

31 DECEMBER 2002

INFRACO JNP LIMITED

LONDON UNDERGROUND LIMITED

UNDERLEASE



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THIS UNDERLEASE made on 31 DECEMBER 2002

BETWEEN

INFRACO JNP LIMITED (company registration number 03923425) whose registered office is at 55 Broadway London SW1H 0BD (*Infraco*) and

LONDON UNDERGROUND LIMITED (company registration number 01900907) whose registered office is at 55 Broadway London SW1H 0BD (*LUL*)

WITNESSES as follows:

INTERPRETATION

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

1.2 Words and expressions used in this Underlease 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.

1.3 LUL and Infraco agree that the provisions of the PPP Contract and the obligations under it shall be of primary importance when the terms of this Underlease are being construed and thus:

- (a) in so far as there may be any inconsistency between any term of this Underlease and any term of the PPP Contract then the term in this Underlease shall be construed so far as possible so as to give full effect to the terms of the PPP Contract and the intentions of the parties to this Underlease as expressed in the PPP Contract but where the inconsistency shall be between a less specific/detailed provision in the PPP Contract or the Underlease and a more specific/detailed provision in the other document then the more specific/detailed provision shall prevail; and
- (b) references to the PPP Contract shall mean as it may be varied modified or substituted from time to time.

1.4 In this Underlease the expression Infraco includes the estate owner for the time being of the reversion expectant on the termination of the Underlease Term and the expression LUL includes LUL's successors in title and assigns.

DEMISE AND RENTS

2. In consideration of the rent hereby reserved and the covenants on the part of LUL and the conditions hereinafter contained Infraco demises to LUL (by way of a separate demise of each Relevant Parcel and of the remainder of the Underlet Premises respectively)¹ the Underlet Premises together with so far as Infraco is able to

¹ Note: omit words in parenthesis in the case of an Underlease derived out of an Ancillary Lease

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grant them the rights set out in Part II of the First Schedule excepting and reserving to Infraco and to all other persons from time to time entitled to them the rights set out in Part III of the First Schedule to hold them to LUL subject to the rights of any party pursuant to a Third Party Document and subject to the PFI Contracts and all Title Matters for the Underlease Term yielding and paying to Infraco the annual rent of one pound.

LUL'S COVENANTS

3. LUL covenants with Infraco as set out in the **Second Schedule**.

INFRACO'S COVENANTS

4. Infraco covenants with LUL as set out in the **Third Schedule**.

PROVISOS

5. It is agreed and declared as set out in the **Fourth Schedule**.

GLA ACT CERTIFICATION

6. The parties hereby certify that this Underlease is a PPP lease for the purposes of section 218 of the GLA Act.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

VALUE ADDED TAX

8. The provisions of clauses 53.3, 53.4, 53.6 and 53.7 of the PPP Contract shall apply in respect of this Underlease as if repeated herein provided that references to "the Contract" shall be replaced with references to "this Underlease" and the words in brackets in the first sentence of clause 53.3 shall not so apply.

DULY DELIVERED as a **DEED** on the date inserted on page 1.

THE FIRST SCHEDULE

Part I The Underlet Premises

The same premises as demised by the Lease (out of which this Underlease is derived) dated the same date as this Underlease and made between LUL (1) and Infraco (2) but excluding all Depot Premises other than any Depot PFI Unit.

Part II Rights granted

1. The rights (subject to the rights excepted and reserved in Part III of this Schedule) in common with Infraco and all others now or hereafter entitled to them granted in Part I of the First Schedule to the Lease (but excluding (i) the rights of access to LUL's Premises in paragraph 1(i) and paragraph 5 of Part I of the First Schedule to the Lease; and (ii) the benefit of the easements rights or privileges in paragraph 3 of Part I of the First Schedule to the Lease) and Part II of the Third Schedule to the Lease.
2. All rights granted by any lease of a Depot PFI Unit.
3. The right to enter the Depot Premises for the purpose of the operation of the Underground Network, or of exercising any rights (including without limitation any LUL Specified Right) under, or complying with any obligation on the part of LUL contained in, the PPP Contract or any Transaction Document, or for making use of the Services or for using and/or occupying (as appropriate) any Staff Accommodation and Train Staff Facilities and Train Service Facilities located on the Depot Premises and identified in the attached Appendix A to this Schedule and in exercising such right LUL will comply with the provisions of the PPP Contract relating to the same (if any).

