or events occurring before Completion but of which no notice of any claim or potential claim was received by LLA or the Trustees of the LLA Scheme before Completion.
- 5.3 LLA hereby acknowledges and agrees that any liability in respect of any of the matters listed below shall remain its sole responsibility and liability after Completion and undertakes to indemnify and keep indemnified the Concessionaire against any liability arising from or in connection with any claim, action or proceeding brought against the Concessionaire in respect of any of the following matters in relation to the LLA Scheme:-
- (a) any liability arising from the fraud, negligence, or breach of statutory duty (but, for the avoidance of doubt, not breach of contract) on the part of LLA;
 - (b) any claim made or already in progress against LLA before Completion;
 - (c) any liability in respect of claims made against the Concessionaire as Principal Employer or as an Employer of the LLA Scheme of which LLA or the Trustees of the LLA Scheme have received notice before Completion;
 - (d) any failure by LLA to pay all contributions (and any other payments) due to the LLA Scheme up to Completion (save as disclosed in the Disclosure Letter) including, in particular, but without limitation to the generality of the foregoing:-
 - (i) employer contributions due from LLA in accordance with advice from the LLA Scheme actuary; and
 - (ii) forwarding contributions deducted by LLA from the remuneration of LLA Scheme members;
 - (e) any obligation or liability resulting from a fraudulent or negligent mis-statement of data by LLA to the LLA Scheme actuary;
 - (f) any debt due from LLA under section 75 of the Pensions Act 1995 on LLA's withdrawal from the LLA Scheme;
 - (g) any obligation to indemnify the Trustees of the LLA Scheme under the terms of the LLA Scheme or otherwise in respect of any liability resulting from the fraud, negligence or breach of statutory duty (but, for the avoidance of doubt, not breach of contract) on the part of LLA

Provided that the Concessionaire shall promptly notify any such claim, action or proceeding to LLA and thereafter keep LLA fully informed of its progress. In the conduct of any such claim, action or proceeding the Concessionaire shall comply with any reasonable directions as LLA may from time to time give to the Concessionaire in writing and will not make any admission of liability, agreement or compromise in relation to any such claim, action or proceeding without the prior written consent of LLA (such consent not to be unreasonably withheld or delayed).

6. By the end of the Concession Period each of LLA and the Concessionaire will take all steps within its power (provided that it shall not be required to breach any Law) and sign (and use its best endeavours to procure that any other parties thereto will sign) all documents necessary to procure:
- 6.1 that LLA (or such Successor Operator as LLA may nominate in writing to the Concessionaire before the date which falls two months before the end of the Concession Period or as soon as practicable after such date) becomes the Principal Employer (as defined in the terms of the LLA Scheme) with effect from the end of the Concession Period or such earlier date as LLA and the Concessionaire may agree; and
- 6.2 that, as far as the law relating to pension schemes allows, the Concessionaire is discharged from its obligations in its capacity as Principal Employer and as an Employer under the LLA Scheme and LLA or any Successor Operator (as the case may be) shall assume such obligations as the new Principal Employer and as an Employer under the LLA Scheme (other than in respect of any claims which have been brought against the Concessionaire in such capacity or potential claims of which it has notice, but which have not been settled, prior to or on the date on which the Concession Period ends, or the earlier date of its ceasing to be the Principal Employer) Provided that the foregoing discharge and assumption shall be without prejudice to:-
- (a) any liability of the Concessionaire to the trustees of the LLA Scheme in respect of:-
- (i) any debt due from it to the LLA Scheme arising under section 75 of the Pensions Act 1995; and
 - (ii) any final special contribution due from it under the terms of the LLA Scheme to achieve a 100% funding level in the LLA Scheme as at the date of termination of the Concession Period in accordance with clause 2.6 of the LLA Scheme definitive trust deed; and
- (b) any liability of the Concessionaire in respect of any of the matters listed below, which shall remain the sole responsibility and liability of the Concessionaire after the date on which the Concession Period ends or the earlier date of the Concessionaire ceasing to be Principal Employer (in this paragraph hereafter called "the End Date") and the Concessionaire undertakes to indemnify and keep indemnified LLA or any Successor Operator (as the case may be) against any liability arising from or in connection with any claim, action or proceeding brought against LLA or any Successor Operator (as the case may be) in respect of any of the following matters in relation to the LLA Scheme:-
- (i) any liability arising from the fraud, negligence, or breach of statutory duty (but not, for the avoidance of doubt, breach of contract) on the part of the Concessionaire;
 - (ii) any claim made or already in progress against the Concessionaire before the End Date;

- (iii) any liability in respect of claims made against LLA or any Successor Operator, as Principal Employer or as an Employer of the LLA Scheme, of which the Concessionaire or the Trustees of the LLA Scheme have received notice before the End Date;
- (iv) any failure by the Concessionaire to forward contributions deducted by the Concessionaire from the remuneration of LLA Scheme members due to the LLA Scheme up to the End Date;
- (v) any obligation or liability resulting from a fraudulent or negligent mis-statement of data by the Concessionaire to the LLA Scheme actuary;
- (vi) any obligation to indemnify the Trustees of the LLA Scheme under the terms of the LLA Scheme or otherwise in respect of any liability resulting from the fraud, negligence or breach of statutory duty (but, for the avoidance of doubt, not breach of contract) on the part of the Concessionaire

Provided that LLA or any Successor Operator (as the case may be) shall promptly notify any such claim, action or proceeding to the Concessionaire and thereafter keep the Concessionaire fully informed of its progress. In the conduct of any such claim, action or proceeding LLA or any Successor Operator (as the case may be) shall comply with any reasonable directions as the Concessionaire may from time to time give to LLA or any Successor Operator (as the case may be) in writing and will not make any admission of liability, agreement or compromise in relation to any such claim, action or proceeding without the prior written consent of the Concessionaire (such consent not to be unreasonably withheld or delayed).

7. The Concessionaire and LLA acknowledge their mutual understanding that the combined effect of Regulation 5(1) and Regulation 7(2) of the TUPE Regulations is that the contractual rights of Concession Employees, whether or not derived from the provisions of an occupational pension scheme, which do not relate to benefits for old age, invalidity or survivors will become enforceable against the Concessionaire with effect from the Commencement Date on the same terms as against LLA immediately before the Commencement Date.

For the avoidance of doubt, nothing in this Concession Agreement shall limit or restrict (or be construed as an attempt to limit or restrict) the effect of the TUPE Regulations in relation to such contractual rights.

- 8.1 LLA and the Council hereby confirm that at the date of this Concession Agreement there is an established practice of providing the benefits ("Redundancy Rights") referred to in paragraph 8.2 for any LGPS Member upon termination of his employment, on or after his attaining age 50, by reason of redundancy or in the interests of the efficient exercise of the employer's functions and so far as they are each aware, there are no other similar such practices in respect of any of the Concession Employees.

- 8.2 The Redundancy Rights of the LGPS Members are:-

- (a) rights to immediate, unreduced early retirement pension scheme benefits; and
- (b) rights to benefit enhancements by way of credited pensionable service to the maximum extent permitted under the Local Government (Discretionary Payments) Regulations 1996 as

amended prior to the date of this Concession Agreement ("Discretionary Payments Regulations").

- 8.3 Paragraph 9 and the Pensions Announcement Letter are intended to reflect the agreement of LLA and the Concessionaire regarding the extent to which and the terms on which the Concessionaire is obliged to maintain the Redundancy Rights referred to in paragraph 8.2 in respect of the LGPS Members during the Concession Period, whether or not this may be required under the TUPE Regulations.
- 9.1 Whether or not the same may reflect the requirements of the TUPE Regulations, the Concessionaire undertakes to LLA (and to the LGPS Members by means of the Pensions Announcement Letter) to provide or procure that there are provided the following benefits for any LGPS Member whose service as a Concession Employee is terminated during the Concession Period on or after his attaining age 50 by the Concessionaire by reason of redundancy or in the interests of the efficient exercise of the employer's functions and whose pensionable service under the LLA Scheme has been continuous from the Commencement Date to the said date of the termination of his service:
- (a) unreduced, immediate retirement benefits under the LLA Scheme in accordance with rule 7.3 of the rules of the LLA Scheme (taking account of as much additional pensionable service awarded in accordance with sub-paragraphs (b) and (c) below as may be permitted without exceeding Inland Revenue limits);
 - (b) the award of an Additional Period (as defined in paragraph 9.2) of pensionable service under the LLA Scheme Provided that if the total Additional Period cannot be awarded in respect of any such LGPS Member under the LLA Scheme, due to Inland Revenue limits or any other restriction under any Law, the Concessionaire shall provide compensation (hereinafter in this Schedule called "Compensation") to the LGPS Member, payable by some other means outside the LLA Scheme, equal in value (as determined by the LLA Scheme actuary and notified to the Concessionaire and to LLA) to the difference between the value to the LGPS Member of the benefits which would have been awarded in respect of the total Additional Period under the LLA Scheme had that been permitted for that LGPS Member and the value to the LGPS Member of the benefits in respect of that part of the Additional Period which can be, and are, awarded under the LLA Scheme; and
 - (c) the award of a "year for year" Pensionable Service credit under the LLA Scheme in accordance with rule 13.1(3) thereof for any such LGPS Member who elects to transfer his rights accrued prior to the Commencement Date under the LGPS into the LLA Scheme under rule 13.1(2) thereof.
- 9.2 For the purposes of this paragraph 9, "Additional Period" means a period equal in length to the maximum credited period ("Credited Period") (as defined in Regulation 8(1) of the Discretionary Payments Regulations and summarised below) which would have been awarded, pursuant to the Council's and/or LLA's established practice of exercising their discretions under the Discretionary Payments Regulations in accordance with and subject to the terms of the Discretionary Payments Regulations (as in force at the date of this Concession Agreement), if the LGPS Member's total period of membership of the LGPS had included both his actual total period of membership of the LGPS prior to the Commencement Date and the period of his continuous LLA Scheme pensionable service from the Commencement Date to the date of termination of his service as a

Concession Employee as referred to in paragraph 9.1 (in this Schedule hereinafter called the "Total Service Period").

There follows a summary of the meaning of Credited Period for the purposes of this paragraph 9.2, which is intended to reflect the definition of "credited period" contained in Regulation 8(1) referred to above insofar as it may be related to an LGPS Member by reference to his Total Service Period, and to the extent that the summary does not fully reflect the definition in that way it shall be deemed to be modified accordingly in order to do so.

Subject to any applicable abatements or restrictions by reference to the Discretionary Payments Regulations, the Credited Period is the period which does not exceed:-

- (a) the period by which the LGPS Member's Total Service Period falls short of 40 years;
- (b) the period beginning with the day following the date of termination of the LGPS Member's service as a Concession Employee and ending with his 65th birthday;
- (c) the aggregate of the LGPS Member's Total Service Period and any period of superannuable membership (as defined in Regulation 10(2) of the Local Government Pension Scheme Regulations 1997); or
- (d) 10 years.

- 9.3 The Concessionaire undertakes to LLA that it shall notify the trustees of the LLA Scheme in writing (as provided for under Rule 13.1(2)(b) of the LLA Scheme) that the provisions of Rule 13.1(2) of that scheme shall apply in respect of any LGPS Member whose service as a Concession Employee is terminated in the circumstances referred to in paragraph 9.1 and who makes a written request in accordance with that Rule.
- 9.4 The Concessionaire's obligations under sub-paragraph (a) of paragraph 9.1 shall be conditional on the LGPS Member exercising all such rights and generally doing all such things within his power as may be necessary to bring into immediate, unreduced payment, his benefits under the LLA Scheme and the Concessionaire undertakes to LLA that it shall notify in writing any LGPS Member, whose service is terminated in the circumstances referred to in paragraph 9.1, what is required of him in order to enable his retirement benefits under the LLA Scheme (and any additional benefits payable in accordance with paragraph 9.1), to come into payment immediately upon his service being so terminated.
- 9.5 LLA undertakes to the Concessionaire that it will give any such consent or approval under the terms of this Schedule 10 or under the terms of the LLA Scheme as may be necessary to allow the benefits to be provided in accordance with paragraph 9, either under the LLA Scheme or outside the LLA Scheme in accordance with the foregoing provisions and the terms of the Pensions Announcement Letter. For the avoidance of doubt, LLA and the Council confirm that nothing in this Concession Agreement shall prevent or impede the Concessionaire from providing the said benefits or shall impose on the Concessionaire any requirement to obtain the consent of LLA in order to do so.
- 9.6 The Concessionaire hereby acknowledges that (subject only as may otherwise be agreed between LLA and the Concessionaire) any liability it incurs in respect of its obligation to award Compensation under paragraph 9.1(b) to or in respect of an LGPS Member by some means outside

the LLA Scheme shall remain its sole responsibility and liability both during and after the end of the Concession Period and the Concessionaire undertakes to indemnify and keep indemnified LLA against any cost, expense, loss or other liability arising from or in connection with any claim which may by virtue of any Law be brought against LLA in respect of any liability to pay or provide such Compensation (whether during or after the end of the Concession Period). Provided that LLA shall promptly notify any such claim to the Concessionaire and thereafter keep the Concessionaire fully informed of its progress and in the conduct of any such claim LLA shall comply with any such reasonable directions as the Concessionaire may from time to time give to LLA in writing and will not take any material step in relation to any such claim (including without limitation any admission of liability) which would or might result in any claim under the foregoing indemnity without the prior written consent of the Concessionaire (such consent not to be unreasonably withheld or delayed).

