

31 DECEMBER 2002

(1) LONDON UNDERGROUND LIMITED

(2) INFRACO BCV LIMITED

(3) INFRACO JNP LIMITED

(4) INFRACO SUB-SURFACE LIMITED

**AMENDED AND RESTATED
ACTON WORKS ETC AGREEMENT**

Frances Low
Secretary and Solicitor
London Underground Limited
55 Broadway
London
SW1H 0BD

ACTON WORKS ETC AGREEMENT

THIS AGREEMENT is made on 31 December 2002

BETWEEN

- (1) **LONDON UNDERGROUND LIMITED** whose registered office is at 55 Broadway, London SW1H OBD (**LUL**);
- (2) **INFRACO BCV LIMITED** whose registered office is at 55 Broadway, London SW1H OBD (**BCV**);
- (3) **INFRACO SUB-SURFACE LIMITED** whose registered office is at 55 Broadway, London SW1H OBD (**SSL**);
- (4) **INFRACO JNP LIMITED** whose registered office is at 55 Broadway, London SW1H OBD (**JNP**, or together with BCV and SSL, the **Infracos**)

WHEREAS

- (1) By service contracts (the **PPP Contracts**) dated 1 April 2000 between LUL and SSL, BCV and JNP respectively the Infracos agreed to provide certain services to LUL.
- (2) Pursuant to the PPP Contracts LUL has agreed to lease by way of the Acton Works Leases certain land and buildings to each Infraco at the LUL site known as Acton Works.
- (3) The Acton Works Lease to be granted to BCV includes the Building (as defined below) which contains assets and facilities which are used for the purposes of training apprentices, LUL staff and outside contractors in all aspects of fire, track and general safety and which the Infracos and LUL require access to and use of in connection with the PPP Contracts.
- (4) This Agreement regulates the use, rights and obligations in respect of such assets and facilities.
- (5) This Agreement amends and restates the agreement of the same name dated 4 October 2000 (as amended by variation dated 25 June 2001) between the Parties hereto.

IT IS HEREBY AGREED as follows:

DEFINITIONS AND INTERPRETATION

1.1 To the extent applicable the provisions of this Agreement shall be interpreted in accordance with clause 1.2 below of the Master Definitions Agreement dated 1 April 2000 between LUL, BCV, SSL and JNP (the MDA)

1.2 Words and expressions used in this Agreement shall to the extent applicable and unless defined herein or the context otherwise requires, have the meanings assigned to them in Schedule 2 of the MDA.

1.3 References in the singular shall be deemed to include the plural and vice versa and references in either gender shall be deemed to include the other and the neuter.

1.4 **BCV Acton Works Lease** means the Acton Works Lease to be entered into between LUL (1) and BCV (2) pursuant to BCV's PPP Contract.

1.5 **Building** means the building known as the Engineering Training Centre or ETC, Gunnersbury Lane, being the building described as AC11 in the BCV Acton Works Lease

1.6 **Canteen Area** means the Facility so named and shown on Plan Number 1 annexed hereto

1.7 **Commencement Date** means 1 April 2000.

1.8 **Estate** means LUL's land and premises known as Acton Works as more particularly described in the BCV Acton Works Lease.

1.9 **ETC Facilities Charge** means the amount payable to BCV by Users pursuant to the ETC Service Level Agreement.

1.10 **ETC Service Level Agreement** means the agreement detailing, inter alia, common services to be provided by BCV for the benefit of the Users and in respect of the Building, and the charge payable therefor.

- 1.11 **Facilities** means those facilities (including class rooms, training rooms, offices, workshops, storage areas and Fire Training Area) contained within or without the Building as listed in Schedule 1 to this Agreement, the location of which is shown on Plan Numbers 1 2, or 3 annexed hereto.
- 1.12 **Fire Training Area** means the Facility so named and shown shaded on Plan Number 3 annexed hereto.
- 1.13 **Fire Training Equipment** means the portacabin, shed, fire extinguishers and ancillary equipment, propane gas demonstration unit, and 2 track trolleys.
- 1.14 **First Aid Room** means the Facility so named and shown on Plan Number 1 annexed hereto.
- 1.15 **Shared Assets** means the Fire Training Equipment and the Track Hearing Test Equipment .
- 1.16 **Users** means in relation to the Facilities, the party or parties to this Agreement named in the user column of Schedule 1 alongside each of the respective Facilities and the term 'All', where used in such user column, shall mean LUL, JNP and SSL. The term shall include all persons duly authorised by such Users.
- 1.17 **Track Hearing Test Equipment** means the hearing test device and ancillary equipment located in the Facility being classroom 14.

