

THIS AGREEMENT is made the **31st** day of **DECEMBER** 2002

BETWEEN

- (1) **LONDON UNDERGROUND LIMITED**, a company registered in England and Wales under number 01900907 and having its registered office at 55 Broadway, London SW1H 0BD (*LUL*);
- (2) **INFRACO BCV LIMITED**, a company registered in England and Wales under number 03923496 and having its registered office at 55 Broadway, London SW1H 0BD (*BCV*); and
- (3) **INFRACO JNP LIMITED**, a company registered in England and Wales under number 03923425 and having its registered office at 55 Broadway, London SW1H 0BD (*JNP*); and
- (4) **INFRACO SUB-SURFACE LIMITED**, a company registered in England and Wales under number 03923484 and having its registered office at 55 Broadway, London SW1H 0BD (*SSL*).

WHEREAS

(A) By PPP Contracts entered into between BCV, JNP and SSL (together, the *Infracos*) and London Underground Limited respectively, the Infracos have agreed to provide certain services to LUL.

(B) Pursuant to the applicable PPP Contracts, LUL has agreed to grant to BCV a lease of Ruislip Depot and BCV has in turn agreed to grant Depot Sub-leases of parts of the depot to JNP.

(C) Part of the land at Ruislip Depot leased or to be leased to BCV (and which is not included in the Depot Sub-leases to JNP) comprises a loading area which all the Infracos require to use in connection with the carrying out of works pursuant to their respective PPP Contracts.

(D) The parties have agreed to enter into this Agreement to record the terms and conditions which will apply to the use of such loading area and the arrangements for regulating such use.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 To the extent applicable the provisions of this Agreement shall be interpreted in accordance with clause 1.2 of the Master Definitions Agreement entered into between LUL, BCV, JNP and SSL (the *MDA*).

1.2 Words and expressions used in this Agreement shall, to the extent applicable and unless defined in Schedule 1 or the context otherwise requires, have the meanings assigned to them in the *MDA*.

1.3 Any covenant by two or more Parties together is several only and not joint.

2. COMMENCEMENT AND DURATION

2.1 Notwithstanding the date of execution of this Agreement, this Agreement shall commence on the Start Date and shall terminate on the Expiry Date subject to earlier termination as provided for in this Agreement.

3. USE OF LOADING AREA

3.1 Subject to sub-clauses 3.2, 3.3 and 3.8 below, and in consideration of the payment by each of JNP and SSL respectively under clause 7.1, BCV grants to each of JNP and SSL the right:

- (a) to enter the Depot and pass with or without vehicles plant and machinery together with such equipment as JNP and/or SSL reasonably require over such of the track, sidings, roadways, footpaths, or accessways as are now provided and are reasonably necessary for the lawful use of or access to the Loading Area or over any alternative route or routes as BCV may reasonably prescribe and notify to JNP and SSL from time to time provided that such alternative route(s) are no less convenient than those existing at the date of this Agreement; and
- (b) to use the Loading Area with or without vehicles plant and machinery together with such equipment as JNP and/or SSL reasonably require for the purpose of loading and unloading materials plant and/or machinery in connection with works which JNP and/or SSL are required to perform pursuant to their respective PPP Contracts.

3.2 Where a Party requires the use of the Loading Area in accordance with clause 3.1 it shall submit to BCV's Depot Manager a use booking request on such form as from time to time prescribed by BCV (the *Request*) setting out the date and time from which the use is required together with the duration of such use. Within three (3) Business Days of receipt of the Request BCV shall:

- (a) where the Loading Area is not subject to a prior booking confirmed in accordance with this sub-paragraph, confirm to the Infraco submitting the Request that permission is given to use the Loading Area for the period required; or
- (b) where the Loading Area is subject to a booking previously confirmed in accordance with (a) above, allocate the use of the Loading Area in accordance with clause 3.3.

3.3 In the event that the Request is made by two or more Parties in respect of the same period (including instances where the Request is in respect of a period which is already the subject of a confirmed booking pursuant to 3.2(a) above) then, subject to clauses 3.3 – 3.4, permission for use of the Loading Area shall be allocated (or re-allocated in the event that the period is already booked):

- (a) (whilst the Transplant Agreement subsists) to the Party who has had a booking of a 'Class E Service' as defined in the Transplant Agreement confirmed in accordance with clause 2.5 (*Procedure for Planning and Booking of Transplant Service*) of that Agreement for the same period; or
- (b) where (a) above does not apply, on a first come first served basis.

