

DATED 31 DECEMBER 2002

BETWEEN

- (1) INFRACO BCV LIMITED**
- (2) LONDON UNDERGROUND LIMITED**
- (3) INFRACO JNP LIMITED**
- (4) INFRACO SUB-SURFACE LIMITED**

**AMENDED AND RESTATED
ETC SERVICE LEVEL AGREEMENT**

Frances Low
Secretary & Legal Director (Ref: 9020/CM)
London Underground Limited
55 Broadway
London SW1H 0BD

THIS AGREEMENT is made the 31 day of December 2002

BETWEEN

- (1) **INFRACO BCV LIMITED**, a company registered in England and Wales under number 3923496 and having its registered office at 55 Broadway, London SW1H 0BD ("BCV");
- (2) **LONDON UNDERGROUND LIMITED**, a company registered in England and Wales under number 1900907 and having its registered office at 55 Broadway, London SW1H 0BD ("LUL");
- (3) **INFRACO JNP LIMITED**, a company registered in England and Wales under number 3923425 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 3923484 and having its registered office at 55 Broadway, London SW1H 0BD ("SSL").

WHEREAS

- (A) Pursuant to the PPP Contract dated 1 April 2000 LUL has agreed to lease to BCV, *inter alia*, the building known as the Engineering Training Centre and curtilage at Gunnersbury Lane, Acton Works ('ETC'), on the terms and conditions contained in the agreed form of lease (the 'Lease')
- (B) BCV has entered into an agreement dated 4 October 2000 and titled the Acton Works ETC Agreement (the 'ETC Agreement') with LUL, JNP and SSL (the 'Other Parties') under which it has agreed to make certain facilities at ETC available for the use of the Other Parties .
- (C) This Agreement is supplemental to the ETC Agreement and is the ETC Service Level Agreement contemplated by and referred to in clause 3.3 of the ETC Agreement.
- (D) This Agreement details the amount of the ETC Facilities Charge payable to BCV by each of the Other Parties for use of the Facilities pursuant to the ETC Agreement as well as the extent of the ancillary or common services to be provided by BCV for the common benefit of the Other Parties.
- (E) This Agreement amends and restates the agreement of the same name dated 25 June 2001 between the parties hereto.

IT IS NOW AGREED:

1 DEFINITIONS AND INTERPRETATION

In this Agreement unless the context otherwise requires:

1.1 **Base Level Services** means those Services so named in the 'Service Type' column of the Facilities Services Schedule which are to be provided by BCV pursuant to Clause 4.1.1 below;

1.2 **Base Level Services Charge** means the amount payable by each of the Other Parties for the provision by BCV of the Base Level Services calculated as follows:

$$(A \times D) + (A/B \times C \times D)$$

where:

- A is the total area in square feet of the Facilities used exclusively by that Party;
- B is the total area in square feet of the Facilities used exclusively by all of the Parties hereto;
- C is the total area in square feet of the Facilities and common areas (including reception areas, classrooms, corridors, canteen and first aid rooms and toilets but excluding the Fire Training Area) of ETC which are used by all of the Parties hereto;
- D is the amount payable per square foot which amount shall initially be £12 subject to review by BCV (to be agreed upon by the Other Parties) on each anniversary of the Commencement Date

1.3 **Commencement Date** means 1 April 2000;

1.4 **Extra-Over Services** means those Services so named in the 'Service Type' column of the Facilities Services Schedule which are to be provided by BCV pursuant to Clause 4.1.2 below;

1.5 **Extra-Over Services Charge** means the 'at cost' price to BCV of the provision of the particular service to the Party requesting the same together with a fair and reasonable management fee to be agreed upon by such Party and BCV prior to provision of the Service;

1.6 **ETC Facilities Charge** means the amount invoiced to each of the Other Parties in accordance with Clause 5.2 below;

1.7 **Facilities Services Schedule** means the Schedule setting out the Base Level Services, Extra-Over Services, and User Managed Services and annexed hereto as Schedule 1;