10.

- (a) The Concessionaire and LLA shall on or before Completion execute an engrossed version of the Pensions Deed and LLA shall use its best endeavours to procure that the trustees of the LLA Scheme (except for [REDACTED] and [REDACTED]) shall prior to Completion execute the engrossed version of the Pensions Deed. The provisions of this Schedule 10 are dependent upon the Pensions Deed being executed by LLA and the Concessionaire (with any such modifications as may be agreed prior to Completion by LLA, the Concessionaire and the trustees of the LLA Scheme) on or before the date of Completion. LLA and the Concessionaire shall each use their respective best endeavours to procure that as soon as practicable after the Completion Date the said [REDACTED] and [REDACTED] shall execute the Pensions Deed and the Pensions Deed shall then be dated and delivered as a deed.
- (b) The Concessionaire and LLA shall each use their best endeavours to procure that if the Pensions Deed has not been approved by the Inland Revenue Pension Schemes Office ("PSO") prior to Completion, such further amendments to the LLA Scheme (designed so far as possible to give effect to the terms of this Schedule and the Pensions Deed) as may be required to enable it to be approved by the PSO shall be effected as soon as reasonably practicable following Completion PROVIDED that if and to the extent that the PSO does not approve the insertion into the Rules of the LLA Scheme of the proposed new sub-Rules 13.1(6), (8) or (9) as provided for in Clause 2.23 of the Pension Deed, the Concessionaire undertakes to LLA to make or procure there are made such payments into a separate bank account to be opened by the Concessionaire (in the name of the Concessionaire but to which LLA shall be a required signatory for the payment, withdrawal or transfer of funds from the account) and designated the "LLA Scheme escrow account" ("the Escrow Account") of the same amount and at the same intervals as would have been payable by the Concessionaire as principal employer of the LLA Scheme under the said sub-Rules as special contributions into the LLA Scheme had the said sub-Rules been approved by the PSO. The Concessionaire undertakes to LLA to retain the money representing the payments so made by the Concessionaire (and all interest received thereon) in the Escrow Account until such time or times as such special contributions can, with the approval of the PSO, be paid into the LLA Scheme to be held by the trustees of the LLA Scheme upon the same terms (insofar as possible) as would have applied under the said sub-Rules. Insofar as the aforesaid is not possible, the Concessionaire undertakes to LLA that the said money shall be retained in the Escrow Account until such time as LLA and the Concessionaire shall agree in writing how to apply it in such a way as most closely reflects the provisions of the said proposed sub-Rules under the Pensions Deed. Insofar as the PSO

may allow some, but not all, such special contributions to be paid into the LLA Scheme the foregoing provisions of this proviso shall only apply to such part of those contributions which are not allowed so to be made. The Concessionaire and LLA shall agree how best to procure that amounts equal to the said payments are forwarded to the LLA Scheme on a tax efficient basis (including by reimbursement to the Concessionaire from the Escrow Account for contributions paid by the Concessionaire direct to the LLA Scheme). The Concessionaire and LLA agree that any amounts for the time being held in the Escrow Account shall be on account of the Concessionaire's special contributions payable or to be payable to the LLA Scheme and that in no circumstances shall any "relevant benefits" (defined as above) be paid or payable from the Escrow Account or from the amounts so held.

For the avoidance of doubt, neither the Concessionaire nor LLA intend to create a trust in relation to any amounts for the time being held in the Escrow Account other than as may be expressly provided for hereafter. In the event, but only in the event, of a Concessionaire Event of Default, the Concessionaire hereby declares that it will hold any amount then standing to the credit of the Escrow Account on trust for the trustees of the LLA Scheme.

- (c) Prior to Completion the Concessionaire will confirm to LLA and to the trustees of the LLA Scheme the details of the five individuals who are to continue or to be appointed (as the case may be) as trustees of the LLA Scheme on and from the completion of the Deed of Appointment as nominees of the Concessionaire (as Principal Employer of the LLA Scheme), and LLA will confirm to the Concessionaire and to the trustees of the LLA Scheme the details of the individual to be appointed or to remain (as the case may be) as a trustee of the LLA Scheme on and from the completion of the Deed of Appointment, being the LLA Nominee (as defined in clause 7.2 of that scheme). The said details shall be incorporated into the Deed of Appointment. The Concessionaire shall, on or before Completion, execute an engrossed version of the Deed of Appointment with such details incorporated as aforesaid, and LLA and the Concessionaire shall each use their respective best endeavours to procure that (i) the other parties to the Deed of Appointment, except [REDACTED], shall prior to Completion execute the engrossed version of the said Deed of Appointment; (ii) as soon as practicable after the Completion Date the said [REDACTED] shall execute the said engrossed Deed of Appointment; and (iii) the duly executed Deed of Appointment shall be dated and delivered as a deed as soon as practicable after Completion and after execution and delivery of the Pensions Deed.

11. The Concessionaire undertakes that if any Concession Employee who was eligible to (but who did not) join the LLA Scheme prior to 1 April 1998 as a manual worker subsequently applies to become a member of the LLA Scheme at a time when such Concession Employee is still eligible to become a member of the LLA Scheme and is still a manual worker, the Concessionaire shall execute, and shall use its best endeavours to procure that the trustees for the time being of the LLA Scheme shall execute, a deed (or alternatively that the Concessionaire and the trustees for the time being of the LLA Scheme shall resolve to admit such Concession Employee to the LLA Scheme on special terms) which shall enable such Concession Employee to contribute to the LLA Scheme as a member thereof at the rate of 5% (rather than 6%) of his or her pensionable pay. LLA undertakes to give its consent (if required) to any such deed or resolution of the Concessionaire and the trustees of the LLA Scheme.
12. The Concessionaire shall on, or as soon as reasonably practicable after, Completion issue the Pensions Announcement Letter to all LGPS Members.
13. Save as provided in this Schedule 10 or in the Pensions Deed, neither the Council nor LLA will, without the consent of the Concessionaire (such consent not to be unreasonably withheld or delayed), do any act during the Concession Period, including for the avoidance of doubt but without limitation the issue of any written or verbal communications to any Concession Employee or its or their employees or former employees, which would or might affect the rights or expectations in relation to the provision of relevant benefits (defined as above), of any employee or former employee of LLA (who, after the Concession Date, is either a beneficiary under the LLA Scheme, or a Concession Employee, or both) except insofar as such act is required by legislation or by a regulatory authority. LLA and the Council undertake to use their respective best endeavours to procure that no act is taken by the current trustees of the LLA Scheme without the consent of the Concessionaire in the period between Completion and the dating and delivery of the Pensions Deed and the Deed of Appointment, save for procuring the completion and delivery of those deeds, unless such act is required by legislation or by a regulatory authority.
14. References in this Schedule to numbered paragraphs are to the corresponding numbered paragraph in this Schedule.

SCHEDULE 11

NOT USED

SCHEDULE 12
WARRANTIES BY LLA
(Clause 3.4)

1. Capacity and Authority

- 1.1 LLA is a private company limited by shares incorporated under the laws of England and Wales and has been properly constituted and in continuous existence since incorporation.
- 1.2 LLA and the Council each has the power and authority, and has taken all corporate actions necessary, to execute and deliver validly, and to exercise its rights and perform its obligations validly, under this Concession Agreement and the Property Lease and each other document to which the Council or LLA is a party with the Concessionaire to be executed at or before Completion, including, without prejudice to the generality of the foregoing, to transfer to the Concessionaire the Transferred Assets upon the terms and conditions of this Concession Agreement, to transfer the Council Shares and to grant to the Concessionaire the leasehold estate under the Property Lease.
- 1.3 The obligations of each of LLA and the Council under this Concession Agreement, the Property Lease and each other document to which the Council or LLA is a party with the Concessionaire to be executed at or before Completion are, or when the relevant documents are executed will be, enforceable in accordance with their terms.
- 1.4 LLA has the right, power and authority to own the Transferred Assets and operate and manage the Airport and validly transfer the Transferred Assets to the Concessionaire upon the terms and conditions of this Agreement grant to the Concessionaire the Property Leases upon the terms and conditions thereof and contract with the Concessionaire for the provision of the Airport Services and the carrying on of the Airport Business upon the terms and conditions of this Concession Agreement.
- 1.5 No order has been made, petition presented, or resolution of LLA or the Council passed, for the winding up of LLA or the Council or the appointment of a liquidator to LLA or the Council or for the appointment of an administrator in respect of LLA or the Council.
- 1.6 No receiver, administrative receiver or manager has been appointed to the whole or any part of the business or assets of LLA or the undertaking or assets of the Council.
- 1.7 No voluntary arrangement has been proposed under Section 1 of the Insolvency Act 1986 in respect of LLA. No compromise, moratorium or arrangement has been proposed, agreed to or sanctioned under Section 425 of the Companies Act in respect of LLA.

- 1.8 Neither the Council nor LLA is insolvent or unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except that in the interpretation of this Warranty, Section 123(1)(a) Insolvency Act 1986 shall have effect as if for "£750" there was substituted £100,000), nor have either stopped paying its debts as they fall due, save where any debt is being contested in good faith and adequate funds are available to discharge the debt.
- 1.9 No action is being or has been taken by the Registrar of Companies to strike LLA off the register under Section 652 of the Companies Act.

2. Accounts

2.1 The Accounts:

- 2.1.1 have been prepared and audited in accordance with generally accepted accounting principles and practice in the United Kingdom and, without prejudice to the generality of the foregoing, in compliance with the Companies Acts and all applicable Statements of Standard Accounting Practice or Financial Reporting Standards issued or adopted by the Accounting Standards Board;
- 2.1.2 give a true and fair view of the state of affairs of LLA as at the last Accounting Date and of the profits (or losses) of LLA for the financial year ended on the Last Accounting Dates;
- 2.1.3 to the extent required by law and consistent with the principles, practices and standards referred to in paragraph 2.1.1 above, disclose in a proper manner and/or make proper provision for (in each case, in accordance with the accounting policies set out in the Accounts):
- (a) all liabilities of LLA as at the Last Accounting Date, whether actual or contingent, liquidated or unliquidated;
 - (b) all commitments of LLA as at the Last Accounting Date in respect of capital expenditure;
 - (c) depreciation of land, buildings and other fixed assets;
 - (d) bad or doubtful debts
- 2.1.4 without prejudice to the generality of sub-paragraph 2.1.3, specifically note any contingent liability of which LLA was aware as at the Last Accounting Date in excess of £150,000 (or series of related contingent liabilities which would in aggregate exceed £150,000).

2.2 The Management Accounts:

- 2.2.1 have been prepared with reasonable accuracy and care and in good faith, on a consistent basis, and consistently with the Accounts;

- 2.2.2 having regard to the fact that they have not been audited, are reasonably accurate and not materially misleading and, in particular, do not materially misrepresent the state of affairs or assets and liabilities of LLA as at the date up to which they are prepared or the profits (or losses) of LLA for the period since the Last Accounting Date;
 - 2.2.3 without prejudice to the generality of sub-paragraph 2.2.2, disclose all material commitments entered into by LLA since the Last Accounting Date in respect of capital expenditure;
 - 2.2.4 without prejudice to the generality of sub-paragraph 2.2.2, either make provisions for or specifically note any contingent liability in excess of £150,000 (or series of related contingent liabilities which would in aggregate exceed £150,000) which has (or have) arisen and of which LLA has become aware since the Last Accounting Date.
- 2.3 Since the Last Accounting Date, the business of LLA has been operated so as to maintain it as a going concern and (save as may be disclosed by the Management Accounts) LLA is not aware of any material adverse change in the financial condition of such business (excluding future prospects of the Airport Business), other than any change which would be likely to affect businesses generally or would be likely to affect all other airport operators' businesses to a similar extent.
- 2.4 Since the Last Accounting Date, LLA has not received notice of any termination, or change in the terms, of a material contract or the loss of a material customer or supplier or any other abnormal factor not affecting all other airport operators' businesses.
- 2.5 Save as fairly disclosed in the Disclosure Letter, and except for the contemplated Concessionaire Works and the possible works contemplated by the Development Strategy, neither LLA nor the Council is aware of any items of capital expenditure which will be required by any Law existing at the date of this Concession Agreement in respect of the Tangible Concession Assets (as such assets are constituted as at the date of this Concession Agreement) within the five years following the date hereof and which could cause capital expenditure in respect of any one such item of capital expenditure (or series of related items with respect to related facts or circumstances), to exceed £150,000 or in respect of the aggregate of all other items of capital expenditure in any one year to exceed £500,000.
- 3. **Commercial Contracts and Employees**
 - 3.1 The Commercial Contracts as so identified by "CC" in the Disclosure Bundle Index to the Disclosure Letter comprise all subsisting agreements (written or oral) entered into by LLA in connection with the Airport Business other than the Excluded Contracts (as defined in Schedule 2), the Occupational Documents, the Employment Contracts and the Non-Material Contracts (as defined in Schedule 2).

