

DATED

31/12

2002

LONDON UNDERGROUND LIMITED

INFRACO JNP LIMITED

-and-

BECHTEL LIMITED

LUL DIRECT AGREEMENT

(RELATING TO THE SECONDMENT AGREEMENT)

Lovells

Atlantic House
Holborn Viaduct
London
EC1A 2FG
B8/MSM/1115360.02

THIS AGREEMENT is made as a deed on **31/12/2002** between

- (1) **LONDON UNDERGROUND LIMITED** (company registration number 01900907) whose registered office is at 55 Broadway, London, SW1H 0BD and its successors (**LUL**);
- (2) **INFRACO JNP LIMITED** (company registration number 03923425) whose registered office is at 55 Broadway, London SW1H 0BD and its successors (**Infraco**); and
- (3) **BECHTEL LIMITED** company registration number 00506133 whose registered office is at 245 Hammersmith Road, London, W6 8DP (**Bechtel**).

WHEREAS

- (A) By a contract dated 1 April 2000 (the **PPP Contract**) LUL has engaged Infraco to provide certain services and Infraco has agreed to provide such services to LUL on the terms, and subject to the conditions, set out in the PPP Contract.
- (B) LUL and Infraco have agreed under the PPP Contract that Infraco shall not enter into, be a party to, or be a beneficiary under, any Key Sub-Contract unless LUL, or its nominee, enters into a Direct Agreement in respect of that Key Sub-Contract.
- (C) Infraco under a contract of even date herewith (the **Secondment Agreement**) has engaged Bechtel to loan to Infraco the services of experienced personnel to assist Infraco in the management of its capital investment programme and other capital works which are undertaken pursuant to the PPP Contract (the **Services**) which is a Key Sub-Contract.
- (D) LUL has the right to exercise Step-in Rights under the PPP Contract to remedy certain matters.
- (E) LUL requires the assurance of direct and enforceable obligations and restrictions appearing herein.

NOW IT IS HEREBY AGREED as follows:

1. In this Agreement words and expressions defined in the PPP Contract shall, except where the context otherwise requires, have the meaning assigned to them under the PPP Contract.

Step-in Rights

2.1 Bechtel agrees that, in the event of LUL exercising its Step-in Rights, it will, if so required by notice in writing given by LUL and copied by LUL to Infraco, accept the instructions of LUL or its appointee acting as the agent of LUL (as applicable) which are given in accordance with the terms of the Secondment Agreement in respect of the performance of the Services upon the terms and conditions of the Secondment Agreement insofar as such instructions either relate to, or are for the purposes of, LUL's Step-in Rights.

2.2 The parties agree that, as between LUL, Infraco and Bechtel, any written notice given by LUL in accordance with this clause 2 shall be conclusive proof of LUL's entitlement to exercise its rights under this clause 2, of Infraco's agreement that Bechtel is entitled to accept instructions given by LUL and of Bechtel's obligation, in accordance with the terms, and subject to the conditions, of the Secondment Agreement, to accept such instructions of LUL as provided in LUL's notice insofar as such instructions either relate to, or are for the purposes of, LUL's Step-in Rights.

2.3 Bechtel further agrees that LUL shall not, subject to clause 5, by such notice given by LUL in accordance with this clause 2, accept liability for payment of any amounts payable to Bechtel and/or performance of Infraco's obligations under the Secondment Agreement.

2.4 Infraco acknowledges and has agreed to be a party to this Agreement so that:

- (a) Bechtel shall not be in breach of the Secondment Agreement by complying with the obligations imposed on it pursuant to this clause 2; and
- (b) subject to clause 5, Infraco shall at all times remain liable for payment of all amounts payable to Bechtel under the Secondment Agreement and for performance of Infraco's obligations under the Secondment Agreement, notwithstanding the service by LUL of such notice and compliance by Bechtel with the obligations imposed on it by this clause 2.

3. Without prejudice to clause 37.12 (*Use by LUL of Infraco/Third Party IPRs*) of the PPP Contract, Bechtel agrees that it shall not exercise any IPRs which it owns, and which it has licensed to Infraco under the Secondment Agreement or under another agreement with Infraco, so as to prevent or hinder LUL, or any third party appointed by LUL under clause 23.1 (*LUL Step-in Rights*) of the PPP Contract, from exercising its Step-in Rights.

4.1 Bechtel agrees that it will not without first giving LUL not less than twenty eight (28) days prior written notice (which must be copied by Bechtel to Infraco) exercise any right it may have to terminate the Secondment Agreement or treat the Secondment Agreement as having been repudiated by Infraco or to discontinue the performance of any obligations, warranties or covenants to be performed by Bechtel pursuant thereto.