- 1.8 **Financial Year** means each period of twelve months commencing on 1st April in one year and ending on 31st March in the next year or such other twelve month period as the BCV may in its reasonable discretion from time to time determine;
- 1.9 **Parties** means the parties to this Agreement and includes their permitted successors and assigns and **Party** means whichever of them is indicated by the context of the reference;
- 1.10 **Payment Period** means any one of the thirteen four weekly periods in a Financial Year, the first such period commencing on the first day of each Financial Year or such other payment period as the parties may agree;
- 1.11 **Services** means those facilities services set out in the 'Facilities Services' column of the Facilities Services Schedule other than User Managed Services;
- 1.12 **User Managed Services** means those facilities services so named in the 'Service Type' column of the Facilities Services Schedule and which, in relation to areas of ETC which are exclusively used by a Party, such Party is responsible for arranging themselves pursuant to Clause 4.3
- 1.13 Headings are inserted for convenience only and shall not affect this Agreement's construction.
- 1.14 References to Clauses and Schedules shall be to Clauses of and Schedules to this Agreement.
- 1.15 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.
- 1.16 References to any provision of a statute or regulation shall be construed as a reference to that provision as amended, re-enacted or extended at the date of signature hereto.
- 1.17 References to any document are to such document as amended, varied or replaced at the date of signature hereto.
- 1.18 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 the ETC Agreement.

2. RECORDAL

- 2.1 This Agreement is entered into subject to the ETC Agreement, the terms of which shall take precedence over this Agreement unless expressly provided herein to the contrary.

3 COMMENCEMENT AND DURATION

- 3.1 Notwithstanding the date of execution of this Agreement, this Agreement shall commence on the Commencement Date and shall continue in force until the date of expiration or sooner determination of the ETC Agreement.

4. PROVISION OF THE SERVICES

- 4.1 In consideration of the payment by each of the Other Parties to BCV of their respective ETC Facilities Charge in accordance with Clause 5 below, BCV agrees to use reasonable endeavours to provide or procure the provision of each of:

4.1.1 the Base Level Services as and when reasonably necessary having regard to the nature of the service to be provided; and

4.1.2 the Extra – Over Services within 2 weeks, or as soon as is reasonably practicable having regard to the nature of the service to be provided, after receipt of a written request by one of the Other Parties to provide such Extra-Over Services

in accordance with the respective 'Service Provision Summary' relating to each of such Services as set out in the Facilities Services Schedule.

- 4.2 BCV shall provide the Services in accordance with all applicable laws and regulations to the extent applicable to the provision of the Services.
- 4.3 The Parties agree that each of them shall be responsible for provision of the User Managed Services so far as they relate to their individual requirements and, where appropriate, the requirements of any applicable laws and regulations.
- 4.4 It is the intention of the Parties that a meeting be held in conjunction with the meeting proposed under clause 6.1(a) of the ETC Agreement to be attended by nominated representatives of each of the Parties to discuss any concerns or issues relating to the Services or any matters arising out of this Agreement including, without limitation, any adjustment to the ETC Facilities Charge and, where appropriate, any planned works which BCV intends to carry out which may affect the Parties use of ETC.

5 PAYMENT

- 5.1 Each of the Other Parties shall pay to BCV their respective ETC Facilities Charge invoiced in accordance with Clause 5.2 below.
- 5.2 BCV shall invoice each of the Other Parties at the end of each Payment Period for
- (i) their respective Base Level Services Charge; and
 - (ii) any Extra-Over Services Charge for any Extra-Over Services requested by and provided to the Party requesting same
- for such services provided or undertaken by BCV during that Payment Period: and
- (iii) a quarter share in any costs incurred by BCV in relation to maintenance and improvement of the Fire Training Area during the Payment Period.
- 5.3 All invoices shall be due and payable within 30 days of the date of their receipt.
- 5.4 Any sum payable under this Agreement if not paid on or by the date that such payment was due shall bear interest from the said due date at a rate of 4% above the base rate from time to time of the Bank of England or if the same shall become incapable of determination, such reasonable rate of interest as BCV may from time to time specify in substitution therefor.
- 5.5 Unless otherwise stated, all sums payable under this Agreement are exclusive of VAT and other duties.

