

20 NOVEMBER

2002

LONDON UNDERGROUND LIMITED

INFRACO BCV LIMITED

NCC ESCROW INTERNATIONAL LIMITED

ESCROW AGREEMENT
in relation to the Capability Model Workbook
prepared for the Public, Private Partnership
for London Underground Limited

27399



CONTENTS

CLAUSE	PAGE
1. INTERPRETATION.....	1
2. APPOINTMENT OF AGENT.....	1
3. DELIVERY AND CUSTODY OF THE MASTERS.....	2
4. INTELLECTUAL PROPERTY RIGHTS.....	2
5. NO LIABILITY.....	2
6. CONFIDENTIALITY.....	3
7. THE AGENT'S FEES.....	3
8. TERMINATION.....	3
9. LIMIT OF LIABILITY.....	4
10. REVISED MASTERS.....	5
11. RIGHTS OF ACCESS.....	6
12. NOTICES.....	6
13. ASSIGNMENT.....	7
14. COUNTERPARTS.....	8
15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999.....	8
16. GOVERNING LAW.....	8
SCHEDULE 1 FEES PAYABLE TO THE AGENT.....	9
SCHEDULE 2 INTEGRITY TESTING.....	10

THIS AGREEMENT is made on 20th November 2002

BETWEEN:

- (1) **LONDON UNDERGROUND LIMITED** whose registered office is at 55 Broadway, London SW1H 0BD (Company No.01900907) (*LUL*);
- (2) **INFRACO BCV LIMITED** whose registered office is at 55 Broadway, London SW1H 0BD (Company No. 03923496) (*Infraco*);
- (3) **NCC ESCROW INTERNATIONAL LIMITED** whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7ED (Company No. 3081952) (*Agent*).

WHEREAS:

(A) Infraco has entered into a PPP Contract with LUL, under which they have agreed to provide certain services to LUL in connection with the enhancement and maintenance of the Underground Network.

(B) In the PPP Contract reference is made to Version 4.1 of the Capability Model Workbook (as described in Appendix 5 to Schedule 2.2 of the PPP Contract) which is intended to be used for the purposes of determining the Line Groupings Capability score (in Journey Time minutes).

(C) The parties wish to provide for the safe custody of two (2) identical master copies of the Capability Model Workbook for each line grouping contained on one (1) CD Rom and with file names Bakerloo Line.xls, Central Line.xls, Victoria Line.xls and Waterloo & City Lines.xls which relate to the part of the Underground Network for which Infraco is responsible under the PPP Contract (the *Masters*, each a *Master*) upon the terms set out in this Agreement.

(D) Both LUL and Infraco will each hold a copy of the Master (each a *Copy*, together the *Copies*).

IT IS AGREED as follows:

1. 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 between LUL and Infraco JNP Limited, Infraco BCV Limited and Infraco SSL Limited (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 meaning assigned to them in Schedule 2 of the MDA.

2. APPOINTMENT OF AGENT

LUL and Infraco hereby appoint the Agent and the Agent hereby agrees to act with effect from the date hereof as custodian of the Masters in accordance with the

provisions of this Agreement until such time as its appointment is terminated as hereinafter provided.

3. DELIVERY AND CUSTODY OF THE MASTERS

3.1 Subject to Clause 3.5, on the Transfer Date or as soon as reasonably practicable thereafter LUL shall through its representatives deliver or cause to be delivered to the Agent (at the address specified in Clause 12.2(c)) two (2) Masters.

3.2 The Agent agrees to accept delivery of the Masters and thereafter to hold the same in safe custody at two (2) separate locations for the duration of this Agreement. The Agent shall promptly notify both LUL and Infraco of the addresses at which the Masters and any Revised Masters (as defined herein at Clause 10) are held from time to time.

3.3 On receipt of the Masters and any Revised Masters, the Agent shall perform Integrity Tests as set out in Schedule 2 of this Agreement to ensure that the Masters and Revised Masters contain an accessible excel spreadsheet. The Agent shall provide a copy of the Integrity Test results to LUL and Infraco as soon as is reasonably practicable.

3.4 LUL and Infraco shall each hold a Copy and a copy of any Revised Masters.

3.5 Prior to delivery of the Masters by LUL in accordance with Clause 3.1 above, Infraco shall verify in writing to LUL that each Master is a true and accurate copy of the Capability Model Workbook to which the Master relates.

3.6 Any Dispute arising between LUL and Infraco in relation to this Agreement shall be resolved in accordance with the Dispute Resolution Agreement. The parties acknowledge that the Agent is not a party to the Dispute Resolution Agreement and is consequently not bound by the terms of such agreement.