SCOPE OF AGREEMENT AND CONTRACT PERIOD

2.1 This Agreement relates to the Facilities and Shared Assets contained in or about the Building;

2.2 This Agreement shall commence on the Commencement Date and shall, unless all the parties otherwise agree in writing or it is sooner terminated pursuant to the provisions herein, continue until the date of expiration or sooner determination of the earlier of either the BCV Acton Works Lease in its entirety or in relation only to that part which includes the Building.

FACILITIES

Access and Use

3.1 BCV shall provide and the Users respectively shall be permitted to use the Facilities together with all equipment necessary for the beneficial enjoyment of the Facilities.

3.2.1 The Users shall be entitled to access the Facilities as detailed in Schedule 1 at all reasonable times and in respect of a Facility which has more than one User, upon giving prior written notice to BCV, for the purposes of exercising the rights granted in Clause 3.1 above. In the event that more than one User wishes to use a shared Facility at the same time, BCV shall allocate the shared Facility to a single User for that time period, using its best endeavours to ensure equitable access to the shared Facilities by each of the Users.

3.2.2 Notices or communications to BCV referred to in Clause 3.2.1 above shall be addressed to:

Ground Floor
Engineering Training Centre
Acton Works Depot
Gunnersbury Lane
Acton
London NW1
Tel: 46387
Fax: 46683
Attention: ETC Reception

3.3 BCV shall be entitled to charge the Users the ETC Facilities Charge as detailed in the ETC Service Level Agreement.

Maintenance and Alternative Facilities

3.4 BCV in relation to each of the Facilities shall procure that such Facilities are maintained in no worse a state and condition as the Facilities are in at the Commencement Date as evidenced, so far as it is applicable hereto, by the Schedule of Conditions referred to in clause 3.1 of the Fourth Schedule of the BCV Acton Works Lease.

3.5 The Users shall use all reasonable endeavours not to damage the Facilities, fair wear and tear excepted.

3.6 BCV may replace or improve any Facility with an alternative provided the alternative provides an equivalent or better service and in

either case no less convenient service than that provided by the Facility replaced.

3.7 Subject to obtaining Landlord's consent and all requisite planning consents (if necessary), BCV, in relation to a Facility, shall, at the request and cost of any User make improvement to the Facility as is reasonable in the case of a request by an Infraco having regard to the obligations of each Infraco under its PPP Contract.

SHARED ASSETS

Access and Use

4.1 LUL, being the owner of the Shared Assets, shall provide such assets and permit the Infracos, together with their invitees, where appropriate, to use such assets for the purposes of complying with their obligations under their PPP Contracts.

4.2 The Infracos shall use the Shared Assets with all due care and only in the manner in which they are designed to be used and will use all reasonable endeavours not to damage such assets.

4.3 LUL shall maintain, cleanse, renew, replace and improve the Shared Assets and, in consideration for making same available for the use of the Infracos, shall be entitled to recover a fair and reasonable proportion of the cost of doing so from the Infracos, which sum shall be proportionate to each of Infraco's respective use of the Shared Assets.

RIGHTS GRANTED

Rights granted to the Parties

5.1 To facilitate the exercise of the rights granted pursuant to clauses 3 and 4 above and as ancillary thereto, the parties to this Agreement and their invitees shall, where required, have the following additional rights:

- (a) **Rights of way:** to pass with or without vehicles or on foot only (as the case may require) to and from the Building for all purposes in connection with the lawful use of the Facilities or Shared Assets over such of the access ways entrance halls stairways landings lifts and escalators (if any) within the Building and the roadways or footpaths within the Estate which now provide and are reasonably necessary for the purposes of that lawful use or access to the Facilities or Shared Assets or over such alternative route or routes as LUL (as the landlord under the BCV Acton Works Lease) or BCV may reasonably prescribe and notify to the Users;

- (b) **Toilet and shower facilities:** to use the toilets and showers and ancillary facilities within the Building.
- (c) **Canteen and First Aid Facilities:** to use the Canteen Area and First Aid Room and ancillary facilities within the Building.