- 3.2 The Disclosure Letter contains accurate and complete particulars of the identities, dates of commencement of employment or appointment to office, and terms of employment or appointment of all employees and officers except for Excluded Initial Employees whose annual remuneration (excluding overtime payments) for the financial year ending on the Last Accounting Date exceeds £30,000.
- 3.3 The Commercial Contracts and the Pensions Administration Agreement disclose the complete agreements (written or oral) including any variations amendments or supplements thereto and any waivers or releases in respect thereof. Complete copies thereof have been supplied to the Concessionaire prior to the date hereof.
- 3.4 There is no subsisting material breach by LLA (of which LLA is aware) of any of the Disclosed Contracts or the Pensions Administration Agreement, and any allegation of any such breach relating to or which may affect airport charges contained in the Disclosure Letter or in any document listed in the Disclosure Bundle Index to the Disclosure Letter is groundless.
4. **Disputes and Claims**
- 4.1 Neither LLA nor the Council is engaged in court or Disputes proceedings or any dispute which has not led to proceedings (except for the routine collection of individual debts not exceeding £5,000 and in aggregate not exceeding £150,000) concerning the business of operating and managing the Airport, the Airport Assets or the Airport Site (including, but not limited to, relating to the pollution or protection of the Environment or the protection of the health of humans, animals or plants). Neither LLA nor the Council have received notice of any threat of such proceedings and to the best of LLA's and the Council's knowledge and belief, no such proceeding is pending or threatened. To the best of the knowledge and belief of LLA and the Council, no fact or circumstance exists which may give rise to such proceedings. There is no outstanding judgment, order, decree, arbitral award or decision of a court, tribunal, arbitrator or governmental agency in any jurisdiction against LLA or the Council in excess of £5,000.
- 4.2 No distress, execution or other process has been levied and remains undischarged on any of the Transferred Assets or any part of the Airport site.
- 4.3 Save to the extent fairly disclosed in the Disclosure Letter, LLA and the Council are not aware of:
- 4.3.1 any material liability (actual or contingent) relating to the pollution or protection of the Environment or harm to or protection of the health of humans, animals or plants and which would require LLA to make good, repair, reinstate or clean up, or otherwise pay a fine or penalty in relation to, any of the Transferred Assets or Airport Site or any fact or circumstance which is likely to give rise to this type of liability or obligation;
- 4.3.2 any Public Authority or other investigation, enquiry or proceeding relating to the pollution or protection of the Environment or harm to or protection of the health of humans, animals or plants, concerning the Transferred Assets or the Airport Site and so far as LLA and the Council are aware none is pending or threatened nor is there any fact or circumstance exists which might give rise to any of the foregoing.

5. Title

LLA has good and marketable title to all of the Stock (subject to the provisions of the Disclosed Contracts) and Loose Plant other than the Leased Assets (as defined in Schedule 2) and is legal and beneficial owner of the other Transferred Assets (including the Leased Assets under the Finance Agreements).

6. Property and Planning

6.1 LLA are not aware of any Third Party Rights affecting the Airport Site other than as fairly disclosed by the Disclosure Letter or deemed to be disclosed by Clause 3.13.4 or the Occupational Documents.

6.2 The Occupational Documents are all the agreements (written or oral) entered into by LLA or the Council with a person having a right to occupy or use any part of the Airport Site and there have been no express or implied agreements to vary, amend or supplement the same or to pay compensation or waive or vary any rent or outgoings payable by the Occupier under the Occupational Documents.

6.3 The Council have not received notification of any proceedings which have been issued to challenge the validity of the Planning Permission.

6.4 No planning permission (other than the Planning Permission) affecting the Airport Site or any part thereof imposes any conditions which either:-

(a) adversely affect or are likely to adversely affect materially the carrying on of the Airport Business (including the Concessionaire Works or the implementation of the Development Strategy); or

(b) creates or is likely to create any material financial burden which has not been discharged in all material respects prior to the date of this Concession Agreement (other than a planning permission obtained by a tenant under an Occupational Document or a financial burden in respect of which LLA and the Council has provided an effective indemnity under Clause 38.2).

6.5 Other than Planning Agreement One, Planning Agreement Two, Planning Agreement Three and Planning Agreement Four, there are no other Statutory Agreements affecting the Airport Site or any part thereof or which will become binding upon the Concessionaire.

7. Licence to Maintain

The consent of the Secretary of State to the Council maintaining the Airport under Section 30 Civil Aviation Act 1982 (or such statutory provisions as may have preceded that Act) was not issued subject to, and is not subject to, any conditions.

8. Pensions

8.1 Save for the LLA Scheme and the LGPS, there is not in operation and no proposal has been announced to enter into or establish, an agreement, arrangement, custom or practice (except as disclosed in the documents listed in Part L of the Disclosure Letter or as otherwise agreed between LLA and the Concessionaire) for the payment by LLA or the Council of, or payment by LLA or

the Council of a contribution towards, a pension, lump sum or other similar benefit on death or retirement for the benefit of any of the Initial Employees or any of their dependants.

- 8.2 Copies of all of the trust deeds and rules currently governing the LLA Scheme have been provided to the Concessionaire and are listed in Part L of the Disclosure Letter.

9. **Document Lists**

All the documents listed in Parts A to H (inclusive) and marked with an asterisk in Part L of the Disclosure Bundle Index attached to the Disclosure Letter are all the documents contained in the "Data Room" during the period it was available for inspection to the Shareholders.

SCHEDULE 13
DISPUTE RESOLUTION PROCEDURES

Part 1

Expert Determination

1. Amicable Settlement

- 1.1 Save as provided in paragraphs 1.2 and 1.3 below, the parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any Dispute, provided that no party shall be obliged to delay a referral for determination under this Part 1 for more than 14 days after notice of the Dispute is given.
- 1.2 The parties shall not be obliged to act in accordance with paragraph 1.1 above in the event of any Dispute to be determined by Fast Track Reference and may refer the Dispute for determination immediately the Dispute arises.
- 1.3 Any use by the parties of the procedure under paragraph 1.1 above shall be without prejudice, in respect of any Dispute in relation to Construction Matters as defined in paragraph 2.1.1, to the right of the parties to refer at any time such Dispute to adjudication in accordance with paragraph 1 of Part 3 of this Schedule and the parties shall not be obliged to act in accordance with paragraph 1.1 above in the event of any reference of the relevant Dispute to adjudication in accordance with paragraph 1 of Part 3 of this Schedule.

2. Introduction

- 2.1 Where any Dispute is not resolved in accordance with paragraph 1.1 above and there is no Fast Track Reference:
 - 2.1.1 if the Dispute arises under or in connection with the Concessionaire Works or any other construction operations (as defined in the Housing Grants, Construction and Regeneration Act 1996) to be carried out under or in connection with this Concession Agreement ("**Construction Matters**") such Dispute shall (unless all parties decide otherwise) be determined in accordance with the Construction Dispute Resolution Procedure as set out in Part 3 of this Schedule;
 - 2.1.2 if this Concession Agreement expressly provides for Expert Determination such Dispute shall be determined under paragraph 3 below;
 - 2.1.3 if the Dispute is not in relation to Construction Matters and:
 - (a) involves the pursuit of a claim or counterclaim by either party of a monetary value of less than £250,000 (Index Linked from the Commencement Date); or
 - (b) involves pursuit of a claim or counterclaim by either party of a monetary value exceeding the amount set out in paragraph (a) above which the parties agree in writing shall be determined in accordance with paragraph 3 below,

such Dispute shall be determined in accordance with paragraph 3.

2.1.4 in all other cases, such Dispute shall be made the subject of proceedings in the High Court of Justice in London (the "Court").

2.2 Where one of paragraphs 2.1.1, 2.1.2 or 2.1.3 apply or where there is a Fast Track Reference, the party wishing to invoke determination under this Schedule (the "Referring Party") shall serve written notice on the other party (the "Responding Party") giving short particulars of the Dispute to be determined and the intention to refer for determination ("Notice of Referral").

3. **Expert Determination**

3.1 Where paragraph 2.1.2 or 2.1.3 applies or where there is a Fast Track Reference, then either party may require the Dispute to be referred to the Expert.

3.2 The following procedure shall be followed in appointing the Expert:

3.2.1 the parties shall endeavour to agree within 5 Business Days of service of the Notice of Referral upon the identity of a single Expert to be nominated and to whom the Dispute shall be referred for determination;

3.2.2 if the parties cannot agree within 5 Business Days of service of the Notice of Dispute upon the identity of the Expert then the Expert shall be nominated on the application of any party pursuant to paragraph 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8;

3.2.3 if the Dispute arises under, out of, in connection with or is related to the buildings or structures then the Expert shall be nominated by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors;

3.2.4 if the Dispute arises under, out of, in connection with or is related to methods of accounting or otherwise to matters usually and properly within the knowledge of a chartered accountant then the Expert shall be a chartered accountant who has been professionally qualified for not less than 10 years nominated by or on behalf of the President of the Institute of Chartered Accountants in England and Wales.

3.2.5 If the Dispute arises in connection with or is related to technical and engineering matters usually and properly within the knowledge of an engineer then the Expert shall be an engineer who has been professionally qualified for not less than 10 years nominated by or on behalf of the Association of Consulting Engineers.

3.2.6 if the Dispute arises in connection with or is related to the meaning or construction of this Agreement or if the parties are unable to agree that the Dispute falls within paragraphs 3.2.3, 3.2.4 or 3.2.5 above or 3.2.7 or 3.2.8 below then the Expert shall be counsel of not less than 10 years' call nominated by or on behalf of the President for the time being of the Bar Council and, if appropriate, such Expert shall determine the applicability of paragraph 3.2.3, 3.2.4, 3.2.5, 3.2.7 or 3.2.8;

- 3.2.7 if the Dispute arises in connection with or is related to pensions actuarial matters usually and properly within the knowledge of an actuary, then the Expert shall be an independent actuary appointed at the request of any of the parties by the President for the time being of the Institute of Actuaries;
- 3.2.8 if the Dispute arises in connection with or is related to calculations or determinations which an investment banker is best qualified to adjudicate, then the expert shall be an investment banker of not less than 10 years experience nominated by or on behalf of the President of the Institute of Chartered Accountants in England and Wales.
- 3.2.9 any person requested to nominate an Expert under paragraphs 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8 shall be requested to make such nomination within 10 Business Days of the making of such request and in making such nomination may take such independent advice as he thinks fit;
- 3.2.10 upon the Expert being so nominated the parties or either of them shall forthwith notify the Expert of his nomination and shall request him to confirm to both parties within 5 Business Days whether or not he is willing and able to accept the appointment as Expert and whether or not there is any conflict as mentioned in paragraph 3.3;
- 3.2.11 if the Expert shall be either unwilling or unable to accept such appointment or shall not have confirmed his willingness and ability to accept such appointment within the said period of 5 Business Days then (unless the parties are able to agree upon the nomination of another Expert as provided in paragraph 3.2.1) the matter may be referred (by either party) to the person identified in Clauses 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8 (whichever shall be appropriate) and who shall be requested to make a nomination or (as the case may be) a further nomination and the process shall be repeated until a person is found who is willing and able to accept appointment as Expert;
- 3.2.11 the parties will co-operate to ensure that the terms of the contract of appointment of the Expert are agreed with him within 5 Business Days of the Expert expressing his willingness to accept his appointment and agree that if there shall be any dispute between the parties as to the amount of remuneration to be offered to the Expert or any other terms of his appointment then such amount or terms shall be determined by the person identified in paragraph 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8 (whichever shall be appropriate) whose decision shall be final and binding on the parties.
- 3.2.12 the appointment of the Expert shall be deemed to have been made upon the signing of the contract of appointment.
- 3.3 The following provisions shall apply in respect of the qualification of the Expert;
- 3.3.1 no person shall be appointed to act as the Expert unless he shall be qualified by education, experience and training to determine the Dispute. If within four Business Days of appointment of an Expert in accordance with paragraph 3.2 either party objects on the grounds that the proposed Expert is not so qualified, then the person identified in paragraphs 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8 (whichever shall be appropriate) shall decide the issue and his decision shall be final and binding on the parties. In so deciding he shall consider any submission either party may wish to make. If he shall decide that the

proposed Expert is not so qualified then the person identified in paragraphs 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8 (whichever shall be appropriate) shall be requested to appoint a replacement in accordance with the provisions of paragraphs 3.2.9 to 3.2.12 (inclusive);