4.2 Bechtel's right to terminate the Secondment Agreement or to treat the Secondment Agreement as having been repudiated by Infraco or to discontinue the performance of any obligations, warranties or covenants to be performed by Bechtel under the Secondment Agreement shall cease if:

- (a) within the period of notice set out in clause 4.1 LUL shall give notice in writing to Bechtel (which must be copied by LUL to Infraco) requiring Bechtel to accept the instructions of LUL or its appointee acting as the agent of LUL (as applicable) which are given in accordance with the terms of the Secondment Agreement in respect of the carrying out and completion of the Services upon the terms and conditions of the Secondment Agreement as varied by clause 5 (the ***Secondment Agreement Step-in Date***); and
- (b) within the period of fourteen (14) days after the Secondment Agreement Step-in Date (the ***Grace Period***), LUL or its appointee acting as the agent of LUL (as applicable) have cured in full all defaults of Infraco which gave Bechtel a right under the Secondment Agreement to terminate the Secondment Agreement or to treat the Secondment Agreement as having been repudiated by Infraco or to discontinue the performance of any obligations, warranties or covenants to be performed by Bechtel under the Secondment Agreement which have occurred and are continuing on the Secondment Agreement Step-in Date.

5.1 Subject to clause 5.2, following service of a notice from LUL under clause 4.2:

- (a) Bechtel shall (to the exclusion of Infraco) thereafter only accept the instructions of LUL or its appointee acting as the agent of LUL (as the case may be) that are given in accordance with the terms of the Secondment Agreement and LUL or such appointee acting as the agent of LUL (as applicable) shall have the rights and obligations of Infraco under the Secondment Agreement including any obligations or liabilities which arose on or prior to the Secondment Agreement Step-in Date and which remain to be performed, paid or satisfied under the Secondment Agreement;

- (b) all amounts due and payable to Bechtel or which may subsequently become due to Bechtel under the Secondment Agreement (and which have not been discharged by Infraco or any other person) shall be paid by LUL or its appointee acting as the agent of LUL (as the case may be):
 - (i) in the case of amounts which are overdue and unpaid on the Secondment Agreement Step-in Date, within the Grace Period; and
 - (ii) in the case of amounts which become due and payable after the Secondment Agreement Step-in Date, on the dates on which those amounts are due and payable in accordance with the terms of the Secondment Agreement;
- (c) Bechtel shall continue to perform the Services in accordance with the terms, and subject to the conditions, of the Secondment Agreement.

5.2 Bechtel agrees that in the event of LUL exercising its right to give a Step-out Notice to Infraco, Bechtel shall, if so required by notice in writing which is given by LUL to Bechtel not less than ten (10) days prior to the effective date of the Step-out Notice (and copied by LUL to Infraco), and which explains in reasonable detail the reasons for LUL's delivery of the Step-out Notice, from the relevant date specified in the notice accept the instructions of Infraco, that are given in accordance with the terms of the Secondment Agreement, in respect of the performance of the Services upon the terms and conditions of the Secondment Agreement.

5.3 Unless expressly agreed otherwise in writing by Bechtel on or prior to the effective date of LUL's Step-out Notice, LUL shall remain liable to Bechtel for LUL's obligations and liabilities under the Secondment Agreement arising between the Secondment Agreement Step-in Date and the effective date of the Step-out Notice (including those obligations and liabilities arising under clause 5.1(a)) which have not been done, observed or performed by LUL.

5.4 Without prejudice to clause 37.12 (*Use by LUL of Infraco/Third Party IPRs*) of the PPP Contract, LUL and any third party appointed by LUL under clause 23.1 (*LUL Step-in Rights*) of the PPP Contract shall cease to have the right under this Agreement to use any of Bechtel's IPRs that are licensed to Infraco under the Secondment Agreement or under another agreement with Infraco on and after the date specified in a Step-out Notice as the date on which Infraco is to recommence performance of the Services.

Asset Designation

6.1 LUL may in accordance with the GLA Act at any time following the date of this Agreement designate the property, rights and liabilities of Infraco under the Secondment Agreement as Key System Assets and those shall constitute key system assets for the purposes of section 216 of the GLA Act. LUL may also in accordance with the PPP Contract at any time following the date of this Agreement designate the property, rights and liabilities of Infraco under the Secondment Agreement as a Primary Asset. The parties agree and understand that if LUL so designates in accordance with the GLA Act and/or the PPP Contract, the property, rights and liabilities of Infraco, that the ability of Infraco to deal with its property, rights and liabilities is restricted in accordance with the GLA Act and/or the PPP Contract subject to any consent (including any conditions attaching thereto) as LUL may at any time notify to Bechtel in relation to any property, rights and liabilities of Infraco so designated.