6 . PRIORITISATION OF PERFORMANCE

- 6.1 To the extent that more than one of the Other Parties requires simultaneous benefit of the Extra-Over Services, BCV shall use reasonable endeavours to allocate equitably and reasonably its resources necessary to perform or procure the provision of the Extra-Over Services.

7. MISCELLANEOUS BCV OBLIGATIONS

- 7.1 Each of the Other Parties agrees to report to BCV any malfunction or fault of any heating, air conditioning, ventilation, plumbing or other building service or system serving ETC as soon as possible after the same has come to its attention and furthermore shall, in so far as it is reasonably capable, act in such a way so as to minimise any damage likely to be caused as a result of any such malfunction or fault.

8. DISPUTE RESOLUTION

- 8.1 Any dispute between the Parties shall be resolved in accordance with the dispute resolution provisions of the ETC Agreement.

9. VARIATION

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

10. ILLEGALITY AND SEVERABILITY

- 10.1 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 deletion 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.

11. GOVERNING LAW

- 11.1 This Agreement shall be construed and governed in accordance with English law.
- 11.2 Without prejudice to Clause 8 (Dispute Resolution), the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

12. RIGHTS OF THIRD PARTIES

- 12.1 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.

13. ASSIGNMENT

- 13.1 No Party (other than LUL) 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.

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the Parties on the day and year first above written.

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

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

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

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

SCHEDULE 1

Facilities Services Schedule

Ref	Facilities Service	Service Provision Summary	Service Type
1. Management			
1.1	Premises Management	Provision of building management function, including: <ul style="list-style-type: none">• Customer interface• co-ordination of building support services	Base Level Service
1.2	Facilities Contract Management	Comprehensive contract management of the Facilities Contract	Base Level Service
1.3	Statutory Compliance	Compliance with all statutory requirements for building plant, services and fabric, including maintenance of all statutory records, certificates, insurance inspections, notices etc.	Base Level Service
1.4	Record Keeping	Provision and maintenance of building related records, including statutory certificates, maintenance records, licenses, floor plans, copies of contracts and procedures, minutes of contract monitoring meetings etc. Provision of 'Building Manual' containing documentation of the building as required by Auditors, statutory bodies and legislation.	Base Level Service
1.5	Help Desk Provision	Provision of telephone 'Help Desk' for enquiries related to the Facilities Services set out in this table with a single internal telephone contact.	Base Level Service

Ref	Facilities Service	Service Provision Summary	Service Type
2. Property Maintenance			
2.1	Planned Asset Maintenance	Undertake planned maintenance programme ensuring compliance with Statutory and operational requirements.	Base Level Service
2.2	Fabric Maintenance	<p>Provision, management and monitoring of service contracts for planned (cyclic) preventive maintenance regimes to the internal and external fabric of the building.</p> <p>Keeping of maintenance records.</p> <p>Provision of an ad-hoc, day to day, break down / maintenance service in relation to building fabric with agreed response times.</p> <p>Compliance with all statutory requirements in relation to building fabric including maintenance of all statutory records, certificates etc.</p>	Base Level Service
2.3	M & E Maintenance	<p>Provision, management and monitoring of service contracts for planned (cyclic) preventive maintenance regimes to building plant and services, including:</p> <ul style="list-style-type: none"> • Heating, Cooling and Ventilation • Hot and Cold Water Systems • Pressure Vessels • Small Power Installations • Gas Distribution System • Electrical Distribution System • Plumbing • Lighting 	Base Level Service

Ref	Facilities Service	Service Provision Summary	Service Type
		<ul style="list-style-type: none"> • Lifting Equipment • Lightening Conductors <p>Provision of an ad-hoc, day to day, break down / maintenance service in relation to building services with agreed response times.</p> <p>Compliance with all statutory requirements in relation to M & E including maintenance of all statutory records, certificates, statutory inspections etc.</p>	
2.4	Minor Works & Reactive Repair	Provision of minor works and reactive repairs to both building fabric and services elements, reported through the help desk.	Base Level Service
2.5	Blind Maintenance	Provision maintenance regimes for internal blinds.	Base Level Service
2.6	Alteration Works	<p>Provision of alteration works within the Users exclusively occupied areas, at the request of such User. The requested works will be subject to the approval of the Facilities Manager (BCV) and all statutory requirements including Fire Regulations, and Building Control.</p> <p>Project requests to be evaluated with due regard to the overall BCV Accommodation Strategy and in terms of on-going cyclic refurbishment programmes. All projects are to be undertaken on a value for money basis and to meet the business need.</p>	Extra-Over Service