3.3.2 unless both parties otherwise agree, no person shall be appointed as the Expert who at the time of appointment is (or within three years before such appointment has been) a director, office holder or an employee of or retained as consultant to either party or any Affiliate of either party or is the holder of shares in a party or an Affiliate of either party (unless it is a company quoted on a recognised stock exchange and his shareholding is less than one per cent of the issued share capital (of any class) in the party);

3.3.3 no person shall be appointed as the Expert or continue to act as the Expert if at the time of appointment or at any time before he gives his determination under such appointment he or his employer has or may have some interest or duty which conflicts or may conflict with his function under such appointment unless;

(a) before accepting such appointment he shall have disclosed such interest or duty stating that it conflicts or may conflict with his function under such appointment; and

(b) in respect of any such interest or duty arising after his appointment he shall have disclosed such interest or duty immediately he becomes aware of it and there is no material risk of such interest or duty prejudicing his decision as Expert;

3.3.4 if either party objects:

(a) to a proposed appointment of an Expert or to an appointed Expert continuing to act as such on grounds of a conflicting interest or duty within 4 Business Days of such interest or duty being disclosed; or

(b) to a proposed appointment of an Expert or to an appointed Expert continuing to act as such within 4 Business Days of becoming aware of a conflicting interest or duty which has not hitherto been disclosed and in either case it considers that there is a material risk of such interest or duty prejudicing the decision of the Expert or proposed Expert or in the case of (b) above it considers that the interest or duty should have been disclosed pursuant to paragraph 3.3.3 above, then any party may apply to the person identified in paragraphs 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8 (whichever shall be appropriate) who shall decide whether if such person were to be appointed as Expert or were to continue as Expert (as the case may be) such material risk would exist or whether such duty or interest should have been disclosed pursuant to paragraph 3.3.3. In so deciding he shall consider any submissions either party or the Expert may wish to make. If he shall so decide then the appointment of the Expert shall cease forthwith or shall not be made (as the case may be) and he shall appoint a replacement in accordance with the provisions of paragraphs 3.2.9 to 3.2.12 (inclusive),

3.4 All information, data or documentation disclosed or delivered by a party to the Expert or to the other party in consequence of or in connection with the appointment of the Expert hereunder shall be treated as confidential save to the extent that it is already in the public domain and the Expert

and the parties shall not disclose any such information, data or documentation to any person or company save with the consent of the party providing any such information, data or documentation. All such information, data or documentation shall remain the property of the party disclosing or delivering the same and it and all copies thereof shall be returned on completion of the Expert's work.

3.5 The terms of reference of the Expert shall contain (inter alia) provisions that:

- 3.5.1 the Expert shall not later than 7 Business Days after his appointment call the parties to a meeting at which he shall raise any matters requiring clarification (whether arising out of his contract of appointment or otherwise) and to lay down the procedural rules to be applied, which rules shall be in accordance with the terms of this paragraph. The Expert may be required by either party to hold further such meetings pursuant to the provisions of paragraph 4.3;
- 3.5.2 the parties shall be entitled to supply data and information or authorise third parties to produce such data or information (including, without limitation, expert evidence) and make written submissions to the Expert within 10 Business Days after his appointment.
- 3.5.3 either party shall be entitled to make a written reply submission within 10 Business Days of receiving the submission of the other party in accordance with paragraph 3.5.2 above.
- 3.5.4 the Expert may in his discretion request such further information, documents or submissions from the parties as he considers appropriate and, subject to paragraph 3.5.5, the Expert shall ignore data, information and submissions supplied and made after the 10 Business Day periods referred to in paragraph 3.5.3 unless the same are furnished in response to a specific request from him;
- 3.5.5 the Expert shall be entitled to obtain such independent professional and/or technical advice as he may reasonably require and to obtain such secretarial assistance as is reasonably necessary. The costs of such advice or assistance shall be recoverable by the Expert as provided in paragraphs 3.7 and 3.11;
- 3.5.6 any and all communications between and submissions made by either of the parties and the Expert shall be made in writing and a copy thereof provided simultaneously to the other party and no meeting between the Expert and the parties or either of them shall take place unless both parties have a reasonable opportunity to attend any such meeting;
- 3.5.7 the Expert shall provide to each of the parties a draft of his decision and the parties shall be given a period of not less than 3 Business Days to make comments on such draft;
- 3.5.8 the Expert shall give full written reasons for his determination;
- 3.5.9 the Expert shall have full power to open up, vary, review and revise any endorsement, decision, opinion, instruction, notice, statement or objection, finding, determination, requirement or certificate of any part related to the Dispute;
- 3.5.10 the Expert shall be entitled to include in his decision actions required by one or both parties, including payment of any sum by way of a valuation or compensation provided for under the Agreement. Such actions shall commence and be completed according to periods

specified by the Expert for such purpose in the notification of the decision to the parties. In the case of payment, if such payment is delayed beyond the specified date, the Expert shall be entitled to award interest to the party receiving such payment, at the rate of the Default Interest Rate for the period of such delay;

- 3.5.11 the Expert shall make his decision within 35 (thirty five) Business Days after his appointment. If within such period the Expert shall not have rendered his decision then at the request of either party another Expert shall be appointed hereunder and on acceptance of such appointment the appointment of the previous Expert shall cease unless prior to the date the new Expert is appointed the previous Expert shall have rendered his decision hereunder, in which case such decision shall be binding on the parties in accordance with paragraph 3.9 and the appointment of the new Expert shall cease immediately upon the making of the previous Expert's decision.
- 3.6 The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Acts 1950, 1979 and 1996 (as amended from time to time) and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reaches his determination.
- 3.7 Each party shall bear the costs of providing all data, information and submissions given by it and the costs and expenses of all witnesses and persons retained by it but the costs and expenses of the Expert and any independent advisers to the Expert and any costs of his appointment by the person identified in paragraphs 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7 or 3.2.8 (whichever shall be appropriate) shall be borne as to one half by the Concessionaire and as to one half (jointly and severally) by LLA and the Council.
- 3.8 Nothing in paragraphs 3.1 to 3.5 above shall prevent either party at any time seeking any interim or interlocutory relief from the Court.
- 3.9 Unless and until such decision is affected by an order of the Court (whether as provided in paragraph 7 below or otherwise) a decision of the Expert shall be final and binding on the parties.
- 3.10 Save in respect of a Dispute of the kind referred to in paragraph 2.1.2 (a) above, either party may refer any matter comprised in the Dispute to the Court for determination by commencing proceedings in the Court within 30 days after receipt of the decision of the Expert and the Court shall have jurisdiction to determine the rights of the parties in respect of such matters.
- 3.11 The Expert shall be entitled to fees as set out in the contract of appointment referred to in paragraph 3.2.11 above and to reasonable expenses, all payable in accordance with paragraph 3.7.
- 3.12 The Expert may determine an amount of costs incurred by a party in respect of the Dispute which are to be recovered from the other party and if so determined he shall notify the parties of his decision on this point.
- 3.13 At any time prior to the decision of the Expert being communicated to the parties, they may agree a settlement of the dispute or difference referred to the Expert.

3.14 Unless this Concession Agreement has already been terminated, the parties shall continue to comply with, observe and perform all their obligations under this Concession Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this Schedule 13.

4. **Consolidated Dispute Resolution**

4.1 In the event of a Dispute arising which relates to a dispute or potential dispute arising under, out of, in connection with or in relation to any of the Concession Documents or the Collateral Agreements and/or any other contract except the EPC Contract between one or more of the parties ("the party in the related disputes") and a third party in connection with the Airport Business (all such contracts being referred to in this paragraph 4 as the "Related Contracts") and which arises out of substantially the same facts (the "Related Dispute") the party or parties in related dispute shall or shall procure that the other party to the Related Dispute shall as soon as practicable give to the Expert and also to the other parties (not in dispute) the particulars set out in paragraph 4.2 below.

4.2 The particulars referred to in paragraph 4.1 above are:

4.2.1 a copy of the Related Contract;

4.2.2 a preliminary statement from the party or parties in related dispute and/or, as the case may be, the other party to the Related Dispute setting out:

- (a) the basis and grounds on which consolidation of the Related Dispute and the Dispute may be ordered;
- (b) the cases of the parties to the Related Dispute;
- (c) any relief sought by the parties to the Related Dispute; and
- (d) a list of any documents served in relation to the Related Dispute.

Any such particulars sent to the Expert shall be sent at the same time to the other party to the Related Dispute accompanied by a request that such party attend the meeting referred to in paragraph 4.3.

4.3 The party or parties in related dispute shall use its reasonable endeavours to procure that an authorised representative of the other party to the Related Dispute shall attend the preliminary meeting with the Expert to be held in accordance with paragraph 3.5.1 or, if such preliminary meeting shall already have taken place, either party to the Dispute shall be entitled to instruct the Expert to convene a further preliminary meeting. The parties each agree to send an authorised representative to any meeting of this kind under a Related Contract which they may be requested to attend.

- 4.4 At the meeting or preliminary meeting (as the case may be) referred to in paragraph 4.3 the representative of the parties to the Related Dispute shall, as a preliminary matter, either:
- 4.4.1 confirm to the Expert that the party in related dispute accepts the proposed consolidation of the Related Dispute with the Dispute; or
 - 4.4.2 inform the Expert that the party in related dispute does not accept the proposed consolidation of the Related Dispute with the Dispute.
- 4.5 The Expert shall have the authority and the power to consolidate the Dispute and Related Dispute and to direct all procedural and/or evidential matters arising in both the Dispute and the Related Dispute as consolidated in whatever manner the Expert shall consider shall lead to the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.
- 4.6 In the event of proceedings before the Expert, if paragraph 4.4.1 applies, the Expert shall order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in paragraph 4.5 above.
- 4.7 In the event of proceedings before the Expert, if paragraph 4.4.2 applies, the Expert shall issue within 7 days of the preliminary meeting referred to in paragraph 4.3 his written decision as to whether or not the Dispute and the Related Dispute should be consolidated and if the Expert determines that the Dispute and the Related Dispute should be consolidated, he shall have the authority and the power referred to in paragraph 4.5 above.
- 4.8 In the event of the Expert deciding that the Dispute and the Related Dispute should not be consolidated, any party (including the other party to the Related Dispute) may, if the parties are unable to resolve the matter within 10 Business Days of the said decision of the Expert, refer the question of consolidation of the Dispute with the Related Dispute to the Court.
- 4.9 In the event that an expert under a Related Contract orders that a Dispute under this Agreement be consolidated with a Related Dispute with which he is dealing under the Related Contract then:
- 4.9.1 with effect from the time of such order, the Expert shall cease to have authority or jurisdiction to determine the Dispute which shall instead be determined by the expert under the Related Contract and the appointment of the Expert shall cease; and
 - 4.9.2 such order shall be binding on the parties, with the party in related dispute procuring that the third party who is a party to the Related Contract shall with effect from the time of such order comply with the requirements of the Related Contract (including if applicable any requirement or direction of the Expert appointed under such Related Contract) as to the future conduct of and determination of the Dispute.

5. **The Court**

In any proceedings before the Court in respect of any Dispute, the Court shall have full power to open up, vary, review and revise any endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement or certificate of the parties related to the Dispute and any decision or determination of the Expert.

Part 2

Construction Disputes Resolution Procedure

1. Adjudication

- 1.1 Either party may refer any Dispute in relation to Construction Matters to adjudication in accordance with this sub-paragraph 1 such adjudication and such reference to be carried out in accordance with CIC Model Adjudication Procedure: First Edition dated February 1998 published by the Construction Industry Council (the "CIC Procedure") except as otherwise provided in this paragraph 1.
- 1.2 Paragraph 6 of the CIC Procedure shall not apply.
- 1.3 Paragraph 26 of the CIC Procedure shall be deemed to be amended so that the Adjudicator (as defined in the CIC Procedure) may open up, review and revise any certificate, decision, direction, notice, opinion, requirement or valuation made in relation to the Contract save where the same is expressly stated in the Contract to be final and binding on the parties.
- 1.4 References to the CIC Procedure in the *pro forma* terms and conditions for the appointment of the Adjudicator attached to the CIC Procedure shall be deemed to be references to the CIC Procedure as modified by this paragraph 1 and the terms and conditions of appointment shall be modified accordingly.
- 1.5 The provisions of this paragraph 1 shall prevail over any conflicting provisions in the CIC Procedure.
- 1.6 If a party has referred a dispute to adjudication in accordance with the CIC Procedure the other party shall not be entitled to make a separate reference to adjudication in relation to that dispute unless the first reference is discontinued for any reason.