The ambit of rights granted

5.2(a) The rights set out in paragraph 5.1 above are granted to the parties (where required):

- (i) for the duration of this Agreement;
- (ii) in so far as LUL (as landlord under the BCV Acton Works Lease) or BCV is able to grant the same;
- (iii) subject to such conditions as LUL (as Landlord under the BCV Acton Works Lease) or BCV may properly impose regarding safety or security at the Building.

(b) These rights shall be exercised in common with LUL (as Landlord under the BCV Acton Works Lease) and BCV and any other person from time to time authorised by LUL or BCV or otherwise entitled to rights in relation to the subject matter of the grant provided that in the exercise of the rights as little hindrance obstruction interference and disturbance as is reasonably possible shall be caused to the use of the Estate and Building, traffic, the convenience of the public, the access to or use or occupation of public or private roads or footpaths, and properties neighbouring the Estate.

AGREEMENT REVIEW AND TERMINATION

6.1(a) The parties agree in relation to the Facilities and Shared Assets to meet from time to time but in any event at least once every 12 months from the date of this Agreement:

- (i) to review the occupation and/or use of the Facilities and Shared Assets
- (ii) to consider alternative arrangements for occupation and/or use of the Facilities or Shared Assets in the event of a change in any party's business requirements for use of the Facilities or Shared Assets.

(b) If after consultation pursuant to 6.1 (a) above:

- (i) a party no longer requires the occupation and/or use of a Facility or Shared Asset then it may terminate this agreement so far as it relates to such occupation and/or use of such Facility or Shared Asset by first providing BCV or LUL (as the case may be) with not less than 6 months' notice in writing; or
- (ii) BCV or LUL (as the case may be) wishes to terminate the right of occupation and/or use of a Facility or Shared Asset respectively by a party then it may do so by first providing that party with not less than 6 months' notice in writing.

Cessation of Use

6.2 If in the reasonable opinion of BCV or LUL, a party has ceased, for all practical purposes having regard to the use to which a Facility or Shared Asset respectively was put at the Commencement Date, to make use of a Facility or a Shared Asset in accordance with this Agreement, BCV or LUL (as the case may be) shall notify in writing the relevant party and thereafter shall cease to be under any obligation under this Agreement to provide such Facility or Shared Asset to that party.

INFORMATION SHARING

7.1 Each party shall at all times nominate a suitably qualified person, (a **Nominated Person**) who shall act as the point of contact for the purposes of sharing information in relation to any Shared Asset or Facility.

7.2 Each party shall forthwith notify each other party of the identity of such person and any substitute or replacement for such person.

7.3 In the event that any party becomes aware of a fault, defect or lack of repair (a **Defect**), or of any circumstances likely to lead to the existence of a defect, in any Shared Asset or Facility where such defect interferes with or is capable of interfering with the exercise of any party's rights or the performance by any party of its obligations under any PPP Contract, or this Agreement, the Nominated Person of that party shall provide to either the LUL, in respect of a Shared Asset or BCV, in respect of a Facility, (referred to hereinafter as the **Responsible Party** as appropriate) a notice (a **Defect Notice**) containing such details as are available to it of the Defect or the circumstances likely to lead to a Defect which the Responsible Party is liable to repair, remedy or make good.

7.4 The Defect reporting requirement in clause 7.3 above shall operate in addition to any requirement to report any Defect to LUL pursuant to a PPP Contract.

REMEDYING WANTS OF REPAIR

8.1 In the event that the Responsible Party receives a Defect Notice pursuant to clause 7.3 above, it shall (subject to clause 10 below), no later than 30 days following receipt of the Defect Notice, or as soon as reasonably practicable thereafter having regard to the nature of the Defect, commence and diligently proceed to remedy, repair or make good as applicable any defect to which the Defect Notice relates.