4. INTELLECTUAL PROPERTY RIGHTS

LUL, Infraco and the Agent acknowledge and agree that the Capability Model Workbook shall remain the confidential property of LUL and that all copyright and all other intellectual property rights in the Capability Model Workbook will (insofar as such copyright or other intellectual property rights vest in LUL) remain vested in LUL.

5. NO LIABILITY

Subject to Clause 3.3, the Agent shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Capability Model Workbook. The Agent shall have no obligation or responsibility to determine that the items deposited by or on behalf of LUL and Infraco accepted by the Agent for deposit are or are not the Masters.



6. CONFIDENTIALITY

The Agent agrees on its own behalf and on behalf of each of its officers, employees, sub-contractors and agents to maintain the Masters together with all information and/or documentation coming into its possession or to its knowledge under or in connection with this Agreement in strictest confidence and secrecy, not to copy or otherwise make use thereof other than for the purposes of fulfilling its obligations under this Agreement and not to disclose or release it other than in accordance with the terms hereof.

7. THE AGENT'S FEES

7.1 In consideration of the services to be performed by the Agent hereunder, LUL agrees to pay to the Agent the fees as detailed in Schedule 1 (together, the *Fees*).

7.2 Following the execution of this Agreement, the Agent will send an invoice in respect of the Initial Fee and the first Annual Fee to LUL.

7.3 Thereafter, the Agent will send an invoice to LUL in respect of:

- (a) the Annual Fee, on or about the date of each subsequent anniversary of this Agreement;
- (b) the Update Fee, if and when such fees are properly incurred under Clause 10; and
- (c) fees for access not covered by the Annual Fee as defined in Schedule 1. Notwithstanding the foregoing, Infraco agrees to reimburse LUL the full amount of fees paid by LUL to the Agent in respect of such access where the Infraco is responsible for such fees pursuant to paragraphs 3(a) and 3(b) of Schedule 1. In such circumstances, Infraco shall make payment to LUL within twenty eight (28) days of request by LUL to Infraco.

7.4 LUL will pay to the Agent the Fees then due to the Agent within twenty eight (28) days of receipt of the relevant invoice from the Agent.

8. TERMINATION

8.1 The Agent shall be entitled to resign its appointment hereunder:

- (a) by giving to LUL and Infraco not less than sixty (60) days' written notice; or
- (b) if, sixty (60) days after delivery by the Agent of a written notice to LUL and Infraco, any outstanding Fees have not been paid to the Agent in accordance with Clause 7.

8.2 The Agent shall immediately prior to the date on which its resignation takes effect deliver the Masters and all Revised Masters to such other custodian (the *Alternative Custodian*) as LUL and Infraco may jointly agree, each acting reasonably, and notify to the Agent in writing.



8.3 Infraco shall be afforded an opportunity to pay any outstanding Fees on behalf of LUL within thirty (30) days of delivery by the Agent of a written notice in accordance with Clause 8.1(b) and the Agent shall accept such payment in satisfaction of LUL's obligation to pay the same. The whole of such payment by Infraco shall be reimbursed by LUL within twenty eight (28) days of a written request being made by Infraco to LUL together with interest thereon at the Applicable Rate.

8.4 This Agreement shall continue in force from the Transfer Date for a period of thirty (30) years or until terminated either by the Agent pursuant to Clause 8.1 above or by LUL and Infraco agreeing to terminate and by serving the Agent with not less than thirty (30) days' written notice of the same.

8.5 In the event that this Agreement is terminated pursuant to Clause 8.4 above, LUL and Infraco shall appoint a new, mutually acceptable Alternative Custodian on similar terms to those contained herein, subject to such modifications as the Alternative Custodian shall deem necessary and which shall be acceptable to LUL, and Infraco, all acting reasonably.

8.6 If an Alternative Custodian has not been appointed within sixty (60) days of delivery of any notice issued by the Agent (pursuant to Clause 8.1) or by LUL and Infraco (pursuant to Clause 8.4) in accordance with the provisions of Clause 8.5 then the Agent shall deliver the Masters and all Revised Masters to London Underground Limited, 55 Broadway London SW1H 0BD (FAO: PPP Contract Manager) (the *Temporary Custodian*). The Temporary Custodian shall comply with this Agreement as if it was the Agent (including Clause 3.2 with regard to the location of the Masters and the Revised Masters) for the period in which it has custody of the Masters and Revised Masters.

8.7 In such event, LUL and Infraco shall continue to look for an Alternative Custodian to be appointed on similar terms to those contained herein. Once appointed, the Temporary Custodian shall promptly deliver or cause to be delivered all Masters and Revised Masters to the Alternative Custodian to the address stated in the new escrow agreement.