2. The Court

- 2.1 Any Dispute relating to Construction Matters which has not been finally resolved as provided for in paragraph 1 of Part 1 of this Schedule or paragraph 1 of Part 3 of this Schedule shall be tried by a Judge sitting as such at the High Court of Justice in London dealing with Official Referee's Business.
- 2.2 If and insofar as any provision of this Concession Agreement relating to Construction Matters leaves any matter or thing to the decision or opinion of any person or persons (including any account, requirement or notice) the same shall not prevent the Court in determining the rights and liabilities of the parties hereto from making any finding necessary to establish whether or not such decision or opinion was correctly made or expressed on the facts found by the Court, nor from

establishing what or what other decision or opinion should have been made or expressed as if no decision or opinion had been made or expressed.

3. Parallel Issues

3.1 The provisions of paragraph 3.2 shall apply in the event of:

3.1.1 the Contractor claiming any rights or benefits arising out of or in any way connected with the EPC Contract which touch or concern any matter between the Concessionaire and LLA and/or the Council under this Concession Agreement (including without limitation any Dispute to be resolved under this Concession Agreement; and/or

3.1.2 LLA and/or the Council claiming any rights remedies or other relief against the Concessionaire arising out of or in any way connected with the EPC Contract which touch or concern any matter between the Contractor and the Concessionaire (including without limitation any "EPC Dispute" to be resolved under the EPC Contract).

3.2 The parties acknowledge the entitlement and obligations of the Contractor to conduct on behalf of the Concessionaire all negotiations with LLA and/or the Council related to the settlement of claims for rights and benefits referred to in paragraph 3.1.1 or the matters between the Contractor and the Concessionaire referred to in paragraph 3.1.2 and the determination of any disputes which may arise therefrom in accordance with and subject to the provisions of Clause 20.7 of the EPC Contract.

SCHEDULE 14

TERMINATION SCHEDULE

Part 1 - General Definitions

"Actual Payment Date" means the date that any Termination Payment made under this Schedule is actually paid to the Concession are in cleared funds in accordance with the manner provided in this Concession Agreement.

"Cash-in-Hand" means actual cash of the Concessionaire other than Retained Earnings.

"Concessionaire", in this Schedule 14, includes the Concessionaire, the Guarantor and any other member of the London Luton Airport Group.

"Council Shares" means the entire issued share capital of LLA.

"Discounted Equity Amount" shall be calculated and determined in accordance with Part 9 of this Schedule 14.

"Encumbrance" means an encumbrance or security interest of any kind whatsoever including (without limitation) a mortgage, charge, pledge, lien, hypothecation, restriction, right to acquire, right of pre-emption, option, conversion right, third party right or interest, right of set-off or counterclaim, trust arrangement or any other type of preferential agreement (such as a retention of title arrangement) having similar effect.

"Excluded Equity" means any amounts additional to those contemplated by the Shareholders Agreement or the Initial Subordinated Loan Agreement which would otherwise be included in the Par Equity Amount, but which are not contributed to and applied by the Concessionaire for the purposes set out in Clause 42.3.

"Excluded Indebtedness" means any amounts additional to those contemplated by the Initial Facility Documents advanced to the Concessionaire and any refinancing thereof which would otherwise be included in the Senior Funding Amount, but which have not been applied by the Concessionaire for the purposes as set out in Clause 42.3.

"Full Equity Amount" shall be calculated and determined in accordance with Part 8 of this Schedule 14.

"Funders" means any lender or other provider of finance or financial accommodation under the Funding Agreements or any agent or trustee appointed pursuant to and in connection with any of the foregoing and any counterparty under any Hedging Agreement.

"Funding Agreements" means each of the following documents:

- (a) the Initial Facility Documents including all amendments, variations, waivers and supplements thereto from time to time;
- (b) any other agreements or instruments (including, without limitation, bonds) entered into by the Concessionaire from time to time to provide finance or other financial accommodation of any type for the purpose of or in connection with the Airport Business (including, without limitation, the provision of the Airport Services, the carrying out of the Concessionaire Works and the implementation of the Development Strategy), including (without limitation) any agreements or instruments to raise additional or substitute finance

or accommodation of any type for the purpose of or in connection with the Airport Business (including as aforesaid) or in respect of or relating to the rescheduling or refinancing of any of its indebtedness [for the aforesaid purpose] and including all amendments, variations, waivers and supplements thereto from time to time but excluding any Shareholder Financing Agreements.

"Hedging Agreement" means each of the following documents:

- (a) an ISDA Master Agreement between Barclays Bank plc and the Concessionaire, including all amendments, variations, waivers and supplements hereto from time to time; and
- (b) any other agreements or instruments entered into by the Concessionaire from time to time as part of its hedging arrangements from time to time with respect to indebtedness incurred by it with respect to the Airport Business the provision of the Airport Services or the carrying out of the Concessionaire Works or any other Development Works and the implementation of the Development Strategy, including all amendments, variations, waivers and supplements thereto from time to time.

"Par Equity Amount" means the aggregate of the following:

- (a) the aggregate amount subscribed and paid up in cash for share capital in the Concessionaire as at the Termination Date; and
- (b) the aggregate outstanding principal amount of all loans (including interest thereon capitalised in accordance with the terms of the relevant agreement in respect of such loans) advanced to the Concessionaire and owing to the Shareholders under the Shareholder Financing Agreements as at the Termination Date.

"Permitted Additional Funding" has the meaning given to it in Clause 42.

"Retained Earnings" means any amount which represents revenues of the Airport Business.

"Senior Funding Amount" means the aggregate of:

- (a) an amount equal to all sums owing to the Funders by the Concessionaire and all other liabilities of the Concessionaire to the Funders (actual and contingent) under the Funding Agreements as at the Termination Date (whether or not due and payable);
- (b) an amount equal to all sums which become owing to the Funders by the Concessionaire under the Funding Agreements arising from the early repayment of monies under the Funding Agreements before or after the Termination Date;
- (c) an amount equal to all termination sums and other amounts which become payable by the Concessionaire to the Funders under the Hedging Agreements arising from the early termination of transactions entered into thereunder before or after the Termination Date and any other sums owing to the Funders under the Hedging Agreements as at the Termination Date;

- (d) an amount equal to all additional amounts of principal (if any) which would have been owing to the Funders by the Concessionaire under the Funding Agreements as at the Termination Date if the Concessionaire had not made any mandatory or voluntary prepayments of principal prior to the Termination Date;
- (e) interest, fees and other costs which accrue under the Funding Agreements and the Hedging Agreements from the Termination Date to the Actual Payment Date

Less:

the proceeds of enforcement of security and any other amounts held by Funders (other than Cash-in-Hand) whether on behalf of themselves or the Concessionaire or recovered from the Concessionaire and/or third parties or in respect of the foregoing which may be applied by the Funders in reduction of the foregoing or part thereof.

"Statutory Compensation Amount" means any amount payable to and received by the Concessionaire from any Public Authority by virtue of any Law as compensation for the occurrence of the Concessionaire Termination Event in question net of any reasonable costs incurred in connection with the recovery thereof and any applicable Taxation.

"Shareholder Financing Agreements" means each of the following documents:

- (a) the Initial Subordinated Loan Agreement including all amendments, variations, waivers and supplements thereto from time to time; and
- (b) any other agreements or instruments entered into by any of the Shareholders with the Concessionaire from time to time to provide finance or other financial accommodation of any type for the purpose of or in connection with the Airport Business (including, without limitation, the provision of the Airport Services, the carrying out of the Concessionaire Works or any Development Works and the implementation of the Development Strategy), including (without limitation) any agreements or instruments to raise additional or substitute finance or accommodation of any type or in respect of or relating to the rescheduling or refinancing of its indebtedness for the purpose or in connection with the Airport Business (including as aforesaid) and including all amendments, variations, waivers and supplements thereto from time to time.

"Termination Amounts" means all liabilities and obligations (actual and contingent) of the Concessionaire to any person other than the Council or LLA, (including employees) arising out of or in connection with the Airport Business (including, without limitation, the provision of Airport Services, the carrying out of the Concessionaire Works or any Development Works and implementation of the Development Strategy) which are in existence at the Termination Date or are as a result of or in connection with the termination of this Concession Agreement, and including (without limitation) the costs of retransferring the Transferred Assets and stamp duty payable upon transfer of the Council Shares if Part 6B applies, but excluding liabilities and obligations due to the Shareholders by way of return of share capital under any Shareholder Financing Agreements, or to Funders under any Funding Agreements or Hedging Agreements.

Part 2 - Termination pursuant to Clause 17.2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part 3 - Termination pursuant to Material Breach Clauses 20.1.1 or 20.1.2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part 4 - Termination pursuant to Council Discriminatory Event or Council

Expropriation Event - Clause 20.1.3 or 20.1.4

T [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part 5 - Termination pursuant to Expropriation Event other than

Council Expropriation Event

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part 6 - Termination pursuant to an Incapacity Event - Clause 20.1.6

Part 6A - Compensation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Part 6B - Transfer of Shares

1. If the conditions contained in Clause 20.4 shall be satisfied the provisions in this Part 6B of Schedule 14 shall apply.
2. The Council agrees to sell the Council Shares with full title guarantee and the Concessionaire agrees to buy the Council Shares free of any Encumbrance (except, but subject as provided below, the Debentures) and with all rights now or hereafter attaching to them.
3. The consideration for the purchase of the Council Shares is the full and final settlement referred to in Clause 20.4.
4.
 - 4.1 Completion of the sale of purchase of the Council Shares ("Completion") shall take place at the London offices of Clifford Chance or such other solicitors as the Concessionaire may appoint 14 days after the satisfaction of whichever is the last of the conditions contained in Clause 20.5 to be satisfied.
 - 4.2 Upon Completion the Council shall deliver to the Concessionaire:
 - 4.2.1 duly executed transfers of the Council Shares to the Concessionaire or as it directs together with the share certificates for all of the Council Shares (or an express indemnity in a form satisfactory to the Concessionaire in the case of any missing certificate);
 - 4.2.2 a copy, certified to be a true copy by a duly authorised officer of the Council, of a resolution of the Council (or an authorised committee of the Council) authorising the execution of the documents referred to in this paragraph 4 by the Council;
 - 4.2.3 letters of resignation from each director and the secretary of LLA in the agreed form;
 - 4.2.4 a letter of resignation from the auditors of LLA accompanied by a statement under section 394 of the Companies Act 1985 in the agreed form together with evidence that any letter required by the Companies Act 1985 to be deposited by the auditors at the registered office of LLA has been so delivered pending which the resignation is not effective;
 - 4.2.5 all the financial and accounting books and records of LLA;
 - 4.2.6 the statutory books of LLA (duly written-up to date as at immediately prior to Completion), their respective common seals, Certificates of Incorporation and any Certificates of Incorporation on Change of Name;
 - 4.2.7 the title deeds to the Airport Site (including all insurance policies and other documents relating to the Airport Site) and a letter to the Peterborough District Land Registry directing the Land Registry to remove the restrictions in favour of the Council contained in entry 2 of the proprietorship register in respect of title number BD180578 and entry 2 of the proprietorship register in respect of title number BD200841;
 - 4.2.8 any documents of title relating to Intellectual Property and confidential information within the possession of LLA and used or required to be used by LLA in, or in connection with the Airport Business at Completion;

- 4.2.9 bank statements together with certificates from LLA's bankers certifying the current and deposit account balances of LLA as at the close of business on the third Business Day preceding Completion;
- 4.2.10 the cash book balances of LLA as at Completion with reconciliation statements reconciling such cash book balances with the certificates referred to in Clause 4.2.9.
- 4.3 The Concessionaire is not obliged to complete the sale and purchase of the Council Shares unless the Council has fulfilled all its obligations under this Part 6B. If the sale and purchase of the Council Shares is not completed by the Council, the Concessionaire may terminate the agreement and the Termination Payment shall be payable by the Council to the Concessionaire in full upon such termination in accordance with Part 6A above.
- 4.4 The Council shall indemnify and keep indemnified the Concessionaire on demand in respect of all obligations and liabilities of LLA of any nature whatsoever arising in relation to any act or omission (including any contract entered into) prior to completion of the transfer of the Council Shares (including, without limitation, all liabilities in respect of Taxation or the Environment or any act or omission), save only for LLA's obligations to repay the principal amount of the Debentures and interest thereon provided that, notwithstanding any term of the Debenture to be contrary:
- 4.4.1 LLA may elect to repay such principal amount and interest accrued thereon in whole or in part at any time after completion (without penalty).
- 4.4.2 The interest rate under the Debentures shall be LIBOR being the rate per annum which appears on Telerate Page 3750 (or any replacement thereof) on the Telerate Service at or about 11.00 a.m. on the first day of the relevant interest period for the offering of Sterling deposits for a period comparable to the relevant interest period.
- 4.4.3 LLA shall not be obliged to repay the principal amount of the Debentures or pay interest thereon except in the amounts of at the times set out in the annex marked "W" attached hereto, and shall not be obliged to pay interest accrued or accruing in respect of any period up to the date of completion of the transfer of the Council Shares. Upon repayment of principal and discharge of interest due from LLA, the Debentures shall be discharged and released by the Council. The Debentures shall secure no other liability.
- 4.4.4 for the avoidance of doubt, LLA's obligations to repay such principal amount and interest thereon and the security therefor constituted by the Debentures shall rank in terms on priority behind all obligations of the Concessionaire or any of its Affiliates which are secured by the Funding Agreements (but pari passu with any such obligations which are secured by any Shareholder Financing Agreements) and the Council shall enter into any deed of priority or postponement to that effect.
- 4.4.5 the Council agrees not to enforce, and to permanently waive, all restrictive covenants or other restrictions contained in any of the Debentures.
- 4.5 Stamp Duty payable on the transfer of the Council Shares may be deducted from first interest and then principal payments retained by LLA under paragraph 4.4.