3.4 Notwithstanding the confirmation of a booking pursuant to 3.2 or 3.3 above any other Party may approach the Party holding the relevant booking to either seek joint access with such Party during the validity of the relevant booking and/or propose a variation to such booking.

3.5 The Party holding the booking under the terms of clause 3.2 or 3.3 will reasonably consider any requests made under clause 3.4 and discuss the same with the relevant requesting Party and will use all reasonable endeavours to accommodate that Party's request. Following any agreed alternative arrangement for such booking, the requesting Party and the Party holding the booking will immediately advise the BCV Depot Manager of such revised arrangements.

3.6 Each of the Parties hereto (excluding LUL) shall be entitled to a minimum of ninety (90) days confirmed bookings of the Loading Area in each calendar year.

3.7 BCV shall inform all the other Parties in writing as soon as:

- (a) any booking made by any Party is confirmed and/or
- (b) a confirmed booking changes.

3.8 The Parties acknowledge that LUL may from time to time require the use of the Loading Area in connection with the loading by it of Heritage Rolling Stock. In such cases where LUL does require such use it shall have the same rights as any other Party hereto subject to complying with the terms and conditions of use of the Loading Area as set out in this Agreement (save for any obligation to make any payment pursuant to clause 7) including the booking procedure in clause 3.2 above.

4. EXERCISE OF RIGHTS GRANTED

4.1 The rights set out in sub-clause 3.1 above are granted to JNP and SSL:

- (a) for the duration of this Agreement;
- (b) subject to such written conditions as BCV as lessee of the Depot may properly impose regarding safety or security at the Depot.

4.2 Such rights shall be exercised in common with BCV and any other person from time to time authorised by BCV or otherwise entitled to rights in relation to the subject matter of the grant provided that such other parties shall cause as little hindrance, obstruction, interference and disturbance as is reasonably possible to the use of the Loading Area by JNP, SSL and LUL.

4.3 Each of JNP SSL and BCV shall exercise its rights under this Agreement in such a manner:

- (a) as complies with Good Industry Practice;
- (b) so as to cause as little damage as is reasonably practicable and shall make good any physical damage caused by it;
- (c) to the extent reasonably practicable, so as to cause the minimum obstruction or interference to any other Party in the performance of its obligations under its PPP Contract or the Transplant Agreement or any Transaction Document;

And LUL agrees likewise save in respect of sub-clause 4.3(a).

5. MAINTENANCE OF LOADING AREA

5.1 BCV as the lessee of the Depot shall procure that the Loading Area is maintained in such condition as is necessary or as either of JNP or SSL may reasonably require for the safe and proper use of the Loading Area by the Parties in connection with the discharge of their respective obligations under the applicable PPP Contracts.

6. USE OF TRANSPLANT SERVICES

6.1 In the event that BCV or SSL require Transplant Services from JNP in connection with use of the Loading Area, the provision of and payment for such services shall be subject to and in accordance with the terms of the Transplant Agreement.

7. PAYMENT

7.1 In consideration of the rights granted by BCV to each of SSL and JNP pursuant to clause 3 above and BCV complying with its obligations in clause 5.1 above, each of JNP and SSL agree to pay to BCV a sum (the ***Loading Agreement Payment***) equal to a fair and reasonable proportion (having regard to the use by each of the Loading Area) of the costs and expenses properly and reasonably incurred by or on behalf of BCV in respect of BCV complying with clause 5.1 above,

Provided that:

- (a) no part of the Loading Agreement Payment to be paid by either JNP or SSL shall relate to the cost incurred by BCV in renewing, enhancing, or upgrading the Loading Area in accordance with its obligations under its PPP Contract; and
- (b) neither JNP nor SSL shall be responsible for the payment of the other's proportion.

7.2 For the avoidance of doubt, due allowance for any sums payable by JNP to BCV pursuant to clause 7.1 above shall be made in the service charge which JNP is liable to pay to BCV pursuant to the Depot Sub-leases of other parts of the Depot to

be entered into between BCV and JNP pursuant to their respective PPP Contracts with the intention that JNP shall not be charged twice for the costs and expenses incurred by BCV in the maintenance of the Loading Area through both the Depot Sub-Leases and this Agreement.