3. Fire Related Services

3.1	Fire Alarm Maintenance	Provision, management and monitoring of service contracts for planned preventive maintenance regimes to building fire alarms and other related systems, including statutory testing, in accordance with corporate and legislative Fire Certificate	Base Level Service
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Ref	Facilities Service	Service Provision Summary	Service Type
		<p>requirements.</p> <p>Provision of a 24 hour, break down / maintenance service in relation to fire alarms / systems with agreed response times.</p> <p>Compliance with all statutory requirements in relation to fire alarms including maintenance of all statutory records, certificates etc.</p>	
3.2	Fire Risk Assessments	Carry out fire risk assessments as required	Base Level Service
3.3	Fire Door Maintenance	Provision, management and monitoring of service contracts for maintenance regimes to fire doors within the building, including breakdown service with agreed response times.	Base Level Service
3.4	Portable Fire Appliance Testing	<p>Provision and maintenance of Portable Fire Fighting Appliances in accordance with the LU Portable Fire Appliance Procedures and relevant UK legislation.</p> <p>Provision of Portable Fire Appliance Testing to assets owned by others</p>	Base Level Service
3.5	Fire Drills and Evacuation	Programmed and co-ordinated fire drills and evacuation in accordance with Fire Certificate requirements.	Base Level Service
3.6	Fire Certificates	Applications for, and maintenance of, Fire Certificates, including variations to existing certificates, when and where appropriate.	Base Level Service

4. Security Related Services

4.1	Security Management	Management of all security related activities to provide co-ordinated and integrated physical security measures.	Base Level Service
4.2	Intruder Alarm Maintenance	Provision of technology based security systems, monitored 24 hours per day, 7 days a week, to ensure the safety of the buildings, contents and the occupants.	Base Level Service

Ref	Facilities Service	Service Provision Summary	Service Type
		Provision, management and monitoring of service contracts for planned preventive maintenance regimes to intruder alarms, where installed within the building.	
4.3	Security Access System Maintenance	Provision of technology based security access systems, monitored 24 hours per day, 7 days a week, to the building. Provision, management and monitoring of service contracts for planned preventive maintenance regimes and breakdown service to security access systems, where installed within the building.	Base Level Service
4.4	Manned Security Mobile	Provision of mobile security guard. Provision and regular updating of Security Assignment Instructions and training modules.	Base Level Service

5. Cleaning Related Services

5.1	General Cleaning	Provision of a comprehensive cleaning regime to include general daily cleaning of office areas; cleaning of sanitary, common and reception areas; sweeping of external footpaths. Ad-hoc and planned carpet cleaning as appropriate. Periodic cleaning as per specification.	Base Level Service
5.2	Window Cleaning	Provision of a comprehensive cleaning regime to all internal and external windows and glazed areas, as required.	Base Level Service
5.3	Washroom Consumables	Provision of washroom consumables to all sanitary areas.	Base Level Service
5.4	Waste Management	Provision of waste disposal services which complies with the Environmental Protection Act 1990, Duty of Care Code of Practice and in accordance with the Waste Disposal	Base Level Service

Ref	Facilities Service	Service Provision Summary	Service Type
		Contract. Maintenance of Statutory Records e.g. Transfer Notes. Provision of appropriate waste receptacles.	
5.5	Female Hygiene	Provision of sanitary facilities to all female toilets, including vending service. Removal of female sanitary and other waste from sanitary areas as appropriate.	Base Level Service
5.6	Confidential Waste	Provision of a confidential waste disposal service. Confidential waste collections and the provision of sacks to be arranged through the 'Help Desk'. Disposal to be monitored and registered.	User Managed Service