Part 7 - Not Used

Part 8 - Full Equity Amount

1. Following a Termination Date (the "**Relevant Date**") when the Termination Payment includes Full Equity Amount or Discounted Equity Amount, the provisions of this Part 8 shall apply.
2. As soon as practicable after a Relevant Date, the Concessionaire shall produce and deliver to LLA a projection (the "**Termination Projection**") showing the projected cash flows for the Airport Business including revenues and costs (including capital costs), the projected passenger numbers and projected freight volume (measured in tonnes) for the period (the "**Post Termination Period**") from the Relevant Date up to and including the last day of the Concession Period (on the assumption that no Termination Date occurs). The Termination Projection will be based upon the current Business Plan as at the Relevant Date extended (as necessary) to the end of the Post Termination Period.
3. The Concessionaire, shall also include in the Termination Projection the projected Shareholder Distribution Amounts over the Post Termination Period, which shall include, for the avoidance of doubt, the projected cash available for distribution to Shareholders on or following the end of the Post Termination Period.
4. The Concessionaire shall then calculate the Full Equity Amount which shall be the net present value of the projected Shareholder Distribution Amounts (including as aforesaid) in the Termination Projection, where the discount rate applied for the purpose of calculating such net present value is the Concessionaire's WACC, except for the purpose of Part 6A, where it is the Concessionaire's COE.

Part 9 - Discounted Equity Amount

The Discounted Equity Amount shall be calculated in the same manner as the Full Equity Amount but with the Discount Rate as therein used being equal to the Concessionaire's COE multiplied by 1.5 Provided that the Discount Rate [REDACTED].

Part 10 - General Provisions on Compensation

1. The Concessionaire shall not (and shall procure that every member of the London Luton Airport Group shall not) conduct the Airport Business with the express and sole intention of maximising any amount of compensation payable by LLA or the Council to the Concessionaire pursuant to the Schedule 14.
2. No sum or amount shall be the subject of double counting within one or more elements of the Termination Payment.
3. These shall be deducted from each Termination Payment calculated pursuant to Schedule 14 any amount due to LLA or the Council from the Concessionaire under the terms of the Concession Agreement up to the Termination Date.
4. Following termination of this Concession Agreement, the Concessionaire shall notify LLA and the Council of as soon as reasonably practicable (as applicable) the Senior Funding Amount, the Full

Equity Amount, the Par Equity Amount and the other amounts comprising the Termination Payment, together with, shown in reasonable detail, the derivation of the relevant amounts and satisfactory evidence of such derivation. The Concessionaire shall with such notice confirm to LLA and the Council that the amounts notified are to the best of its knowledge true, accurate and complete calculations of the Senior Funding Amount, the Full Equity Amount, the Par Equity Amount and the other relevant amounts.

5. Following the issue of the notice and confirmation pursuant to paragraph 1 above, the parties shall liaise for a period of up to 15 Business Days. If the Termination Payment is not agreed within such period the Dispute shall be referred for determination payment to the Disputes Resolution Procedure.
6. Payment of the Termination Payment shall be made within 10 Business Days of the Termination Date or (if later) the date the Termination Payment is agreed or determined pursuant to paragraph 2 above, provided that interest shall accrue at the Concessionaire Borrowing Rate (compounded quarterly) on the Termination Payment from the Termination Date and compounded quarterly.

SCHEDULE 15

DEVELOPMENT STRATEGY

General Approach

The Airport is establishing itself as a significant international airport in the London and South Eastern area. There are currently strong indications that passenger growth in the area will continue and that the Airport is well situated to capture a significant amount of this growth.

The general strategy of the Concessionaire is therefore to stimulate growth at the Airport through very active marketing and provide the necessary expansion of facilities to meet the requirements of such growth in line with demand.

The medium to long term development prospects of the Airport are considerable and represent a substantial opportunity for the Concessionaire. The Concessionaire's medium to long term development strategy for the Airport is to have a balanced mixture of traffic to reduce sector risks and develop flexible facilities to cater for this mix of traffic.

Objectives

The Concessionaire's objective is to achieve the full growth and development potential of the Airport in progressive stages up to 10 million passengers and beyond within appropriate environmental and planning considerations, based on:

sound principles of economic efficiency and financial viability;

generation of economic benefits to the region;

creation of new employment opportunities;

requirements of customer demands and expectations;

provision of a high quality competitive international airport.

It is intended that the mix of traffic at the Airport and the airline fees will be closely monitored by the Concessionaire with a view to matching capacity to demand without creating downward pressure on revenues.

Development

The Concessionaire will initially commit to the completion of the Concessionaire Works subject as provided and in accordance with the obligations placed on the Concessionaire in this Concession Agreement.

Following the completion of this first phase, the Concessionaire currently expects to proceed further development phases taking capacity up to 10 million passengers per annum and beyond, subject to compliance with its Development Strategy.

The Development Strategy Plans currently form the guideline principles of the design and appearance of the future expansion of the terminal, but are subject to review by the Concessionaire in the light of its Development Strategy.

The Concessionaire expects LLA to be engaged in meaningful participation with the Concessionaire in respect of major reviews of the Plans. The design and construction objectives of subsequent phases should be guided by GACDM recommendations to the extent applicable and, in particular, should provide adequate space to provide appropriate standards of passenger comfort and convenience. The Concessionaire will strive to achieve a generally high quality passenger service at the Airport targeting a level of GACDM Level C primarily as a minimum standard.

It is the intention of the Concessionaire that subsequent development will be planned and phased to ensure, so far as reasonably practicable, that there is sufficient terminal and airfield capacity to meet demand (as projected in the Concessionaire's Business Plan) from time to time and to the appropriate standards and quality. The expansion in capacity should be geared to be available to meet the expected passenger demand when it is realised with capacities being reached so that GACDM Level C space standards (as a minimum) are maintained insofar as reasonably practicable and that Airline Users can be confident that additional capacity will be provided as demand increases. The Concessionaire will be responsible for deciding when any development is required for these purposes.

Where it is economic and effective to do so, the Concessionaire should seek to work in "partnership" with other organisations in the locality. In particular, a cooperative "partnership" approach with organisations providing transport facilities within the area should be developed in order to integrate transportation links. The Concessionaire will seek to exploit for the benefit of the Airport Business the Rail Interchange Facility.

The Consultative Committee and Airport Forum should be consulted on any proposed developments beyond the initial Phase.

Capability

The promotion and implementation of its Development Strategy (including implementation of any future development) will be governed by the commercial and economic conditions prevailing over the Concession Period.

The following issues (amongst others) will need to be resolved to the Concessionaire's satisfaction when planning for future development:

Economic efficiency and financial viability.

The likelihood of planning permission and environmental conditions (including noise limitations).

The terms of any Section 106 or similar agreements.

Impediments caused by the existence of pre-existing tenant rights or concessions.

Limitations and/or opportunities caused by the development of the southern access route to Century Park.

Land availability and rights of access.

Customer/user requirements.

Any restraints of Law.

Environmental controls.

The availability of bank finance.

Where any of the above factors are seen as being impediments to future expansion, the Concessionaire intends to take reasonable steps to resolve the issues.

For the purpose of the Objectives set out above, and the section headed Capability, "economic efficiency" and "financial viability" shall include, without limitation, not adversely affecting the Shareholders' internal rate of return in respect of their existing investment and any future investment showing an internal rate of return to the Shareholders over the remaining Concession Period which is not less than the internal rate of return which would be expected in the market for an investment at that time of that nature.

SCHEDULE 16

TERMS OF TRANSFER OF AIRPORT ASSETS

(Clause 30)

1. Definitions

In this Schedule, except to the extent that the context otherwise requires, terms defined in Clause 1 of (or in Schedule 2 to) this Concession Agreement shall have the same meanings and, in addition:

"Completion Accounts " means the balance sheet of the London Luton Airport Group showing a true and fair view of the state of affairs at the Reversion Date.

"Concessionaire's Accountants" means such firm of accountants (if any) as may act as auditors to the Concessionaire as at the Reversion Date or such other firm of accountants as the Concessionaire may notify in writing to LLA.

"Net Reverting Assets" means the aggregate net amount (taking into account the apportionments to be made pursuant to paragraph 10) of:

- (a) the Reverting Debts and the value ascribed to the Reverting Loose Plant, the Reverting Motor Vehicles and the Reverting Stock for the purpose of paragraph 4; less
- (b) the Reverting Creditors.

"Non-Reverting Claims" means all claims of any kind whatsoever relating to any member of the London Luton Airport Group or the Airport Business or the Reverting Assets, so far as not comprising Reverting Debts.

"Non-Reverting Contracts" all contracts, orders, undertakings, arrangements and engagements of any member of the London Luton Airport Group subsisting at the Reversion Date which:

- (a) have been entered into otherwise than for the purpose of or in connection with carrying on the Airport Business;
- (b) relate to the financing or refinancing of the Airport Business, except to the extent comprising Reverting Creditors or the Reverting Finance Agreements;
- (c) relate to arrangements between the Concessionaire and any of its directors (excluding contracts of employment), shareholders, Affiliates;
- (d) without prejudice to the generality of sub-paragraph (c) above, the Technical Services Agreement or any agreement which is analogous thereto (whether or not the counter-party is a director, shareholder or Affiliate of the Concessionaire);
- (e) constitute Development Strategy Contracts;
- (f) are otherwise than on bona fide arms length terms;
- (g) relate to the Property Let and are otherwise than in accordance with the Property Leases and Clause 24.1;

- (h) are outside the ordinary and usual course of the Airport Business unless an integral part thereof;
- (i) are entered into in breach of Clauses 24.1.1 to 24.1.8 or any other provision of this Concession Agreement;

unless in the case of sub-paragraphs (a), (f), (g), or (h) the relevant contract, order, undertaking, arrangement or engagement has been approved or is deemed to have been approved by LLA pursuant to Clause 24 or any other provision of this Concession Agreement.

"Non-Reverting Items" means the assets, rights and liabilities referred to in paragraph 3.

"Non-Reverting Records" the statutory books of the Concessionaire and all records of the Concessionaire relating to the Non-Reverting Items, except to the extent of any election made pursuant to paragraph 2.9 or 2.11.

"Reversion Consideration" means the consideration for the reversion of the Airport Business and the transfer of the Reverting Assets, as determined pursuant to paragraphs 4 and 6.

"Reversion Date" means the date of expiry of the Concession Period or if earlier the Termination Date (subject to paragraph 5.1 below).

"Reverting Assets" means all the property, undertaking, rights and assets of the Airport Business agreed to be transferred under this Schedule, details of which are set out in paragraph 2.

"Reverting Books and Records" means all of the books and records, lists of customers and suppliers, books of account and other records of any kind whatsoever of any member of the London Luton Airport Group in relation to the Airport Business including (without limitation) all records relating to the Reverting Employees but excluding any records referred to in section 49(1) VATA and also excluding the Non-Reverting Records.

"Reverting Business Information" means all information relating to the marketing of the Airport Services (including customer names and lists, sales targets, sales statistics, market share statistics, marketing surveys and reports, marketing research and advertising or other promotional materials and media buying information materials) belonging to any member of the London Luton Airport Group and used in connection with the Airport Business.