8.8 Termination of this Agreement shall not relieve the Agent or its officers, employees, sub-contractors and agents from the obligations of confidentiality contained in Clause 6.

9. LIMIT OF LIABILITY

9.1 The Agent shall not be liable for any loss caused to LUL and Infraco arising from the loss of or damage to the Masters or any Revised Masters except to the extent that such loss or damage is caused by the negligence of the Agent, its officers, employees, agents or sub-contractors and in such event the Agent's total liability in respect of all claims arising under or by virtue of this Agreement shall not (except in the case of claims for personal injury, fraudulent misrepresentation or death) exceed the Maximum Amount (as defined hereinafter). The Agent shall in no circumstances (except in the case of claims for personal injury, death or fraudulent misrepresentation) be liable to LUL and Infraco for consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.



For the purposes of this Clause 9, the Maximum Amount shall be the sum of £500,000 during the first year of this Agreement and shall be increased on every anniversary of this Agreement by the percentage increase of the Retail Prices Index (or any successor index) in the preceding twelve (12) month period.

9.2 Save for any claim for which the Agent is liable falling within the provisions of Clause 9.1 above, LUL and Infraco shall jointly and severally indemnify the Agent for any legal and/or related costs it reasonably and properly incurs as a result of the Agent issuing or otherwise becoming involved in any form of dispute resolution or litigation of any nature in relation to this Agreement, except that LUL shall assume all liability and shall solely indemnify and keep indemnified the Agent and its officers, agents, contractors and employees from and against any and all actions, claims, proceedings, losses, damages, demands, costs, expenses (including court and legal costs) and other liabilities of whatever nature suffered incurred or sustained by the Agent as a result of or in connection with any claim of alleged or actual infringement of IPRs arising out of or in connection with all dealings by the Agent with the Masters as contemplated under this Agreement.

For the avoidance of doubt, this Clause 9.2 shall not apply in the case of any dispute resolution or litigation or any claim for actual or alleged infringement of IPRs arising from or in direct consequence of breach of this Agreement by or negligence of the Agent.

10. REVISED MASTERS

10.1 In the event that any revisions to the Capability Model Workbook are agreed and verified by LUL and Infraco (and audited as the case may be) as permitted under the Transaction Documents, LUL shall promptly deliver to the Agent (at the address specified in Clause 12.2(c)) for safe custody, and the Agent shall accept delivery of, two (2) copies of the relevant revisions to the Capability Model Workbook (each a **Revised Master**). The provisions of this Agreement shall apply *mutatis mutandis* to such Revised Master(s) as well as to the Masters.

10.2 On receipt of:

- (a) the Masters deposited by LUL in accordance with Clause 3.1, the Agent shall provide a copy of the Master; and
- (b) any Revised Master deposited by LUL in accordance with Clause 10.1, the Agent shall provide a copy of the Revised Master,

as soon as reasonably practicable to Infraco.

10.3 In any year of this Agreement, no Update Fee shall be charged by the Agent in respect of the first set of Revised Masters delivered as set out in Clause 10.1. An Update Fee shall be charged only in respect of each subsequent delivery of Revised Masters made in that same calendar year.



11. RIGHTS OF ACCESS

11.1 The parties hereby agree that LUL and/or Infraco shall, (with the prior written consent of LUL, not to be unreasonably withheld), have (during normal business hours and upon reasonable notice):

- (a) access to; and
- (b) the right to:
 - (i) inspect; and
 - (ii) require the Agent to send a copy to LUL and Infraco of

the Masters and all Revised Masters held by the Agent from time to time.

11.2 Where LUL or Infraco notifies the Agent that it requires a copy of the Masters and/or any Revised Masters pursuant to Clause 11.1, the Agent shall provide the copies requested as soon as reasonably practicable and no later than seven (7) days after the notice has been given.

12. NOTICES

12.1 All notices or communications to be given under this Agreement shall be in writing and signed by or on behalf of the party giving it. Such notice or communication shall be served by leaving at, or sending it by fax, prepaid recorded delivery or special delivery registered post to the address or fax number as set out in clause 12.2 below. Proof of posting or despatch of any notice or communications 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; and
- (c) in the case of recorded delivery or special delivery registered post, two (2) Business Days from the date of posting.