Part III Rights excepted and reserved

The following rights (subject always in each case to the use by LUL of the Underlet Premises in accordance with paragraph 3 of the Second Schedule to this Underlease and to the exercise by LUL of the rights granted by the Underlease):

Access

1. The right in accordance with the terms of the PPP Contract and/or the Transaction Documents to enter any part of the Underlet Premises consisting of Relevant Let Property and to exercise the rights granted to the tenant under the Lease in each case for the purposes of the exercise of its rights and/or the performance of its obligations under the PPP Contract or any Transaction Document subject to the rights of any occupier of the Relevant Let Property and in the case of any Relevant Let Property which is unoccupied subject to the terms which would apply were it occupied on the basis of the Standard Letting Documents; and

2. The right in accordance with the terms of the Transaction Documents to enter the Underlet Premises not consisting of Relevant Let Property and to exercise the rights granted to the tenant under the Lease in each case for the purposes of the exercise of its rights and/or the performance of its obligations under the PPP Contract or any Transaction Document and to permit other Infracos to enter the Underlet Premises and to exercise the rights granted to the tenant under the Lease in accordance with the provisions of the Inter-Infraco Assets and Facilities Agreement.

Provided that Infraco in exercising such rights shall do so with all due diligence causing as little damage and inconvenience as reasonably possible and so far as reasonably practicable Infraco should not interfere with Relevant Let Property and shall make good to the reasonable satisfaction of LUL and (as the case may require) consistent with the leases or licences to the satisfaction of any tenant and occupiers of the Underlet Premises thereby affected, all damage or disturbance thereby caused to the Underlet Premises or any part thereof.

Allocated Space

3. The right to occupy and use the Allocated Space (as defined in the Fifth Schedule) within the Underlet Premises for the purposes of performance of its obligations under the PPP Contract or any Transaction Document subject to the terms and conditions set out in the Fifth Schedule.

Other rights

4. Rights in relation to the Underlet Premises in the same terms (*mutatis mutandis*) as are granted in paragraphs 2 and 4 of Part I of the First Schedule to the Lease in relation to certain parts of LUL's Premises.

Rights for the benefit of Depot Premises

5. The rights (if any) in common with LUL and all others now or hereafter entitled to them granted in Part II of the Third Schedule to the Lease.

APPENDIX A

Staff Accommodation, Train Staff Facilities and Train Service Facilities at Depot Premises

Depot Premises	Description of area	Occupied by whom
Stratford Market (Jubilee Line)	LUL use up to 25 car parking spaces within the depot and have the use of a messroom.	Jubilee Line train crew.
Golders Green (Northern Line)	No LUL occupation.	
Morden (Northern Line)	No LUL occupation.	
Cockfosters (Piccadilly Line)	LUL use up to 30 car parking spaces within the depot and occasionally use canteen and toilet facilities.	Piccadilly Line train crew.
Northfields (Piccadilly Line)	<ul style="list-style-type: none"> a) LUL use up to 20 car parking spaces within the depot. b) LUL also have the use of mess rooms, vending machines, toilets and a training room. c) Instructor operators make use of rolling stock for training LUL trainee operators within the depot. 	Piccadilly Line train crew.
Lillie Bridge	No LUL occupation.	

THE SECOND SCHEDULE

LUL's covenants

Pay rent

1. To pay to Infraco the annual rent of one pound (if demanded) on each anniversary of the date of this Underlease.

Alienation

2. Except as permitted by the PPP Contract not to assign (at law or in equity) this Underlease or the Underlet Premises as a whole or in part nor make any declaration of trust of them.

User

3. Not to use or permit the Underlet Premises to be used otherwise than for the purposes of:
- (a) carrying on its undertaking in exercise of and subject to its statutory and common law powers and obligations; or
 - (b) exercising any rights under the PPP Contract or any other Transaction Document (including without limitation in connection with any LUL Commercial Exploitation and any works and activities in relation thereto); or
 - (c) making use of the Services and complying with any obligations on the part of LUL contained in the PPP Contract or any other Transaction Document.

THE THIRD SCHEDULE

Infraco's covenants

Lease

1. To pay the rent reserved by the Lease and by way of indemnity only to observe and perform the covenants and conditions on the part of the tenant therein contained save to the extent that they are to be observed or performed by LUL under this Underlease.

THE FOURTH SCHEDULE

Provisos agreements and declarations

Termination

1.1 Infraco shall be entitled to determine this Underlease in whole or in part in accordance with the provisions of the PPP Contract (but not otherwise) and LUL shall have no right to any continuation or extension of this Underlease except as expressly contemplated by the PPP Contract.

1.2 LUL shall be entitled to determine this Underlease in whole or in part at the same time and to the same extent as it is entitled to determine the Lease.

No compensation

2. Except as expressly provided in the PPP Contract LUL shall not have any entitlement to compensation (whether in respect of improvements or otherwise) on Termination of the Underlease Term.

Separate demise

3. The demise of the Underlet Premises pursuant to clause 2 of this Underlease shall operate as a separate and severable demise of each Relevant Parcel and of the remainder of the Underlet Premises the extent of each such demise comprising and being co-extensive with Infraco's interest in each Relevant Parcel and the remainder of the Underlet Premises respectively.²

² Note: Omit paragraph 3 in the case of an Underlease derived out of an Ancillary Lease.