"Reverting Contracts" means all contracts, orders, undertakings, arrangements and engagements of any member of the London Luton Airport Group (including any lease, licence or other right granted to any member of the London Luton Airport Group in respect of the occupation or use of land owned by any third party) relating to the Airport Business which are subsisting as at the Reversion Date, including the Reverting Customer Contracts, the Reverting Supplier Contracts and the Reverting Finance Agreements, except to the extent comprising Non-Reverting Contracts.

"Reverting Creditors" means the amounts owed by the Concessionaire to trade creditors and incurred in the ordinary and usual course of the Airport Business as at the Reversion Date.

"Reverting Customer Contracts" means those contracts entered into by any member of the London Luton Airport Group for the supply of goods and/or services by any member of the London Luton Airport Group in connection with the Airport Business which are subsisting at the Reversion Date.

"Reverting Debts" means all amounts owing to any member of the London Luton Airport Group by trade debtors in the ordinary and usual course of the Airport Business as at the Reversion Date (whether or not due and payable).

"Reverting Employees" those Concession Employees whose contracts of employment will transfer to the Transferee by virtue of the TUPE Regulations or any replacement, or would have done so if the same had been in force.

"Reverting Finance Agreements" means those contracts entered into by any member of the London Luton Airport Group which are subsisting at the Reversion Date pursuant to which any of the Fixtures & Fittings, the Reverting Loose Plant, Reverting Stock, or Reverting Motor Vehicles are being supplied to or are held by any member of the London Luton Airport Group on hire purchase, conditional purchase, hire, rental, leasing, licence, retention of title pending payment or other terms such that title thereto has not at the Reversion Date passed to any member of the London Luton Airport Group.

"Reverting IPR" means all Intellectual Property used or required to be used by any member of the London Luton Airport Group in, or in connection with, the Airport Business at the Reversion Date.

"Reverting Leased Assets" means the Reverting Assets which are the subject of the Reverting Finance Agreements.

"Reverting Loose Plant" means the loose plant, machinery, tools, office equipment, furniture and other like articles owned and/or used by any member of the London Luton Airport Group in connection with the Airport Business at the Reversion Date which do not comprise Fixtures & Fittings.

"Reverting Motor Vehicles" means the motor vehicles owned and/or used by any member of the London Luton Airport Group in connection with the Airport Business at the Reversion Date .

"Reverting Stock" means all stocks of consumables, stock in trade, spare parts and operating supplies owned and/or used by any member of the London Luton Airport Group in connection with the Airport Business at the Reversion Date.

"Reverting Supplier Contracts" means the benefit (subject to the burden) of all contracts, arrangements and outstanding orders entered into prior to the Reversion Date by any member of the London Luton Airport Group with suppliers for the supply to any member of the London Luton Airport Group of goods or services (other than in respect of insurance) in connection with the Airport Business which are subsisting at the Reversion Date together with the benefit of all payments made by the Concessionaire prior to the Reversion Date in respect of such contracts, arrangements and orders.

"Transferee" LLA or any Successor Operator.

"Transferee's Accountants" means such firm of accountants (if any) as may act as auditors to the Transferee as at the Reversion Date or such other firm of accountants as LLA may notify in writing to the Concessionaire.

2. Reversion of Airport Business and Transfer of Reverting Assets

The Concessionaire shall sell and transfer to the Transferee (and the Transferee shall purchase and acquire from the Concessionaire), with effect from the Reversion Date, the Reverting Assets free from all Security Interests (other than as contained in the Reverting Contracts or arising in the ordinary course) comprising:

- 2.1 the Reverting Books and Records;
- 2.2 the Reverting Business Information;
- 2.3 the Reverting IPR;
- 2.4 the Reverting Loose Plant (other than any which comprises Reverting Leased Assets);
- 2.5 the Reverting Motor Vehicles (other than any which comprise Reverting Leased Assets);
- 2.6 the Reverting Stock;
- 2.7 the Reverting Debts (subject to the Transferee's agreement to discharge the Reverting Creditors and subject to paragraph 4 and 6);
- 2.8 the benefit of the Reverting Contracts, so far as not comprising Reverting Debts (subject to the Transferee's agreement to assume the burden thereof, so far as not comprising Reverting Creditors);
- 2.9 to the extent of any written election by the Transferee, the benefit of any Non-Reverting Contract and all records relating thereto specified in such election, subject to the Transferee's agreement to assume the burden thereof;
- 2.10 the benefit of any sum to which any member of the London Luton Airport Group is entitled either from third parties or insurers in respect of damage to any of the Reverting Assets, other than any sum expended before the Reversion Date in making good the damage or in respect of any obligation or liability retained by the Concessionaire or any member of the London Luton Airport Group;
- 2.11 to the extent of any written election by the Transferee, any other property, asset or right of any member of the London Luton Airport Group (other than any cash in hand or at bank or other financial instruments) used in connection with the Airport Business, whether in or on the Property Let or otherwise, which is specified in such election and all records relating thereto (subject to the assumption by the Transferee of all liabilities of the Concessionaire which relate to the property, asset or right so specified);
- 2.12 the Landing Lights Leases or replacements thereof wherever located (if subsisting at the Reversion Date); and
- 2.13 all land or property referred to in Clause 23.6.

3. Excluded Items

The following items are excluded:

- 3.1 the Property Let and the Fixtures & Fittings (which are the subject of the Property Leases and which will revert to LLA upon the termination of the Property Lease);
- 3.2 all cash in hand and at bank and all financial instruments of any member of the London Luton Airport Group;
- 3.3 all liabilities of any member of the London Luton Airport Group which this Schedule does not expressly provide will be transferred to or assumed by the Transferee, including (without limitation) all liabilities of any member of the London Luton Airport Group in respect of pension provision for the Reverting Employees (subject to the provisions of Schedule 10), Taxation, bank borrowings, all environmental liabilities which have been caused by any member of the London Luton Airport Group and all liabilities incurred by any member of the London Luton Airport Group in respect of which any member of the London Luton Airport Group is from time to time obliged to maintain insurances pursuant to any Law (including, without limitation, employer's liabilities in respect of industrial injuries) or this Concession Agreement and/or which any member of the London Luton Airport Group has from time to time insured;
- 3.4 the Non-Reverting Records;
- 3.5 the Non-Reverting Claims (subject to Clause 2.10);
- 3.6 the benefit of all contracts of employment and all liabilities to or in respect of employees of any member of the London Luton Airport Group (to the extent to which the TUPE Regulations as at the date of this Concession Agreement would not have operated to transfer the same to the Transferee if the Reversion Date was the date of this Concession Agreement);
- 3.7 except to the extent of any election made pursuant to Clause 2.9, the benefit and burden of the Non-Reverting Contracts;
- 3.8 except to the extent of any election made pursuant to Clause 2.11, any other tangible or intangible property, asset, right or liability of the Concessionaire not expressly referred to in paragraph 2 above or this paragraph 3;
- 3.9 the benefit of this Concession Agreement, any other Concession Document and any Collateral Agreement.

4. Reversion Consideration

- 4.1 The Reversion Consideration shall be:

- 4.1.1 for the Reverting Business Information and the Reverting Books and Records, the sum of £1;
- 4.1.2 for the Reverting Loose Plant, the Reverting Motor Vehicles and the Reverting Stock the aggregate net book value thereof as at Completion, as shown by the Reverting Books and Records;

- 4.1.3 for the Reverting Debts, the Transferee's agreement to assume the burden of discharging the Reverting Creditors and the consideration agreed or determined under paragraph 6;
- 4.1.4 for the benefit of the Reverting Contracts (so far as not comprising Reverting Debtors), the Transferee's agreement to assume the burden of the Reverting Contracts (so far as not comprising Reverting Creditors);
- 4.1.5 for the benefit of any Non-Reverting Contract specified in any election made pursuant to paragraph 2.9, the Transferee's agreement to assume the burden thereof;
- 4.1.6 for any other property, asset or right specified in any election made pursuant to paragraph 2.11, the Transferee's agreement to assume all liabilities which relate thereto.
- 4.2 The Reversion Consideration payable pursuant to paragraph 4.1 shall be paid in accordance with paragraph 6.7.
- 4.3 In addition to the Reversion Consideration, LLA and the Council shall pay any Termination Payment due.
- 5. **Completion**
 - 5.1 Completion of the transfer of the Reverting Assets shall be deemed to have taken place on the Reversion Date at the Airport, when the Concessionaire shall be deemed to have delivered to the Transferee possession of those Reverting Assets which are transferable by delivery, provided that if any Termination Payment is payable by the LLA, the Reversion Date shall be delayed until the Termination Payment is made.
 - 5.2 On the Reversion Date or as soon as reasonably practicable (and, in any event, within 14 Business Days) after the Reversion Date, the Concessionaire shall (subject to paragraph 11) deliver to the Transferee at the Airport:
 - 5.2.1 such documents in such forms as may be reasonably required by the Transferee to enable the Concessionaire to transfer the Reverting Assets to the Transferee in accordance with paragraph 2;
 - 5.2.2 such other documents in such forms as may be reasonably required by the Transferee and/or by the Concessionaire to perfect the legal transfer of the Reverting Assets pursuant to the terms of this Schedule.
- 6. **Determination and Payment of Reversion Consideration**
 - 6.1 As soon as practicable after the Reversion Date the Concessionaire shall procure that the Concessionaire's Accountants prepare draft Completion Accounts and a "Reversion Consideration Statement" showing:
 - 6.1.1 the amount of the Net Reverting Assets (which may be a positive amount or a negative amount);
 - 6.1.2 the apportionments made pursuant to paragraph 10 which have been taken into account in calculating the Net Reverting Assets;
 - 6.1.3 a list of the Reverting Debts as at the Reversion Date;

- 6.1.4 a list of the Reverting Creditors as at the Reversion Date;
- 6.1.5 the amount of the Reversion Consideration payable to (or by) the Transferee by (or to) the Concessionaire for the purpose of paragraph 6.
- 6.2 The Completion Accounts shall be prepared in accordance with the requirements of generally accepted accounting principles in the United Kingdom and of all relevant statutes as if they were statutory accounts required to be prepared under the Companies Act. No account shall be taken of any events taking place after the Reversion Date and regard shall only be given to information available to the Concessionaire and LLA as at the Reversion Date.
- 6.3 The Concessionaire shall procure that, within 30 days after the Reversion Date, the Concessionaire's Accountants will submit the draft Completion Accounts and the Reversion Consideration Statement and their working papers to the Transferee's Accountants. The Transferee shall procure that, within 30 days of receipt of the draft Completion Accounts and the Reversion Consideration Statement and working papers, the Transferee's Accountants will certify whether or not they agree with the draft Completion Accounts and the Reversion Consideration Statement. The Concessionaire shall procure that the Transferee's Accountants are given all such assistance and access to all such additional information as they may reasonably require in order to enable them to make their decision.
- 6.4 If the Transferee's Accountants certify their agreement with the draft Completion Accounts and the Reversion Consideration Statement, it shall constitute the Completion Accounts and the amounts shown in the Reversion Consideration Statement in respect of the items detailed in paragraphs 6.1.1 to 6.1.5 shall be final and binding on the Concessionaire and the Transferee. If the Transferee's Accountants certify that they disagree with the draft Completion Accounts and certificate (or any item therein), then the provisions of paragraph 6.5 shall apply and the decision of the independent firm of chartered accountants produced in accordance with paragraph 6.5 shall constitute the Completion Accounts and the amounts shown in the Reversion Consideration Statement in respect of the items detailed in paragraphs 6.1.1 to 6.1.5 shall be final and binding on the Transferee and the Concessionaire. If the Transferee's Accountants do not give the Concessionaire the Reversion Consideration Statement required by paragraph 6.3 within the prescribed time limit, the draft Completion Accounts and the Reversion Consideration Statement shall be final and binding on the Transferee and the Concessionaire.
- 6.5 If any dispute arises between the Transferee's Accountants and the Concessionaire's Accountants as to any matter to be included in the Completion Accounts either the Transferee or the Concessionaire may give notice that a dispute exists (a "Dispute Notice") to the other and, if the Transferee and the Concessionaire have not resolved the dispute within 21 days of the date of receipt of the Dispute Notice by the other, the following provisions shall apply. Either the Transferee or the Concessionaire may refer the dispute to an independent firm of chartered accountants agreed by the Transferee and the Concessionaire or, in default of agreement within 21 days of the date of the Dispute Notice, an independent firm of chartered accountants nominated by the President for the time being of the Institute of Chartered Accountants in England and Wales (the "Expert"), with a request that the Expert make a decision on the dispute within 21 days of receiving the reference. In any reference, the Expert shall act as an expert and not as an arbitrator. The decision of the Expert shall, in the absence of fraud or manifest error, be final and binding on the Transferee and the Concessionaire. The costs of the Expert shall be borne equally by the

Transferee and the Concessionaire or in such proportions as the Expert may determine to be fair and reasonable.