12.2 Notices or communications referred to in clause 12.1 to be given under this Agreement shall be addressed:

- (a) If to LUL:

London Underground Limited
9th Floor
Albany House
Petty France
London
SW1H 0BD



Tel: 020 7918 3850
Fax: 020 7918 4138
Attention: PPP Contract Manager

(b) If to Infraco:

Infraco BCV Limited
30 The South Colonnade
London
E14 5EU

Tel: 020 7308 3980
Fax: 020 7308 4951
Attention: PPP Contract Manager

(c) If to the Agent:

NCC Escrow International Limited
Manchester Technology Centre
Oxford Road
Manchester
M1 7ED

Tel: 0161 242 2200
Fax: 0161 242 2275
Attention: Operations Manager

12.3 A party to this Agreement may change its nominated address, telephone or facsimile number by prior notice to the other parties.

13. ASSIGNMENT

13.1 This Agreement may not be assigned or transferred by LUL or Infraco in whole or in part save as provided in this Clause 13.

13.2 LUL shall assign its rights, and shall transfer its obligations, under this Agreement to any person to whom its rights under the PPP Contract are assigned or its obligations under the PPP Contract are transferred (the *Transferee*) and LUL shall procure that the Transferee executes an agreement by which it agrees with the other parties hereto to observe and perform all the terms and conditions of this Agreement.

13.3 Infraco may not 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 PPP Contract.

13.4 In the event of any assignment pursuant to Clause 13.2 or 13.3, the assigning party shall notify the Agent of such assignment by no later than fourteen (14) days from the date of such assignment.



14. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which taken together shall constitute one and the same instrument. Any party may enter into this Agreement by executing any such counterpart.

15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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.

16. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with laws of England and Wales and the parties to this Agreement irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof this Agreement has been entered into the day and year first above written.



SCHEDULE 1

FEES PAYABLE TO THE AGENT

1. Initial Fee: A one off payment of £900.
2. Annual Fee: an annual fee of £800. The fee shall include:
 - (a) Access Rights on two (2) occasions in that year, each of up to two (2) hours in duration, in relation to Infraco and LUL; and
 - (b) the Agent maintaining a log of details of a party using its access.
3. Fees shall be chargeable for additional access as follows:
 - (a) a fee of £125 per access to the Masters (of up to two (2) hours in duration) as incurred by LUL or Infraco from time to time for Access Rights in excess of those paid for in paragraph 2(a) above. In the case of access made by Infraco such fees shall be payable by LUL for the first two (2) Access Rights exercised by Infraco in excess of those referred to in paragraph 2(a) in the relevant year. The fees for further Access Rights in such year shall be the responsibility of the accessing party; and
 - (b) a fee of £60 per hour for any additional time in relation to any access to the Masters under paragraphs 2(a) and 3(a). Such fees shall be the responsibility of the party that incurs the additional time in relation to any access.
4. Update Fee: a £200 fee per set of Revised Masters delivered to the Agent, with no Update Fee payable in respect of the first set of Revised Masters delivered in any calendar year.
5. The fee payable to the Agent for making copies of the Masters and/or Revised Masters shall be calculated on the following basis:
 - (a) the fee chargeable for the reasonable time spent by the Agent in making the copies; and
 - (b) the reasonable cost of paper and CDs used in making the requested copies.

ALL FEES ARE SUBJECT TO VAT

The Agent may revise its Fees (acting both reasonably and bona fide) from time to time on giving forty five (45) days' written notice to LUL and Infraco. For the avoidance of doubt, an increase in Fees should not be applied retrospectively to Fees which have already become payable.



SCHEDULE 2

INTEGRITY TESTING

1. The integrity testing service (*Integrity Testing*) to be conducted by the Agent upon arrival of the Masters will check that the deposited material contains data that is accessible. The results of the Integrity Testing will be recorded in a test report (the *Test Report*) along with details of all the items lodged. This Test Report will be forwarded to LUL and Infracore and the Agent shall retain a copy of the Test Report.
2. Integrity Testing will be completed on any Revised Master(s) provided throughout the term of this Agreement.
3. The process to be completed includes:
 - (a) where appropriate, virus checks are performed on each item of media deposited. The anti-virus software used will be listed in the Test Report.
 - (b) checks are made to ensure that each item of media can be read without error.
 - (c) if the data has been encrypted or password protected in any way, checks to ensure that the data can be accessed using the decryption key or password provided by the software owner.
 - (d) checks to see if compression has been used, in which case tests are undertaken to ensure that the data can be decompressed. The compression utility used will be listed in the Test Report.



SIGNED by
and
for and on behalf of
LONDON UNDERGROUND LIMITED

)
) *Wendell Smith*
)
) *[Signature]*
)

SIGNED by
and
for and on behalf of
INFRACO BCV LIMITED

)
) *Wendell Smith*
)
) *[Signature]*
)

SIGNED by
and
for and on behalf of
NCC ESCROW INTERNATIONAL LIMITED

)
) *[Signature]*
)
) **ROB COTTON**
) **FINANCE DIRECTOR**