THE FIFTH SCHEDULE

Rights relating to Allocated Space

1. In this Fifth Schedule the following expressions have the following meanings:

Allocated Space means the rooms or space within the Underlet Premises more particularly described in the Space Allocation Table as used by Infraco and the expression includes any part or parts thereof;

Designated Use means, in relation to each room or space comprised in the Allocated Space, the use specified for that room or space in the "Description/Use" column of the Space Allocation Table or such other use as may be approved by LUL in accordance with the Space Allocation Process from time to time;

Regulations means any reasonable and proper regulations including any Site Specific Conditions and any variations or additions thereto from time to time notified in writing to Infraco and made by or on behalf of LUL for the proper management, care or security of the Underlet Premises and having a proper regard to safety, and to the need to provide an acceptable working environment for persons resorting thereto;

Site Specific Conditions means reasonable and proper conditions of use and occupation which are specific to particular rooms or space within the Allocated Space as imposed on Infraco pursuant to paragraph 7 for the proper management, care or security of the Underlet Premises and having a proper regard to safety, and to the need to provide an acceptable working environment for persons resorting thereto;

Space Allocation Table means the table recording the allocation of space between LUL and Infraco as agreed and initialled by them at the date hereof and from time to time amended in accordance with paragraph 6.

UNDERTAKINGS

2. Infraco undertakes with LUL in the manner set out in the **Appendix 1**.

PROVISOS

3. It is agreed and declared in the manner set out in the **Appendix 2**.

DETERMINATION

4.1(a) LUL may determine Infraco's right to use all or a part of the Allocated Space (as appropriate) in the following circumstances:

- (i) on fourteen (14) days written notice given by LUL containing or accompanied by a certificate from the Contract Manager appointed by LUL certifying that he considers (acting reasonably) that Infraco (or its authorised contractor) has permanently ceased to use the Allocated Space (or the relevant part) for the purposes of the performance of its obligations under the PPP Contract and/or any Transaction Document, if during that period of fourteen (14) days Infraco

has failed to demonstrate to LUL's reasonable satisfaction that it has not permanently ceased to use the Allocated Space (or the relevant part);

- (ii) expiry of notice in writing given by LUL in accordance with the Space Allocation Process following a decision of LUL as to use of the Allocated Space (or the relevant part) pursuant to the Space Allocation Process;
- (iii) on seven (7) days written notice given by LUL at any time following any material breach by Infraco of its undertakings contained in Appendix 1 if during that period Infraco has not remedied the breach or agreed a programme for rectification of the breach with LUL.

4.1(b) Infraco may terminate its use of Allocated Space or a part thereof upon giving fourteen (14) days prior written notice to LUL.

4.2 Following any determination pursuant to paragraph 4.1 in relation to a part only of the Allocated Space, the provisions of this Fifth Schedule shall continue in force in relation to the remainder of the Allocated Space.

4.3 Any determination pursuant to paragraph 4.1 shall be without prejudice to either party's rights in respect of any antecedent breach of the obligations on the part of the other party.

PPP CONTRACT

5. The obligations upon Infraco set out in this Fifth Schedule are in addition to and in no way vary or reduce the obligations owed by either party to the other under the terms of the PPP Contract or any other Transaction Document and to the extent that there is a conflict between any provision of this Fifth Schedule and the provisions of the PPP Contract or any other Transaction Document, the latter shall prevail.

OCCUPANCY SURVEY

6.1 It is recognised that there may be instances of Infraco occupation at Stations and premises comprised in the Underlet Premises which are not recorded in the Space Allocation Table. To facilitate the identification of such occupation, the parties agree to co-operate in carrying out, in phases, an occupancy survey of other Stations and other premises comprised in the Underlet Premises in order that any such occupation by Infraco can be recorded.

6.2 LUL agrees that once each phase of the occupancy survey referred to in paragraph 6.1 has been completed, the occupation by Infraco has been verified and agreed between the parties and a revised Space Allocation Table has been produced, the parties shall each initial the revised Space Allocation Table.

6.3.1 Pending completion of the occupancy survey and the amended Space Allocation Table, the parties may agree that instances of Infraco occupation of the Underlet Premises which are not yet recorded in the Space Allocation Table shall be deemed to be subject to the terms and conditions set out in this Fifth Schedule.

6.3.2 At the end of each Contract Year each party shall initial a then current version of the Space Allocation Table which shall:

- (i) include details of any additional space within the Underlet Premises which LUL and the Infraco as a consequence of the Space Allocation Process agree is to be or has been allocated to the Infraco in order to enable the Infraco to perform its obligations under the PPP Contract and/or any Transaction Document; but
- (ii) excluding any space that has been the subject of a notice served pursuant to paragraph 4 of this Fifth Schedule.