8.2 If the Responsible Party fails to remedy, repair or make good the matters prescribed in the Defect Notice in accordance with clause 8.1 above, the relevant User shall be entitled to enter the relevant Facility (together with such persons authorised by the User and such equipment as the User reasonably requires) to remedy, repair and make good the defect to which the Defect Notice relates at the expense of the Responsible Party and the Responsible Party shall pay within 28 days of receipt of demand the reasonable costs and expenses incurred by the User in carrying out such works.

CO-OPERATION

9.1 The parties shall co-operate with one another and act reasonably and in good faith in and about performance of their respective obligations and the exercise of their respective rights as set out in this Agreement.

DISPUTE RESOLUTION

10.1 For as long as LUL is the landlord pursuant to the BCV Acton Works Lease in relation to the Building, any dispute relating to this Agreement shall be resolved in accordance with the Dispute Resolution Agreement.

FORCE MAJEURE

11.1 If a party is affected by Force Majeure such that it will be unable to perform its obligations hereunder to a material extent, it will promptly notify the other parties affected thereby of the nature and extent of the circumstances in question and the delay or failure likely to result therefrom.

11.2 Notwithstanding any other provision of this Agreement, a party (the **Affected Party**) shall not be deemed to be in breach of this Agreement, or otherwise be liable, for any delay in performance or other non-performance of any of its obligations under this Agreement to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other parties affected. The Affected Party shall use all reasonable efforts to remedy the situation so far as possible and subject thereto will comply with its obligations hereunder, provided that there

shall be no obligation on the Affected Party to settle labour disputes or to test or to refrain from testing the validity of any order, regulation or law in any court having jurisdiction. The Affected Party shall give prompt notice to other parties affected of the cessation of the cause of any Force Majeure.

SURVIVAL

12.1 The provisions of this Agreement (including any appropriate Schedules) which by their nature or implication (including in respect of any accrued rights and liabilities) are required to survive termination or expiry of this Agreement shall so survive and continue in full force and effect, along with any other clauses or Schedules of this Agreement necessary to give effect to them.

12.2 The provisions of clause 18 below shall survive the termination or expiry of this Agreement and continue in full force and effect.

NOTICES

13.1 Save where specified otherwise in this Agreement any notice affecting this Agreement and any invoices (together, **Notices**) shall be in writing and signed by the Agreement Manager referred to in clause 13.2 below for the party giving it on behalf of that party and may be served by leaving it at, or sending it by fax, prepaid recorded delivery, special delivery or registered post to the address and for the attention of the Agreement Manager of the other party. Proof of posting or despatch of any notice or communication shall be deemed to be proof of receipt:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of fax, the Business Day after the despatch;
- (c) in the case of recorded delivery, special delivery or registered post, forty-eight (48) hours from the date of posting.

13.2 Notices or communications referred to in clause 13.1 above affecting this Agreement shall in the case of LUL be addressed to:

9th Floor
Albany House
Petty France
London
SW1H 0BD
Tel: 020 7918 3850
Fax: 020 7918 4138
Attention: LUL Contract Manager

and in the case of BCV be addressed to:

5th Floor
Quadrant B
30 The South Colonnade
London

E14 5EU

Tel: 020 7308 4615
Fax: 020 7308 2217
Attention: BCV Contract Manager

and in the case of SSL to be addressed to:

1st Floor
Quadrant A
30 The South Colonnade
London
E14 5EU

Tel: 020 7308 4790
Fax: 020 7308 4670
Attention: SSL Contract Manager

and in the case of JNP to be addressed to:

30 The South Colonnade
London
E14 5EU

Tel: 020 7308 4709
Fax: 020 7308 4982
Attention: Head of Prime Contact Management

or such persons or address as the relevant party may from time to time notify in writing to the others.

WAIVER

14.1 The failure of any party at any time to enforce any provision of this Agreement shall in no way affect its right to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision, or be a waiver of the provision itself.

14.2 Save as expressed to the contrary in this Agreement, each party's rights and remedies under this Agreement are cumulative and shall not apply to exclude or limit any right or remedy at law or any claim for equitable relief.

ASSIGNMENT

15. No Infraco may assign, transfer, charge or otherwise deal with, in whole or in part, any of its rights or obligations under this Agreement (nor grant, declare a trust of, create or dispose of any right or interest in it) other than in accordance with the terms of the relevant PPP Contract.