6. Environmental Services

6.1	Environmental Management	Ensure that all Environmental Procedures and Management Systems are implemented. Ensure that Facilities operations are in accordance with Company Policy and Statutory legislation. Ensure Security Assignment Instructions appropriately direct Security Staff to undertake energy saving actions during close down patrols such as switching lights off etc. Ensure compliance with statutory requirements and Approved Codes of Practice emanating from environmental considerations.	Base Level Service
6.2	Energy Monitoring & Management	Provision of controls and systems to ensure optimum efficiency of building plant and services, including day/night switching, automatic lighting systems, energy efficient components and regular maintenance	Base Level Service

Ref	Facilities Service	Service Provision Summary	Service Type
		Adjustment of heating/cooling controls to ensure office environments meet working and statutory requirements whilst commensurate with optimum energy use and good housekeeping.	
6.3	Meter Reading	Undertake meter readings to monitor energy usage and to ensure most effective purchase of energy including electricity, gas and water.	Base Level Service
6.4	Microbiological Regime	Provision of a comprehensive microbiological regime including record keeping, management and reviews. Implementation of Facilities Control of Microbiological Bacteria in Water Services procedure including compliance with H.S.G. 70, ACOP and other requirements under the COSHH Regulations.	Base Level Service
6.5	Utilities Provision	Monitoring utilities provision to the building ensuring constant supply	Base Level Service

7. Health & Safety

7.1	Health & Safety Management	<p>Implementation of BCV HSEMS System so far as it applies to the common areas and the premises overall.</p> <p>Provision and implementation of BCV's Authority to Work Procedures. Permits to Work are required for Contractors to carry out activities ensuring safe systems of work are adhered to and minimum disruption caused to occupants.</p> <p>Provision of guidelines for proper control of Contractor activities, methods of operation and individual responsibilities towards the occupants, operation and fabric.</p>	Base Level Service
7.2	First Aid	Ensure that the First Aid Room is at all times fully equipped with such first aid materials and equipment as may be reasonably necessary having regard to the nature of the Parties' requirements and their use of ETC	Base Level Service

Ref	Facilities Service	Service Provision Summary	Service Type
7.3	Water Treatment	Provision of a sufficient supply of Potable water. Implementation of Facilities Control of Microbiological Bacteria in Water Services Procedure including compliance with H.S.G. 70 and management procedures.	Base Level Service
7.4	Pest Control	Preventive and reactive pest control in both catering and general office areas.	Base Level Service
7.5	COSHH Management	Implementation of COSHH Procedures including the provision of appropriate risk assessments, product data sheets and statutory compliance with relevant legislation.	User Managed Service
7.6	Statutory Signage	Provision and maintenance of safety signage in accordance with current legislation and Fire Certificate requirements.	Base Level Service
7.7	Risk Assessment	Completion, where appropriate, of Risk assessments under Regulations 3 & 7 of the Management of Health and Safety at Work Regulations 1992.	User Managed Service
7.8	Eyebolt Testing	Provision and maintenance of eyebolts (suspended access equipment) where appropriate including statutory testing programme and associated certification	Base Level Service
7.9	Portable Appliance Testing	Testing of Portable Electrical Appliances in accordance with Facilities' Portable Appliance Procedures and relevant legislation.	Base Level Service in relation to shared and common areas and an Extra-Over Service in relation to areas exclusively used by one Party

8. Office Services

8.1	Reception Duties	Provision of dedicated building receptionist during normal working hours.	Base Level Service
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Ref	Facilities Service	Service Provision Summary	Service Type
8.2	Local Photocopying Facilities	Provision and maintenance of standard photocopier in Main Office (Room G01)	Base Level Service
8.3	Local Photocopying Facilities	Provision and maintenance of photocopying facilities in exclusively used Facilities	User Managed Service
8.4	Gas supply	Provision of gas, gas cylinders and associated equipment for training purposes	User Managed Service
8.5	Pay telephone	Provision of public card-operated pay telephone in reception area	Base Level Service