7.3 Upon reasonable written request, BCV shall provide to SSL and JNP a written breakdown of the total costs and expenses incurred by or on behalf of BCV in complying with clause 5.1 above and BCV shall give to JNP and SSL all reasonable opportunity to inspect (and copy but at their own costs) all relevant invoices and related documentation (including, without limitation, details of overheads and the basis of apportionment) relating to such costs and expenses.

7.4 BCV shall submit an invoice to each of JNP and SSL at the conclusion of each Payment Period and payment of the relevant Loading Agreement Payment shall be due and payable within twenty-eight (28) days.

Late Payment

7.5 Any sum payable by a Party under this Agreement, if not paid within seven (7) days of the due date shall bear interest at the Applicable Rate.

Disputed Amounts

7.6 Any disputes between the Parties in relation to any amounts payable pursuant to this Agreement shall be determined in accordance with the Dispute Resolution Agreement.

8. VAT

8.1 All sums payable under this Agreement shall be exclusive of VAT, if any. Subject to clause 8.2 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 complying with the VAT Regulations 1995 in respect of the supply; and the payer 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. Any VAT invoice issued under this clause 8.1 shall (i) state whether it is a VAT invoice, (ii) show all amounts exclusive of VAT, (iii) show VAT as a separate amount and (iv) state separately the relevant rates of VAT for each supply to which it relates.

8.2 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 to the extent to which that person or any VAT group of which it is a member cannot recover such VAT whether by way of credit against a liability to account for VAT or as an actual repayment from HM Customs & Excise.

8.3 Where any amount paid or payable under this Agreement is increased or decreased and as a result the value of the consideration for a taxable supply (as defined by section 4(2) of the Value Added Tax Act 1994) is adjusted, an additional payment or a repayment shall be made equal to the appropriate adjustment in respect

of VAT due on the adjusted amount paid or payable and a credit or debit note provided accordingly.

8.4 Each Party shall provide the other Party with any information reasonably requested by that other Party relating to any amount of VAT chargeable in accordance with this Agreement and payable by the Party requesting the information.

9. DISPUTE RESOLUTION

9.1 Any Dispute in relation to this Agreement shall be resolved in accordance with the Dispute Resolution Agreement.

10. LIMITATION ON LIABILITY

10.1 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.

11. CO-OPERATION

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

12. ASSIGNMENT

12.1 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.

13. AGREEMENT REVIEW AND TERMINATION

13.1 The Parties agree that the Planning Manager for each Infraco (or such other suitable person as any of the Parties may nominate in writing from time to time) together with an LUL representative shall meet from time to time but in any event at least once every three (3) months to confirm their respective programmes of works and required access to the Loading Area and to consider potential changes with a

meeting to be held at the beginning of each Contract Year to review the use of the Loading Area.

13.2 If after consultation pursuant to clause 13.1 above a Party no longer requires the use of the Loading Area then it may terminate this Agreement so far as it relates to that Party's use by first providing BCV with not less than 6 months' notice in writing.

13.3 This Agreement shall terminate in the event of termination of the BCV Lease insofar as it relates to the Loading Area or any part of the Depot without which use of the Loading Area is not possible or practicable.

13.4 Save as provided in clause 13.5 below LUL shall not terminate in whole or part any Lease or Ancillary Lease granted by it to BCV where such termination results in termination of this Agreement in accordance with clause 13.3 above without having first complied with the provisions of clause 17 (*LUL Specified Rights*) of each of the SSL Contract and of the JNP Contract in respect of such termination.

13.5 LUL shall not be obliged to comply with the provisions of clause 17 (*LUL Specified Rights*) of the SSL Contract or of the JNP Contract where the termination referred to results from the exercise by LUL of any entitlement under the BCV Contract to undertake LUL Commercial Exploitation which LUL Commercial Exploitation would not constitute Disruptive Commercial Exploitation as defined for the purposes of the SSL Contract or the JNP Contract (as appropriate) (as if the relevant premises were comprised in SSL's Lease or JNP's Lease (as appropriate)).

13.6 Any notice served by LUL in respect of the LUL Specified Right referred to in clause 13.4 above shall state whether LUL requires:

- (a) that either JNP or SSL shall undertake the obligations of BCV under this Agreement; or
- (b) that JNP or SSL (or both) shall cease to use the Loading Area.

13.7 Where the notice served by LUL is as set out in clause 13.6(a) LUL, JNP and SSL agree that on conclusion of the procedure set out in clause 17 of the PPP Contracts they will enter into an agreement in respect of the Loading Area on the same terms as this Agreement but incorporating such changes as are necessary to accommodate the removal of BCV as a party.