SEVERABILITY

16. Should any provision of this Agreement be held to be invalid or unenforceable then such provision shall, so far as invalid or unenforceable, be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement. The parties shall then use all reasonable endeavours to replace the invalid or unenforceable provision by a valid provision the effect of which is the closest possible to the intended effect of the invalid or unenforceable provision.

CONSTRUCTION CONTRACTS (ENGLAND AND WALES) EXCLUSION ORDER 1998

17. The parties acknowledge and agree that this Agreement is entered into by them under a project applying similar principles to the private finance initiative, as referred to in the Construction Contracts (England and Wales) Exclusion Order 1998 (SI 1998 No. 641).

VALUE ADDED TAX

18.1 All sums payable in respect of supplies under this Agreement shall be exclusive of VAT, if any. Subject to clause 18.2 below, if VAT is chargeable on any supply under this agreement the recipient of the supply shall pay any VAT on that supply subject to prior receipt of a valid VAT invoice in respect of the supply complying with the VAT Regulations 1995; and the recipient shall not be liable for any interest or penalties arising to the extent that such a VAT invoice is not issued in respect of such supply.

18.2 Where under this Agreement any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall not include any VAT (if any) except Irrecoverable VAT (if any).

18.3 Each party shall provide each other party with any information reasonably requested by that other party in relation to the amount of VAT chargeable in accordance with this Agreement.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

GOVERNING LAW

20. Without prejudice to clause 10 above, this Agreement shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales as provided for in clauses 9.1 to 9.5 of the Dispute Resolution Agreement.

LIMITATION ON LIABILITY

21. The liability of one Infraco to another Infraco under this Agreement shall not extend to:

- (a) loss of profits or revenue;
- (b) loss of business;
- (c) loss of contracts;
- (d) claims of third parties for such damages; or
- (e) indirect, special, incidental or consequential loss or damage,

even if the party against whom the relevant claim is made has notice of the likelihood of such loss or damage.

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the parties on the date first above written.

SIGNED by **MARTIN CALLAGHAN**)
And **FRANCES LOW**)
for and on behalf of)
LONDON UNDERGROUND)
LIMITED)

Director **MARTIN CALLAGHAN**

Secretary **FRANCES LOW**

SIGNED by **MARTIN CALLAGHAN**) **MARTIN CALLAGHAN**
And **FRANCES LOW**) **FRANCES LOW**
for and on behalf of)
INFRACO BCV LIMITED)

SIGNED by **MARTIN CALLAGHAN**) **MARTIN CALLAGHAN**
And **FRANCES LOW**) **FRANCES LOW**
for and on behalf of)
INFRACO JNP LIMITED)

SIGNED by **MARTIN CALLAGHAN**) **MARTIN CALLAGHAN**
And **FRANCES LOW**) **FRANCES LOW**
for and on behalf of)
INFRACO SUB-SURFACE)
LIMITED)

SCHEDULE 1

BCV FACILITIES AT ENGINEERING TRAINING CENTRE. GUNNERSBURY LANE

FACILITIES		FLOOR	USER(S)
Main Office	G01	Ground	All
Main Office	G02	Ground	All
Office	G05	Ground	LUL
Storage	G06	Ground	All
Classroom 20	G07	Ground	All
Classroom 19	G08	Ground	LUL
Classroom 18	G09	Ground	JNP
Classroom 17	G10	Ground	LUL
New Classroom 5	G15	Ground	SSL
New Classroom 6	G15a	Ground	JNP
Classroom 3	G18	Ground	JNP
Classroom 2	G19	Ground	LUL
Staff Room	G22	Ground	All
Classroom 7	G24	Ground	LUL
Classroom 14	G24a	Ground	All
Classroom 8	G25	Ground	LUL
Classroom 13	G25a	Ground	All
Classroom 10	G27a	Ground	JNP
Classroom 12	G28	Ground	LUL
Classroom 11	G28a	Ground	SSL
Kitchen	G33	Ground	All
Office	101	First	All
Office	102	First	All
Classroom A	103	First	LUL
Visual Aids	104	First	All
Classroom C	106a	First	SSL
Classroom B	107	First	LUL
Fire Training Area		N/A	All