- 6.6 If the amount of the Net Reverting Assets is a negative amount, the Reversion Consideration shall be a cash sum equal to such negative amount (less £1), payable by the Concessionaire to the Transferee; and if the amount of the Net Reverting Assets is a positive amount, the Consideration shall be a cash sum equal to such positive amount (plus £1) payable by the Transferee to the Concessionaire.
- 6.7 The amount of the Reversion Consideration payable by (or to) the Transferee to (or by) the Concessionaire shall be paid in cleared funds within 10 Business Days after determination of the amount thereof pursuant to this paragraph 6. If not paid by the Transferee within such time, the Council shall pay the same to the Concessionaire.

7. Risk and Title

Risk in and title to the Reverting Assets shall pass to the Transferee on the Reversion Date with the intention that such transfer takes place with effect from the Reversion Date (where practicable) and the Concessionaire shall after the Reversion Date be a trustee for the Transferee in respect of all the Reverting Assets until the same shall have been formally delivered and/or formally transferred or assigned to the Transferee or such transfers or assignments have been registered (where appropriate).

8. Position after the Reversion Date

The Concessionaire and the Transferee shall forthwith pass to the other any payment, notice, correspondence, information or enquiry in relation to the Airport Business or the Reverting Assets which it receives after Completion and which properly belongs to the other.

9. Reverting Employees

- 9.1 The Concessionaire and the Transferee acknowledge and agree that, pursuant to the TUPE Regulations or any replacement, the contracts of employment between the Concessionaire and the Reverting Employees, together with any related collective agreements (save insofar as such contracts and agreements relate to any occupational pension scheme) will have effect after the Reversion Date as if originally made between the Transferee and the Reverting Employees (or between the Transferee and the relevant Trade Union, as the case may be). In the absence of TUPE Regulations, the parties shall endeavour to achieve the transfer of Reverting Employees to the same effect.
- 9.2 The Transferee shall indemnify the Concessionaire against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) as a result of any failure by the Transferee to comply with its obligations under Regulation 10 (3) of the TUPE Regulations or any replacement.
- 9.3 Upon or as soon as practicable after the Reversion Date the Transferee and the Concessionaire shall jointly give the Concession Employees a notice which is substantially similar in effect and purpose to the agreed form attached to this Concession Agreement marked "B".

- 9.4 The Concessionaire shall indemnify and continue to indemnify LLA against all costs, claims, expenses, outgoings and accrued liabilities arising in respect of any Reverting Employee from the change of employer occurring by reason of the operation of the TUPE Regulations being a significant change and to the detriment of any of the Reverting Employees.
- 9.5 The Concessionaire shall represent and warrant with effect from the Reversion Date that it has complied with its obligations imposed by the TUPE Regulations in connection with any Reverting Employee. In particular the Concessionaire has complied with its obligation to inform and consult with the appropriate representatives of affected employees pursuant to Regulation 10 of the TUPE Regulations and will continue to do so. The Concessionaire shall indemnify and will continue to indemnify LLA on demand against all costs, claims, expenses and liabilities arising from or in connection with any breach of its obligation to inform and consult (including all legal fees and expenses incurred as a result of defending or settling any claims relating to any breach of its obligations under the TUPE Regulations.)
- 9.6 The Concessionaire shall indemnify LLA against any costs, claims, liabilities, awards or expenses as a result of any claims made by any Reverting Employees in respect of health and safety at work matters, industrial accidents, injuries, diseases, allergies or illness or breach of the Occupiers Liability Act 1957, the Health and Safety at Work Act 1974 and any other applicable legislation which supersedes those acts from time to time which have been made or of which the Concessionaire is aware prior to close of business on completion, or relate to any accident, injury, process or event occurring prior to close of business on completion.

10. **Apportionments**

- 10.1 All rent, rates, and other periodic outgoings relating to or payable or accruing in respect of the Airport Business down to and including the Reversion Date shall be borne by the Concessionaire and as from Completion shall be borne by the Transferee, in each case, to the extent consistent with paragraphs 2 and 3. Such outgoings and amounts receivable shall if necessary be apportioned accordingly provided that all outgoings specifically referable to the extent of the user of any property or rights shall be apportioned according to the extent of such user.
- 10.2 All salaries, wages and other periodic outgoings for which the Concessionaire is accountable and all employer's pension contributions and all other normal employment costs (including accrued holiday pay) in respect of the Reverting Employees down to and including the Reversion Date shall be borne by the Concessionaire and shall be apportioned accordingly and thereafter shall be borne by the Transferee, in each case, to the extent consistent with paragraphs 3.7 and 9.1.
- 10.3 The apportionments to be made pursuant to this paragraph 10 shall be included in the Completion Accounts.

11. Reverting Contracts

- 11.1 The Transferee shall (subject to paragraph 11.2) take over from the Concessionaire or the relevant member of the London Luton Airport Group the benefit and burden of the Reverting Contracts (other than obligations and liabilities relating to the period prior to the Reversion Date) with effect from the Reversion Date.
- 11.2 Insofar as any of the Reverting Contracts cannot be transferred to the Transferee except by an assignment made with the consent of another party or by an agreement of novation, then (without prejudice to any other rights of the Transferee) the following provisions shall apply:
- 11.2.1 this Schedule shall not constitute an assignment or an attempted assignment of the Reverting Contract if the assignment or attempted assignment would constitute a breach of the Reverting Contract;
- 11.2.2 the parties shall use their joint reasonable endeavours both before and after the Reversion Date to obtain, any such consent or agreement;
- 11.2.3 until such consent or novation is obtained, the Concessionaire shall do all such acts and things as the Transferee may reasonably require to provide the Transferee with the benefits of the Reverting Contract (including enforcement at the cost and for the account of the Transferee of any right of the Concessionaire against the other party to the Reverting Contract arising out of its cancellation by the other party or otherwise).
- 11.3 The Concessionaire shall be responsible for and indemnify the Transferee against obligations and liabilities relating to the period prior to the Reversion Date in respect of the Reverting Contracts and the Transferee shall be responsible for and indemnify the Concessionaire and any other member of the London Luton Airport Group against obligations and liabilities relating to the period after the Reversion Date in respect of the Reverting Contracts.

12. VAT

LLA and the Council shall pay any VAT chargeable in connection with any supply made hereunder within 7 days of receipt of an appropriate VAT invoice.

13. Further Assurance

Each member of the London Luton Airport Group and the Transferee shall do or procure the doing of all such acts and things and/or execute or procure the execution of such documents in a form reasonably satisfactory to (and at the cost of) the Transferee as may be reasonably necessary for the purpose of vesting the Reverting Assets in the Transferee or giving the Transferee the full benefit of all of the provisions of this Schedule.

14. Access to Reverting Books and Records

The Transferee shall hold all of the Reverting Books and Records for a period of six years from the Reversion Date and shall permit the Concessionaire and its representatives such access to the Reverting Books and Records as the Concessionaire may reasonably require, including, in particular, for the purpose of preparing the accounts of the Concessionaire for any period during which the Reversion Date falls.

15. **Effect of Completion**

The provisions of this Schedule, in so far as any such provision remains to be, or is capable of being, performed or observed, shall remain in full force and effect after completion is deemed to have been taken place pursuant to paragraph 5.1.

16. **Power of Attorney**

The Concessionaire and the Guarantor hereby irrevocably appoint LLA as its attorney to prepare and execute all such documents, as the Concessionaire or the Guarantor shall have failed to do in order to implement or perfect the transfers referred to in Clause 23.6 in respect of any land owned by the Concessionaire or the Guarantor necessary to the operation of the Airport Business or referred to in paragraph 13 above.

SCHEDULE 17

AIRPORT FORUM

Terms of Reference

The Airport Forum is intended to encourage consultation between representatives of the Council, LLA and the Concessionaire. In addition to the Forum, officer representatives of LLA, the Council and the Concessionaire are expected to meet and discuss operational issues and matters relating to this Concession Agreement at other times as necessary.

The Airport Forum shall be a consultative body only. It shall have no power to alter any term of this Concession Agreement, or to otherwise take any collective action, or to bind any of its members or participants.

The Airport Forum shall have the following terms of reference:

Membership

The following individuals are invited to participate in the Forum:

- All members of the LLA Board
- Two member representatives from the Council (non LLA Board members), as designated by the Council
- The Chief Executive and Director of Finance from the Council
- All Directors of London Luton Airport Group, Ltd. ("LLAGL")
- All Directors of London Luton Airport Operations Limited ("LLAOL") (including the Chief Executive, Director of Finance and company secretary)
- Two employee representatives of the Concessionaire selected by the Concessionaire (in consultation with the Chief Executive of the Council)
- The AGI Representative

The AGI Representative and three Directors of LLAOL should be present at all Airport Forum meetings. Where the LLAOL Finance Director is unable to attend, a manager from the Finance Department should attend as the Finance Director's representative.

Other representatives from the organisations (or their Affiliates) referred to above may attend Forum meetings by invitation where their advice may be required on any agenda item. The two Chief Executives shall mutually determine whether any additional representatives shall be invited.

Secretarial arrangements

The Chief Executive (LLAOL) will have the responsibility for sending out agendas and recording the minutes of the meeting.

The Chief Executive (LLAOL) will consult the Chief Executive (Council) about the agenda for the Airport Forum meeting at least 7 days prior to the meeting. At any time, to the extent the two Chief Executives conclude that a specific dispute or concern regarding this Concession Contract has arisen, or is likely to arise, they will schedule a separate meeting of the appropriate parties to address the specific dispute or concern.

An Agenda and agenda items shall be despatched to members of the Forum at least 3 days prior to the day of the meeting of the Forum.

The agenda, report and minutes of the Airport Forum will be strictly confidential. Reports and minutes of the Airport Forum will be forwarded to all members designated above and to the Secretary of LLAGL, and may also be presented and discussed at LLA Board meetings.

Meetings will take place at the Airport.

Frequency

Meetings are expected to take place approximately every two months.

The first meeting shall take place on 1st October 1998 at 6.00. The Chief Executives (LLAOL) and the Chief Executive (LBC) will report on the programme of future meeting dates at the inaugural meeting.

Business

The following areas of Business are expected to be within the term and reference of the Airport Forum

- Annual Business Plan and Revised Business Plan
- Airport Performance and Business Development
- Development Strategy
- Progress on capital development work
- Environmental Policy and Performance
- Employee policy and development (including any proposals for subcontracting)
- Community Relations
- Other matters which LLA might reasonably request in exercise of their monitoring role of the Concession Agreement, except to the extent such matter has been or will be referred to a separate meeting, as provided above.

Review

The terms of reference may be reviewed and adjusted by mutual agreement of the two Chief Executives.

SCHEDULE 18

CALCULATION OF WACC AND COE

Weighted Average Cost of Capital ("WACC") Methodology and Cost of Equity ("COE") Methodology

Introduction

This Schedule contains the agreed framework for the determination of Concessionaire's WACC and Concessionaire's COE to be used in this Concession Agreement.

Framework

Quoted airport companies will provide a benchmark for the cost of capital measurement. However, while the Concessionaire remains unquoted, a proxy has to be used for the company's beta (an important measure of share price volatility used in assessing the cost of the equity component of the company's capital). The method agreed is to base Concessionaire's WACC on [REDACTED]

If the Concessionaire is a quoted company this "proxy beta" problem disappears. It is possible to determine the Concessionaire's cost of equity directly from the market. In this case, the liquidity premium should also disappear.

The methodology outlined below reflects current best market practice; if market practice changes, the WACC calculation methodology used at the time of the calculation event will reflect the best market practice at that time.

[REDACTED]		
[REDACTED]		
[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
[REDACTED]		

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]
- [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

EXECUTED (but not delivered until the)
date hereof) **AS A DEED** by affixing)
THE COMMON SEAL of **THE COUNCIL**)
OF THE BOROUGH OF LUTON in the)
presence of:)

Chief Executive: Kate Jones

Kate Jones

Deputy Chief Executive and Director of Finance:
Peter Watson

Peter Watson

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by)
affixing the Common Seal of **LONDON**)
LUTON AIRPORT LIMITED in the)
presence of:)

Director: Frank Pullman

Frank Pullman

Director: John Esam

John Esam

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by)
affixing the Common Seal of **LONDON**)
LUTON AIRPORT OPERATIONS)
LIMITED in the presence of:)

Director: Bryan Smith

Bryan Smith

Director: Alan Mawdsley

Alan Mawdsley

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by)
affixing the Common Seal of **LONDON**)
LUTON AIRPORT GROUP LIMITED)
in the presence of:)

Director: Bryan Smith

Bryan Smith

Director: Roy Williams

Roy Williams