6.2 LUL may at any time following the designation of the property, rights and liabilities of Infraco under clause 6.1 as Primary Assets and/or Key System Assets, de-designate any such property, rights and liabilities of Infraco in accordance with the PPP Contract and/or the GLA Act so that they are no longer Primary Assets and/or Key System Assets.

6.3 In the event of LUL exercising its rights under clauses 6.1 and 6.2 it shall notify Bechtel and Infraco as soon as reasonably possible of such designation or the cessation thereof and the date that such designation or cessation thereof shall take effect.

Governing Law and Disputes

7.1 This Agreement shall be governed by, and construed in accordance with, English law. Subject to the terms of this clause 7, the parties hereto agree that the courts of England are to have exclusive jurisdiction to settle any Dispute and for such purposes irrevocably submit to the jurisdiction of the courts of England.

7.2 The parties irrevocably agree that a judgment or order of any court referred to in this clause in connection with a Dispute is conclusive and may be enforced against them in any other court which has jurisdiction to enforce the relevant judgment or order.

7.3 Any party shall have the right to refer any dispute or difference under this Agreement to adjudication under the procedure set out in Part I of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 amended as follows:

(a) delete “and” at the end of line 2 of 13(g)

replace the “.” at the end of 13(h) with “, and”

add a further sub-paragraph 13(i) as follows:

“and shall, at the request of either party, hold a hearing at which the parties may present oral submissions and argument and call and cross-examine witnesses of fact and expert witnesses.”;

(b) add a further paragraph 23(3) as follows:

“in the event that a payment is made by one party to the other party pursuant to a decision of the adjudicator and such decision is reversed or varied in subsequent litigation, the parties agree that interest shall be payable at the Applicable Rate from the date of payment on any principal sum ordered to be repaid by the Courts”; and

(c) amend paragraph 24 as follows:

(i) in paragraph 24(a) delete the words “in sub-section (2)”; and

(ii) add a new paragraph 24(e):

“In Section 42(4) replace the word “order” in lines 2 and 3 with the word “decision”.

7.4 If the parties are unable to agree on a person who shall act as adjudicator of a Dispute that arises hereunder, then the President of the London Court of International Arbitration shall, upon the request of the party who referred the dispute or difference to adjudication, select a person to act as adjudicator.

7.5 In the event that any term, condition or provision contained in this Agreement shall be held to be contrary, inconsistent or non-compliant with the requirements of sub-sections (1) to (4) of Section 108 of the Housing Grants, Construction and Regeneration Act 1996, such term, condition or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand, without affecting the remaining terms, conditions and provisions. The parties agree to negotiate an equitable adjustment in such invalid or unenforceable term, condition or provision of this Agreement in order to give effect to the underlying purposes of this Agreement.

Notices

8. Any notice affecting this Agreement shall be in writing and signed by or on behalf of the party giving it and may be served by leaving it at, or sending it by fax, special delivery, pre-paid recorded delivery or registered post to the address and for the attention of the relevant party. Proof of posting or despatch of any notice or communication shall be deemed to be proof of receipt:

- (a) in the case of fax, the business day after the despatch;
- (b) in the case of special delivery, recorded delivery or registered post, two (2) business days from the date of posting.

Such notices 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: Contract Manager

and in the case of Infracore be addressed to:

30 The South Colonnade
London
E14 5EU

Tel: 020 7308 3745
Fax: 020 7308 2894
Attention: Head of Prime Contract Management

and in the case of Bechtel be addressed to:

11 Pilgrim Street
London EC4V 6RN

Tel: 020 7651 7888
Fax: 020 7651 7960
Attention: Mike A. Adams, Managing Director, Bechtel Rail

Copy to:

11 Pilgrim Street
London EC4V 6RN

Tel: 020 7651 7878
Fax: 020 7651 7955
Attention: Peter J.P. Olofson, Chief Counsel

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

Termination

9. This Agreement shall terminate or expire on the date of termination or expiration of the Secondment Agreement.

Rights of Third Parties

10. 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.

Assignment

11. No party shall assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written approval of the other parties.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and delivered as a deed on the date first above written.

EXECUTED AND DELIVERED as a)
DEED BY)
LONDON UNDERGROUND LIMITED)
acting by :)

Director **MARTIN CALLAGHAN**

Secretary **FRANCES LOW**

EXECUTED and DELIVERED as a)
DEED BY)
INFRACO JNP LIMITED)
acting by:)

Director **MARTIN CALLAGHAN**

Secretary **FRANCES LOW**

EXECUTED and DELIVERED as a)
DEED BY)
BECHTEL LIMITED)
acting by :)

Director John W. Wallace **JOHN W. WALLACE**

Director Michael A. Adams **MICHAEL A. ADAMS**