

31 December 2002

(1) LONDON UNDERGROUND LIMITED

(2) INFRACO JNP LIMITED

**AMENDED AND RESTATED
SITE MANAGEMENT AGREEMENT
IN RELATION TO ACTON WORKS**

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

THIS AGREEMENT is made on 31 December 2002

BETWEEN

- (1) LONDON UNDERGROUND LIMITED (LUL)** (registered number 3923496) whose registered office is at 55 Broadway, London SW1H 0BD
- (2) INFRACO JNP LIMITED (JNP)** (registered number 3923425) whose registered office is at 55 Broadway, London SW1H 0BD

RECITALS

- 1.1 LUL has entered into Service Contracts each dated 1 April 2000 with JNP, Infraco BCV Limited ("BCV") and Infraco Sub-Surface Limited ("SSL") respectively (the "PPP Contracts").
- 1.2 Pursuant to the PPP Contracts, LUL has agreed to grant leases (the "Acton Works Leases") of parts of the land and buildings within LUL's ownership known as Acton Works ("the Estate") as more particularly described in the Acton Works Leases.
- 1.3 Pursuant to the Acton Works Leases, LUL has agreed to provide certain services in respect of the Estate for the general benefit of the tenants and occupiers thereof, as set out in the Third Schedule to the said leases.
- 1.4 LUL wishes to appoint JNP to manage and/or procure the provision of certain of the services on its behalf on the terms and conditions set out in this Agreement.
- 1.5 This Agreement amends and restates the agreement of the same name dated 4 October 2000 between the parties hereto

IT IS 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 of the Master Definitions Agreement dated 1 April 2000 between LUL, BCV, SSL and JNP (the MDA) and the Acton Works Leases.
- 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 or the Acton Works Lease.

- 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.

MANAGEMENT SERVICES DUTIES

- 2.1 JNP shall provide, or procure or place contracts on behalf of LUL (the terms of which shall first be agreed upon by LUL) for the provision of, the following management services (the "Services"):

- (a) repairing maintaining and cleansing all ways roads pavements open areas buildings and Conducting Media which are now or may be at any time during the Perpetuity Period constructed laid or installed upon or serving the Estate (or over which the Landlord has the benefit of rights) and which may be available for use of occupiers (but excluding any such where the use thereof is limited to the occupiers of particular specified units);
- (b) maintaining repairing and cleansing, as required, all ways roads pavements sewers drains pipes watercourses and party walls party structures party fences walls or other conveniences which may belong to or be used for the buildings on the Estate in common with other premises near or adjoining the Estate;
- (c) providing all forms of security for the benefit of the Estate as a whole;
- (d) receiving sorting and holding mail for collection by tenants of the Estate;
- (e) keeping all planted areas within the Common Parts properly tended and keeping clean the open areas on the Common Parts;
- (f) providing utility main and sub-meter readings for meters installed on the Estate;
- (g) providing and maintaining Estate directory boards closed-circuit television and any other apparatus or facility provided for the benefit or use of tenants or occupiers of buildings on the Estate; and
- (h) maintaining repairing and renewing as necessary the street lighting on the Common Parts.

- 2.2 JNP shall provide a dedicated site manager (the "Site Manager") based at the Estate to undertake the Services for the benefit of all tenants of the Estate. The Site Manager shall initially be Jim Coughlan or such other employee of JNP as LUL may agree in writing from time to time.

- 2.3 In performing its obligations hereunder, JNP shall:
- (a) exercise all due care and skill as may be expected of a site manager;
 - (b) comply with all lawful instructions of LUL relating to the provision of the Services;

- (c) comply with all present and future Acts of Parliament, statutory instruments or other regulations;
- (d) keep detailed records of, and accounts for, all matters concerning the provision of the Services and shall provide copies of such records and accounts to LUL upon request;
- (e) use all reasonable endeavours to work within the services charges' budget to be prepared by the parties pursuant to Clause 3.3;
- (f) not undertake any services or works over and above the Services without the prior written consent in writing of LUL and should it fail to obtain such consent in breach of this Clause LUL shall not be liable for the cost of any such additional services or works

PAYMENT

- 3.1 In consideration of JNP providing the Services LUL shall pay to JNP an annual management fee which shall initially be in the sum of £40,000 in respect of the first year of this Agreement ('the Management Fee').
- 3.2 In addition to payment of the Management Fee, LUL shall pay JNP an annual amount for the purposes of payment of any sums incurred by it in the performance of its obligations hereunder, such amount to be agreed by the parties in accordance with Clause 3.3.
- 3.3 The amounts payable pursuant to Clauses 3.1 and 3.2 shall be reviewed and agreed upon by the parties annually prior to commencement of the following financial year.
- 3.4 JNP shall invoice LUL on a four weekly basis for an amount equivalent to one-thirteenth of the total of the sums payable under clauses 3.1 and 3.2 and LUL shall pay the amount of such invoice within 30 days of receipt.
- 3.5 In the event that the amount paid to JNP under clause 3.2 is insufficient to cover the expenses incurred by JNP in carrying out its obligations hereunder, or the amount paid by LUL exceeds the amount so required, the deficit, or excess (as the case may be), shall be paid to JNP or LUL, respectively, by the other of them.

DURATION

- 4.1 This Agreement shall commence on 1 April 2000 (the "Commencement Date") and continue in force unless determined in accordance with Clause 4.2 or 4.3

- 4.2 LUL may terminate this Agreement at any time upon giving not less than one month's written notice to JNP
- 4.3 JNP may terminate this Agreement by giving to LUL not less than one month's notice such notice to expire on 31 March in any one year (being the last day of service charge year in relation to the Estate pursuant to the Acton Works Leases).

INSURANCE AND INDEMNITY

- 5.1 The provisions of the Insurance Agreement shall apply with respect to this Agreement.

DISPUTES RESOLUTION

- 6.1 Any dispute shall be resolved in accordance with the Dispute Resolution Agreement.

CO-OPERATION

- 7.1 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.

FORCE MAJEURE

- 8.1 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.
- 8.2 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 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

- 9.1 The provisions of this Agreement 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 of this Agreement necessary to give effect to them.

NOTICES

- 10.1 Any notice affecting this Agreement and any invoices (together, **Notices**) shall be in writing and signed by the Agreement Manager referred to in clause 10.2 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 dispatch 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 dispatch;

(c) in the case of recorded delivery, special delivery or registered post, forty-eight (48) hours from the date of posting.

- 10.2 Notices or communications referred to in clause 10.1 affecting this Agreement shall in the case of LUL be addressed to:

London Transport Property (a subsidiary division of LUL)
Townsend House
Greycoat Place
London
SW1P 1BL

Tel: 020 7918 9035
Fax: 020 7976 6564
Attention: Richard Hawkes

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 Contract Management

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

ASSIGNMENT

- 11.1 JNP 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 its PPP Contract.

SEVERABILITY

- 12.1 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.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 13.1 A person who is not 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

- 14.1 Without prejudice to clause 6, 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 8.1 to 8.5 of the Dispute Resolution Agreement.

VAT

- 15.1 All sums payable under this Agreement shall be exclusive of VAT, if any. Subject to clause 15.2 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 15.1 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.

- 15.2 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.
- 15.3 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.
- 15.4 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.

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

SIGNED by)
 for and on behalf of)
LONDON UNDERGROUND)
LIMITED)

Director **MARTIN CALLAGHAN**

Secretary **FRANCES LOW**

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