14. VARIATION

14.1 This Agreement may be amended only under an instrument in writing signed by the duly authorised representatives of the Parties.

15. NOTICES

15.1 Any notices or other documents to be given under this Agreement shall be in writing in the English language and shall be deemed to be duly given if delivered by hand or by registered post or by facsimile to a Party at the address set out below for

such Party or such other address as that Party may from time to time designate by written notice to the other.

15.2 The Parties addresses for service of all documents in terms of this Agreement are:

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

Infraco BCV Limited
30 The South Colonnade
London E14 5EU
Tel: 020 7308 4615
Fax: 020 7308 2217
Attention: BCV Contract Manager

Infraco JNP Limited
30 The South Colonnade
London E14 5EU
Tel: 020 7308 3745
Fax: 020 7308 2894
Attention: Head of Prime Contract Management

Infraco Sub-Surface Limited
30 The South Colonnade
London E14 5EU
Tel: 020 7308 4790
Fax: 020 7308 4670
Attention: SSL Contract Manager

15.3 Any such notices or other documents shall be deemed to be received by the addressee two (2) Business Days following the date of dispatch if the notice or other document is sent by registered post or on the next Business Day after delivery if sent by hand or facsimile.

16. ILLEGALITY AND SEVERABILITY

16.1 If any provision of this Agreement shall become or be declared illegal, invalid or unenforceable, in whole or in part, for any reason whatsoever by any competent tribunal or authority, such provision or part thereof shall be divisible and shall be deemed to be deleted from this Agreement in so far as the continued operation of this Agreement is concerned, provided always that if such deletions substantially affects or alters the commercial basis of this Agreement, the parties shall negotiate in good

faith to amend and modify the provisions and terms of this Agreement as may be necessary or desirable in the circumstances.

17. GOVERNING LAW

17.1 Without prejudice to clause 9 of this Agreement (*Dispute Resolution*), this Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties to this Agreement irrevocably submit to the exclusive jurisdiction of the courts of England and Wales as provided for in clauses 9.1 to 9.2 of the Dispute Resolution Agreement.

18. WAIVER

18.1 The failure of any Party at any time to enforce any provision of this Agreement shall in no way affect its rights to require complete performance by another 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.

18.2 Unless expressed to the contrary in this Agreement, each Parties 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.

19. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

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)	MARTIN CALLAGHAN
and FRANCES LOW)	FRANCES LOW
for and on behalf of)	
LONDON UNDERGROUND LIMITED)	

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

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

MARTIN CALLAGHAN
FRANCES LOW

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

MARTIN CALLAGHAN
FRANCES LOW

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise requires:

1. **Agreement** means this agreement and any variations thereto;
2. **BCV Lease** means the lease of property including inter alia the Depot entered or to be entered into between LUL and BCV pursuant to BCV's PPP Contract.
3. **Depot** means the land and premises known as Ruislip Depot leased or to be leased to BCV by LUL pursuant to the BCV Lease, as shown for the purposes of identification only edged red on the plans each entitled "Loading Area Plan 1" annexed hereto, (excluding however the land and building delineated 'Control Room' on one of the said plans, and the footbridge delineated 'Footbridge' on one of the said plans) and the expression includes any part or parts thereof;
4. **Loading Area** means the area within the Depot used for the loading and unloading of, inter alia, materials, plant and machinery as shown for the purpose of identification only edged green on the plan entitled "Loading Area Plan 2" annexed hereto, and the expression includes any part or parts thereof;
5. **Loading Agreement Payment** has the meaning given in clause 7.1;
6. **Parties** means the parties to this Agreement and their permitted successors and assigns and **Party** means whichever of them is indicated by the context of the reference;
7. **TransPlant Agreement** means the Transplant Agreement dated 1 April 2000 between LUL, BCV, SSL and JNP relating generally to the provision of engineering trains as amended or varied from time to time;
8. **TransPlant Services** shall have the meaning given to the term in the Transplant Agreement.

LOADING AREA PLAN 1

LOADING AREA PLAN 2

DATED 31 DECEMBER 2002

BETWEEN

(1) LONDON UNDERGROUND LIMITED

and

(2) INFRACO BCV LIMITED

and

(3) INFRACO JNP LIMITED

and

(4) INFRACO SUB-SURFACE LIMITED

RUISLIP DEPOT LOADING AREA AGREEMENT



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