SITE SPECIFIC CONDITIONS

7.1 The parties acknowledge that it may be necessary from time to time for LUL to impose certain Site Specific Conditions.

7.2 Where LUL acting reasonably considers it necessary to impose such Site Specific Conditions it will do so by notice in writing to Infraco in the form set out in Appendix 3.

APPENDIX 1

Infraco's undertakings

Condition of property

1. To keep the Allocated Space clean and tidy and clear of rubbish and leave it in a clean and tidy condition.

Alterations

2. Not to make any alterations or carry out any works to or at the Allocated Space other than in accordance with the PPP Contract.

Signs and notices

3. Not to display any signs or notices at the Allocated Space without the prior written consent of LUL (such consent not to be unreasonably withheld or delayed).

Nuisance and use

- 4.1 Not to use the Allocated Space in such a way as to cause any nuisance or damage to the Underlet Premises or adjoining or neighbouring property or to the owners, occupiers or users of any adjoining or neighbouring property.

- 4.2 Without prejudice to the generality of the foregoing, not to use the Allocated Space other than for the Designated Use for the purposes of the performance of its obligations pursuant to the PPP Contract and/or any Transaction Document.

- 4.3 Not to store any dangerous, combustible or hazardous substances or materials (other than those with the consent in writing of LUL (such consent not to be unreasonably withheld or delayed)) and to comply with the reasonable and proper requirements of LUL in relation to such storage.

Statutory requirements and insurance

5. Not to do anything that will or might constitute a breach of any statutory requirement affecting the Underlet Premises.

Indemnity

6. To indemnify LUL, and keep LUL indemnified, in accordance with and to the extent provided in clause 24 (*Indemnity*) of the PPP Contract, against Losses arising in any way from any breach of any of Infraco's undertakings contained in this Fifth Schedule.

Rules and regulations

7. To observe the Regulations governing Infraco's use of the Allocated Space.

LUL's rights

8. Without prejudice to the foregoing provisions of this Fifth Schedule, in the exercise of such rights not in any way to impede LUL or its officers servants or agents in the exercise of LUL's rights of possession and control of the Underlet Premises or any part thereof.

APPENDIX 2

Provisos agreements and declarations

Notices

1.1 Any notices or other documents to be given under this Fifth Schedule shall be in writing in the English language and shall be deemed to have been 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.

1.1.1 LUL's address for service is:

9th Floor Albany House, Petty France
London
SW1H 0BD
Attention: LUL PPP Contract Manager (JNP Contract)

1.1.2 JNP's address for service is:

30 The South Colonnade
London
E14 5EU
Attention: Head of Prime Contract Management

1.2 Any such notices or other documents shall be deemed to have been received by the addressee two Business Days following the date of despatch of the notice or other document if sent by registered post, or on the next Business Day after delivery if sent by hand or by facsimile.

Warranty disclaimer

2. Infraco acknowledges that no representation or warranty has been given prior to the date hereof or is given or implied by this Fifth Schedule that the use now or hereafter proposed by Infraco for the Allocated Space is or will be or will remain a use which does not constitute a breach of the Town and Country Planning Act 1990 (or any act for time being in force of a similar nature or any laws and regulations intended to control or regulate the construction demolition alteration or change of use of land or buildings or to preserve or protect the environment or national heritage) or will not require planning permission and that no consent which LUL may give to any change of use shall be taken as including any such representation or warranty.

APPENDIX 3

[date]

Infraco JNP Limited
[address]

For the attention of the Head of Prime Contract Management

**UNDERLEASE: SITE SPECIFIC CONDITIONS IN RELATION TO
ALLOCATED SPACE AT [STATION/SITE NAME]**

In accordance with paragraph 7.2 of the Fifth Schedule of the Underlease dated _____
_____ and entered into between London Underground Limited and JNP
Limited you are hereby notified of the imposition of the Site Specific Conditions of
use and occupation specified in Part 2 of the Schedule to this notice in relation to the
rooms comprising the Allocated Space set out in Part 1 of the said Schedule.

Yours faithfully

[Signatory's name]
LUL PPP Contract Manager
on behalf of London Underground Limited

SCHEDULE

PART 1

Allocated Space

Room number	Description/use	Comments

PART 2

Site Specific Conditions

EXECUTED as a **DEED**)
by **INFRACO JNP LIMITED**)
acting by two directors/a director)
and the secretary)

Director **MARTIN CALLAGHAN**

Secretary **FRANCES LOW**

EXECUTED as a **DEED**)
of **LONDON UNDERGROUND**)
LIMITED in the presence of:)

Director **MARTIN CALLAGHAN**

Secretary **FRANCES LOW**